
(1996) 02 AP CK 0029

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 142 of 1989

Oriental Fire and General Insurance Company Ltd.

APPELLANT

Vs

Ravulapalli Subbamma @ Subbulu and Another

RESPONDENT

Date of Decision : 05-02-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95, 96(2)

Citation : (1997) 4 ALT 647 : (1997) 2 APLJ 435

Hon'ble Judges : V. Rajagopala Reddy, J;K.M. Agarwal, J

Bench : Division Bench

Advocate : S. Hanumaiah, for the Appellant; E.V. Bhagiratha Rao, for the Respondent

Final Decision : Allowed

Judgement

V. Rajagopala Reddy, J.—The appellant is the 2nd respondent. 1st respondent filed the Claim Petition u/s 110-A of Motor Vehicles Act in O.P. No. 184/83 before the Motor Accidents Claims Tribunal (District Judge), Ongole, claiming Rs.50,000-00 as compensation for the death of her husband - Nannayya. The Claims Tribunal granted Rs.20,000-00 as compensation with interest from the date of petition, with proportionate costs. Questioning the order of the Tribunal, the appellant filed CMA. No. 349/1985 and a learned Single Judge of this Court refused to interfere with the order of the Claims Tribunal. This appeal is filed aggrieved by the Judgment of the learned Single Judge, dated: 16-11-1988.

2. The deceased was alleged to have been travelling in the lorry - ADB-7987 belonging to the Respondent No. 2 and due to the rash and negligent driving by the driver of the lorry, the lorry fell into a ditch and the deceased crushed resulting in his instantaneous death. The lorry was insured with the appellant. The Tribunal below found that the accident in question occurred on account of the rash and negligent driving of the vehicle. The said finding was not questioned in the appeal nor before us.

3. The point that is urged before us is that as the deceased was a gratuitous passenger travelling in a lorry, the appellant being the Insurance Company, was not liable to pay any compensation.

4. In support of his contention, the learned Counsel for the appellant relied upon a Division Bench decision of this Court in *Oriental Fire and General Insurance Co. Ltd. v. M. Bhanumathi and Ors.* 1990 (1) ALT 685. It is not disputed that the deceased was a gratuitous passenger travelling in the lorry and while travelling in the said lorry, he met with the accident and died. The insurance policy filed, prohibits the lorry for carriage of passengers. The Division Bench decision of this Court cited above, dealing with a similar situation considered and discussed in detail various decisions on this aspect and concluded as follows:

"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 Rules prohibit 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 96(2) (b) (1) (c) of the Motor Vehicles Act. We are in agreement with the view taken by the Full Bench of Bombay High Court in *Oriental Fire and General Insurance Co. Vs. Hirabai Vithal Nikam and Others*, . and the decision of the learned Single Judge in *Nia Co. Ltd. v. S. Jaffar* 1982 (1) ALT 243.

We are, therefore, of the view that where passengers are carried for hire or reward in a lorry which is a goods vehicle, the insurer is not liable for death or bodily injury to such passengers."

5. The above decision is therefore an authority to the proposition that the Insurance Company cannot be fastened with any liability even in the case of death of passengers, who are carried for hire or reward, in a lorry, which is a goods vehicle.

6. In *The Premier Insurance Co. Ltd., Vijayawada Vs. Vaddeswarapu Siromanamma and Others*, ., a Division Bench of this Court accepted the contention of the Insurance Company, that the compulsory insurance policy does not cover the passengers taken gratis in a lorry. It was held that the passengers were gratuitously travelling in a lorry and the liability cannot be fastened upon the Insurance company on the basis of Act policy u/s 95 of the Act. This position is now well settled and several Courts have taken this view.

7. The learned single Judge relied upon *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, . In this case, the deceased while travelling in a motor car, met with his death due to an accident. The deceased was a gratuitous passenger. The Supreme Court held that it was not required that the insurance policy should cover risk of such passengers. This is a case of motor car. Even then, the Insurance Company was held not liable for the death of the gratuitous passenger. This decision advances the contention

raised by the appellant. The learned single Judge was of the erroneous view that the deceased was not a gratuitous passenger. Even then, as per the ratio in Premier Insurance Co. Ltd. case (4 supra) no liability can be fastened on the Insurance Company. The learned Judge, therefore, committed an error in thinking that the Insurance Company was liable for the compensation. The owner of the lorry is no doubt liable to pay the compensation and the claimant can proceed against him as per the Award.

8. The appeal is, therefore, allowed. The impugned Award is modified to the extent that there shall be no liability on the appellant - Insurance Company for payment of any compensation arising out of the present accident. No costs.