
(1987) 02 AP CK 0020
In the Andhra Pradesh High Court

Ratni Devi Shyam Suka and Others

APPELLANT

Vs

B. Venkata Rami Reddy and Others

RESPONDENT

Date of Decision : 13-02-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D, 92A

Citation : (1988) 1 ACC 441 : (1988) ACJ 142

Hon'ble Judges : Rama Rao, J

Bench : Single Bench

Judgement

Rama Rao, J.—This appeal at the instance of the claimants is u/s 110-D of the Motor Vehicles Act. The claimants are the wife, son and daughters of the deceased who died in an accident on 15-10-79. It is stated that the deceased was 45 years old at the time of the accident and he was working as a cashier of the Transport Corporation of India Limited drawing a monthly salary of Rs. 840/-. On 15-10-79 the deceased was driving a scooter ADM 7231 and one D. Ramarao was sitting on the pillion and the scooter was coming from North to South from the Industrial Estate, Vijayawada Town and reached the Bandar-Vijayawada Road at the Southern end and when the scooter came from the North-South road and entered on the main High way road between Machilipatnam and Vijayawada just at that time the lorry APK 1084 driven by the second respondent was coming from Machilipatnam. The lorry dashed against the scooter and due to this collision the deceased fell down and sustained injuries and died the next day. It is stated by the claimants that this accident occurred due to rash driving of the lorry and the claim is made for compensation of Rs. 75,000/- for the loss of earnings of the deceased. The plea of the third respondent Insurance Company is that though the accident was on 15-10-1979 the petition was filed on 20-1-1981 and such belated application is barred by limitation. It is stated that there was no rash and negligent driving and the averments that the deceased being 45 years old and also his monthly salary at Rs. 840/- are denied and it is further stated that the accident occurred solely due to the rash and negligent driving of the scooter by the deceased and in any event he is guilty of contributory negligence.

Respondents 1 and 2 adopted the plea of the third respondent. The court below held that there is no rash and negligent driving and in any event considering that there is contributory negligence held that the claimants are entitled to compensation of Rs. 16,000/- only and ultimately dismissed the claim petition as there was no rash and negligent driving on the part of the lorry. In support of the rash and negligent driving PW 2 the pillion rider was examined. He is the sole eye witness to the accident. PW 2 did not say that the lorry was coming at a high speed or that there was any negligence on the part of the driver of the lorry. The court below mainly emphasised on the fact that while the deceased was going in a scooter from North to South and entering on the main Highway road he should have paused and without taking necessary precaution he entered the road abruptly and his act must be considered as the sole contributing factor to the accident. It cannot be controverted that the evidence of PW 2 is feeble and cannot be made the basis for the finding that there is rash and negligent driving. Relying upon the evidence of RW 1 the driver, the Tribunal held that there is no rash and negligent driving. But however, we cannot overrule the circumstance of pleading guilty by the driver in the criminal court. This is sought to be explained by stating that the driver was advised by the police to plead guilty. It is difficult to contain this approach as it cannot be expected of a person to merely plead guilty for a charge u/s 304-A by a driver of the vehicle who has to necessarily depend upon the validity and continuity of the licence. Whatever be the insufficiency of the evidence of PW 2 and the effect of the evidence of RW 1 there cannot be better evidence than one's own admission. The driver himself pleaded guilty before the criminal court and therefore from this circumstance it can be safely concluded that there is rash and negligent driving. In view of this I am unable to endorse the finding of the court below that there is no rash and negligent driving on the part of the driver.

2. But however it must be stated that in view of the admitted fact that the deceased was driving the scooter and approaching the main road he should have taken the precaution of pausing for some time and then enter the main road. As he entered the main road without any such precaution some part of the negligence has to be necessarily attributed to the deceased also. In this view it must be stated that there is composite negligence.

3. In so far as the quantum of compensation is concerned, as already stated, the claim is made for Rs. 75,000/-. As stated by the Tribunal the deceased was 45 years old at the time of the accident and he can serve in the Bank as cashier upto the age of 55 years only. Taking into consideration his contribution to the family from out of the salary earned by him and also his expectation of earnings the income upto 55 years and also considering the contributory negligence that can be apportioned to his part as 2/3rds the Tribunal stated that the compensation that can be given is Rs. 16,000/-. The Learned Counsel for the appellant sought to add a new dimension to this case at this stage. It is contended that in any event the claimants are entitled to the sum of Rs. 15,000/- towards compensation in view of the provisions of Section 92-A of the

Motor Vehicles Act. Learned Counsel for the respondent-Insurance Company, Sri I.A. Naidu contended that Section 92-A has come into force from 1-10-82 and it cannot be given retroactivity and as such this provision cannot be pressed into service in respect of the accident which occurred prior to 1-10-82. Section 92-A of the Act reads thus:

Liability to pay compensation in certain cases on the principle of no fault:

(1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Subsection (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

Sub-section (1) of the Act provides that the owner of the vehicle is liable to pay the compensation in the event of death or permanent disability and Sub-section 2 fixes the amount of compensation at Rs. 15,000/- in the event of death and Rs. 7,500/- in the event of permanent disability. By Sub-Section 3 the claimant is not obliged to plead and establish that the death or the disability was due to any neglect or default of the owner or the owners of the vehicle and Sub-section 4 reinforcing Sub-section 3 provides that the claim for compensation cannot be defeated by reason of any wrongful act, neglect or default of the person. The set up of the section clearly indicates that it is forward looking and prospective. The statements and object of the amended Act whereunder Section 92-A has been introduced disclose that with a view to avoid unnecessary and vexatious burden of proving negligence or rashness of the driver by the claimants of the persons who died or permanently disabled in the accident, this provision is introduced. The aim of this amendment is to protect the pedestrians who are victims of the accidents and they will not be able to withstand the onslaught of the affluent

sections of the Society. It is stated as follows in the statement of objects and reasons:

Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claim for compensation. It is therefore, considered necessary to amend the Act suitable to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle, and secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown.

4. The Learned Counsel for the appellant relied upon the decision of the Bombay High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Shantabai S. Dhume and Others*, wherein it is held that Section 92-A has to be applied to all the pending cases irrespective of the date on which the accident occurred. It is held that the retroactivity is implicit in the provision and retroactivity has to be read in view of the beneficial provision embodied in Section 92-A. The question of making the provision retrospective in pending matters applies only to the procedural matters but not sub-stative matters. Section 92-A seeks to fix the minimum liability irrespective of negligence and this burden is put upon the owner of the vehicle ultimately being passed on to the Insurance Company. This protection is entirely a new dimension and placed the burden upon the owner of the vehicle for the first time. At the time when the claim is made or the accident happened the question of paying this amount irrespective of the negligence could not have been visualised by the owner and the Insurance Company was not apprised of this situation of the payment of minimum amount. The insurance policy is the product of the contractual nexus between the parties and bilateral contracts are modelled or founded on the basis of the situations and circumstances existing at the time when the contract was entered into. Further this provision can be considered as affecting the vested rights accrued to the parties and as such it will be straining the section if the retroactivity is sought to be spelt out. Therefore I am unable to subscribe to the view propounded by the Bombay High Court. Taking into consideration the totality of circumstances, namely the contributory negligence by the deceased and also considering the estimate of his earnings upto 55 years only and his contribution to the family, the reasonable estimate of compensation that can be made is Rs. 10,000/-. The claimants are entitled to compensation at the rate of Rs. 10,000/-. The appeal is partly allowed. No costs.