
(2007) 02 AP CK 0044
In the Andhra Pradesh High Court
Case No : A.A.O. No. 2885 of 2001

Rachala Bichamma and Others

APPELLANT

Vs

Abdul Hakeem and Others

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(25)
Motor Vehicles Act, 1988 — Section 147, 2(35)

Citation : (2008) ACJ 1323 : (2007) 4 ALT 344

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : M. Rama Rao, for the Appellant; C.V. Rajeeva Reddy, for the Respondent

Final Decision : Dismissed

Judgement

G.V. Seethapathy, J.—This appeal is directed, against order dated 22-9-1989 in O.P. No. 242 of 1986 on the file of Motor Accidents Claims Tribunal-cum-Additional District Judge, Mahabubnagar (for short, "the tribunal") wherein the claim of the appellants for compensation was dismissed.

2. The appellants herein filed the claim application before the tribunal seeking compensation of Rs. 50,000/- on account of death of the deceased Sudhakar Reddy, husband of the first claimant and father of claimants 2 to 4, who died in a motor vehicle accident that occurred on 27-5-1986. According to the claimants, on that day, the deceased was engaged by one Pasha of Shadnagar to transport bulls and cows to Hyderabad and the deceased travelled along with the cattle in the lorry ABT 795 and at about 4 a.m., the deceased fell from the lorry and died on the spot near Bhoothpur village due to rash and negligent driving of the lorry by its driver, the first respondent herein. A case in Crime No. 45 of 1986 was registered against the driver. It is further pleaded that the deceased was aged 26 years and was earning Rs. 5007- per month and the claimants were all dependent on him.

3. The O.P. was not pressed against the first respondent driver of the lorry.
4. The second respondent-owner filed a counter opposing the claim and contending that the lorry was engaged by Mohd. Pasha for Rs. 820/- on hire for transporting cattle and that at about 8.30 p.m., the deceased who was sitting in the body of the lorry in a drunken condition started shouting and dancing and the first respondent wanted Pasha to ask the deceased to get down from the lorry. But, Pasha assured that the deceased would not commit any nuisance. It is further pleaded by the first (sic. second) respondent that the deceased continued shouting sitting on the cattle and unable to control himself, fell down and died and so, the first respondent and second respondent are not liable to pay compensation.
5. The third respondent-insurer filed a counter opposing the claim and denying their liability to pay the compensation.
6. On the strength of the pleadings, the tribunal framed the following issues:
 1. Whether the accident occurred on 27-5-1986 resulting in the death of Sudhakar Reddy was due to rash and negligent driving of the lorry ABT 795 by respondent No. 1 during the course of his employment under respondent No. 2?
 2. Whether the vehicle ABT 795 was insured with respondent No. 3 and the policy was in force on the date of accident?
 3. Whether the person driving the vehicle at the time of accident has no valid driving licence?
 4. Whether the petitioners are entitled to any compensation? If so, from which of the respondents and to what extent?
 5. To what relief?
7. The first claimant was examined as P.W.1 and Exs.A-1 and A-2 were marked. No oral or documentary evidence was adduced by the respondents. On a consideration of the evidence on record, the tribunal gave a finding on issue No. 1 that the death of the deceased was not due to rash and negligent driving of the lorry ABT 795 by the first respondent. On issue No. 2, the tribunal held that the lorry was insured with the third respondent. On issue No. 3, the tribunal held that the first respondent was having valid driving licence. In view of the finding on issue No. 1, the tribunal dismissed the claim of the appellants. Aggrieved by the same, the present appeal is filed.
8. Arguments of the learned Counsel for the appellants and respondents are heard, Records are perused.
9. Learned Counsel for the appellants contended that the deceased was accompanying cattle and he was a coolie engaged for the purpose of loading and unloading the cattle and he is not an unauthorized passenger and therefore, the claimants are entitled for compensation. Learned Counsel for the respondent No.

3, on the other hand, contended that the deceased died on account of his own negligence and not due to any rash and negligent driving of the lorry by its driver, the first respondent. He further contended that the deceased was unauthorized traveller in the lorry, which is a goods vehicle and so the insurer is not liable to pay any compensation.

10. The appeal against the first respondent-driver was dismissed for default.

11. In view of the rival contentions of the parties, the questions which arise for consideration in this appeal are (1) whether the accident occurred on account of rash and negligent driving of the lorry by its driver and (2) Whether the deceased is an unauthorized and gratuitous passenger in the goods vehicle and so, the insurer is not liable to pay any compensation?

12. The case of the appellants is that the deceased was engaged by one Pasha as a coolie to accompany cattle for transport of which the lorry was engaged and that on 27-5-1986 at about 4 a.m., due to rash and negligent driving of the lorry, the deceased fell down from the lorry and died. In the claim application itself, it is stated that the deceased fell down from the lorry and died. It is not a case where the lorry met with any accident. According to the version of the second respondent, owner of the lorry, as pleaded in the counter, the deceased was sitting on the back of the cattle and shouting in drunken condition and unable to control himself, he lost balance and fell from the lorry and therefore the deceased himself was responsible for his death. The only witness examined by (sic. as) P.W.1 is the first claimant wife of the deceased who is admittedly not an eyewitness to the incident. Ex.A-1, F.I.R registered on the basis of a complaint given by a nearby villager does not also show that there was any rashness or negligence on the part of the first respondent in driving the lorry. Ex.A-2, C.C. of inquest report is also of no avail to the claimants. On the other hand, Ex.A-2 shows that at the time of inquest, the panchayatdar opined that the deceased fell down from the lorry while he was asleep. The appellants have therefore miserably failed to establish that there was any rash or negligent driving on the part of the first respondent driver. In the absence of any evidence establishing rashness or negligence on the part of the first respondent driver, no liability can be fastened on the first respondent or the second respondent for payment of compensation and consequently the question of third respondent indemnifying the owner does not arise.

13. The finding of the tribunal that the death of the deceased was not due to rash and negligent driving of the lorry ABT 795 by the first respondent does not therefore call for any interference in this appeal.

14. Even otherwise, there is no evidence on record to show that the deceased was engaged as a coolie for the purpose of loading and unloading of the cattle. The material on record shows that one Pasha engaged the lorry on hire for transporting his cattle and that the deceased was engaged by Pasha as a coolie. The said Pasha is not examined. Even according to the claimant, the occupation

of the deceased was agricultural coolie work. There is nothing to show that the deceased was engaged for the purpose of loading and unloading in the lorry. In the absence of such evidence, the deceased remains a gratuitous passenger in the lorry, which is admittedly a goods vehicle.

15. In a decision in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, the Apex Court held as follows:

On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer (sic. insured) to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury.

It was further held.

The applicability of decision of this Court in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 1988 Act is significant. By reason of the change in the definitions of the terminology, the Legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in 1939 Act were omitted. Further more, it categorically states that "goods carriage" would mean a motor vehicle constructed or adapted for use solely for the carriage of goods". Carrying of passengers in a goods carriage", thus, is not contemplated under 1988 Act.

In a recent decision in *National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others*, , then Apex Court held as follows:

Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

16. In *National Insurance Co. v. Swaroopa and Ors.* AIR 2006 SC 2472, it has been reiterated that the Insurance Company is not liable to pay compensation in respect of gratuitous passenger being carried in a goods vehicle which met with accident.

17. In view of the principles laid down by the Apex Court in the above decisions, it is held that the claimant being a passenger in a goods vehicle, the appellant-insurer cannot be fastened with any liability to pay compensation to the claimant,

as the risk in respect of such passengers is not covered by the policy. Thus viewed from any angle, the third respondent-insurer is not liable to pay any compensation to the claimants. In view of the finding that the accident was not due to any rash or negligent driving of the lorry by its driver, the first respondent or owner of the vehicle (second respondent) is also not liable to pay any compensation. In the circumstances, the finding of the tribunal that the claimants are not entitled to claim any compensation does not call for any interference in the appeal.

18. In the circumstances and for the reasons stated above, order dated 22-9-1989 passed by the tribunal in O.P. No. 242 of 1986 dismissing the claim for compensation is held not liable to be set aside.

19. In the result, the appeal is dismissed. No order as to costs.