

(2014) 07 AP CK 0039
In the Andhra Pradesh High Court
Case No : M.A.C.M.A No. 1179 of 2009

The New India Assurance Co. Ltd

APPELLANT

Vs

Anela Sathyamma

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 166, 2(30)

Citation : (2015) ACJ 1352 : (2014) 6 ALT 772

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : Kota Subba Rao, Advocate for the Appellant; Bajrang Singh Thakur, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the Award dated 23.02.2007 in M.V.O.P. No. 627 of 2004 passed by the Chairman, Motor Accidents Claim Tribunalcum District Judge, Mahabubnagar (for short the Tribunal), the 2nd Respondent Insurance Company preferred the instant M.A.C.M.A.

2. The factual matrix of the case is thus:

a) The claimants are the wife, minor son and parents of the deceased A. Ramulu of Veltoor Village, Mahabubnagar District. Their case is that on 06.10.2003 at about 9.00 P.M., when the deceased was returning from Hyderabad to his Village on his scooter bearing No. AP 09 G 6505 and when he reached Punjabi Dhaba in the village limits of Rajapur, one car bearing No. ADY 2239 came with high speed being driven by its driver in a rash and negligent manner and dashed the deceased, thereby he fell down and sustained multiple fractures and died on the same night while undergoing treatment in Osmania General Hospital at Hyderabad. It is averred that the car driver was responsible for the accident. It is further averred that due to sudden demise of the deceased, the claimants became destitutes. On these pleas, the claimants filed M.V.O.P. No. 627 of 2004

against the Respondents, who are owner and insurer of the offending vehicle and claimed Rs. 5,00,000/- as compensation under different heads u/s 166 of M.V. Act. Later they got amended the petition to Section 163-A of M.V. Act.

b) First Respondent remained ex parte.

c) R2Insurance Company filed counter and opposed the claim by denying all the material averments in the petition. R2 opposed the claim mainly on the contention that as per F.I.R. allegations the deceased was hit by an unknown vehicle and case was registered by the police as such. However, later the claimants created a false story in collusion with one Yousuf Khan as per which he came to police station along with one Shaik Saleem on 28.05.2004, i.e. 7 months after the accident and the said Yousuf Khan introduced himself as the owner of the car and Shaik Saleem as his driver and surrendered his driver being responsible for accident. R2 further contended that as per the records, one Mangamma was the original owner of the vehicle and policy was issued in her name. Hence, the claimants colluded with the owner and driver of the vehicle to get compensation. R2 further denied the age, avocation and income of the deceased. Finally, R2 contended that the claim is excessive and untenable.

d) During the trial, P Ws.1 to 3 were examined and Exs.A1 to A8 were marked on behalf of the claimants. RW1 was examined and Ex.B1 was marked on behalf of R2.

e) Perusal of the award would show that the Tribunal believed the case of claimants and held that car was involved in the accident and its driver was responsible for the accident. The Tribunal awarded Rs. 3,07,000/- under different heads with interest at 7.5% P.A. and with proportionate costs against the Respondents. Hence, the appeal by the Insurance Company.

3. Heard Sri Kota Subba Rao, learned Counsel for Insurance Company and Sri Bajrang Sing Thakur, learned Counsel for Respondents/claimants.

4a. Learned Counsel for Appellant challenged the award mainly on two grounds. Firstly, he argued that admittedly the deceased was hit by an unknown vehicle as is evident from Ex.A1FIR. However, surprisingly after a long lapse of 7 months PW2 allegedly appeared before police along with Shaik Saleem introducing himself as owner and Saleem as driver who committed the accident and surrendered him. Learned Counsel argued that but for the alleged voluntary surrender of the driver, the police investigation did not independently detect the crime vehicle. Ex.A4charge sheet was laid by the IO solely on the strength of alleged confession of driver. He vehemently argued that the surrender of driver after a long gap creates any amount of doubt regarding involvement of car in the accident and the doubt further intensifies from the fact that the descriptive particulars of the vehicle were sourly missing in FIR. He argued that even though vehicle number could not be mentioned nothing prevented the complainant to mention the nature of vehicle in the FIR. The conspicuous silence in this regard, he argued, suggests that no body knew the nature of the vehicle and

subsequently car was implanted in collusion with the concerned. Thus at the first instance he argued that the claim application is liable to be rejected for want of proof of involvement of car in the accident.

b) Secondly and alternatively, learned Counsel argued that even assuming that the car in question was involved in the accident still the Insurance Company cannot be fastened with liability for the reason that the evidence of P Ws.2 and 3 would show that PW3Mangamma was the original owner of the car and policy was also issued in her name. However, she sold the car to PW2 but as some amount was due from him, the RC was not transferred in his name by the date of accident. The evidence would show the car was in possession and control of PW2 and the driver was also under his control. Therefore, though PW3 was the owner she had no effective possession and control over the vehicle by the date of accident. Hence, PW2 has to be treated as the owner of the vehicle by the date of accident as per the decision reported in *Purnya Kala Devi v. State of Assam* and PW2 alone shall be held liable for compensation since the Insurance Company undertook to indemnify the liability of PW3 but not PW2. Added to it, as PW2 alone was shown as owner in the claim petition, Insurance Company cannot be held liable.

5a. Per contra, learned Counsel for the Respondents/claimants firstly argued that car in question was very much involved in the accident which was detected in the police investigation. In FIR the particulars of the vehicle were not mentioned because the complaint was lodged by the wife of the deceased on telephonic information given by some other person. As she was not an eyewitness to the accident and as the information received by her was not clear about the particulars of the vehicle, she only mentioned that an unknown vehicle hit her husband. Therefore, mere non-mentioning of the vehicle particulars is not a consequence. On the other hand, PW2 and PW3 clearly admitted that their vehicle was involved in the accident. Except alleging that claimants colluded with P Ws.2 and 3, the Insurance Company has not produced any tangible material in that regard. Therefore, the Tribunal rightly came to the conclusion that car in question was indeed involved in the accident. Relying upon the following decision learned Counsel would submit that the admission of owner of the vehicle about the involvement of his vehicle in the accident will be a sufficient proof as held by the Apex Court in *Saroj and Ors. v. Het Lal and others*.

b) Secondly, regarding liability of Insurance Company learned Counsel argued that insurer cannot absolve its liability on the contention that the registered owner transferred her vehicle to a third party without the knowledge of the Insurance Company and that the registered owner was not in effective possession and control over the vehicle by the date of accident. He argued that the insurer having undertaken the liability of third party risk is bound to answer such third party claims in spite of the fact that vehicle was transferred or hired to third parties by the owner. He submitted that if it is the case of the Insurance Company that the owner transferred the vehicle without intimation to it and

thereby caused breach of terms of policy, it may at best request the Court to order for pay and recover the amount from the owner but it cannot repudiate its liability altogether since the policy was in force and liability was in respect of third party. On this aspect he relied on the decision of the Apex Court reported in *S. Iyyapan v. United India Insurance Co. Ltd.* and another. He thus prayed to dismiss the appeal.

6. In the light of above rival arguments, the point for determination in this appeal is:

Whether the award passed by the Tribunal is factually and legally sustainable

7a. POINT: As can be seen, the Appellant doubting the involvement of the car in the accident on the argument that except the alleged and belated confession of driver there is no other material to believe the involvement of the car in the accident. Though this argument apparently looks sound but cannot be approved. It is true Ex.A3remand report and Ex.A4charge sheet reveal that basing on the surrender of driver of the car on 28.05.2004 through its owner Yousuf Khan (LW5), the police came to know that the car bearing No. ADY 2239 was involved in the accident. The Appellant criticises that the alleged surrender and confession of the driver was a result of collusion between the claimants and owner of the car as otherwise there was no need for the driver to surrender 8 months after the accident. This argument cannot be accepted for the reason that both the registered owner PW3 and her purchaser PW2 were examined in the Court and they clearly admitted about involvement of the car in the accident.

b) PW2 deposed that he purchased the car from PW3 and engaged Shaik Saleem as driver. On 27.05.2004 his driver came to him and confessed before him that on 05.10.2003 at about 21 hours while he was going to Hyderabad he dashed one scooterist at Punjabhi Dhaba of Rajapur village and scooterist died. PW2 further deposed that due to fear driver could not inform this fact to him and as he revealed this fact on 27-05-2004, he produced him before the police. Thus, PW2 gave an explanation to the effect that due to fear his driver did not divulge about the accident till after 8 months. Except giving a denial suggestion nothing tangible could be extracted in the cross-examination to disbelieve his version.

c) Then, PW3 Mangamma deposed that she is the owner of the car and she sold the same to PW2 for Rs. 50,000/- but transfer was not taken place as she has not received the total sale consideration. She further stated on 27.05.2004 PW2 came to her and informed that the car met with an accident on 05.10.2004 within the limits of Balanagar and that the driver confessed the same before him. On that she advised PW2 to surrender the driver before police, Balanagar and get him released on bail and she informed these facts to the Insurance Company through a letter. Like PW2, except denying her evidence no useful material was elicited in her cross-examination.

d) So, the owner and purchaser have admitted before the Court that their vehicle was very much involved in the accident and they surrendered the driver to the

police. Basing on it of course, police charge sheeted the driver. In view of the above strong evidence, the doubt expressed cannot be countenanced.

8. Saroj and Others Vs. Het Lal and Others, was a hit and run case. A motor cycle was hit by Tata 207 vehicle. The complaint was lodged as if an unknown vehicle hit the motor cyclist. During investigation police claimed that the driver confessed before his uncle and at his instance the vehicle and driver were surrendered before the police. Accordingly, police charge sheeted the driver. In the claim petition the driver filed written statement as if no incident as alleged took place and Tata 207 was not involved in the accident though he admitted to be the driver of the vehicle. However, second Respondent/owner in his written statement admitted about the accident but contended that fault lies with the motor cyclist. The Tribunal and High Court dismissed the claim expressing doubt about involvement of vehicle. In claimants appeal the Apex Court while commenting on the admission of owner in his written statement has held thus:

xx xx xx

This admission in the pleadings which we have quoted in the order was itself sufficient to hold that the vehicle concerned belonging to Respondent 2 was involved in the accident. This admission was never traversed by Respondent 2 and, thus, there was no occasion to hold that the said vehicle was not involved and that it was a hit-and-run case.

xx xx xx

In strict sense, this admission may not be binding vis-?-vis Respondent 1, the driver, who continued to take a stand that the vehicle being driven by him was not involved in the accident. This defence of Respondent 1 is understandable as admittedly he is facing the prosecution for causing the accident and the death thereby of deceased Joginder Singh on 16.09.2005 at 3.30 p.m.

Thus, Honourable Apex Court has given much credence to the admission of owner of the vehicle regarding involvement of the vehicle in the accident.

In the instant case also P Ws.2 and 3 on oath admitted before the Court about the involvement of the car in the accident. Except denying their admission the Insurance Company has not conducted any independent survey to come with different evidence. Therefore, this contention cannot be accepted.

9. The second argument touching the liability of Insurance Company is concerned, same cannot be approved. Admittedly, PW3 is the registered owner of the car. Appellant/Insurance Company issued Ex.B1policy in her name undertaking to bear third party risks. Ex.B1 was covering the period from 21.02.2003 to 20.02.2004 and the accident being occurred on 06.10.2003, the policy was in force by the date of accident. As such, Insurance Company cannot repudiate its liability on the ground that the vehicle was sold by PW3 and she was not in effective possession and control over the same. The evidence would show that PW2 has not paid the entire sale consideration and RC was not

transferred in his name by the date of accident. So, under law, PW3 was the registered owner and PW2 was only a custodian of the vehicle.

10. The cited decision in *Purnya Kala Devi Vs. State of Assam and Another*, can be distinguished on facts. In that case the bus of an owner was requisitioned by State of Assam on some Government duty under Assam Requisition and Control of Vehicles Act, 1968 (for short Assam Act) on 14.02.1993. While so, on 16.02.1993 the driver dashed a cyclist and caused his death. In the claim petition the State Government took the plea that it only requisitioned the vehicle and it was not the owner and hence the registered owner has to bear the liability. Ultimately in the appeal, Honourable Apex Court by referring Section 2(30) of M.V. Act which defined the term owner held that since the vehicle was not released by the State Government by serving any notice in writing on the owner as per Section 5 of Assam Act, the State can be squarely covered under the definition of owner as contained in Section 2(30) of M.V. Act. Ultimately the Apex Court fastened the liability on the State of Assam. In the cited decision, the vehicle was not covered with policy. Had it been so, we do not know what would have been the observation of Apex Court in respect of the liability of the Insurance Company.

Needless to say that facts in the instant case are quite different. PW2 will not fit in the definition of owner u/s 2(30) of M.V. Act since the vehicle was not transferred in his name. So, he (PW2) was only a custodian and PW3 was the owner. Therefore, the argument of Appellant cannot be upheld.

11. In the result, this MACMA is dismissed by confirming the award of the Tribunal in MVOP No. 627 of 2004. No order as to costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.