

(2008) 12 AP CK 0071
In the Andhra Pradesh High Court
Case No : C.M.A. No. 3892 of 2002

The New India Assurance Co. Ltd.

APPELLANT

Vs

Neeradi Kaspa Sattavva and Another

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 28

Citation : (2008) ACJ 710

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : Kota Subbarao, for the Appellant; A. Bichaiah in C.M.A. Nos. 3892 of 2002, 394, 440 and 505 of 2003 and Ch. Janardhan Reddy in C.M.A. No. 406 of 2003, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—Aggrieved over the quantum of compensation awarded by the learned Commissioner for Workmens" Compensation and Assistant Commissioner of Labour, Nizamabad in W.C. Nos. 63 of 1999, 64 of 1999, 60 of 1999, 61 of 1999, 62 of 1999, the appeals in C.M.A. Nos. 3892 of 2002, 394 of 2003, 406 of 2003, 440 of 2003 & 505 of 2003 have been filed by the appellant-Insurance Company in the respective W.Cs.

2. The appellant in all the C.M.A.s herein is the Insurance Company and respondents 1 and 2 in all the C.M.As are the applicants-claimants and the owner of the crime vehicle respectively before the Commissioner. The status of the parties will hereinafter be referred to as arrayed before the Commissioner for the sake of convenience.

3. Since all W.Cs as well as the C.M.As are an outcome of the same accident that has occurred on 1.7.1998 and the issue involved in all the five appeals is one and the same, all the five appeals are disposed of by a Common Judgment.

4. The claimants in all the appeals are the injured who have filed the respective

W.Cs. before the Commissioner seeking a compensation of Rs. 1,00,000/- each.

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

On 1-7-1998 at about 8 A.M., all the claimants were going in a Tractor and trolley bearing Nos. AP25 T 4136 and AP 25 D 3875 from Gundenemli village to Nizamsagar project Canal to attend labour work under the course of employment of the owner of the vehicle in question. After attending the work, they were returning on the same tractor and trolley and when they reached near the outskirts of Tadkole village at about 7 P.M., the driver of the vehicle drove the same in a rash and negligent manner in a high speed, as a result of which, the tractor turned turtle in a mud and consequently, all the claimants received injuries and fractures all over the body. The claimants were earning a sum of Rs. 2,100/- per month and contributing the same to their respective families. Hence, both the Insurance Company and the owner of the vehicle in question are jointly and severally liable to pay the compensation to the claimants. The Insurance Company has filed a counter denying all the material averments mentioned in the applications and the wages paid to the claimants, their age and the injuries sustained by them.

6. The owner of the vehicle filed a counter admitting that the claimants were working as agricultural labourers under him.

7. Based on the above pleadings, the following points were framed before the Commissioner in each W.C:

1. Whether the applicant is workman within the meaning of the Act and whether the accident occurred during the course of employment under Opposite Party No. 1

2. If so, to what relief the applicant is entitled and against which of the opposite parties

8. Before the Commissioner, separate trial was conducted in each W.C and on behalf of the respective applicants, P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked and on behalf of the opposite parties, R.W.1 was examined in each W.C.

9. On a consideration of the oral and documentary evidence, the Tribunal having come to a conclusion that the claimants were employed by the owner as labourers and having held that the Insurance Company and the owner are jointly and severally liable to pay the compensation to the claimants, ordered compensation by considering the gravity of the injuries and the income of the claimants, in all the W.Cs.

10. Aggrieved over the quantum of compensation, the Insurance Company has filed these five appeals.

11. Sri Kota Subba Rao learned Counsel for the Insurance Company would contend that the accident did not occur in the course of employment and that the

claimants were traveling in a trolley attached with the tractor for which there is no insurance coverage and therefore, the liability cannot be fastened against the Insurance Company.

12. Per contra, the learned Counsel for the claimants-workmen would contend that the accident occurred only during the course of employment while the claimants were engaged as labourers, by the opposite party No. 2-the owner, and therefore, the claim under workmen's Compensation Act is maintainable.

13. There is no dispute that the claimants were engaged by the owner of the vehicle for doing labour work in the Nizamsagar Project canal. For the said purpose, on the date of incident, all the claimants travelled in a trolley attached to the tractor to the place of the work and after completion of work, they started in the same trolley attached to the tractor to their house. During the return journey, due to the rash and negligent driving of the tractor by its driver, the tractor turned turtle in a mud, resulting multiple injuries to the claimants.

14. The fact that all the claimants sustained injuries only after completion of work while returning to the house, remains undisputed. But, the question as to whether this accident can be construed as that of an accident occurred in the course of employment, is the main thrust of the argument raised by the learned Standing counsel for the Insurance company.

15. The tractor and trolley will be engaged only in order to attend to the works in relation to the agriculture or the other allied operations. Therefore, it can be inferred that the tractor and the trolley are not at all meant for travelling.

16. In support of his contention that the traveling of the claimants is not permissible in the trolley and therefore, the insurance company is not liable to pay any compensation, the learned Standing Counsel relied on a decision of the Apex Court reported in *United India Insurance Co., Ltd. v. Serjearo and Ors.* (1), wherein it was held by the Honorable Apex Court at paragraph 8 which reads as follows:

So far as the question of liability getting labourers travelling in trollies is concerned, the matter was considered by this Court in *Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others*, and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated by this Court in *Smt. Yallwas case* (supra) and *Brij Mohans case* (supra).

17. In this regard, to appreciate the issue involved, it is relevant to note the provisions of Rule 28 of the Central Motor Vehicles Rules, which reads as under:

A driver when driving a tractor shall not carry or allow any person to be carried on tractor. A driver of goods carriage shall not carry in the drivers' cabin more number of persons than that is mentioned in the registration certificate and shall not carry passengers for hire or reward.

18. In the light of the above provisions as well as the principles laid down by the Apex Court in the above decision (citation- 1 supra), it can easily be said that the traveling of the claimants as labourers in the trolley attached to the tractor itself is not permissible and if that being the case, there is no other go except to hold that the claimants cannot claim that they have suffered injuries only during the course of their employment. Normally, the statutory liability to pay compensation under the Motor Vehicles Compensation Act is on the employer. The Insurance is a matter of contract between the Insurance Company and the insured. In this case, since the claimants travelled in a tractor-trolley, the liability cannot be fastened against the Insurance Company, as held by the Honourable Apex Court in the decision referred to above.

19. At this stage, the learned Counsel for the claimants would contend that the Judgment relied upon by the learned Counsel for the Insurance Company is in respect of the provisions of the Motor Vehicles Act, but not under the provisions of the Workmens" Compensation Act and therefore, the said decision cannot be made applicable to the facts of the case on hand.

20. Irrespective of the fact whether the claim has been made under the provisions of Workmens" compensation Act or the provisions of Motor Vehicles Act, it is needless to observe that the liability cannot be fastened against the Insurance Company when there is violation of the policy conditions. Therefore, the liability cannot be distinct and at the same time, it cannot vary from the provisions itself for the reason that the liability can as well be fastened subject to the coverage of risk as well as the subsistence of the policy by the date of incident and violations of the policy conditions. In this view of the matter, the contention of the learned Counsel for the claimants that the decision relied on by the learned Standing counsel for the insurance company, cannot be made applicable to the facts of the case on hand, cannot be sustained.

21. For the foregoing reasons and in view of the principles laid down by the Apex Court in the above decision (citation-1 supra) as well as the above provisions, I am of the opinion that the tribunal has failed to consider all these aspects while fastening the liability against the insurance company and therefore, the order of the tribunal is liable to be set aside in so far as the fastening of the liability against the insurance company is concerned.

22. At this stage, it is submitted by the learned Counsel for both the parties that the entire award amounts have been deposited by the Insurance Company and out of the same, half of the awarded amounts have been withdrawn by the respective claimants.

In view of exempting the liability of the insurance company in all these appeals, it is needless to observe that the Insurance company is at liberty to withdraw the balance amounts remaining in the deposit made by it and at the same time, the Insurance Company is at liberty to proceed against the owner of the vehicle for recovery of the amount already withdrawn by the respective claimants. It is also

made clear that the claimants in all the appeals can recover the balance amount, if any awarded to them, from the owner of the vehicle.

Subject to the above direction, all the C.M.As are allowed setting aside the order of the tribunal in the respective W.Cs in so far as the fastening of the liability against the insurance company, is concerned. It is also made clear that the order of the tribunal in the respective W.Cs. needs no interference in so far as the other findings of the tribunal are concerned. No costs.