

(1996) 08 AP CK 0094
In the Andhra Pradesh High Court
Case No : A.A.O. No. 872 of 1985

Oriental Fire and Genl. Ins. Co. Ltd.

APPELLANT

Vs

Kodipally Mallaiah and Others

RESPONDENT

Date of Decision : 05-08-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A, 95, 96

Citation : (1997) ACJ 1234

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : K. Ragavachary, for the Appellant;

Judgement

R. Bayapu Reddy, J.—This appeal is filed by the insurance company which is the respondent No. 3 in O.P. No. 104 of 1980 on the file of the District Judge-cum-Motor Accidents Claims Tribunal, Karimnagar, questioning its liability to pay the compensation awarded by the Tribunal to the claimants who are respondent Nos. 1 and 2 herein.

2. The present respondent Nos. 1 and 2 who are claimants before the lower court had filed the petition under the provisions of Motor Vehicles Act claiming compensation of Rs. 50,000/- on account of the death of their son in the accident which took place on 20.10.1980 at Peddapalli-Karimnagar road near Chinna Kalavala bridge. The vehicle involved in the accident was lorry bearing No. AAT 1321 which was owned by the respondent No. 3 herein and it was driven by respondent No. 4 herein at the time of the accident. The deceased who is the son of the claimants was aged about 16 years and he was travelling in the lorry which was a goods vehicle and in which cement bags were being carried on. As per the contention of the claimants, the deceased and some other persons numbering about 24 got into the lorry and sat on the cement bags and were travelling at the time of accident by paying fare to the driver of the lorry. The accident, according to them, took place on account of rash and negligent driving of the lorry by its driver. The dependants of the other persons who died in the

accident filed separate petitions claiming compensation, and all the petitions were tried together and disposed of by the common order dated 4.12.1984. The Tribunal came to the conclusion that the accident took place on account of rash and negligent driving of the lorry by its driver. On the basis of evidence the Tribunal awarded a compensation of Rs. 40,000/- to the claimants in O.P. No. 104 of 1980. The respondent Nos. 3 and 4 herein who are driver and owner of the vehicle have not chosen to question the orders of the Tribunal. The insurance company which is the present appellant and which was the respondent No. 3 before the Tribunal has, however, chosen to file the present appeal questioning the order of the Tribunal contending that the vehicle in which the deceased was travelling was a goods vehicle carrying cement bags and that 24 persons were travelling in the said lorry at the time of the accident which is in violation of the terms of the insurance policy as well as the permit issued to the lorry and that in view of such circumstances the insurance company cannot be held liable to pay the compensation. The appellant is not disputing the findings of the lower court regarding the rash and negligent driving of the vehicle by the driver due to which the accident had taken place.

3. The only point that, therefore, arises for consideration in this appeal is whether the insurance company, which is the appellant in the present case, is liable to pay any compensation to the claimants?

4. The lorry which was involved in the accident was admittedly insured with the present appellant insurance company by the respondent No. 4. The findings of the Tribunal that the accident took place on account of the rash and negligent driving of the lorry by its driver is not disputed by the appellant and the respondent Nos. 3 and 4 who are the driver and owner of the vehicle have also not chosen to question the orders of the Tribunal. The only contention of the appellant, which is the insurance company, is that it is not liable to pay any compensation as the deceased along with many other persons numbering about 24 had travelled in the lorry which is a goods vehicle and that it is in violation of the terms of the insurance policy as well as the permit issued for the lorry. The learned Counsel for the appellant has relied upon the Division Bench decision of this Court in *Oriental Fire & Genl. Ins. Co. Ltd. v. M. Bhanumathi* 1990 ACJ 1043, in support of his contentions in this regard. A similar point arose for consideration in that Division Bench decision of this Court. It is observed in the said decision that where the passengers are carried for hire or reward in a lorry which is a goods vehicle, the insurer is not liable for the death or bodily injury caused to such a passenger. The Division Bench referred to the Full Bench decision of the Bombay High Court in *Oriental Fire & Genl. Ins. Co. Ltd. v. Shantabai S. Dhume* 1987 ACJ 198 (Bombay) and the decision of our own High Court in *New India Assurance Co. Ltd. v. Chotinabee* 1986 ACJ 120, in support of its views. It is observed by the court that where the passengers are carried for hire or reward contrary to the permit issued, the insurer is not liable for the death or bodily injury to such persons. In the above cited decision of our High Court in *New India Assurance Co. Ltd. v. Chotinabee* (supra), it is held,

construing Sections 95 and 96 of the Motor Vehicles Act, that as persons were travelling in the lorry on payment of charges contrary to the specific conditions in the policy and also the permit, the insurance company would not be liable to pay compensation. In the present case also, even as per the contention raised in the petition filed by the petitioners, the deceased along with many other persons was travelling in the lorry in which cement bags were being carried and those persons got into the lorry by paying fare to the driver of the lorry. Under such circumstances, the insurance company cannot be held liable to pay the compensation which is awarded in favour of the claimants. The learned Counsel for the respondent Nos. 1 and 2 who are claimants has, however, tried to contend that even if the insurance company cannot be said to be liable to pay the compensation on merits in view of such circumstances, it is liable to pay the minimum compensation under the theory of no fault liability as contemplated in Section 92-E of the Motor Vehicles Act (old). He has also tried to rely upon the decision of our High Court in K. Ramulu and Others Vs. Shaik Khaja and Others, , in this regard. It is held in the said decision of our High Court that as Section 92-E has got overriding effect, and when the intendment u/s 94 is to have insurance coverage in all cases where the owner is statutorily liable, it is just and proper to hold that the insurer is also liable in regard to the compensation payable u/s 92-A. The learned Counsel for the appellant also did not try to dispute this proposition. Therefore, the appellant insurance company will be liable to pay the compensation to the claimants to an extent of Rs. 25,000/- which is the minimum compensation in the case of death of a person as per the provisions of Section 92-A of the Motor Vehicles Act (old) which applies to the present case. As such the award of the lower court is modified accordingly restricting the liability of the appellant insurance company to Rs. 25.000/-.

5. The appeal is, therefore, allowed in part and the order of the lower court is modified holding that appellant insurance company is liable to pay only an amount of Rs. 25,000/- as compensation to the claimants. The said amount is apportioned equally for both claimants. No costs.