
(1997) 01 AP CK 0002

In the Andhra Pradesh High Court

Case No : A.A.O. No. 544 of 1991 and Cross-objections by first respondent

Sada Nirmala and Others

APPELLANT

Vs

Indrapaul Singh and Another

RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 94, 95, 95(1), 95(2)

Citation : (1997) 2 ALD 507 : (1997) 2 ALT 275

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : None, for the Appellant; A.T.R. Gokul, for K.G.K. Prasad and Kota Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Somasekhara, J.—The award of the Motor Accidents Claims Tribunal, Nizamabad, in O.P, No. 679 of 1988 dated 10-10-1990 is in challenge. The appellants being the claimants viz., wife and children of one Sada Bhaskar, who died in a motor vehicle accident, which occurred on 22-5-1983 while the deceased was travelling as a pillion rider on the motor-cycle bearing No. APJ 8689 whose rider was respondent No. 1, Respondent No. 2 is the Insurer. During the enquiry, the Tribunal found that the accident was due to the negligence of respondent No. 1. While awarding the compensation of Rs. 25,000/- as against respondent No. 1, the Tribunal held that respondent No. 2-Insurer is not liable to indemnify respondent No. 1 in paying the amount under the award. Aggrieved by that, the appeal is filed.

2. The unassailed finding of the Tribunal is that the deceased travelled on the motor-cycle at the behest of respondent No. 1, while the rider was to attend a marriage. The Tribunal relying upon the three precedents viz., New India Assurance Company Limited v. Kuppaswamy Naidu and Ors. (1988 ACJ- 774), Surjit Singh and Anr. v. Santhos Kumari and Ors. (1989 ACJ 466) and K. Yelunni and Ors. v. Premalatha and Ors. (1989 ACJ 833), came to the conclusion that

neither in the terms of the policy Ex.B-1 nor in law the deceased was covered by the risk to have the benefit of Insurer indemnifying the rider or the owner of the vehicle in paying the compensation. None appeared for the claimants. However, the respondent No. 1 has filed cross-objections challenging the finding of the Tribunal regarding the liability fastened only on the owner of the vehicle and not against the Insurer.

3. Mr. A.T.R. Gokul appearing on behalf of Mr. K.G.K. Prasad, learned Advocate for respondent No. 1, has contended that the Tribunal was wrong in fastening the liability only on respondent No. 1 and not against the Insurer in view of the fact that the deceased was to go with respondent No. 1 at his instance and not voluntarily. It is also his contention that the deceased should be taken to have been travelling on the vehicle in the course of the employment under respondent No. 1 at the time of the accident. Mr. Kota Subba Rao, Advocate for Respondent No. 2 has contended that as per settled law the Insurer is not liable to indemnify the owner of the vehicle or rider of the vehicle in regard to the death or injury to the pillion rider unless the terms of the policy covered such a risk. It is also his contention that even in regard to the rider of the vehicle no such liability is contemplated in law as against the Insurer as per the settled law.

4. The law in regard to liability of the Insurer to indemnify the owner of a two-wheeler or any vehicle as such is settled and it is no longer *res Integra*, particularly in regard to the liability of the Insurer with reference to a pillion rider on a two-wheeler like motor-cycle is also settled. Our own High Court in *United India Insurance Co. Ltd. v. Etnoori Yadagiri Goud and Ors.*, 1995 ACJ 600 (A.P.) has categorically held that the rider of the vehicle or the owner of the vehicle is not a passenger muchless a third party to be covered by the Act policy, and unless the terms of the policy covers the risk of such person, the Insurer cannot be made liable to indemnify the owner of the vehicle in paying the compensation. Mr. Kota Subba Rao has rightly pointed out a precedent of a Division Bench of this Court in *United India Insurance Co. Ltd. v. Odeti Mallu Bai*, 1995 ACJ 851 (D.B.) (A.P.), taking the same view. Therefore, this Court while dealing with the matter in a single Bench is bound by the precedent of the Division Bench. The Division Bench in *Odeti Mullu Bai*'s case² referred to the precedent of the Supreme Court in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. Pvt. Ltd.*, 1977 ACJ 343 (SC), in regard to such an interpretation. Moreover, the catena of precedents of various High Courts have consistently taken such a view that the liability of the Insurer should arise in one way or the other under the provisions of Sections 94, 95 and 96 of the Motor Vehicles Act, 1939 and that the liability of the Insurer is restricted in the first place with reference to the terms of the policy, and secondly with reference to the statutory liability u/s 94 of the Act, popularly known as the Act policy or to cover the risk of the third parties, and specifically with reference to the statutory liability u/s 95(1) and (2) of the Act. The High Court of Kerala in *K. Velum v. Premalatha and Ors.*, 1990 (1) ILR 254 (Ker.), the High Court of Orissa in *New India Assurance Co. Ltd. v. Ashok Kumar Acharya*, 1995 AC 189 (Ori), the High Court of Madras in *New India*

Assurance Co. Ltd. v. Kuppuswamy Naidu, 1988 ACJ 774 (Mad.) and the High Court of Punjab & Haryana in Surjit Singh v. Santosh Kumari, 1989 ACJ 466 (P & H) on facts have consistently held that the risk of the pillion rider in such a case cannot be taken to have been covered by an insurance policy for the Insurer to indemnify the owner of the vehicle to pay compensation unless the terms of the policy covered such a risk. It is only the High Court of Karnataka in New India Assurance Co. Ltd. v. K. Rajanna, 1995 ACJ 1015 (Karn.) depended upon by the learned Advocate for respondent No. 1 made the Insurer liable to indemnify the owner of the vehicle in paying compensation in regard to a motor vehicle accident to a pillion rider interpreting the expression "Contract of Employment" appearing in sub-section (2) of Section 95 and the terms and conditions of the policy, to include all cases where the pillion rider accompanies for the same work of the driver and not of his own.

5. The learned Advocate for the appellant (sic. 1st respondent) has tried to stretch such a meaning out of the interpretation so as to operate upon the deceased in this case to give the benefit of the indemnity under the terms of the contract on the part of the Insurer to pay the compensation in this case on the ground that the deceased had no reason or business to go with respondent No. 1 on the fateful day except at the instance of respondent No. 1 himself, and therefore, borrowing the expression of the Karnataka High Court in K. Rajanna's case, 1995 ACJ 1015 (Karn.), the relationship between respondent No. 1 and deceased should be brought within the meaning of "Contract of Employment". According to the learned Advocate for the appellant (sic. 1st respondent), the word "business" should not be given a restricted meaning to import only a commercial meaning, but to cover all errands including visiting to a place for a genuine reason. This Court is unable to accept such a contention.

6. The term "Contract of Employment" is not defined either in the Act or in the Rules. Therefore, it must be evolved from its true or real and grammatical meaning in addition to the legal meaning in the Law of Contract and Contract of Employment. The term "Contract of Employment" connotes atleast two persons viz., employer and employee, the former being in the dominating position and contrary to the latter with certain terms to be settled between them for the object of fulfilling the terms of Contract of Employment. No social contract can bring the meaning within the relationship of Master and Servant or Employer and Employee to create *venculim juris* or the relationship in law for the purpose of enforcement and not to make social contract which is incapable of enforcement as it would be *nudum pactum* or a social contract. The expression of the Karnataka High Court in K. Rajanna's case (supra) is neither persuasive nor binding on this Court for various reasons and deserves to be dissented. In the first place such a view is not supported by any statute or precedent. Secondly, such a view is not elaborated and is not examined on the touchstone of Law of Contract or Law of Contract of Service or Law of Contract of Employment.

7. The learned Advocate Mr. A.T.R. Gokul appearing for Mr. K.G.K. Prasad, has

put in best of his efforts to bring the deceased within the meaning "person travelling in the course of the employment" by virtue of Section 95(2)(b)(i) and proviso to sub-clause (1) of the Act. This Court is not able to accept such a contention, Even in such a provision, the expression "Course of Employment" cannot be but creating the relationship of Master and Servant or any other relationship notwithstanding the facts of the present case wherein the deceased was travelling on the vehicle only to accompany respondent No. 1 to attend some social function like marriage. If the proviso in the said provision is accepted, it should naturally come within Section 95(2)(b)(i) of the Act, to make the Insurer liable to indemnify the owner of the vehicle in regard to the death or injury to the pillion rider or any other person notwithstanding the coverage of the risk under the terms of the policy. When the law is settled as above not to cover risk of even the rider of the vehicle, as has been settled by our own High Court more than once, it is not understandable as to how a pillion rider accompanying the rider either in the course of employment or otherwise can be taken to have been covered unless he is brought within the expression of "third party" or under the statutory implication of the Act policy within the meaning of Section 94 of the Act.

8. The question of coverage of risk of such persons travelling in a vehicle either as gratuitous passenger or for any other reason on a two~wheelcr as in the present case is also dealt with by the Supreme Court in National insurance Co. Ltd. v. Jugal Kishore and Ors., 1988 ACJ 270 (SC) in regard to correct legal position and it held that unless the Act policy covers the risk in regard to third parties, any other person cannot be covered for the purpose of the indemnity and the liability cannot be fastened as against the Insurer to indemnify the owner of the vehicle unless covered by the terms of the policy by paying extra premium. Under these circumstances, this Court again should reiterate that a pillion rider in the normal circumstances, unless for the reasons stated above, cannot be taken to have been covered for the purpose of liability of the Insurer to indemnify the owner of the vehicle to pay the compensation to be awarded u/s 110-A of the Motor Vehicles Act or a similar provision in any other Act."

9. The Tribunal has correctly decided the matter with regard to the liability of the Insurer and the liability of the respondent No. 1 owner of the vehicle in this case, and this Court finds no reason to interfere with such a finding nor (sic. or) the award of the Tribunal. The appeal and the cross-objections of respondent No. 1 are dismissed. No costs.

10. As prayed by the learned Advocate for respondent No. 1, the execution of the award shall be postponed by three months from today.