(1998) 11 AP CK 0026

In the Andhra Pradesh High Court

Case No : AAO No. 324 of 1991 and Batch

New India Assurance Company Ltd., Cuddapah — APPELLANT

Vs

Pesala Kishore Kumar and others — RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (1999) 5 ALD 138 : (1999) 4 ALT 107

Hon'ble Judges : Neelam Sanjiva Reddy, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. Kota Subba Rao and Mr. R. Venkata Ratnam, for the Appellant; Mr. K. Palaksha Reddy, for the Respondent

Judgement

N.Y. Hanumanthappa, J

1. CMA No.324/91 has been directed against the order and decree dated 31-12-1990 in OP No. 101/88 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Ongole, whereas CMA Nos. 1302/96, 1303/96, 1304/96 and 1305/96 have been directed against the order and decree dated 30-11-1995 made in OP Nos.559/90, 560/90, 563/90 and 561/90 respectively on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kurnool.

2. The appellant in all the above appeals is the Insurance Company. Since the point involved in all the appeals is common, they are clubbed and disposed of by a common judgment.

3. The case of the claimant in OP No.101/88 was that on 28-10-1987 at about 8 p.m. while he was proceeding to Vijayawada, the lorry bearing No.APD 6864 in which he was travelling met with an accident due to the rash and negligent driving of the driver who was working under Respondent Nos.1 and 2, the owners of the vehicle. Due to the said accident the claimant suffered injuries and his left hand was operated, and thus, he suffered total loss of movement of the

left fore-arm joint and also left hand fingers. As such he claimed compensation of Rs. 1,00,000/-, whereas the case of the claimants in all the other three OPs is that the deceased were working as hamalies earning Rs.70/- per day and on 20-9-1990, the lorry bearing No.AAQ 1622 belonging to the 1st Respondent in which they were travelling met with an accident due to rash and negligent driving of the driver as a result of which the deceased died. As such they claimed compensation of Rs.80,000/- for the death of the deceased.

4. In OP No.101/88, the Court below awarded compensation at Rs.25,000/- with interest to be paid by the owners and the Insurance Company restricting the liability of the Insurance Company to Rs.12,000/-and with costs. In other OPs namely OP Nos.559/90, 560/90 and 561/90, the trial Court awarded compensation at Rs.45,080/-, Rs.38,432/- and Rs.50,696/- respectively with interest and costs restricting the liability of the Insurance Company to Rs.25,000/-only. In OP No.563/90, the Tribunal awarded compensation at Rs.15,000/- with interest and costs restricting the liability of the Insurance Company to Rs.12,000/- only. Aggrieved by this, the Insurance Company filed these appeals.

5. According to the appellant, the accident occurred due to the negligence on the part of the deceased. The deceased or the injured have no authority to travel in the lorry nor the driver has any authority to permit them to travel. The appellant disputes the earning capacity of the deceased. Mere admission or confession of driver in a criminal case will not be the binding factor. The learned Counsel for appellant further contended that the Tribunal having absolving the Insurance Company from paying any compensation, committed a mistake in again asking the Insurance Company to pay compensation under no fault liability. The same is impermissible.

6. The Tribunal in its order at paras 14 and 15 held as follows:

".....Under the circumstances, I hold that the deceased was travelling in the lorry as an unauthorised passenger. As such, the 2nd Respondent is not liable to pay compensation u/s 166 of M.V. Act. However, the 2nd Respondent is liable to pay compensation under ''no fault liability'' in view of the decision of our High Court reported in K. Ramulu and Others Vs. Shaik Khaja and Others, wherein it was held that even if the victims were unauthorised passengers in the lorry, the Insurance Company is liable to pay compensation under ''no fault liability''."

7. Heard both sides. In respect of similar circumstances, the Hon''ble Supreme Court in the case of National Insurance Co. Ltd v. Jattu Ramu and others, 1998 (2) ACJ 921 (SC), took a view that when the Court holds that the Insurance Company is not liable on the main case, but directing it to pay under no fault liability is not correct.

8. As far as the above legal position is concerned, nothing can be altered as on to-day.

9. Accordingly, these appeals are allowed holding that the claimants are entitled for compensation from the owner of the vehicle but not from the Insurer including in respect of any amount if any already paid. There shall be no order as to costs.

