
(2002) 07 AP CK 0041
In the Andhra Pradesh High Court
Case No : AAO No. 1388 of 1997

P. Muse Khan and Others

APPELLANT

Vs

M. Gopala Krishnaiah and Another

RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1), 2(34)

Citation : (2003) 2 ACC 677 : (2004) ACJ 1306 : (2002) 6 ALD 612 : (2002) 3 APLJ 495

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : T. Niranjan Reddy, for the Appellant; Ramalingeswara Rao, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J. 1. The short question that falls for consideration in this appeal is whether the agricultural fields where the accident occurred is a "public place", within the meaning of Section 2(34) of the Motor Vehicles Act, 1988, so as to fasten the liability against the insurer for the compensation awarded by the Tribunal.

2. The facts, which are not in dispute, are as follows:

One Basha Khan while working in the fields of Shanker Reddy of Mudumur village sustained multiple grievous injuries in a motor accident and died while he was being shifted to Hospital, The appellants herein who are the legal representatives of the deceased Basha Khan filed OP No. 69 of 1996 on the file of Motor Accidents Claims Tribunal-cum-Additional District Judge, Madanapalle seeking compensation contending that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No. AP03 9228 resulting in the death of the deceased. The owner of the said lorry as well as the Insurance Company with whom the lorry was insured were made the respondents. Along

with the claim petition, the claimants also filed IA No. 870 of 1996 u/s 140 of the Motor Vehicles Act, 1988 claiming compensation under no fault liability. The said petition was contested by the 2nd respondent-Insurance Company. The 1st respondent, owner remained ex parte.

3. The 2nd respondent-Insurance Company raised a specific plea in the counter that the place where the accident occurred is not a "public place" as defined u/s 2(34) of the Motor Vehicles Act, 1988 - hereinafter called the Act, and therefore, in terms of Section 147(1)(b)(i) of the Act, the liability cannot be fastened against the Insurance Company.

4. On the basis of the above pleadings, the Tribunal below settled the following issues for trial in IA No. 870 of 1996.

1. Whether the petitioners are the legal heirs of the deceased?

2. Whether the accident took place in a public place?

3. Whether the claimants are entitled for compensation? If so, from whom and to what amount?

4. To what relief?

5. Before the Tribunal below the 1st claimant examined himself as PW1, and got marked Exs.A1 and A2 documents to substantiate the claim under no fault liability. On behalf of the respondents none was examined, however, Ex.B1 policy was marked. The Tribunal below on appreciation of the evidence on record held on issue No. 1 that the claimants are the legal heirs of the deceased. On issue No. 2 it has been held that the accident took place in the fields of Shanker Reddy, which is not a public place, and therefore, the 2nd respondent-insurer is not liable to pay the compensation. Accordingly, the Tribunal below held that the claimants are entitled for statutory sum of Rs. 50,000/- under no fault liability, however, the 1st respondent-owner of the vehicle, alone is liable to pay the same together with interest at 12% p.a., from the date of the petition till realisation.

6. The said order of the Tribunal below dated 11-3-1997, dismissing IA No. 870 of 1996 as against the Insurance Company, is questioned in this appeal by the claimants.

7. Heard the learned Counsel for the appellants as well as the learned Counsel for the respondents.

8. The only contention raised by the learned Counsel for the appellants is that the finding of the Tribunal below that the place where the accident occurred is not a "public place" within the meaning of Section 2(34) of the Act is unsustainable. It is further contended that the order under appeal absolving the Insurance Company from the liability is erroneous.

9. The learned Counsel for the respondents while supporting the order under appeal, submitted that in the facts and circumstances of the case, the Tribunal

below has rightly held that the Insurance Company is not liable to pay the compensation and that the order under appeal does not warrant any interference.

10. Section 147(1) of the Act, to the extent it is relevant for the purpose of the present case, reads as under:

147. Requirements of policies and limits of liability :--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2), --

(i) against any liability which may be incurred by him in respect of the death of or bodily (injury to any person, including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii).....

As can be seen Section 147 of the Act provides that in order to comply with the requirements of the Chapter relating to insurance of Motor Vehicles against third party risks, the policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in the policy against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Thus, undoubtedly one of the requirements to make the insurer liable against the third party risks is that the death, bodily injury or damage to any property of a third party shall arise out of use of the vehicle in a "public place".

11. In this context it is necessary to refer to the definition of "public place" u/s 2(34) of the Motor Vehicles Act, 1988, which corresponds to Section 2 (24) of the repealed Act of 1939.

2(34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

12. A plain reading of the definition of "public place", shows that the place whether or not a thoroughfare can be considered to be a "public place" if the public have got a right of access thereto. In other words, even a private place, to which the public have a right of access in any manner whatsoever would also fall within the meaning of "public place". Thus, when a private place is made accessible to the members of the public or where entry of the public is never restricted nor objected to, the only plausible conclusion would be that such private place would amount to "public place" as defined u/s 2(34).

13. In Lanka Sarmma Vs. Rajendra Singh and Others, , this Court has examined

the scope of the definition of public place as defined u/s 2(24) of the repealed Act of 1939 and held as follows:

"A private place to which access is gained by the public is also comprehended within the definitional meaning of the words "public place". The fact that the words "public place" refer even to a place which is not a part of thoroughfare shows that private place also is comprehended by that definition. The words "public place" refer to road, street, way or even any other place which is not a thoroughfare to which public have a right of access. The words "other place which is not a thoroughfare" cannot be interpreted according to ejusdem generis rule, because they are negative in nature. A place over which a vehicle can pass and which is yet not a thoroughfare can only refer to a private place made fit for plying of the motor vehicle. Accordingly, it is held that where the coolies were hired for loading and unloading stones to be delivered at dam site and accident occurred near the dam site, the place of accident would have to be considered as one falling within the definition of "public place" though it belonged to the Public Works Dept., as the workmen constituted public and, as such, the place was a public place.

14. Similar view has been expressed in *Chinna Gangappa Vs. B. Sanjeeva Reddy and Another*, . In the said case, the appellant therein met with the accident when he was at the workshop for the purpose of loading and unloading goods. His presence in the premises of the auto garage was not prohibited. The said garage where the accident occurred was held to be a public place as defined u/s 2(24) of the Motor Vehicles Act, 1939 and consequently the insurer was held liable for the compensation awarded.

15. Again in *United India Insurance Co., Ltd., Guntur Vs. S.K. Raheemunnisa and others*, , having reviewed the relevant case law, this Court held that the accident occurred in the premises of a cement factory at a place provided for stationing the lorries where the public has a right of access and therefore it comes within the definition of Section 2(34) of the Act and therefore, the insurance company is liable to indemnify the claim in respect of the compensation awarded by the Tribunal.

16. This issue has also been considered in detail by a Full Bench of Bombay High Court in *Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others*, . In the said case, the accident took place in the compound of Tata Engineering and Locomotive Company Limited. The entire premises including the main road where the accident took place belonged to the company. Generally a person entering the factory premises was supposed to possess permission or authority. The Full Bench on consideration of the relevant statutory provisions held that the place where the accident occurred was a public place. It is relevant to note the following observations made by the Full Bench.

"The term "public place" is a term of art, the same having been defined specifically by Sub-clause (24) of Section 2 of the Act. The first thing to

remember with regard to the definition is that it is an inclusive one. Secondly, it in terms makes it clear that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or set down by a stage carriage, is a public place, it shows that it is not so much concerned with the ownership of the place as with its user. The definition of "public place" under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of the public and be available for their use, enjoyment, avocation other purpose."

17. The Full Bench of Madras High Court also considered the same question in *United India Insurance Company Limited v. Parvathi Devi and Ors.* 1999 (2) ACJ 1520, and held as follows:

"The definition of "public place" is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word "public place", wherever used as a right or controlled in any manner whatsoever, would attract Section 2(24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a "public place"."

18. In the instant case, the evidence on record shows that the crime vehicle which was a bore well support lorry belonging to the 1st respondent was engaged to dig a bore well in the fields of one Shanker Reddy and during the course of drilling the accident took place resulting in the death of the deceased. The report given by the driver of the crime vehicle as recorded in Ex.A1 First Information Report itself shows that at the time of the accident number of villagers were present in the field and watching the drilling operation. This itself makes very clear that the place of accident was accessible to the members of the public. There is absolutely no rebuttal evidence on behalf of the respondents to show that the entry of public into the fields of Shankar Reddy was restricted or obstructed at the relevant time or at any time prior to that. In the absence of any such evidence to suggest denial of access to the public, I am unable to agree with the conclusion reached by the Tribunal below that the place where the accident took place is not a "public place" within the meaning of Section 2(34) of the Act. As a matter of fact the Tribunal below has not adverted to the admitted facts and the evidence on record and merely carried away by the fact that the

accident took place in the agricultural fields and concluded that it is not a "public place". As expressed above, even a private place to which members of public have a right of access shall be held to be a "public place" and the said question has to be determined taking into consideration the facts and circumstances of the case on hand and on the basis of the evidence on record.

19. For the reasons stated supra, I have no manner of doubt whatsoever that the agricultural fields where the accident took place is a "public place", within the meaning of Section 2(34) of the Act. Thus the requirement u/s 147(1)(b)(i) of the Act is satisfied and the Insurance Company cannot be absolved of its liability for payment of compensation awarded by the Tribunal below under no fault liability.

20. The learned Counsel for the respondents placed reliance on a decision of the Madras High Court reported in Nagarathinam v. Murugesan and Ors. 1991 ACJ 673 (Mad.) wherein it is held that the petrol pump where the accident took place is not a public place. In view of the principles laid down by the Full Bench of the Madras High Court in United India Insurance Company Limited v. Parvathi Devi and Ors., (supra) as well as the other decisions cited supra, I am unable to agree with the view expressed by a learned single Judge of Madras High Court in Nagarathinam v. Murugesan and Ors., (supra).

21. The learned Counsel for the appellants has also relied upon the decision of a Division Bench of this Court in New India Assurance Company Ltd., Cuddapah Vs. Pesala Kishore Kumar and others, , and contended that the Insurance Company cannot be made liable to pay the compensation. The facts in the said case are entirely different and the ratio laid down therein, does not apply to the facts and circumstances of the present case.

22. In the circumstances, the order of the Tribunal below in IA.No. 870 of 1996 to the extent of declaring that the petition is maintainable only against the 1st respondent, is set aside. Accordingly I.A. No. 870 of 1996 is allowed against both the respondents i.e., the owner of the vehicle as well as the Insurance Company for a sum of Rs. 50,000/- under no fault liability together with interest at 12% p.a., from the date of the petition till realisation.

23. The Tribunal below shall proceed with OP No. 69 of 1996 and decide the entitlement of the claimants for compensation in OP No. 69 of 1996 under "fault liability". The parties shall be permitted to lead further evidence with regard to issues in OP No. 69 of 1996 and the Tribunal below after hearing both the parties shall pass appropriate orders in accordance with law within six months from the date of receipt of a copy of this order.

24. The appeal is accordingly allowed. There shall be no order as to costs.