

(2007) 09 AP CK 0104
In the Andhra Pradesh High Court
Case No : C.M.A. No. 3487 of 1999

Tadi Satyanarayana

APPELLANT

Vs

Maddu Malla Rao and Others

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 157

Workmens Compensation Act, 1923 — Section 4(1), 4A(3)

Citation : (2008) ACJ 1779 : (2008) 1 ALD 42 : (2007) 6 ALT 559 : (2008) 116 FLR 605

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : N. Subba Rao, for the Appellant; P. Harinath Gupta, for the Respondent

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—The instant appeal is directed against the order dated 03.09.1999 passed by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I Circle, Guntur, in W.C. Case No. 335 of 1996. The unsuccessful applicant is the appellant. He preferred the claim before the Commissioner under the Workmen's Compensation Act (for brevity "the Act") for an amount of Rs. 2 lakhs as compensation for the injuries sustained by him arising out of an accident during the course of his employment. According to him, he was working as Driver of the Zeep bearing No. AP-5T/6073, the original owner of which was the first respondent (Opposite Party No. 1) who transferred the Zeep on the same day of his purchase in favour of the second respondent (Opposite Party No. 2). The applicant had been working as Driver under Opposite Party No. 2 since four months preceding the date of accident. On 02.06.1996 while he was driving the Zeep with passengers and a dead body from Guntur to reach Vemavaram village, at Machavaram village the Zeep fell into a pit and turned turtle and as a result of which the applicant received grievous injuries resulting in permanent disability. A case in crime No. 37/1996 by Machavaram

Police was registered. The applicant sustained fractured injuries to his spinal cord and neck and operation was conducted to his spinal cord and as a result he cannot walk and was confined to bed. He was hale and healthy prior to the accident and was aged 30 years and drawing a salary of Rs. 1,300/- per month besides getting Rs. 300/- to Rs. 400/- per month as batta. Hence, the claim. The first respondent remained ex parte.

2. The second respondent-owner resisted the claim along with the third respondent- insurer. According to the second respondent, the applicant was a driver and he worked under him and sustained injuries in a motor accident during the course of his employment. The third respondent-insurer opposed the claim on the ground that he did not receive any information regarding the accident from the respondents 1 and 2 and the compensation claimed was excessive.

3. At the culmination of enquiry, the learned Commissioner held that the applicant was a workman as per the provisions of the Act and he sustained injuries in a motor accident arising out of and in the course of his employment. After having reached the above conclusion, the learned Commissioner proceeded to assess the compensation and for paucity of evidence on the point of wages, taking into consideration the minimum wages of the applicant at Rs. 1,495/- per month eventually fixed the compensation at Rs. 25,000/- without assessing compensation on regular basis having regard to the fact that the insurance policy was not transferred in favour of the second respondent by the first respondent as the applicant was working under the second respondent eventually held that the third respondent-insurance company was not liable to pay compensation. Thus, the learned Commissioner awarded compensation on the basis of "no fault liability".

4. It is now being assailed in the instant appeal. The facts which are not in dispute may be set forth for brevity and better understanding of the matter. The motor vehicle in this case is a Zeep bearing No. AP-5T/6073. The vehicle was purchased by the first respondent on 15.02.1996. On the same day, he transferred the vehicle in favour of the second respondent. However, preceding the transfer, as enjoined under the provisions of the Motor Vehicles Act, the vehicle was insured with the third respondent by the first respondent. After transferring the vehicle by the first respondent in favour of the second respondent, the insurance policy seems to have not been transferred in favour of the third respondent, nor transferee seems to have duly informed to the third respondent-insurer as to the transfer of the said vehicle in his favour by the first respondent. The applicant was working as a Driver under the second respondent for the last four months preceding the date of the accident.

5. The accident in this case was occurred on 02.06.1996. At the relevant time the applicant was driving the vehicle and at Machavaram village suddenly the Zeep fell into a pit and turned turtle which resulted in the accident. The learned Commissioner after enquiry came to a clear finding that the applicant was a

workman as per the provisions of the Act and he received personal injuries in an accident arising out of and in the course of his employment. He also fixed the wages of the applicant at Rs. 1,495/- per month under the provisions of the W.C. (Amendment) Act, 1995, for paucity of evidence on the actual wages being paid to the applicant by the second respondent. The age of the applicant at the relevant time was also fixed at 33 years. Thus, all the relevant data which is required for assessing compensation have been clearly arrived at by the learned Commissioner inter alia in his award. However, on the sole premise that the insurance policy was not transferred by the first respondent in favour of the second respondent while transferring the vehicle in question, the third respondent-insurer was exonerated from the liability. Not only that, the compensation was not assessed although the relevant data was properly arrived at. On the other hand, the learned Commissioner peculiarly proceeded to award an amount of Rs. 25,000/- under "no fault liability". I fail to understand that even if the insurer is exonerated for the reasons mentioned in the award, as to how the owner under whom the applicant was working is exonerated. The liability could have been fastened as against the owner when there had been a clear finding that the applicant was a workman under the Act and he received personal injuries in an accident arising out of and in the course of his employment.

6. Section 157 of the Motor Vehicles Act is the provision which is germane for consideration in the context. It reads as under:

157. Transfer of certificate of insurance (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicles in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. Explanation: For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

7. A perusal of the above excerpted provision makes it manifest that when there is a transfer of motor vehicle the policy is deemed to have been transferred in favour of the transferee. Under the explanation appended to Sub-section (1), it is further clarified that such a deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. The said explanation was incorporated under Sub-section (1) by means of an amendment under the Act 54 of 1994 which came into force with effect from 14.11.1994.

However, Sub-section (2) obligates the transferee to apply within 14 days from the date of transfer to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described thereunder in his favour. That obligation on the part of the second respondent appears to have not been discharged in the instant case.

8. Notwithstanding the same, the insurer cannot be exonerated from any liability on account of that. The legal position on the point is no more *res integra* and is squarely covered by a Judgment of the Apex Court in *Rikhi Ram and Another Vs. Smt. Sukhrania and Others*, . In para 7 of the said Judgment, it was held thus:

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of the insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.

9. In ordinary course, the instant matter requires to be remitted for fresh consideration by the learned Commissioner under the Act. However, having due regard to the fact that the claim in this case was preferred way back in the year 1996 i.e. more than a decade back and since the main appeal is now being disposed of, it is not expedient in the interest of justice to remit the matter for fresh consideration, more significantly when the required data was available on record having clearly reached by the learned Commissioner in his award. However, the only exercise that remains to be done is to pick up the relevant factor from Schedule-IV appended to the Act which is relevant to the age of the applicant and multiply it with the wages as fixed by the learned Commissioner so as to arrive at the appropriate compensation to be awarded. That exercise can as well be done here. The relevant factor as can be seen from Schedule-IV appended to the Act, having due regard to the age of the applicant at 33 years as fixed by the learned Commissioner, is 201.66. However, as per Section 4(1)(b) of the Act in case of permanent total disablement resulting from the injury, the compensation shall be an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor. Therefore, the compensation can thus be calculated as follows: Rs. 1,495/- monthly wages x 60 per cent x 201.66 relevant factor viz. $1,495/- \times 60/100 \times 201.66 = \text{Rs. } 1,80,889.02$ paise which can be rounded off to Rs. 1,80,890/- (Rupees one lakh eighty thousand and eight hundred ninety only). This amount shall carry interest, as per Sub-section (3) of Section 4A of the Act, at the rate of 12 (twelve) per cent per annum from the date of application till realization. The respondents 2 and 3 herein are jointly and severally liable to pay the said compensation.

10. In the result, the instant appeal is allowed as indicated above. However, under the circumstances, there shall be no order as to costs.