
(1989) 01 AP CK 0006
In the Andhra Pradesh High Court

The New India Assurance Company Ltd.	APPELLANT
Vs	
Anasurya and Others	RESPONDENT

Date of Decision : 25-01-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(32), 96(2)(b)

Citation : (1991) 1 ACC 168

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

K. Ramaswamy, J.—An interesting question of law has been raised by Shri Somayajulu the learned Counsel for the Insurance Company. Namely, whether the insurer is liable to pay compensation for the death of or bodily injury to persons travelling in a tractor-cum-trailer insured under the contract of insurance with the appellant-company? The admitted facts are that Ram Reddy, the 6th respondents the owner of the tractor and trailer APM 3601 and APM 3602. He has employed the 5th respondent Ramulu as their driver. On October, 22, 1985, when the tractor-cum-trailer was transporting the sand to the field of the owner from a vagu after loading the sand for which the deceased Anjaneyulu and Ors. were engaged as labourers to load and unload the sand, due to the negligent driving of the 5th respondent, the deceased fell down from the tractor at the turning of the road. The tyres of the vehicle passed over him due to which he died. Respondents 1 to 4, the widow, the minor daughter and the parents of the deceased, laid the claim in a sum of Rs. 50, 000/- towards compensation for the death of the deceased Anjaneyulu. The Tribunal below awarded a sum, in all, of Rs. 33, 800/- namely, Rs. 28, 800/- towards loss of dependency and Rs. 5, 000/- towards loss of consortium, love and affection, and fastened that liability on the insurance company under the contract of insurance, Ex. B-1.

2. It is relevant to refer to the definitions of the words "Trailer" "Motor Vehicle" and "Goods Vehicle" as given in Sub-sections 32, 30, 18 and 8 of the Section 2 of the Motor Vehicles Act (Act No. IV of 1939) (for short the Act):

2(32) "trailer" means any vehicle other than a side car drawn or intended to be drawn by a motor vehicle.

2(30) "tractor" means a motor vehicle which is not itself constructed to carry and load (other than equipment used for the purpose of propulsion) but excludes a road roller;

2(18) "Motor Vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use in a factory or in any other enclosed premises.

2(8) "goods vehicle" means any vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted without use for the carriage of goods solely or in addition to passengers.

3. Thereby, "tractor" means a motor vehicle intended for the purpose of propulsion and "trailer" meant, any vehicle other than the excepted one in Section 2(32). "Motor Vehicle" means, any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto and includes a trailer. "Goods Vehicle" means, any vehicle constructed or adapted for use for the carriage of goods. Thereby, tractor towed with trailer would mean a motor vehicle constructed or adapted for the purpose of carriage of goods and therefore it is a goods vehicle.

4. The contention of Shri Somayajulu is that a reading of these provisions does show that tractor-cum-trailer is neither a goods vehicle nor a passenger vehicle. Therefore, the owner is not entitled to allow any person other than the driver and attendant to travel in the tractor-cum-trailer and for any death occurred of the person other than third parties, the insurance company is not liable. In support thereof, he places strong reliance on Rule 302 of the Rules which reads thus:

Persons on trailers: No person other than the attendant or attendants required by Rule 500 shall be carried on a trailer:

provided that nothing contained in this rule shall apply in the case of a trailer which is being used for the carriage of troops or police.

5. Rule 500 postulates that no person other than an attendant to each of the trailers is allowed to travel in the tractor, that too if his age is above 20 years and only to operate the tractor to apply the brakes, etc. The goods vehicle is permitted to carry six persons and a driver u/s 65(2) (a) of the Act. By necessary implication there is a prohibition to permit any persons other than the driver and the attendant to travel in the tractor-cum-trailers. Thereby, the contract of insurance is not covered under the policy for payment or compensation for the death of the deceased. He places strong reliance in support thereof on the decision of the Madhya Pradesh High Court in Bhoi Vanaji Dhulaji

and Another Vs. Patel Shivabhai Kashibhai and Others, . I find force in the contention of Shri Mahipathi Rao and Shri Prakash Rcdy, the learned Counsel appearing for the respondents that the tractor-cum-trailer is a goods vehicle. The conclusion I have reached receives support from the ratio in The Public Prosecutor Vs. Yellagadda Ramakrishna Rao and Another, . The definitions of motor vehicle and goods vehicle were considered by the Division Bench speaking through Nara-simham, J. (as he then was) and in paragraphs 7 to 11 of the judgment the Division Bench considered the question whether the tractor-cum-trailer is a goods vehicle for the purpose of its liability to impose tax and held that the tractor-cum-trailer is a goods vehicle within the meaning of Section 2(8) of the Act When the tractor-cum-trailer i.e. goods vehicle is insured for the purpose of agricultural operations, carrying the coolies for loading or unloading is incidental to the purpose of agricultural operations. They are not being carried for hire or reward as a stage carriage but as an incident to their carrying on agricultural operations by the user of the goods vehicle, namely tractor-cum-trailer. Thereby, there is an implied authorisation for permitting to carry the coolies in the tractor-cum-trailer when the vehicle is used for agricultural operation. Admittedly, there is a contract of insurance Ex. B-I taken to cover such an accident. The liability of the owner and insured is co-extensive and the former has contracted to seek indemnification of the damages that may ensue by use of the goods vehicle in public way which causes death of or bodily injury to a third party due to rash and negligent driving of the driver of the motor vehicle. The insurance company having undertaken to indemnify the liability jointly and severally liable to recompense the damage suffered by the owner pursuant to the contractor insurance for which he defrayed the premium. The Liability to pay damages is fastened on the insured-appellant. This view receives support from the ratio in Raghunath Eknath Hivale Vs. Shardabai Karbhari Kale and Others etc., ; Oriental Fire and General Insurance Co. Ltd. v. M. Chandra Rao 1986 (2) A.L.T. 606 : 1987(2) A.C.C. 28; Skandia Insurance Co. Ltd. v. Kokilaben AIR 1987 (S.C.) 1184 : 1987 (1) A.C.C. 413.

6. Section 94 obligates taking of compulsory policy of insurance. Section 95(1) requires a policy of insurance to be taken and prescribes the limits of its liability in respect of the person or class of persons specified in the policy to the extent specified in Sub-section (2) thereof. Sub-section (2) provides that subject to proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely, where the vehicle is a goods vehicle a limit of Rs. 1, 50, 000/- in all, including the liabilities, if any, arising under the Workmen's Compensation Act in respect of the death of or bodily injury to employees other than the driver not exceeding six in number, being carried in the vehicle, etc.

7. Section 96 provides:

Duty of the insurers to satisfy judgments against persons insured in respect of third party risks:-(1) If, after a certificate of insurance has been issued under

Sub-section (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of Sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Sub-section (2) gives power of exclusion of liability when there has been a breach of a specified condition of the policy being one of the following conditions, namely, these enumerated in clauses (a) to (e) thereunder. Thereby, where there is a contract of insurance covering the liability, the insurer is liable to honour the contract unless the insured has contravened any of the conditions enumerated in Sub-section (2) (b) of Section 96 of the Act. Section 94 of the Act provides that no person shall use except as a passenger or cause or allow any other person to use the motor vehicle in a public place unless there is in force in relation to use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with requirements of Chapter VIII. Third party risks are included in Section 94 of the Act. The immediate question, therefore, that emerges is whether the death of a person who was working as a coolie for loading and unloading of the sand, while travelling in the vehicle, tractor-cum-trailer is covered under the third party risk u/s 95 read with Section 96 of the Act. It is one thing, to say, as rightly contended by Sri Somayajulu, that after the tractor-cum-trailer is used as a stage carriage for carrying the passengers other than the purpose for which it is insured, then a different connotation would arise as regards the liability of the insurer. But, in this case, it is unnecessary to go into that question because admittedly the vehicle is being used for carrying the sand to the field of the owner of the vehicle and the deceased Anjaneyulu was employed as a coolie to load and unload the sand along with others.

8. In *Skandia Insurance Co. Case* (5 *supra*) Tliakkar, J., speaking for their Lordships of the Supreme Court, construing the liability of the insurance company and the construction to be adopted in that regard held that:

In order to divine the intention of the Legislature in the course of interpretation of the relevant-provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the Legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of the third party risk will have to be borne by the owner of the vehicle. Why then has the Legislature insisted on a person using the motor vehicle in a public place to insure against

third party risks by enacting Section 94. Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risks attendant upon the user of the motor vehicles on the roads. The law may provide for compensation to the victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependents of the victims in the case of fatal accident. However such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the Court would be recoverable from the persons held liable for the consequences of the Accident.

In Paragraph 14 it was further held that:

The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not a miss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself place the vehicle in charge of a person who does not hold a driving licence that it can be said that he is "guilty" of the breach of the promise that the vehicle will be driven by a licenced driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract.

In that it is further held that

It is only in the case of a breach or a violation of the promise on the part of the insured that the insured can hide under the umbrella of the exclusion clause. In a way, the question is as to whether the promise made by the insurer is an absolute promise or whether he is exculpated on the basis of some legal doctrine.

It was further held that:

What is prohibited by law must be treated as a mandate to the employee and should be considered sufficient in the eye of law for excusing non-compliance with the provisions. It cannot, therefore, be considered as a breach on the part of the insured. To construe the provision differently would be to rewrite the provision by engrafting a rider to the effect that in the event of the motor vehicle happening to be driven by an unlicenced person regardless of the circumstances in which the contingency occurs, the insurer will not be liable under the contract of insurance. It needs to be emphasised that it is not the contract of insurance which is being interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted.

It was further held that:

Wide exclusion clauses will be read down to the extent to which they are

inconsistent with the main purpose, or object of the Contract.

9. Therefore, the Supreme Court has strictly construed the exclusionary clauses in the contract to elongate the object or the purpose, namely, to give benefit of the insurance to the third parties whose death or bodily injury has been occasioned on account of the user of the goods vehicles or passenger vehicles in a public place and the compensation is payable to the victims or the legal representatives of the deceased persons. The immediate question that emerges is whether the contract of insurance of the third parties includes the labour engaged by the owner of the vehicle for loading and unloading the sand for agricultural operations, for which the policy was admittedly taken. Though Sri Somayajulu, learned Counsel, is right in contending that for travelling it is only the driver and the attendant for each tractor is permitted under Rule 302 read with Rule 500 of the Motor Vehicles Rules and there is an implied prohibition against carrying any persons as passengers in the trailer-cum-tractor, but there is no implied prohibition for carrying the coolies or the labour for agricultural operations. The very object of the insurance of the agricultural operations is to engage the tractor in the operation of agriculture. As an incident thereto, carrying the coolies or the labour for agricultural operations. Therefore, when an accident has occurred in which one or some of the labourers or coolies engaged have sustained injuries or have died due to rash and negligent driving of the driver of the contract, then it covers the third party risks. Obviously for that reason the policy is taken and it is not necessarily of any person or persons other than those who were travelling in the vehicle as incidental to the agricultural operations. If this construction is adopted, it would not only subserve the purpose of the contract of insurance but also the very object of carrying on the agricultural operations with the aid of the tractor towed with trailer. Any other construction would defeat the purpose of the insurance taken by the owner of the tractor-cum-trailer and also deprives the labour or the coolies engaged in the agricultural operations which were carried by the trailer-cum-tractor for the purpose. No doubt, the Madhya Pradesh High Court in 1981 ACJ 107 has taken the view which supports the contention of Shri Somayajulu. But with due respect and after giving my anxious consideration to the construction to be adopted, I find it difficult to agree with the ratio laid down thereunder. Accordingly, I hold that the liability fastened on the insurance company is clearly valid and enforceable against the appellant.

10. It is next contended by Shri Somayajulu that the coolie engaged by the owner is a workman and, therefore, the total liability to which the insurance company is mulcted is under the Workman's Compensation Act, 1923. I find it difficult to accede to the contention. The labour cannot be said to be an employee. Section 2(1) (a) of the Workmen's Compensation Act defines "workman". It excludes casual workman. He is only a daily-wage earner. The concept of employee connotes that there is a jural relationship of master and servant on a regular monthly pay and he is prohibited to be engaged by any third parties during the period of his service with the master. The labour or a coolie cannot be

said to be a workman. Therefore, the Workmen's Compensation Act does not apply to the facts of this case.

11. It is next contended by Shri Somayajulu that the quantum is excessive and the Tribunal erred in law in granting the amount of Rs. 33, 800/-, As regards the quantum is concerned, it is common knowledge that at least Rs. 10/- per day would be the ordinary wages per labourer and that he would have contributed at least Rs. 150/- per month towards the dependents and it would come to Rs. 1, 800/- per annum and 16 years multiplier is applied in this case. The deceased is aged only 21 years. Therefore, the computation of Rs. 28, 800/- on that basis is not excessive. It is now well settled by a catena of decisions that the quantum of Rs. 5, 000/- would be the reasonable compensation for loss of consortium. Accordingly, I do not find any illegality in the award of a sum of Rs. 33, 800/-. The appeal is accordingly dismissed but in the circumstances without costs.