
(2014) 03 AP CK 0183
In the Andhra Pradesh High Court
Case No : MACMA No. 391 of 2009

The New India Assurance Company Ltd.	APPELLANT
Vs	
Y. Pothu Raju	RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)(b)(i), 2(13)

Citation : (2014) 03 AP CK 0183

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

Bench : Single Bench

Advocate : Kota Subba Rao, Advocate for the Appellant; Jayanti S.C. Sekhar, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the award dated 24.11.2003 in M.V.O.P. No. 1683 of 2000 passed by Motor Accident Claims Tribunal-cum-I Additional District Judge, Visakhapatnam (for short, "the Tribunal"), the 2nd respondent-Insurance Company preferred the instant M.A.C.M.A.

2. The appellant herein is the 2nd respondent in the O.P.; respondents 1 and 2 herein are the claimants in the O.P. and the 3rd respondent herein is the 1st respondent in the O.P.

3. The factual matrix of the case is thus:

a) The deceased - Yerra Veerayamma, aged 27 years was a labourer and resident of Devavaram village of Nakkapalli Mandal in Visakhapatnam District. The claimants are the husband and minor daughter, their case is that on 09.04.2000, the deceased along with two others boarded the lorry bearing No. AP 09 V 6587 along with their goods i.e., Six rice bags, house hold utensils, wooden cots, in order to go to Eluru to attend agricultural works, as they prepared to stay at Eluru for six months. As such, the deceased engaged the lorry on hire to carry their goods. On the way, when the lorry reached Mallayyadoddi centre, Ravulapalam Mandalam, at about 5.30 a.m. on 10.04.2000, the driver drove the

vehicle at high speed and in a rash and negligent manner and thereby lost control and as a result the lorry went and dashed against the Coconut tree on the road side and fell and turned turtle with the load of gypsum and the goods of the deceased. As a result, the deceased and two others died on the spot and their goods were damaged totally. Immediately, they were shifted to Government Hospital, Kothapeta, where postmortem was conducted. It is averred that the accident was occurred due to the fault of lorry driver. It is further averred that the deceased was earning Rs. 2,000/- per month by attending labour works and the claimants are depending on her earnings and now lost their supporter and family member. On these pleas, the claimants filed M.V.O.P. No. 1683 of 2000 against respondents 1 and 2, who are owner and insurer of the offending lorry and claimed Rs. 2,50,000/- as compensation under different heads mentioned in the O.P.

b) The 1st respondent remained ex parte.

c) The 2nd respondent - Insurance Company filed counter and opposed the claim by denying all the material averments in the claim petition. R.2 contended that the petitioner is a labourer and boarded the lorry as gratuitous passenger and she is not entitled to any compensation as she is unauthorized passenger. R.2 denied the age, income and dependency of the petitioner. R.2 urged to put the claimant in strict proof that the driver who drove the alleged crime vehicle was having a valid and subsisting driving licence and the owner was having proper route, permit, fitness certificate, R.C etc., at the time of accident besides establishing that the use of vehicle was not in violations of the permit or terms and conditions of the policy. R.2 thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A.4 were marked on behalf of claimants. On behalf of R.2, RW.1 was examined and Ex.B.1 - policy copy was filed.

e) A perusal of the judgment would show that issue No. 1 is concerned, the Tribunal having regard to the oral evidence of PW.2 - eye witness coupled with Ex.A.1 - FIR, Ex.A.2 - M.V.I report and Ex.A.4 - charge sheet, has held that the driver of the lorry was responsible for the accident. Issue No. 2 which relates to quantum of compensation and liability of respondents is concerned, the Tribunal awarded compensation of Rs. 2,15,000/- under different heads as follows:

f) Liability is concerned, since R. 1 is the owner of the vehicle he was held vicariously liable for the fault of his driver. R.2 insurance company is concerned, the Tribunal did not agree with the contention of R.2 that the deceased and others travelled only as gratuitous or unauthorized passengers in the crime vehicle which was a goods vehicle and they were not the owners of the goods since the vehicle was already loaded with gypsum material. In this regard, the Tribunal considering the evidence of PW.2 - eye witness-cum-victim of the accident held that the deceased travelled along with her goods i.e., six rice bags, household utensils, wooden cots etc., by paying fare and therefore, she was not

a gratuitous or unauthorized passenger but an owner of the goods. Accordingly, the Tribunal fastened the liability on R.2 also since the crime vehicle was covered with policy under Ex.B.1. Accordingly, R. 1 and R.2 were held jointly and severally liable to pay compensation.

Hence the appeal by the insurance company.

4. Heard Sri Kota Subba Rao, learned counsel for appellant and Sri Jayanthi S.C. Sekhar, learned counsel for respondents 1 and 2/claimants. Case against R.3 was dismissed for default on 21.10.2008. However, since in the Tribunal, R.3 suffered decree, his absence in the appeal will not have any difference as per the decision reported in Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others, .

5. Criticizing the award fastening liability on the insurance company, learned counsel for appellant mainly argued that the vehicle in question is a goods carriage vehicle and it was carrying gypsum material in it and the deceased and some others boarded in it as midway passengers with their personal belongings and therefore, they can be termed only as gratuitous or unauthorized passengers but not as owners of the goods. As such the liability of such persons will not be covered under the terms of Ex.B.1 -policy. He submitted that Section 147 of Motor Vehicles Act, 1994 only contemplates one owner or his authorized representative who engages the goods vehicle to transport his goods but the Act does not contemplate that a goods carriage shall carry large number of passengers with small percentage of goods. On this point, he relied upon the decision reported in National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, . He submitted that since in the instant case, the deceased and some others travelled with their personal belongings though by paying fare to the lorry driver, they would not come under the term "owner of the goods" since they had nothing to do with the gypsum material already laden in the lorry. Therefore, their risk was not covered under the terms of Ex.B.1 - policy but the Tribunal on an erroneous appreciation of facts and law held that the deceased and others were owners of the goods and that their liability was covered under Ex.B.1. He thus prayed to allow the appeal and exempt the appellant/insurance company from the liability.

6a. Per contra, learned counsel for respondents 1 and 2/claimants argued that the facts and evidence would clearly show that the deceased travelled in the crime lorry only as owner of the goods but not as unauthorized or gratuitous passenger. Expatiating it, learned counsel submitted that the evidence of PW.2 - eye witness-cum-victim of the accident would show that the deceased and others who were engaged by a ryot to work in Eluru for a considerable period, were proceeding from Visakhapatnam District to Eluru on the night of accident along with their rice bags, utensils, cots etc., and for transporting their goods, they paid charges to the lorry driver and so they travelled in the vehicle only as owners of their goods but not as gratuitous or unauthorized passengers. As such their risk was well covered under the terms of Ex.B.1 - policy. He relied upon the decision reported in Smt. Darshanu Vs. Shri Shishupal and Others, , on the

aspect that in similar circumstances, the deceased who travelled in a truck was held as owner of the goods.

b. Alternatively, he submitted that even assuming that the deceased was held to be a gratuitous or unauthorized passenger, still this Court can direct the insurance company to pay compensation and recover the same from the owner of the vehicle, in view of the decision reported in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, . He cited the following decisions to show that relying on the Baljit Kaur's case, the insurance company in those cases was directed to pay and recover the compensation amount from the owner:

i) United India Insurance Company Ltd. Vs. N. Appi Reddy and Others .

ii) Reliance General Insurance Co. Ltd. Vs. Mohd. Saleem and Another, .

7. 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?

8. POINT: The accident, involvement of the crime vehicle and death of deceased are all admitted facts. It is also an admitted fact that the vehicle was covered with policy under Ex.B.1 by the date of accident. As can be seen from the award, the Tribunal held the deceased as owner of the goods mainly on the ground that the evidence of PW.2 - eye witness-cum-victim of the accident, which revealed that a ryot engaged him, his family members and the deceased and some others to do coolie work at Eluru and in that context, they boarded the crime lorry along with bags of rice, utensils, household articles, folding cots etc., by paying fare was not challenged in the cross-examination. The Tribunal further observed that it is common knowledge that the lorries already loaded with some load take further loads at different loading points and deliver goods at different unloading points and therefore, that the crime lorry was already loaded with gypsum is not a circumstance helpful to the case of insurance company. The Tribunal further observed that from the fact that the deceased was going from Visakhapatnam District to Eluru to work as labourer there along with her necessary goods for temporary shift of the family, the goods carried by her cannot be termed as mere personal belongings. On these observations, the Tribunal held that the deceased was only an owner of the goods but not a gratuitous or unauthorized passenger.

9. I have carefully gone through the evidence of PW.2 and also the finding of the Tribunal. It is true that in the evidence of PW.2, he deposed that one ryot engaged their services including deceased and in that context while going to Eluru, they carried with them rice bags, utensils, household articles, folding cots etc., by paying fare to the driver of the lorry. It was stated that the deceased also agreed to pay Rs. 150/- as her fare to the lorry driver. It is also true that in the cross-examination of R.2, this aspect was not specifically challenged. Now the point is by virtue of it, can the deceased be held as owner of the goods rather than as an unauthorized or a fare paid passenger. Further, whether the

articles carried by her can be termed as goods within the meaning of Section 2(13) of M.V. Act.

10. From Ex.A.4 - charge sheet, it is evident that the lorry in question was proceeding with gypsum load and the deceased, PW.2 and others boarded at Devavaram Village to go to Veerabadrapuram to attend crop cutting coolie work. So the deceased and others had no connection with the gypsum load. However they boarded the lorry with their own articles. Section 2(13) of the M.V. Act defined the term goods as follows:

(13) "goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

Having regard to the said definition and facts and evidence, in my view, the articles carried by the deceased can at best be termed as luggage or personal effects but not as goods within the meaning of Section 2(13) of M.V. Act. In this regard in the similar circumstances, in a decision reported in *The Oriental Insurance Co. Ltd. Vs. Guntur Sambrajyam and Others*, a learned Judge of this Court observed that the articles carried by the deceased in a goods vehicle were his personal belongings but not goods within the meaning of Section 2(13) of M.V. Act. The facts in that case were that a lorry carrying Napa stones was proceeding to Guntur and on the midway, the deceased boarded the lorry at Gurajala with some rice bags. In that context, learned judge while discussing the definition of the goods as mentioned in Section 2(13) of M.V. Act has observed that the deceased was only a midway passenger and the fact that the deceased carried with him some rice bags does not make any difference and it cannot be considered that he was transporting goods in the lorry and was accompanying them as its owner. In the said decision, learned judge referred another decision reported in *Deddula Padmavathi, Deddula Subba Rao, Deddula Sankaraiah and Deddula Rama Tulesamma Vs. Maddala Srinivasa Rao and National Insurance Company Limited*, wherein it was held thus:

One or two bags of vegetables being carried by a passenger who boarded the lorry in the midway would not become "goods" within the meaning of Section 2(13) of the Motor Vehicles Act, 1988 (the Act) because, luggage being carried by passengers is not covered by the said definition. The volume and the weight of the bags being carried would have relevance to find out if they are "luggage" or "goods" within the Meaning of Section 2(13) of the Act. Words employed in Section 147(1)(b)(i) of the Act, reading "including owner of the goods or his authorized representative carried in the vehicle" show that the intendment of the Parliament was to cover the risk of the owner of the goods or his authorized representative, who actually engaged the goods vehicle for transport of his "goods" from one destination to another destination, and are not intended to cover persons who board the goods vehicle, carrying "goods" of some others, in the midway with some luggage being carried with them.

Ultimately learned Judge held that the insurer was not liable to pay compensation granted by the Tribunal.

11. Apart from above, in the case of Cholleti Bharatamma (Supra), Hon''ble Apex Court observed thus:

8. The Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods as considerably the insurance policy covers the death or injuries either of the owner of the goods or his authorized representative.

a. Thus, the Hon''ble Apex Court too observed that passengers carrying some small quantity of goods with them in a goods vehicle will not make them as owner of the goods and their luggage as goods within the meaning of Section 2(13) of M.V. Act.

b. In view of above decisions, the deceased cannot be held as owner of the goods and her luggage cannot be termed as goods within the meaning of Section 2(13) of M.V. Act. In view of the above decisions of Hon''ble Apex Court and our High Court, the decision cited by learned counsel for respondents reported in the case of Darshanu (Supra) cannot be accepted.

12. Then a perusal of Ex.B.1 - policy would show that it does not cover the risk of an unauthorized passenger like deceased in the goods vehicle. Therefore, the appellant/insurance company cannot be fastened with liability.

13. Now the alternative argument of learned counsel for respondents 1 and 2 has to be seen. His submission is that if the deceased is held to be gratuitous or unauthorized passenger, the Court may basing on Baljit Kaur's case (Supra), direct the appellant/insurance company to pay compensation and recover the same from the owner of the vehicle. Hence now the relevant observation of Hon''ble Supreme Court in Baljit Kaur's case(Supra) has to be perused. While observing that the risk of a gratuitous passenger in a goods vehicle will not be covered under the terms of policy, the Supreme Court made further observation as follows:

We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be subserved if the appellant, herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle.

14. In my considered view, this observation made on equitable grounds applies only to limited cases i.e., those cases where, basing on New India Assurance Company Vs. Shri Satpal Singh and Others, which was by then a law, if compensation was granted to a gratuitous passenger in a goods vehicle against insurance company and the appeal carried out by the insurance company is

allowed basing on New India Assurance Co. Ltd. Vs. Asha Rani and Others, , in such circumstances though insurance company is exonerated by virtue of Asha Rani's case (Supra), still it can be directed to pay compensation at first and recover the same from the owner/insured. Except to those limited cases, pay and recover ordered in Baljit Kauris case (Supra) will not apply to other cases.

15. It may be noted that in the instant case, by the date of award passed by the Tribunal on 24.11.2003, the judgment in Asha Rani's case. (Supra) was already rendered (date of judgment 03.12.2002). As such the pay and recovery theory observed in Baljit Kaur's case (Supra) would not apply to the instant case. Hence the submission of respondents 1 and 2 cannot be considered.

16. In the result, this M.A.C.M.A is allowed. Appellant/Insurance Company is exempted from the liability and it is directed that third respondent herein/owner shall pay compensation to the claimants. However, pending appeal if the appellant/insurance company paid any compensation, it can recover the same from the third respondent herein/owner. No order as to costs.

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