

(2025) 02 AP CK 0806

In the Andhra Pradesh High Court, Amaravati

Case No : Motor Accident Civil Miscellaneous Appeal No: 3013 Of 2014

United India Ins Co Ltd., Tirupathi

APPELLANT

Vs

D Kalavathi Chittoor Dist 2 Others And Others

RESPONDENT

Date of Decision : 17-02-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2025) 02 AP CK 0806

Hon'ble Judges : Dr. V.R.K. Krupa Sagar, J

Bench : Single Bench

Advocate : Rama Mohan Rao Kotha, Gandavalli Mahesh

Final Decision : Dismissed

Judgement

Dr. V.R.K. Krupa Sagar, J

1. This appeal under section 173 of the Motor Vehicles Act, 1988 is filed by the United India Insurance company impugning the order dated 15.04.2014 of the learned Chairman, Motor Accidents Claims Tribunal – Cum – IV Additional District Judge, Tirupati in MVOP.No.549 of 2010.

2. Heard arguments of Sri Ram Mohan Rao Kotha, the learned counsel for appellant and Sri Gandavalli Mahesh, the learned counsel for respondent No.1 and 2.

3. The following aspects are required to be noticed:

Sri B.Narasimhulu was driving a motor cycle bearing registration No.AP 03 L 4477 on which Sri D.Ramesh was the pillion rider. On 27.02.2010 at about 02.00 pm, while they were travelling on bike on Piler-Kalakada road and when it reached near T.Sandruvaripalle Village, there came from the opposite direction, a tractor and trailer bearing registration No.AP 04 L 4292 and AP 04 L 4293 and its driver Sri P.Bhaskar who also happens to be its owner, drove the tractor and trailer at high speed in a rash or negligent manner and dashed the motor cycle.

The two persons on the motor bike fell down and the tractor ran over the body of Sri D.Ramesh and caused the spot death. Sri B.Narasimhulu sustained injuries. Sri B.Narasimhulu gave the written information to police and accordingly, Kalikiri Police Station registered Cr.No.9 of 2010 as against Sri P.Bhaskar for having driven the tractor and trailer in rash or negligent manner causing death and injuries. After due investigation, a charge sheet was laid by the State police. Grieved by the death of Sri D.Ramesh, his wife and his adopted daughter together filed a claim under section 166 of the Motor Vehicles Act, 1988 seeking a compensation of Rs.5,00,000/-. The driver/ owner was made as respondent No.1. At the material point of time, the vehicle was found insured with M/s United India Insurance Company Limited, Tirupati and therefore, it was made as respondent No.2. Before the claims tribunal, respondent No.1 did not choose to appear and contest. The Insurance company laid its contest. It denied the facts averred in the claim petition. It raised the contest stating that the owner/ driver had no driving licence to drive the vehicle. That the tractor and trailer were permitted to be used for agricultural and forest purposes, but it was used for commercial purposes as at the material point of time, it was carrying sand. It was on these two principal grounds, it pleaded before the claims tribunal that it may be excluded from liability.

4. On the rival pleadings, the learned claims tribunals settled the following issues.

1. Whether the deceased viz., D.Ramesh died due to injuries received by him in the motor vehicle accident that took place on 27.2.2010 due to rash and negligent driving of the driver of the Tractor-cum -Trailer bearing R.No.AP 04 L 4292 and AP 04 L 4293 of the first respondent duly insured with the second respondent as alleged?

2. Whether the petitioners being L.Rs., of deceased are entitled for compensation amount? If so, what is the quantum of compensation amount and against whom?

3. To what relief?

5. The wife of the deceased testified as PW.1. The driver of the motor bike testified as PW.2. The brother of the deceased testified as PW.3. Exs.A1 to A8 were marked. On behalf of the insurance company one of its officers testified as RW.1 and an officer from Road Transport Authority testified as RW.2. Ex.B1 insurance policy was exhibited and Ex.X1 authorization given to RW.2 was also exhibited.

6. After considering the material on record and the rival contentions on both sides, the learned claims tribunal held that the accident was only due to rash or negligent driving by respondent No.1 and it further held that respondent No.1 being the owner/ driver was held liable to pay compensation. On evidence, it recorded that the deceased was aged 45 years and there was no tangible evidence about his income. It chose to notionally consider his notional income at Rs.3,000/- per month. It deducted 1/3rd towards possible personal expenses of the deceased. Thus, there remained Rs.2,000/- per month towards earnings. Per

year, it was Rs.24,000/-. Going by the age of the deceased and following the ruling of their Lordships in Sarala Verma V. Delhi Transport Corporation 2009 ACJ 1298 it applied the multiplier 14 and found Rs.3,36,000/- as compensation towards loss of dependency. Various other heads were considered and were granted in paragraph No.19 and they are extracted below:

Rs.

1.

Towards loss of dependency

3,36,000-00

2.

Towards funeral expenses

4,000-00

3.

Towards loss of consortium to the first Petitioner

25,000-00

4.

Towards loss of care and protection to the second petitioner

25,000-00

5.

Towards loss of estate

10,000-00

Total

4,00,000-00

7. It perused Ex.B1 insurance policy and considered the evidence of RW.1 and 2 and the other evidence and considered the following rulings:

1. 2013 (3) ALT 34 of the Hon'ble High Court of Andhra Pradesh in New India Assurance Company Limited V Munagada Chinni Kumari and others.

2. 2013 (2) ALT 362 of the Hon'ble High Court of Andhra Pradesh in Badavath Jaqna Bai V Afsari Begum and another.

3. 2013 ACJ 145 of the Hon'ble High Court of Andhra Pradesh in Jayaprakash Agarwal and others V Mohd. Kaleemulla and another

4. 2012 (5) ALT 321 of the Hon'ble High Court of Andhra Pradesh in S,Nandamma and others V S.Jayanna and another.

5. (2004) I ACE 86 of the Hon'ble Supreme Court of India in National Insurance Company Limited V Swaran Singh and others.

It held that the insurance company having issued a valid and effective insurance policy covering the subject matter accident at the material point of time could be directed to pay first and recover later. Accordingly, it passed the award in the following terms:

In the result, the petition is partly allowed, awarding compensation of Rs.4,00,000/- to the petitioners, payable by the respondents 1 and 2 jointly and severally together with proportionate costs and interest at 7.5% p.a. from the date of petition till the date of realisation.

Compensation amount is apportioned among the petitioners equally.

Second respondent is directed to deposit the compensation amount within two months from the date of this award in the first instance and to recover the same from the respondent No.1 by initiating execution proceedings on the basis of this Award. On such deposit, the first petitioner is permitted to withdraw Rs.1,00,000/- together with interest accrued on the said amount and costs of the petition and her remaining compensation amount of Rs.1,00,000/- is ordered to be kept in fixed deposit in any Nationalised Bank for a period of 2 years. The entire compensation amount awarded to the second petitioner is ordered to be kept in fixed deposit in any Nationalised Bank till she attains majority.

8. Grieved by the above award, the insurance company preferred this appeal. The strong submission of the learned counsel for appellant/ insurance company is that from the evidence, it could be stated that the offending tractor and trailer was used for commercial purposes and therefore there was breach of policy conditions. That the learned claims tribunal having found that the owner/ driver of the tractor and trailer did not possess any valid driving licence ought not to have fastened liability on the insurance company. It is on these two grounds, learned counsel urges this court to absolve the insurance company from liability.

9. As against the above submissions, the learned counsel for claimants/ R1 and R2 contended that the claims tribunal rightly considered the law and fastened the liability on the insurance company and nothing contrary is brought to the notice of this court by the insurance company in this appeal and therefore, the impugned award does not warrant any interference and prayed for dismissal of the appeal.

10. None entered appearance for R3/ owner/ driver of the offending vehicle.

11. The point that falls for consideration is

"Whether on facts or under law, the learned claims tribunal committed an error in fastening liability on appellant/insurance company warranting interference?"

POINT: -

12. A perusal of Ex.B1 insurance policy shows that the tractor and trailer that was insured was permitted to be used for agricultural and forest purposes. This policy stipulated certain conditions mentioning that the vehicle could not be used for certain purposes. The purposes for which it was not permitted to be used are:

- a. It should not be used for hire or reward
- b. It should not be used for racing and reliability trials and speed testing
- c. It should not be used for carrying passengers for hire or reward
- d. It should not be used for greater number trailers than that are permitted by law.

Thus, in the above referred circumstances alone, the liability of insurance company may cease.

13. At the material point of time, as per the evidence on record, the tractor was carrying sand. According to the evidence of PW.1 sand was carried during agricultural operations. Nothing contrary was found from the evidence of other witnesses. The contention that it was used for commercial purposes is not based on any tangible evidence. It is difficult to say that a tractor used for agricultural purposes does not carry sand during agricultural operations. At any rate, the purposes for which the tractor and trailer should not be used as mentioned in Ex.B1 does not contain a stipulation that the vehicle should not be used for commercial purposes. These aspects were rightly considered by the claims tribunal and in paragraph No.22 of the award, it rightly concluded that there was no violation of policy conditions in this regard. This court finds that the above finding was recorded based on facts and the conclusion is supported by valid reasons. Therefore, the same must be upheld.

14. From the evidence of RW.1 and RW.2, claims tribunal recorded a finding that the owner/ driver of the tractor did not possess valid and effective driving licence at the material point of time. The automobile is supposed to be driven by a person holding a valid and effective driving licence. The insurance policy is a contract between the owner of the vehicle and the insurance company. The deceased is a third party. His death brought immense gloom on his wife and child. Ex.B1 insurance policy was valid and effective by the time of subject matter accident. In such type of cases, the Hon'ble Supreme Court of India in Parminder Singh V. New India Assurance Company Limited AIR 2019 SC 3128 held that the liability could be fixed on the owner of the vehicle and by virtue of the existence of valid insurance policy, the insurance company should be directed to pay first and then recover the same from the owner of the offending vehicle. In fact, learned claims tribunal cited copious precedent as indicted in the earlier paragraphs in that regard. Nothing contrary is cited before this court. In these circumstances, this court does not find any illegality in fastening liability on the insurance company. Point is answered against the appellant.

15. In the result, this appeal is dismissed. There shall be no order as to costs.

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