

(2014) 07 AP CK 0156

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 3453 of 2004

The Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Acchigari Prasad

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166, 173, 3, 4

Citation : (2015) 2 ACC 840 : (2015) 1 ALD 75 : (2015) 3 ALT 238

Hon'ble Judges : Anis, J

Bench : Single Bench

Advocate : Muddu Vijay, Advocate for the Appellant; V.R. Reddy Kovvuri, Advocate for the Respondent

Judgement

Anis, J.—This appeal is filed by the appellant/second respondent under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act"), aggrieved by the award dated 25.05.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, (Fast Track Court), Cuddapah, in M.V.O.P. No. 302 of 2001, awarding compensation of Rs. 1,00,000/-.

2. The respondent Nos. 1 & 2/petitioners filed the above O.P under Section 166 of the Act read with Rule 476 of the Andhra Pradesh Motor Vehicles Rules, claiming compensation of Rs. 1,00,000/- on account of the death of their daughter Harathi (hereinafter referred to as "the deceased") in a motor vehicle accident. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

3. The brief averments made in the petition are that the deceased was aged about three years and was studying nursery in Don Bosco English Medium School, Cuddapah, and on 18.08.2000 at about 4:30 p.m, while she was coming from school along with her teacher, one tipper bearing No. AIK.244 belonging to the first respondent came in rash and negligent manner without blowing horn and dashed the deceased causing her severe injuries and she succumbed to the said injuries and therefore, the petitioners claimed Rs. 1,00,00/- as

compensation.

4. Before the Tribunal, the first respondent remained ex parte.

5. The brief averments made in the counter filed by the second respondent are as follows:

"The second respondent put the petitioners to prove the manner of accident, age of the deceased and stated that there is no negligence on the part of the driver of the tipper and further stated that the girl aged about four years suddenly crossed the road on account her confusion and the driver of the vehicle was not having any valid driving license and that the claim of the petitioners is high and excessive and therefore, prayed the Court to dismiss the petition."

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, on behalf of the petitioners, the first petitioner got himself examined as PW. 1 and got marked Exs.A. 1 to A.4. On behalf of the contesting respondent, RW. 1 was examined and Exs. B1 & B2 got marked.

7. After considering the oral and documentary evidence, the Tribunal held that the accident was caused due to rash and negligent driving of the driver of the tipper bearing No. AIK.244 and awarded compensation of Rs. 1,00,000/- along with interest at 9% p.a to the petitioners against both the respondents.

8. Being aggrieved by the award passed by the Tribunal, the second respondent preferred the present appeal.

9. The learned counsel appearing for the appellant/second respondent argued that the Tribunal failed to appreciate that the deceased was aged about 3 years and studying in nursery and the compensation awarded to the petitioners is totally high and excessive. Further, the driver of the tipper has no driving license and the license possessed by him under Ex.B2 belongs to other person and therefore, the Insurance Company is not liable to pay any compensation and prayed the Court to set aside the award passed by the Tribunal.

10. On the other hand, the learned counsel appearing for respondent Nos. 1 & 2/ petitioners argued that the petitioners lost their daughter, who was studying nursery in Don Bosco School and the Tribunal after considering the oral and documentary evidence, rightly awarded compensation against the appellant/ second respondent and the owner of the tipper, which needs no interference by this Court and prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel appearing for both parties, the only point which is to be decided in this appeal is as follows:

"Whether the appellant is entitled for setting aside the award dated 25.05.2004 passed by the Tribunal in M.V.O.P. No. 302 of 2001 or not?"

12. The appellant/second respondent claimed that when the deceased was coming from school, the tipper bearing No.AIK.244 came in a rash and negligent

manner. He further specifically argued that the deceased suddenly crossed the road and on account of confusion, the accident was caused. Therefore, the insurance company is not liable to pay any compensation. To prove these facts, the second respondent has not examined the driver of the tipper to prove the manner of the accident. Further, the evidence of R.W.1, who is working as Senior Assistant in the appellant's company, is not relevant as he is not the eye witness to the manner of the accident.

13. There is no dispute about the fact that the accident was caused due to rash and negligent driving of the driver of the tipper. According to the appellant, the compensation of Rs. 1,00,000/- awarded by the Tribunal to the petitioners is high and excessive and further, the Insurance Company is not liable to pay any compensation in view of the settled law reported in National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, , wherein it is held as follows:

"The Motor Accidents Claims Tribunal held that though on the date of accident the driving license was not valid, since the driver's license was renewed on 16.5.2005 for a further period of three years it cannot be said that during the intervening period the driver was incompetent or disqualified to driver the truck. In appeal before the High Court it was held by a Single Judge that the insurer was liable to indemnify the award".

The Hon"ble Supreme Court in the said decision held that:

"the view held in Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, that the insurance company would have no liability in a case of this nature is applicable to the present case."

14. The respondent Nos. 1 & 2/petitioners contended that they are entitled for Rs. 2,00,000/- as compensation basing on the settled law in Lata Wadhwa and Others Vs. State of Bihar and Others, . In the present case, the Tribunal after considering the evidence available on record awarded Rs. 1,00,000/- as compensation to the petitioners.

15. On the other hand, the Insurance Company contended that the driver of the tipper does not have any license. Therefore, the Insurance Company is not liable to pay any compensation to the petitioners. RW. 1, who is working as a Senior Assistant in appellant's company, filed Exs.B1 & B2 insurance policy and certified copy of the driving license. As per Ex.B1, the insurance policy was in force at the time of accident. A perusal of Ex.B2 driving license shows that it does not belong to the driver of the tipper. Further, RW.1 in his cross-examination denied the suggestion that the driver of the tipper was having valid license.

16. There is no dispute about the accident. The claimants" daughter by name Harika died on 18.08.2000 due to rash and negligent driving of the driver of the tipper. Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to drive. In the present case, the driver was not holding any driving license of his own and as per Ex.B2,

the said driving license do not belong to the driver of the tipper. The Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, held as follows:

"76. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficial provisions of the Act having regard to its purport and object, we fail to see a situation where beneficial provisions can be given effect to Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with Sub-section (1) thereof. The right to avoid liability in terms of Sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

96. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

97. Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the said principle."

17. As per the Act, a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In the present case, no doubt, the driver of the tipper bearing No.AIK.244 does not have any license to drive the vehicle. The Tribunal rightly held that the Insurance Company is liable to satisfy the decree along with the owner. But, the owner has an obligation to take adequate care and see that the driver had appropriate license to drive the vehicle. In the present case, a four years girl died in the accident and the Tribunal directed the Insurance Company to pay along with the owner. At the time of arguments, both the counsel requested the Court to pass an order of pay and recover. Therefore, in view of Swaran Singh's case (third cited supra), this Court direct the appellant/second respondent to first pay the awarded amount to the respondent Nos. 1 & 2/petitioners and then recover the same from the owner of the vehicle i.e., respondent No. 3 herein by initiating the proceedings before the Executing Court without filing a separate suit for the said purpose.

18. With the above said observation, the appeal is disposed of. However, without no costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.