
(2001) 04 AP CK 0036
In the Andhra Pradesh High Court

New India Assurance Company Ltd.

APPELLANT

Vs

R.R. Usharani and Others

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 170

Citation : (2004) 1 ACC 427

Hon'ble Judges : G. Bikshapathy, J;B. Subhashan Reddy, J

Bench : Division Bench

Judgement

G. Bikshapathy, J.—This appeal is preferred by the Insurance Company against the orders dated 1.12.1998 passed by the learned Motor Accident Claims Tribunal (Chief Judge, City Civil Court, Hyderabad) in O.P. No. 568 of 1994.

2. The claimants are the legal representatives of the pillion rider Dr. G. Ramakrishna Reddy who died in an accident that took place on 21.11.1993. On that day, the deceased was travelling as a pillion rider on the motorcycle driven by the 1st respondent in the O.R bearing No. ATC 7103, from Krishna Oberoi Hotel towards the University. While so, on the way, on account of rash and negligent driving of the driver of the motor cycle, unfortunate accident had occurred in which the pillion rider was severely injured and immediately he was admitted in the Apollo Hospital, where he succumbed to the injuries on 31.12.1993. The legal representatives of the deceased pillion rider lodged a petition in O.R No. 568 of 1994 claiming compensation for the death of the deceased. The said claim was resisted by the owner of the motor cycle as well as by the Insurance Company.

3. Before the Court below, three witnesses were examined for the claimants and Exs. A-1 to A-22 were marked and on behalf of the respondents, two witnesses were examined and Exs. B-1 to B-3 were marked.

4. The learned Chief Judge, after considering the evidence onrecord found that the accident had occurred on account of the rash and negligent driving of the

owner of the motor cycle and, therefore, the Insurance Company with which the vehicle was insured was liable to pay the compensation to the claimants. Taking into consideration the income of the deceased, the learned Judge granted Rs. 35 lakhs as compensation with interest at the rate of 12% per annum from the date of petition till realization. Aggrieved by the said order, the Insurance Company has preferred the present appeal.

5. Mr. Kota Subba Rao, learned Counsel for the Insurance Company firstly contends that there was no negligence on the part of the driver of the motor cycle and, therefore the lower Court ought not to have awarded the compensation. Secondly he contends that the policy did not cover the pillion rider. In an accident, which arose after the amendment viz., after 14.11.1994, u/s 147 of the Motor Vehicles Act, 1988 (for short "the Act"), the owner and the pillion rider are covered and prior to that, the pillion rider is not covered. Admittedly in this case, the pillion rider died on 3.12.1993 and, therefore, on this ground also the compensation as awarded by the Court below is liable to be set aside.

6. On the other hand, the learned Counsel for the claimants submits that the Insurance Company cannot contend that there is no negligence on the part of the driver of the motor cycle as it is not one of the terms of the policy and the defences which are available to the Insurance Company only should be pleaded. In the absence of taking any permission u/s 170 of the Act from the Court below, the Insurance Company is precluded from contending such an issue. He also submits that the pillion rider is also entitled for compensation as held by the Supreme Court in catena of decisions, which would be referred to in the subsequent paragraphs.

7. So far as the contention relating to the negligence on the part of the driver of the motor cycle is concerned, it is now well settled by the judgment of the Supreme Court that such a defence is not available to the Insurance Company. Admittedly, in the instant case, no permission was obtained from the Court below as required u/s 170 of the Act and in the absence of obtaining such a permission, it would not be permissible for the Insurance Company to challenge the issue with regard to negligence on the part of the driver as held by the Supreme Court in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, .

8. Under these circumstances, we have to negative the contention raised by the learned Counsel for the Insurance. Company in this behalf.

9. Coming to the question of liability of the Insurance Company with regard to payment of compensation for the death of the pillion rider, it is to be noted that the motor cycle was insured under the provisions of the Act and the owner himself was driving the motor cycle on the fateful day. But, however, the pillion rider who sustained severe injuries died in the accident. The question that falls for consideration is whether the pillion rider is entitled for the compensation u/s 147 of the Act.

10. The learned Counsel for the Insurance Company submits that as per the law laid down by the Supreme Court in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, , prior to the amendment, no compensation is payable either to the owner or to the pillion rider who is not defined in the Act. It is only after the amendment, the pillion rider and the owner are eligible for compensation. He submits that even in the case of *New India Assurance Company Vs. Shri Satpal Singh and Others*, , this issue was not properly considered and, therefore, the law as existing prior to Satpal Singh's case should be taken into consideration.

11. In Satpal Singh's case, the Supreme Court has made it clear that "any person" had a wide amplitude and it covers all the persons travelling in a vehicle. The Supreme Court has clarified that the amendment has no relation to the compensation as Section 95 of the Old Act and Section 147 of the New Act travel in the same direction. The only distinction which is brought out in the amendment is, apart from the words "any person", the additional word "owner" was added. Therefore, in the eye of law, with reference to the facts of the present case, it makes no difference. Admittedly, in the instant case, the pillion rider died in the accident and the claim is laid by the legal representatives of the deceased. While dealing with the Satpal Singh's case, the Supreme Court was very much conscious of the proposition laid down in *Mallawwa* case and having regard to the interpretation of a beneficial legislation it held that "any person" means and includes all persons travelling in the vehicle may be fare paid or gratuitous. Further the word "vehicle" occurring in the said provision cannot be assigned restricted meaning unless a particular vehicle is specifically excluded by a statutory provision. It is not in dispute that two-wheeler (motor cycle) is permitted to carry two persons including the driver, we find no reason to exclude the pillion rider. The judgment of Karnataka High Court reported in air 2000 481 fully supported this view.

12. It is also to be noted in this regard that in *United India Insurance Company Ltd. Vs. Appukuttan and Another*, Division Bench of Kerala High Court, presided by Justice K.T. Thomas, as he then was dealing with the case of compensation in respect of a pillion rider. It observed at Para 6 at Page 889 thus:

But the position has completely been changed when the new Motor Vehicles Act, 1988, came into force. In Section 147 of the new Act which corresponds to Section 95 of the old Act there is no limit in certain cases as contained in Clause (ii) of the old Act. The corresponding proviso in the old Act contained three clauses whereas now there are only two clauses. What was dropped in the new Act is the Clause, which excluded the coverage for death or bodily injury to persons carried in or upon the vehicle. That means such liability cannot now be excluded from the policy. The result is, when a policy of insurance "is an Act Policy", it does not necessarily mean that the Insurance - Company will stand absolved from the liability in respect of the pillion rider of a motor cycle.

The same principle is affirmed in Satpal Singh's case. The latest judgment of the

Supreme Court while interpreting the provisions of the Act held that it is a beneficial piece of legislation which has to be liberally construed in favour of the victims and we are fortified by the judgment of the Supreme Court in *Rathi Menon Vs. Union of India*, , Justice Thomas speaking for the Bench, held that even if an accident had occurred prior to the Amending Act, but if the decision is rendered after the amendment, the date of decision is the criteria and not the date of accident for the purpose of awarding compensation under the Railways Act.

13. Therefore, keeping in view the dicta laid down by the Supreme Court, it has to be necessarily held that the pillion rider is also entitled for the compensation.

14. Mr. Kota Subba Rao, learned Counsel lastly contends that the interest awarded is 12% per annum, which is contrary to a decision rendered by the Supreme Court in *Kaushnuma Begum v. New India Assurance Co.* 1 (2000) ACC 151 (SC) : 2000 ACJ 428, we are not inclined to accept this contention inasmuch as we are not awarding any fresh amount and we are only affirming the order of the Court below by which date 12% interest per annum was the law that was prevailing. In view of this, we have to reject the contention of the Counsel for the appellant on this aspect also.

15. Thus we find no merits in the appeal and it is accordingly dismissed. No costs.