
(2011) 09 AP CK 0109

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 2269 of 2008

United India Insurance Co. Ltd.

APPELLANT

Vs

Balaswamy and others

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 4 ALD 539 : (2012) 3 ALD 747 : (2012) 1 ALT 273

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : Nissar Ahmed Jeddy, S.C, for the Appellant; G. Ramesh Kumar for Respondent Nos. 2 to 4, None appeared, for the Respondent

Judgement

G.V. Seethapathy, J.—This appeal is directed against the order dated 04.03.2008 in OP No. 595 of 2002 on the file of the MACT cum Principal District Judge, Mahabubnagar, wherein, the claim application filed by the respondents 1 to 4 herein u/s 166 of the Motor Vehicles Act, was allowed in part, awarding compensation of Rs. 1,90,000/- with interest at 7.5% per annum from the date of petition. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4. Perused the record.

2. The respondents 1 to 4 herein filed claim application seeking compensation of Rs. 2 lakhs for the death of the deceased Chennamma @ Chinnamma, who died in a motor vehicle accident that occurred on 15.01.2002. The first claimant is the husband and claimants 2 to 4 are the children of the deceased Chinnamma. According to the claimants, on that day, the deceased along with other coolies, was travelling in a tractor-trailer bearing No. AP 23D 274 & 275 to go to Mamidipalli village and when the vehicle reached near Prathibha school after crossing Vemulawada, on account of rash and negligent driving by its driver, the vehicle over-turned and fell into a road side ditch, as a result of which, the coolies travelling in the vehicle sustained multiple injuries and the deceased and another died on the spot. A case in Cr.No. 5 of 2002 was registered by

Vemulawada Police against the driver of the tractor-trailer. According to the claimants, the deceased was aged 40 years and was earning Rs. 80/- per day from coolie work and that she was engaged for road construction work.

3. The 5th respondent herein-owner of the vehicle filed counter, opposing the claim and denying his liability, inter-alia on the ground that the deceased was a stranger and she was not a coolie engaged by him to work on the tractor. The appellant herein insurer filed separate counter, denying their liability, inter-alia contending that the risk of the unauthorized persons, travelling in the tractor-trailer is not covered by the policy and the deceased was not a labourer to work on the tractor.

4. During enquiry, PW.1 was examined and Exs. A.1 to A.7 were marked on behalf of the claimants. The owner of the vehicle examined himself as RW.1 and Ex. B.1 was got marked on behalf of appellant-insurer. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the tractor-trailer by its driver. The said finding is not seriously challenged in this appeal. The Tribunal awarded compensation of Rs. 1,90,000/- with interest at 7.5% per annum, fastening joint and several liability on both the owner and insurer of the vehicle. Aggrieved by the same, the insurer filed the present appeal.

5. The main contention of the appellant-insurer is that the deceased was travelling along with other persons in the tractor unauthorisedly and the risk is not covered by the policy and therefore, the appellant-insurer is not liable to pay any compensation. Learned counsel for the claimants would seek to justify the award on the ground that the deceased was also a labourer working on the tractor and the policy Ex. B.1 covers the risk of such labourers.

6. A perusal of Ex. A.1 FIR, Ex. A.2 charge sheet would disclose that the deceased along with others, was engaged by one Ravindra Reddy, a contractor, for the purpose of laying road and in that connection, they were travelling in the tractor to go to Mamidipalle village. It is nowhere stated in Ex. A.1 or Ex. A.2 that the deceased and other coolies have been engaged by first respondent to work on the tractor. The first respondent owner of the vehicle filed counter, specifically pleading that the deceased was a stranger and he never engaged her or others as coolies to work on his tractor or in his fields. He also gave evidence as RW.1, wherein he stated that the deceased and others were engaged as coolies by one Ravindra Reddy for the purpose of laying a road. In the face of the said contention of the first respondent, denying that the deceased was engaged by him as a worker, the claimants have not adduced any evidence to show that the deceased was in fact engaged to work on the tractor in connection with the agricultural purpose. On the other hand, the documentary evidence adduced by the claimants, particularly, Exs. A.1 and A.2 themselves would go to show that the deceased and others were engaged as labourers by one Ravindra Reddy, a contractor, for laying a road and in that connection, they were proceeding to Mamidipalle village in the tractor of 5th respondent herein. Even in the claim

application also, it is nowhere pleaded that the deceased was engaged to work on the tractor and for any agricultural purpose by the 5th respondent herein. On the other hand, it is the specific case of the claimants even in the claim application that the deceased was engaged as a coolie for road construction work and that she was travelling along with other coolies in the said tractor towards Mamidipalle.

7. Ex. B.1 policy shows that the risk in respect of the driver alone is covered for which a premium of Rs. 15/- is paid and no premium is paid covering the risk of labourers. In fact, in the present case, there is absolutely nothing on record to show that the deceased was engaged by the 5th respondent herein to work on the tractor and she answers the description of "workman" within the meaning of Workmen's Compensation Act. Even otherwise, policy Ex. B.1 does not show that the risk of any such labourer is covered. Under those circumstances, fastening the joint and several liability on the appellant-insurer is unsustainable and the impugned order insofar as it holds the insurer jointly and severally liable to pay the compensation is set aside.

8. It is open to the claimants to recover the balance amount with interest from the owner of the vehicle. However, having regard to the facts and circumstances, and that the claimants are illiterate poor villagers, depending on the labour work for their livelihood it is considered that the amount already withdrawn by them in pursuance of the interim order dated 13.08.2010 may not be recovered from them. It is open to the appellant-insurer to recover the said amount already withdrawn by the claimants in pursuance of the interim order, from the owner of the vehicle. In the result, the appeal is disposed of accordingly. No order as to costs.