
(2014) 06 AP CK 0179

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 1060 of 2005

The National Insurance Company Ltd.

APPELLANT

Vs

Gundu Jangamma

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Citation : (2014) 06 AP CK 0179

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : A. Veeraswamy, Advocate for the Appellant; Kiran Palakurthi, Advocate for the Respondent

Judgement

B. Chandra Kumar, J.—This appeal is directed against the award dated 09.08.2004 passed in O.P. No. 1311 of 2002 by the Principal Motor Accident Claims Tribunal, Nalgonda (for short "the Tribunal").

2. The parties hereinafter referred to as arrayed before the Tribunal for the sake of convenience.

3. The brief facts of the case are as follows:

4. The 1st claimant is the wife and claimant Nos. 2 to 4, are the minor children of the deceased. Their brief case is that on 14.10.2002 the offending lorry bearing No. AP-24-11-434 being driven by its driver in rash and negligent manner at high speed dashed against the car bearing No. AP-10-N-7222 due to which the deceased and another fell from the lorry and cement bags fell on them resulting in the death of those persons. The claimants contended that the deceased was aged about 38 years and earning Rs. 5,000/- per month from vegetable business and he is also a professional driver. They claimed a total compensation of Rs. 2,00,000/-.

5. The 1st respondent is the owner of the lorry. The 2nd respondent is the insurance company with which the vehicle was insured. The 2nd respondent

alone contested the matter.

6. On appreciation of evidence, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the lorry, this finding is not in dispute. On issue No. 2, the Tribunal has taken the income of the deceased at Rs. 50/- per day, after deducting 1/3rd towards personal expenses awarded compensation of Rs. 1,66,464/- towards loss of dependency and by adding Rs. 15,000/- towards loss of consortium to the 1st claimant and Rs. 15,000/- towards loss of estate, love and affection and care and guidance and another sum of Rs. 3,000/- towards funeral expenses, awarded a total compensation of Rs. 1,99,464/-. Challenging the said award, the insurance company filed this appeal.

7. The main contention of the learned counsel for the insurance company is that admittedly the deceased was sitting on the cement load and thus there is clear violation of conditions of the policy and in view of the clear violation of conditions of the policy, the Tribunal ought not to have directed the insurance company to pay the amount and recover the same from the owner of the vehicle. The Tribunal placed reliance on a judgment reported in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , wherein the Apex Court held that though the insurance company is not liable to pay compensation, but, however directed the insurance company to pay the amount to the claimants and recover the same from the owner of the vehicle. Wherever it is alleged that the owner of the vehicle had violated the terms and conditions of the policy it becomes a dispute between the owner of the vehicle and the insurance company. As far as the claimants are concerned, the claimants are third parties, they are not parties to the agreement entered between the insurance company and the owner of the vehicle. When they are not parties to the policy i.e., entered between the insurance company the owner of the vehicle, the claimants are not bound by the terms and conditions of the policy and they cannot be denied compensation. If the insurance company is not directed to pay the amount, it will be difficult for the claimants to recover the said amount from the owner of the vehicle. Whereas the insurance company is being mighty organization can fight with the owners of the vehicles and recover the same. In fact, wherever there are violations by the owners of the vehicles, the insurance company should see that the properties of the owners are attached soon after they receive the information about the accident.

8. As seen from the facts of the case, when the lorry dashed against the car, it turned turtle and the persons sitting on the cement bags fell down and the cement bags fell on them, the deceased is also one among them, whether the deceased could be treated as unauthorized passenger. As long as the victim was sitting on the cement bags it may be said that he is a passenger traveling in the lorry. However, the moment he fell down from the lorry and touched the ground for all particular purposes becomes a third party. He cannot be treated as passenger at that time. Therefore, it appears to be incorrect to say that the

deceased was an unauthorized passenger, when he sustained injuries are proved fatal.

9. In view of the above discussions, I find no merits in the appeal. Accordingly, the appeal is dismissed. No costs. In view of the latest judgments of the Supreme Court, the rate of interest will be 7.5% per annum from the date of petition till realization.

10. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.