(2014) 04 AP CK 0051

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 377 of 2007

Ram Anjamma APPELLANT

Vs

G. Narayan Swami RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Citation : (2014) 04 AP CK 0051

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : S. Venkateswarlu, Advocate for the Appellant; B. Naresh, Advocate for the Respondent

Judgement

B. Siva Sankara Rao, J.—The children and mother of the deceased by name Ram Sunkaiah, aggrieved by the award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-District Judge, Ongole (for short, ''the Tribunal'') in O.P. No. 359 of 2002 dated 31.10.2006 filed by them against the owner and insurer of the lorry bearing registration No. ABA 236 covered by Ex. B1 policy, for dismissal of the claim against the insurer and fixing the liability of payment of compensation only against the owner, preferred this appeal.

2. The contentions in the grounds of appeal in nutshell are that the award of the Tribunal is unjust and compensation awarded is Utterly low and that the Tribunal should have fixed joint liability and thereby sought for allowing the appeal as prayed for before the Tribunal. It is further contended that as per Ex. A5 PME report, the death was not the direct result of the fall from the lorry as unauthorized) passenger, but due to asphyxia after said fall from the said vehicle, that the vehicle turned turtled on him and to that extent he is a third party, that though for the unauthorized passenger, the insurer is not liable, that so far as third party, liability is concerned, the insurer is liable, since the policy admittedly issued covers the third party liability and hence to allow the appeal.

3. Heard the learned counsel for the appellants who reiterated the contentions in

the grounds of appeal. The 1st respondent/owner of the vehicle, who remained ex parte before the Tribunal, did not choose to put forth his appearance herein also and hence taken as heard to decide on merits. It is the contention of the 2nd respondent-insurer that the deceased as well as his son were traveling as unauthorized passengers and there is no risk covered by the policy for carrying passengers in the goods carriage and when the death was while traveling as unauthorized passenger in lorry which turned turtle, not to mention any sort of claim as third party even deceased died of asphyxia and for the injuries as per the PME report and when the Tribunal is right in coming to the conclusion in exonerating the insurer for the deceased being unauthorized passenger of goods carriage, for this Court while sitting in appeal, there is nothing to interfere and sought for dismissal of the appeal.

4. Now the points that arise for consideration in the appeal are:

"1. Whether the Tribunal went wrong in totally exonerating the insurer and if so, there is any liability for the death of the deceased in the status of third party to the vehicle as claimed by the appellant and for what compensation and with what observations?

2. To what result?"

POINT-1:

5. The fact that the deceased along with his son was traveling in goods carriage lorry bearing No. ABA 236 of 1st respondent, insured with 2nd respondent and while so traveling, due to rash and negligent driving of the said lorry, it turned turtle, is not in dispute.

6. So far as the death of the deceased is concerned, Ex. A5 PME report is crystal clear that the death was not from the multiple injuries but for from asphyxia. The doctor''s opinion is very clear therein. It clearly indicates that while as unauthorized passenger traveling from the fall of the lorry turned turtle not died of said fall, but for on the deceased either the vehicle or any hard object fall,, he lost the breath from asphyxia. Thereby, till fall he was considered, undisputedly as unauthorized passenger, but the moment not died from fall he is a third party and death of third party is not from fall but from asphyxia and the act policy under Section 147 of the Act covers the liability of the third party to that extent, as rightly contended by the appellants and the insurer cannot be exonerated vide decisions in A. Subramani Vs. Mani and Others, Thoznilalar Transport Company Vs. Valliammal and Others, Madras, National Insurance Company Limited v. Savitridevi 1991 ACJ 1991 Oriental Insurance Co. Ltd. and Another Vs. Edward D''Cruz and Others, Kanwar Shamsher Singh and Others Vs. Satbir Singh and Others, Delhi and United India Insurance Company Limited v. Koravi Yejji Mollamma 2007 (2) ACK 366 holding that the moment destination reached ceased the status of passenger and likewise the moment fell down even while getting down, ceased status of passenger even till then risk not covered, from the fall when under wheels he is a third party to make the Insurer liable.

7. No doubt, there is negligence of the deceased also along with driver for boarding the goods carriage and traveling therein and as death was not the direct consequence to it but after fall as third party, thereby by taking 70% negligence on the part of the deceased and of the lorry driver in allowing to travel as unauthorized passenger and fall there from and due to that he fell under the vehicle as third party, proved the last breath from asphyxia, for that 30% liability, the insurer is liable to indemnify.

8. Now coming to the quantum of compensation, the deceased was said to be an agricultural coolie. Even taken from the Apex Court''s expression in Lata Wadhwa and Others Vs. State of Bihar and Others, , the minimum wages are to be taken at Rs. 3,000/- per month, in absence of proof of income, as the accident was 1 1/2 year after the said expression. Thus, by taking into consideration the increase in the economic price index and cost of living, the minimum wages can safely be taken at Rs. 3,200/- per month from the avocation of the deceased. The deceased was aged 30 years as per Ex. A.4post mortem certificate and as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier applicable is "17". The claimants are five in number and they are all dependents of the deceased and 1/4th has to be deducted towards personal expenses of the deceased as per Sarla Varma''s case (supra). Then, it comes to Rs. 2,400/- per month, and accordingly, the loss of earnings would come to Rs. 14,89,600/-(Rs. 2,400/- p.m. x 12 months x 17). Apart from it, the 1st claimant is entitled for Rs. 1,00,000/- towards loss of consortium. Rs. 25,000/- towards funeral expenses, Rs. 5,000/- towards loss of estate, and Rs. 10,000/- each for care and guidance of the three minor children, vide Rajesh and Others Vs. Rajbir Singh and Others, . Thus, in all, the claimants are! entitled for Rs. 6,49,600/- as compensation and 30% therein comes to Rs. 1,94,880/- which is rounded off to Rs. 1,95,000/- which is the compensation the respondents 1 and 2 jointly and severally liable to pay with interest at 7.5% p.a. and for the remaining, out of the claim of Rs. 2,00,000/-, which comes to Rs. 5,000/-, the claimants are entitled to recover from the 1st respondent owner alone. Accordingly, Point No. 1 is answered.

POINT -2:

9. Accordingly, the appeal is allowed awarding compensation of Rs. 1,95,000/- (Rupees One lakh ninety five thousand only) (30% liability out of Rs. 6,49,600/-) with interest at 7.5% p.a., which the claimants are entitled against the 2nd respondent-insurer to indemnify the 1st respondent and for no cross-objections from the 1st respondent-owner, for the remaining out of the claim of Rs. 2,00,000/- i.e., Rs. 5,000/- the 1st respondent-owner is liable with interest at 7.5% p.a.. There, is no order as to costs in the appeal.

