

(2003) 02 AP CK 0089
In the Andhra Pradesh High Court
Case No : C.M.A. No's. 621 of 2000

Sriram Subrahmanyam and Others

APPELLANT

Vs

S. Mohammed Riyaz and Another

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 96(2)

Citation : (2003) 5 ALD 68

Hon'ble Judges : Dubagunta Subrahmanyam, J

Bench : Single Bench

Advocate : T. Nagarjuna Reddy, for the Appellant; Nanda R. Rao, for the Respondent

Final Decision : Allowed

Judgement

Dubagunta Subrahmanyam, J.—These seven appeals are filed against awards dated 21-12-1999 in M.V.O.P. No. 862, 804, 863, 806, 959, 803 & 805 of 1997 on the file of 1st Additional District Judge-cum-Motor Accidents Claims Tribunal, Kurnool. The claimants are the appellants. All the appeals relate to one and the same accident. As common questions of fact and law are raised in all these appeals, I propose to dispose of all the appeals by a common order.

2. On the intervening night of 8/9-1-1997, about 18 persons were traveling in a vehicle bearing No. APQ 747 from Nandyal to Kuruvapuram in Karnataka State. On the way, the vehicle met with an accident in Andhra Pradesh. Some persons died as a result of the injuries sustained in the accident. Some other persons sustained injuries. In the present batch of appeals, the appellant/claimant in CMA. No. 1261 of 2000 is the injured claimant and all the other claims relate to claim petitions filed by the dependents of the deceased. According to the claimants, the accident took place due to rash and negligent driving of the driver of the vehicle. The tribunal held that the accident took place due to negligence of the driver of the vehicle. The Insurance Company inter-alia pleaded that there are nearly 18 persons traveling in the mini-bus, it amounts to violation of policy

conditions and so it is not liable to pay any compensation and if any compensation is to be paid, the owner of mini-bus is solely responsible, but not the insurance company. On the basis of evidence available on record, the tribunal held that the accident vehicle was carrying more than 18 persons at the time of the accident, it is a blatant violation of conditions of policy and also violation of permit conditions. In view thereof, the tribunal held that the insurance company is not liable to pay compensation. It held that the owner of the vehicle alone is liable to pay compensation. The tribunal fixed the quantum of compensation to which the claimants are entitled to in each O.P. and passed the awards against the owner of the vehicle alone. The tribunal dismissed the claim applications against the insurance company. Aggrieved thereby, the claimants preferred the present appeal.

3. At the time of hearing all these appeals, the learned Advocate for the appellants made it clear that he is not questioning the quantum of compensation awarded in each O.P. He has stated that the appeals are filed seeking fastening of liability to pay the compensation in each O.P. against the insurance company also.

4. Before dealing with the decisions relied upon by the learned Advocate for the appellants, I would deal with one decision relied upon by the learned Advocate for the insurance company. It is a latest judgment of the Apex Court reported in *Koneru Ranga Rao Vs. N. Swamy Das and Others*, . In para 30 of this judgment, the Apex Court held as follows:

We may consider the matter from another angle. Section 149(2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of Clause (c) of sub-section 2 of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used.

5. The insurance company is, as a matter of right, entitled to take defences permitted by Section 149(2) of Motor Vehicles Act, 1988. The question to be considered is whether in the present batch of appeals the insurance company established that the vehicle involved in the accident is used for a purpose not allowed by the permit? If the answer is in the positive, undoubtedly the insurance company is absolved of its liability to pay compensation to the claimants or to indemnify the insurer namely the owner of the vehicle. The only condition of the permit said to be violated is carrying of 18 passengers in the vehicle at the time of the accident whereas the permit permits carrying of 7 persons only including the driver in the vehicle. The permit Ex.B.2 clearly shows that vehicle involved in the accident is a contract carriage. It is permitted to ply on all routes in the state of Andhra Pradesh except those prohibited.

6. The learned counsel for the appellant placed reliance on some decisions. The first decision is the judgment of the Apex Court reported in *SKANDIA INSURANCE CO. LTD. v. KOKILABEN CHANDRAVADAN* AIR 1987 SC 1184. This

decision deals with interpretation of exclusive clause in the insurance policy. This decision is of not much relevance to the present batch of appeals. The second decision is another judgment of the Apex Court reported in *B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, .* As per the permit the vehicle can carry six workmen. It is a goods vehicle. While the goods vehicle was proceeding on the road another vehicle came from the opposite direction and hit the goods vehicle. In that context, the learned Judges of the Supreme Court observed that if those six workmen while traveling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping upon the load it was carrying. The Supreme Court further observed that the misuse of the vehicle was somewhat irregular though but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. Such an issue is not involved in the present batch of the appeals.

7. However, there are two relevant decisions among the decisions relied upon by appellant. The Kerala High Court in a decision reported in *United India Insurance Co. Ltd. Vs. Sabeer Ali and Others*, was disposing of a batch of appeals. In that case, a jeep met with an accident resulting in death of 3 passengers and injuries to several others. It was carrying passengers of more than the number allowed by the permit at the time of accident. It was contended by the insurance company that there was a breach of a specified condition of the policy and the insurance company is not liable. After noticing the provision in Section 149(2)(c) of Motor Vehicles Act, 1988, the Kerala High Court held that the above provision would show that the insurance company will be absolved if the vehicle involved in the accident was being used for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle. It further held that the only question is carrying more passengers than the number permitted would make it as used for the purpose other than the purpose for which the permit is granted. It held that merely because more number of passengers than was allowed under the permit were carried, it cannot be said that the vehicle was used for the purpose not allowed by the permit. It further observed that it may amount to violation of the permit conditions regarding number of persons to be carried in the vehicle. But, that will not be a reason coming under clause (c) of Section 149(2). Therefore, according to the Kerala High Court, the insurance company cannot be absolved from its liability for the reason that there is breach of a specified condition of the policy being one coming u/s 149(2)(a)(i)(c). The Kerala High Court placed reliance on the judgment of the Apex Court in *B.V. Nagaraju's case* (3 supra).

8. There is a direct binding decision of this Court reported in *KANNEKANTI VARAMMA v. PULI RAMAKOTIAH* 1989 (3) ALT 491. This Court followed a decision of Bombay High Court in *Raghunath Eknath Hivale Vs. Shardabai Karbhari Kale and Others etc., .* The Bombay High Court in its decision held as

follows:

"A breach of the condition of the permit is not the same thing as a breach of the purpose for which it is issued. The contravention of one of the other conditions of the permit is not a contravention of the purpose for which the permit is issued. There was therefore no contravention either of clause(b) (i) (a) or of (b) (i) (c) of Section 96(2) which clauses alone are and can be pressed into service on behalf of the insurance company."

Agreeing with the above principle of law laid down by the Bombay High Court, his Lordship held as follows:

"I have no hesitation to hold that merely because more than six persons have been carried while using the vehicle on the public way, for the purpose for which the permit was issued, it cannot be said that there is a contravention of the covenants of the policy though there is a contravention of the conditions of the statute. If there is any contravention of the conditions, it is always open to the other party to take appropriate action, but that would not be a ground for holding that it is a breach of conditions of the contract of policy of the Insurance."

In view of the above decision of this Court, it is very clear that the vehicle was not used for a purpose other than permitted by the permit. Thus the insurance company is also liable to pay compensation to the claimants and indemnify the owner of the vehicle. It is thus very clear that the impugned awards passed by the tribunal are liable to be set aside.

9. In the result, all the appeals are allowed. The awards passed by the tribunal exonerating the insurance company from its liability are set aside. The insurance company shall also jointly and severally with the 1st respondent owner of the vehicle shall pay the compensation already awarded by the tribunal to the claimants. However, on the compensation amount awarded by the tribunal, the respondents shall pay interest not at 12% per annum but only at 9% per annum from the date of the claim applications till the date of payment. There is no order as to costs in these appeals.