

(1995) 11 AP CK 0031
In the Andhra Pradesh High Court

Oriental Fire and General Insurance Co. Limited	APPELLANT
Vs	
K. Hanumantha Rao and Others	RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 2, 94, 95

Citation : (1996) 2 ACC 404

Hon'ble Judges : Y. Bhaskar Rao, J;B.S. Raikote, J

Bench : Division Bench

Judgement

Y. Bhaskar Rao, J.—The Oriental Fire and General Insurance Co. Ltd. is the appellant and it filed the L.P.As. Nos. 201/1989, 202/1989, 203/1989 and 204/1989, being aggrieved by the judgment of the learned Single Judge of this Court in C.M.A. Nos. 1163/1987, 1165/1989, 1167/1987 and 1164/1987. The claimants filed O.Ps. claiming compensation before the Tribunal under the Motor Vehicles Act stating therein that two persons died and three persons received injuries when they were taking the sheep in the lorry bearing No. AAA 6747 on 28.5.1983 at about 3.30 p.m., the accident took place due to the rash and negligent driving of the vehicle by the driver and as a result, the said two persons died and three persons received injuries. Therefore, they filed the claim petitions. The Motor Vehicle Claims Tribunal has considered the material evidence on record and after hearing both parties, it found that the driver drove the vehicle in a rash and negligent manner which resulted in the accident and caused the death of two persons and injuries to three persons and awarded compensation to the heirs of the two deceased persons as well as three injured persons. The said Claims Tribunal disposed of the claim petitions by awarding the compensation by a common judgment. Appeals are filed against that judgment in this Court. The learned Single Judge of this Court dismissed the appeals. Against that, the present L.F.As. are filed.

2. The learned Counsel for the appellant Mr. Dasaratharamayya contended that the vehicle involved in the accident is goods vehicle and meant for transporting

the goods only and not meant for the transporting the passengers. Therefore, if any person travelling in the vehicle with goods or without goods, the said travel is in contravention of the provisions of the Motor Vehicles Act and Rules. Therefore, no compensation could be awarded whether it is resulted in death or injuries to the persons travelling due to the accident. He further contended that there is no liability to insure the persons travelling in goods vehicle as contemplated u/s 96(1)(b)(ii) of the Motor Vehicles Act, which provides exemption.

3. The learned Counsel for the respondents-claimants Mr. Q. Manohar Reddy contended that the deceased and the injured persons were the owners of the sheep travelling with their sheep. Two persons died and three persons received injuries and the owners are entitled to travel alongwith their goods to look after them. So, they cannot be said as gratuitous passengers. Therefore, they are entitled to compensation and as such, the Motor Claims Tribunal as well as the learned Single Judge have rightly held in granting compensation in favour of the respondents-claimants and there are no merits in the appeals and so they are liable to be dismissed.

4. In view of the above contentions, the important question of law that arises for consideration is:

Whether an Insurance Company is liable to pay compensation where the owners of sheep, while travelling alongwith their sheep in a goods vehicle, receive injuries or die in an accident due to rash and negligent driving of the goods vehicle.

5. The above facts show that the accident took place on 28.5.1983 at about 3.30 p.m. on the relevant date, the Motor Vehicles Act, 1939 and the Rules framed under that Act were in force.

6. In order to appreciate the rival contentions, it is relevant to look at relevant provisions of Motor Vehicles Act:

"Section 2(7): "Goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or the personal luggage of passengers travelling in the vehicle."

Section 2(8): "Goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods of any motor vehicle not so constructed or adapted when used for the carriage of goods, solely or in addition to passengers.

Section 2(23): "Public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in the pursuance of terms of a contract or agreement or otherwise and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for

the purpose of having their goods transported.

Chapter VIII of Act No. IV of 1939 deals with the insurance of motor vehicles against third party risks. Section 94 contemplates necessity of insurance for the motor vehicles to be used in public place. However, the appropriate Government may exempt vehicles belonging to Central Government or State Government, any local authority and State Transport undertaking provided a fund has been established and maintained by the authority in accordance with rules made for meeting any liability arising out of the use of any vehicle by the authority. The requirements of policies and limits of liability are provided in Section 95. Section 95 came up for interpretation in a number of cases. The insurance cover under the Act is compulsory in certain cases and any provision in the policy contrary to it will be of no effect. Section 95(1)(b)(i) creates compulsory liability against the Insurance Company, against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Accordingly, it applies to the case of goods vehicles also subject to the proviso. Section 95(1)(i)(b) of the Act creates compulsory liability of the Government only for the goods and not for passengers in the public service vehicle. A public service vehicle is a vehicle used for the carriage of passengers for hire or reward and includes motor carriage. This is also subject to the proviso. The proviso to Section 95(1)(i)(b) states that a policy shall not be required in certain cases. In other words, the proviso is an exception to compulsory insurance mentioned in Section 95(1)(i)(ii). The non-compulsory type of insurances are mentioned in Clause (i) of the proviso (except under the Workmen's Compensation Act), while Clause (ii) of the proviso is an exception to the proviso, prohibits compulsory police Act mentioned in the main clause u/s 95(1)(i)(ii). According to Clause (1) Sub-clause (i) of proviso (b) to Section 95 of the Act, it is not compulsory to recover the insurance from the insurer having regard to-(1) employees engaged in driving the vehicle; or (2) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or (3) if it is a goods vehicle, being carried in the vehicle. Even this could be covered by a special contract.

7. It is to be noticed that it is mandatory to cover the liability whatsoever even under Workmen's Compensation Act, 1923. u/s 95(1)(b)(ii) of the Act, when several types of passengers travelling in goods vehicles have been brought under the Workmen's Compensation Act, the Insurance Company is liable. For example, the owners of the goods carried in goods vehicle under the Act. It is also provided under the heading that passengers carried for hire or reward or under contract of employment. Section 95(1)(ii)(c) is an exception and the Insurance Company is liable to pay compensation and Clause (ii) to Section 95(b) of the Act imposes compulsory liability on the Insurance Company.

8. It is proved that two persons died and three persons received injuries while they were transporting their sheep in the vehicle, due to the accident. Therefore, the question is whether the goods vehicle is covered by statutory liability or not

under the Act or policy or either.

9. In *Pushpabai Parshottam Udeshi and Ors. v. Ranjit Ginning and Pressing Co. Pvt. Ltd. and Anr.* AIR 1977 SC 1753, the Supreme Court was considering the claim made by the claimants, who are the children of one Purshottam Tulasidas Udeshi, while travelling in the motor vehicle, he met with an accident and died. The question that arose was whether the claimants were entitled for compensation, the requirement of the Company to take policy to cover the risk, who were not carried for hire or reward, the Supreme Court held as under:

Therefore, it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured, the plea of the Counsel for the Insurance Company will have to be accepted and the Insurance Company held not liable under the requirements of the Motor Vehicles Act.

As the passengers in the car were not carried for hire or reward, the Supreme Court held that the Insurance Company is not liable under statutory law. Therefore, it follows that whether the passengers are carried for hire or reward or by reason of or in pursuance of contract of employment, the Insurance Company will be liable statutorily under the Act.

10. In *Meesala Suryanarayana v. Goli Satyavathi and Ors.* 1979 (1) APLJ 401, the facts of the case were that the deceased was the owner of the goods, was travelling alongwith the goods in the lorry, which met with an accident, resulting in the death, and the question arose was whether the Insurance Company was liable. The Division Bench of this Court held that when the deceased with the permission of the driver of the vehicle was travelling in the said vehicle and the same being permitted by the conditions of the goods vehicle permit, so as to infer that the deceased was travelling in the vehicle under the contract of employment with the owner of the vehicle as the driver and cleaner of the vehicle are deemed to be the agents of the owners. All that is necessary is the person must be on the vehicle in pursuance of a contract of employment and if he is such a person, any injury caused to him, would also be covered by the section. The owner of the goods was travelling in the vehicle with the permission of the driver and the cleaner, who are the agents of the owner, in the course of their employment and under the contract of employment. In view of these circumstances, the Insurance Company is liable to pay compensation to the claimants. In the above judgment, more emphasis is given on the aspect that the deceased was travelling under the contract of employment. But Section 95(1)(c) (ii) of the Act contemplates that insurance policy covers the persons travelling in the vehicle, who are carried for hire or reward or by reason of or in pursuance of contract of employment. Thus, the Court held that the Insurance Company is liable to pay compensation to the owner of the goods while travelling in the vehicle when he dies or receives injuries.

11. In *Shaik Saida v. Avula Varma* (1987) 1 ALT 368, Justice K. Ramaswamy, as he then was, speaking for the Division Bench held that the case which is referred to by Justice P.A. Choudhary on the question whether the Insurance Company is liable to pay compensation to accident, claim u/s 94 of the Motor Vehicles Act, 1939 when an employee of the owner of the goods met with an accident while travelling with the goods with the permission of the driver. They referred to Sections 95(1) and (2) and considered the scope of the exception to Section 95(1)(b) proviso (ii) of the Act and also referred to earlier judgment of this Court reported in *State Insurance Department, State Insurance Officer, Trivandrum Vs. Sosamma Mani and Others*, ; *Smt. Santra Bai and Vs. Prahlad and Others*, etc. etc., and *The Hindusthan Ideal Insurance Corporation Ltd. Vs. Manne Chimperamma and Others*, and held that in view of the consistent view of all the Courts and the later Bench judgment of this Court, the Insurance Company is liable when there is a contract with the owner of the vehicle to carry the employee of the owner of the goods for hire or reward alongwith the goods and when the accident occurred when the employee was travelling in the goods vehicle alongwith the goods.

12. In *Oriental Fire and General Insurance Co. Vs. Hirabai Vithal Nikam and Others*, the Full Bench of the Bombay High Court was considering the question whether a passenger is carried in a goods vehicle for hire or reward, and the terms of the contract of insurance do not provide for such carriage, is the insurer liable for the death or bodily injury to such passenger. Their lordships considered the earlier judgment of the Bombay High Court reported in *Nasibdar Suba Fakir Vs. Adhia and Company and Others*, which held as under:

In that case the claimant was not a stranger who boarded the truck for hire or reward. The claimant was the hirer of the motor vehicle a goods vehicle. He was travelling in the truck for the purpose of picking up his own goods-scrap-from Thane ...

By the very necessity of the contract of hire of the vehicle, the hirer, who is the owner of the goods to be transported, has to travel in the vehicle, to supervise the transport. The consideration paid by the hirer of the vehicle being composite included consideration for the incidental transport of the hirer.

13. Thus, their Lordships affirmed the view taken in *Nasibdar Suba Fakir Vs. Adhia and Company and Others*, regarding the claim for compensation for the owners of the goods travelling in a vehicle and further held that for the claim of gratuitous passenger, the Insurance Company is not liable.

14. In *Oriental Insurance Co. Ltd. v. Smt. Irawwa* AIR 1992 Kar 321, the Full Bench of the Karnataka High Court held that since last 12 years, in all the cases where the owner of the goods met with an accident and compensation is claimed, the same was granted by holding that the Insurance Company is liable by interpreting Section 95(1)(b)(ii) of the Act. Therefore, where compensation is claimed in respect of death or bodily injury caused to the owner of the goods, the

Insurance Company is liable to pay compensation on the basis of the principle of Stare Decisis.

15. In the above decision, the claim arose after the Motor Vehicles Act, 1988 came into force. The Division Bench considered the Full Bench ratio laid down with reference to old and new Acts and held that under the old Act. Section 95(1) proviso (c)(ii) and also considered Sections 94 and 95 of the old Act and the corresponding provisions of Sections 146 and 147 of the New Act and definitions provided under both the Acts and held that Section 146(1) of 1988 Act which prescribes compulsory insurance of a motor vehicle in public place is similar to Section 94(1) of 1939 Act. Section 147 of 1988 Act prescribes the requirements of an insurance policy in respect of motor vehicle, is similar to Section 95 of 1939 Act. With this difference, namely, a provision similar to clause (ii) of the proviso to Section 95 is not found in Section 147. The Full Bench on a detailed examination of all the relevant provisions of 1939 Act held that clause did not require covering of liability in respect of passengers in any vehicle which in law was not meant or authorised to carry passengers for hire or reward. However, by applying the principle of Stare Decisis, the liability in respect of passengers travelling in goods vehicle alongwith their goods was upheld.

16. In Oriental Fire and General Insurance Co. Ltd. Vs. M. Bhanumathi and others, the Division Bench of this Court was considering the question whether the claim for compensation where the passenger dies while travelling in goods vehicle can be allowed. The Court considered the scope of Section 95 and Rule 277 of the Rules framed under the Motor Vehicles Act, 1939 and a number of judgments and held that the deceased were carried in the vehicle on payment of charges and hence they were carried for hire or reward. The vehicle was not covered by a permit to carry passengers for hire or reward. The rule prohibits carriage of persons for hire or reward in a lorry. The vehicles were therefore used for a purpose not allowed by the permit under which it was used. Consequently, the insurer is not liable for the tortious act of the owner of the vehicle by virtue of Section 95(1)(b)(i)(c) of the Act and agreeing with the view taken by the Full Bench of the Bombay High Court reported in Oriental F and G Insurance Co. v. Hira Bai (supra) and also the view taken by the learned Single Judge of this Court reported in New India Assurance Company Ltd. Vs. Shaik Jaffar and Others,

17. Rule 213 of the A.P. Motor Vehicles Rules, 1964 prescribes conditions to be attached to permits. The relevant portion of Rule 213 reads as under:

Not more than six persons in all in addition to the driver shall be carried in the vehicle except with the permission of the Transport Authority.

By reading the above rule, it is manifest that according to the rule, in Andhra Pradesh, six persons apart from the driver could be carried in a goods vehicle either they may be as owners of the goods, or employees of the employer or employees of the owners or travelling on paying for hire or reward or in pursuance of contract of employment. Rule 277 prescribes carriage of persons in

goods vehicles. Rule 277-A provides conditions for carrying animals in goods vehicles. Rule 277-A(iii) provides attendants shall accompany the animals. The rules permit transport of the animals alongwith the attendants.

18. Mr. Dasaratharamaiah contended that the employees or animals, or owners of the goods only can travel, but not the employees of the owner of the animals. We are not able to agree with this contention. The word used "attendant" meant to be the person to attend on or to serve the need. Therefore, a person who assists the needs of animals, he may either be a owner or employee of the owner.

19. A reading of Sections 94 & 95 alongwith the Rules 213, 277 and 277-A, it is manifest that where the animals are transported in a goods vehicle, the attendants are permitted to follow them. Further, the above stated rules permit six passengers to travel in a goods vehicle apart from the driver. The Insurance Company, when takes a policy, it is expected to cover all the statutory provisions under the Motor Vehicles Act and Rules therein and a policy taken is deemed to be covered, the statutory liability is created under the Motor Vehicles Act whether it is specifically provided in the policy or not. Therefore, by reading the above Sections 94 & 95 alongwith the Rules, it is revealed that the Insurance Company is liable to pay compensation. We are also supported in our view by the principles laid down in the above stated judgments.

20. The learned Counsel for the Insurance Company Sri Dasaratharamaiah relied upon the judgment of the learned Single Judge of the Madras High Court reported in The Common Wealth Assurance Co. Ltd., Bombay Vs. V.P. Rahim Khan Sahib and Others, and also the subsequent judgment of the Division Bench of the Madras High Court reported in C. Narayanan Vs. Madras State Palm Gur Sammelan and Another, In the above case, it is held that the Insurance Company is not liable. In Commonwealth Assurance Company's case, the Madras High Court held that a person hires a lorry for carrying goods and accompanied the goods, cannot be said to be a passenger carried by reason of or in pursuance of a contract of employment within the meaning of the proviso. This judgment has been confirmed by the Division Bench of the Madras High Court reported in C. Narayanan's case (supra). Rules 213, 217 and 277-A of the A.P. Motor Vehicles Rules permit transportation of goods alongwith the attendants. The rule position in the State of Andhra Pradesh is quite different from that of the State of Tamil Nadu. We are, therefore, not able to persuade ourselves with the view taken by the Madras High Court in the above-said decisions.

21. From the reading of Section 95(1)(c)(ii), and Rules, it is clear that the Insurance Company is liable to pay compensation where the owner of the goods while travelling in the goods vehicle, a death is caused or received injuries, is liable to pay compensation, since he was a passenger travelling in the goods vehicle for hire or reward. It is to be noticed that where a person hires a goods vehicle, it is legitimate and necessary for him to accompany the goods and travel in the vehicle particularly, when the said goods are animals to supervise the animals. Therefore, the consideration paid by the hirer of the vehicle begin

composite included consideration for the incidental transport of the hirer, since his presence in the vehicle is part of the contract for which he has paid the consideration. So, such owner of the goods is deemed to be a passenger for "hire or reward" within the meaning of Section 95(1)(b)(ii) of the Motor Vehicles Act. Therefore, the Insurance Company is liable for the tortious act of the driver of the vehicle.

22. Our view is also confirmed by the views expressed by the three Division Bench judgments of this Court and also the Full Bench judgments of the Karnataka and Bombay High Courts referred to above.

23. In view of the above circumstances, we have to hold that the appellant is liable to pay compensation to the claimants.

24. The learned Counsel for the appellant lastly contended that the Insurance Company is liable to pay only Rs. 10,000/- and not more than that. This contention was not raised before the lower Appellate Court, but, it is raised for the first time before us. Therefore, we do not think it appropriate to permit such plea at the stage of L.P.A. Therefore, his contention is rejected.

Appeals are accordingly, dismissed. No order as to costs.