
(2014) 08 AP CK 0126

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. Nos. 127 of 2007 and 1303 of 2008

Pundu Balamani and Others

APPELLANT

Vs

B. Gangaram and Others

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166(1)(c), 2

Citation : (2014) 08 AP CK 0126

Hon'ble Judges : C. Praveen Kumar, J

Bench : Single Bench

Advocate : M. Rajamalla Reddy, Advocates for the Appellant; W.V.S. Rajeswari, Advocates for the Respondent

Judgement

C. Praveen Kumar, J.—M.A.C.M.A. No. 127 of 2007 was filed by the claimants seeking enhancement of the compensation awarded while M.A.C.M.A. No. 1303 of 2008 was filed by United India Insurance Company Limited, questioning the award dated 14.09.2006 passed in O.P. No. 102 of 2003 on the file of the Motor Accidents Claims Tribunal (District Judge), Nizamabad.

2. Since these two appeals are directed against the order dated 14.09.2006 they are being disposed of by this common judgment.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

4. The facts in issue are as under:

"The claimants, who are the wife and parents of the deceased Pundu Mallesh filed a petition under Section 166(1)(c) of the Motor Vehicles Act, 1988, claiming compensation of Rs. 6,00,000/- for the death of Pundu Mallesh in a road accident that took place on 17.09.2002. It is stated that on that day at about 1.30 p.m. the deceased along with others was traveling in a Tractor bearing No. AP 25 H 4496 from the fields to Damara Village. When the said tractor reached Damara Cheruvu katta, the driver of the tractor drove the same in a rash and negligent

manner, lost control over the same, as a result of which the tractor fell into the tank and the deceased died on the spot. It is stated that prior to the accident the deceased was hale and healthy and earning Rs. 10,000/- per month by doing agriculture. On account of death of the deceased, the first petitioner lost her husband at her prime age and petitioners 2 and 3 lost their son. Since the first respondent is the owner of the vehicle and the second respondent being insurer of the vehicle, both of them are made jointly and severally liable to pay compensation."

5. The first respondent, owner of the tractor remained ex parte, while the second respondent filed written statement denying the averments in the petition including the involvement of the tractor in the said accident. It also disputed the manner in which the accident took place, the age, income and avocation of the deceased. It was further contended that the seating capacity of the tractor is only one and as there is no provision in the policy to cover the risk of labourers or cleaner traveling in the tractor, the insurer is not liable to pay any compensation. It was further contended that the driver of the tractor was not having a valid driving licence to drive the vehicle at the time of the accident. It is also specifically contended that since the owner of the vehicle has violated the terms and conditions of the policy, the insurer is not liable to pay any compensation.

6. Basing on the above pleadings, the Tribunal framed the following issues:

"1. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No. AP 25 H 4496 by its driver?

2. Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?

3. To what relief?"

7. In support of their claim, the first petitioner examined herself as P.W. 1 and an eye witness to the incident as P.W. 2 and got marked Exs. A1 to A6 in support of their plea. The respondents got examined R.W. 1 and also got marked Ex. B1 a copy of the insurance policy.

8. After analyzing the material available on record, the Tribunal found that the accident took place due to the rash and negligent driving of the driver of the tractor and accordingly awarded a sum of Rs. 4,28,000/- as compensation to be paid by both the respondents jointly and severally. Challenging the same these appeals are filed.

9. The learned counsel for the insurance company strenuously contends that the seating capacity of the tractor is only one and as such covering the risk of others traveling in the tractor as coolies or labourers would not arise. It was further contended that the tractor was used other than the purpose for which it was insured and hence the insurer is not liable to pay any compensation.

10. Relying upon the judgment of the Apex Court in *Kishan Gopal and another V. Lala and others* 2014 (1) An.W.R. 58 (SC) the learned counsel for the claimants would submit that the finding of the Tribunal warrants no interference. He further submits that the quantum of compensation awarded by the Tribunal is on the lower side and hence seeks enhancement of the same.

11. Before proceeding further, it would be relevant to refer to the evidence and the contents of the policy. The eye witness to the incident was examined as P.W. 2. P.W. 2 in his evidence deposed that on the date of incident at about 1.30 p.m. while himself along with the deceased were going on a tractor from the fields of Mallesh (deceased) to the house of the owner of the tractor after ploughing the lands, and that the driver of the tractor drove the same in a rash and negligent manner, lost control over the same, leading to tractor turning turtle and falling into a tank. According to him, the deceased Mallesh and the driver of the tractor fell down into the water and died on the spot. The cross examination of P.W. 2 reveals that on the date of accident they were coming in the tractor along with the cultivator and both of them sat on either side of the driver. It was further elicited from the evidence of P.W. 2 that the deceased engaged the tractor of the owner by providing diesel. The evidence of P.W. 2 coupled with that of the evidence of P.W. 1, who was not an eye witness to the incident, amply establish that the said tractor was engaged by the deceased to plough his land and while returning to their village after getting the lands ploughed, the said accident took place. The evidence of P.W. 2 also disclosed that at the time of the accident, the tractor was fitted with a cultivator. The First Information Report (Ex. A1) also discloses that on the date of accident the deceased along with another attended the fields, got the same ploughed through a cultivator and were returning back. The averments in the charge sheet also show that the accident took place while they were returning to village after the agriculture work. As stated above, in respect of the above incident a case in Crime No. 92 of 2002 of Nandipet Police Station came to be registered. Police after investigation filed charge sheet stating that the accident took place on 17.09.2002 while the deceased and another were returning to the village from the fields after ploughing the lands with the tractor.

12. K. Radha Krishna, who was working as Senior Assistant in the insurance company, was examined as R.W. 1. In his evidence he deposed that three persons were traveling in the said tractor at the time of the accident and since the seating capacity of the tractor is only one the insurance company is not liable to pay any compensation. However, he admits in his cross examination that on the date of accident the deceased Mallesh was returning from the fields in the tractor. It is also admitted by R.W. 1 that Ex. B1 is silent as to the seating capacity of the tractor. He also admits about the non-filing of the R.C. Book of the tractor showing the seating capacity. Therefore, the evidence of P.Ws. 1 and 2 coupled with Exs. A1 and A2 (final report) clearly establishes that the accident took place while the deceased, who engaged the tractor to plough the land, was returning after the agricultural operations and the said vehicle was fitted with a cultivator. The said fact is established not only from the evidence of P.Ws. 1 and

2 but also from the admissions made by R.W. 1. Hence, it can be held that the accident took place due to rash and negligent driving by the driver of the tractor while they returning home after the agricultural operations in the field of the deceased.

13. The question would be whether the insurance company is liable to indemnify the owner of the tractor.

14. Coming to the liability of the insurance company in paying the compensation, the learned counsel for the insurance company strenuously contends that since the seating capacity of the tractor is only one and as the deceased along with another person were sitting by the side of the driver, the insurance company is not liable to indemnify the owner as the policy does not cover the risk. The word tractor as defined in the Motor Vehicles Act, reads as under:

"Section (2)(46) of the Act "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road roller;"

15. The said definition does not anywhere refer to the seating capacity of the tractor. The policy which was issued for the vehicle also does not anywhere refer to the seating capacity of the tractor. Probably the R.C. book issued while registering the tractor may contain the same but strangely the said document is not filed. While admitting the non filing of RC book R.W. 1 in his evidence states that the insurance policy is a comprehensive policy i.e. Farmers package policy.

16. Relying upon the evidence of R.W. 1, it is contended by the learned counsel for the insurance company that the seating capacity of the vehicle being one, the insurance company cannot be made to pay the compensation, but the said argument appears to be based on a presumption that the seating capacity of the tractor is only one. It may be true, the seating capacity of the tractor is only one but at the same time the insurance company should have adduced evidence to show that the seating capacity of the tractor is only one. It has not taken any steps to examine any person from the R.T.A. nor did make any effort to get the RC book marked so as to establish its plea. That being the position, the argument of the learned counsel for the insurance company that the insurance company is not liable to pay any compensation since the seating capacity of the tractor is only one cannot be accepted. But the fact remains that the deceased was in the vehicle at the time of the accident. Since the insurance policy, is a farmers package policy, which is a comprehensive policy, when the vehicle was used for agricultural purpose, the insurance company cannot itself get exonerated by not paying any compensation.

17. An identical issue came up before the Karnataka High Court in National Insurance Company Limited Vs. Smt. Renuka and Others, . It was also a case where the tractor and trailer were insured under the farmers package policy. The argument of insurance company was that the policy does not cover the risk.

Rejecting the said plea, the Karnataka High Court held as under:

"Farmer's Package Policy itself is for the tractor and trailer for agricultural activities. The policy is issued under the Farmers Package Policy under which the tractor and trailer necessarily has to be involved in agricultural operations in the agricultural field. The question is whether it is a public place or not as contemplated in Clause 34 of Section 2 of the Motor Vehicles Act. The said clause 34 of Section 2, reads thus:

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;

In the light of the said provision, the accident took place in an agricultural field definitely attracts the said provision for a limited extent to claim compensation. 2. The submission in respect of non-agricultural activities carried on by the tractor, the same has been rejected by the Tribunal and I do not find any materials to entertain the said contention."

18. In *Kishan Gopal case* (supra), the Apex Court was dealing with the situation whether a boy aged about 10 years travelling in a trolley of the tractor died in an accident which took place due to rash and negligent driving by the driver of the said tractor. It was a case where the parents of the deceased filed an application under Section 166 of the Motor Vehicles Act, claiming compensation. After contest, the Tribunal held that the parents were not successful in proving that the deceased has fallen from the tractor which was driven rashly and negligently by its driver. Aggrieved by the same, the claimants preferred an appeal before the High Court. The learned single Judge of the High Court dismissed the appeal confirming the finding of the Tribunal. Challenging the same they preferred an appeal before the Apex Court urging various grounds. In the said case A.Ws. 1 and 2 stated that their deceased son was travelling in the tractor which turned turtle on account of rash and negligent driving of the offending vehicle by the first respondent therein. It was deposed that the deceased fell down from the trolley and the tractor ran over the body resulting in his death. The Apex Court held that, without appreciating the evidence of A.Ws. 1 and 2 and the contents of F.I.R., the Tribunal as well as the High Court were in error in holding that the boy did not die due to a fall from the trolley. In the absence of any rebuttal evidence, the Apex Court, while holding that the accident took place due to the rash and negligent driving of the tractor by its driver, awarded a sum of Rs. 5,00,000/- as compensation by rejecting the plea of the insurance company that they are not liable to pay any compensation as the deceased was gratuitous passenger.

19. *The Oriental Insurance Company Limited Vs. S. Rammanjaneyulu @ Mala Ramanjaneyulu, S. Rama Krishnamma, S. Chandra Babu, and A.C. Venkata Reddi @ Venkatanarayana Reddi*, was a case where the owner of a tractor-trailer engaged the deceased to harvest and transport groundnut seeds at their village. A learned single Judge of this Court held as under:

"Admittedly the tractor and trailer was used for carrying coolies to harvest the groundnut crop. Therefore, it cannot be said that those coolies were passengers being carried for hire and reward. Therefore, it is clear the insurance company cannot avoid its liability. Therefore, I do not see any reason to interfere with the award passed by the Tribunal and hence, this appeal is liable to be dismissed."

20. Similarly the Apex Court in *The New Indian Insurance Company Vs. Darshana Devi and Others*, , while dealing with the situation where the deceased who was travelling on mudguard of the tractor fell down, came underneath the said tractor and died, directed the insurance company to pay compensation to the claimants and recover the same from the owner of the vehicle.

21. In the instant case, the evidence on record clearly discloses that at the time of the accident the vehicle was fitted with the cultivator. That being the position, it cannot be said that the vehicle was used other than the purpose for which it was insured. Since the deceased has engaged the vehicle, it is common that he will be returning to the village after the agricultural operations in the same vehicle. That by itself does not mean that at the time of the accident the vehicle was not in use of agricultural operations. Going to the field for agricultural operations and coming back to the destination has to be treated as part and parcel of agricultural operations. Therefore, it cannot be said that there was a violation of the conditions of the policy, exonerating the insurance company from its liability.

22. Coming to the quantum of compensation, the Tribunal took the income of the deceased as Rs. 100/- per day and fixed the income at Rs. 3,000/- per month. After deducting 1/3rd towards personal and living expenses awarded a sum of Rs. 4,08,000/- towards loss of dependency. Though the learned counsel for the claimants contended that the quantum of compensation awarded is on lower side, but no cogent and convincing material is placed before the Court to show that the deceased was earning Rs. 10,000/- per month as claimed by the claimants. In the absence of any evidence and as the accident took place in the year 2002, fixing the income at Rs. 3,000/- per month appears to be just and reasonable. It is not in dispute that the deceased was aged about 24 years at the time of the accident. Since the age of the deceased was 24 years at the time of accident and in view of the judgment of the Apex Court in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, the suitable multiplier would be "18" and not "17" as adopted by the Tribunal for calculating the loss of dependency. Therefore, the loss of dependency would be Rs. 24,000/- x 18 = Rs. 4,32,000/-.

23. The learned counsel for the claimants further contended that the Tribunal erred in not awarding any future prospects. I am afraid that the said argument cannot be accepted as the evidence on record does not anywhere indicate that the deceased was getting fixed salary or that he was a skilled labourer/worker.

24. Coming to compensation awarded under the conventional heads, the Tribunal

awarded a sum of Rs. 15,000/- towards loss of consortium and loss of love and affection and Rs. 5,000/- towards transportation charges and funeral expenses. The said amount in my view appears to be on lower side. In view of the judgment of the Apex Court in Ramilaben Chinubhai Parmar and Others Vs. National Insurance Co. and Others, and Kishan Gopal and another V. Lala and others 2014 (1) An.W.R. 58 (SC), I deem it appropriate to enhance the same from Rs. 20,000/- to Rs. 50,000/-. Thus, in all the claimants are entitled to Rs. 4,82,000/-.

25. In view of the above discussion, M.A.C.M.A. No. 127 of 2007 is partly allowed by enhancing the compensation from Rs. 4,28,000/- to Rs. 4,82,000/- while M.A.C.M.A. No. 1303 of 2008 is dismissed. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realisation. The compensation so awarded shall be apportioned in the manner adopted by the Tribunal.

26. There shall be no order as to costs.

27. Consequently, miscellaneous petitions, if any, pending in these appeals shall stand closed.