
(2004) 10 AP CK 0005
In the Andhra Pradesh High Court
Case No : A.A.O. No. 751 of 2004

United India Insurance Co. Ltd.	Vs	APPELLANT
Bobbili Simhachalam and Others		RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2005) 3 ACC 170 : (2005) 2 ALD 1 : (2005) 2 ALT 431

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : V. Venugopal Reddy, for the Appellant; Jayanti S.C. Sekhar, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited, represented by its Regional Manager, Dabagardens, Visakhapatnam against the award and decree dt. 12-11 -2003 in O.P.No. 1025 of 2002 on the file of the Court of Motor Accident Claims Tribunal-cum-VI-Additional District Judge, Visakhapatnam awarding compensation u/s 166 of the Motor Vehicles Act, for Rs. 2,00,000-00 holding that the appellant herein and Respondent Nos. 2 and 3 herein are jointly and severally liable to pay compensation to the Respondent No. 1 on account of the death of the Respondent No. 1-claimant's husband who was working as cooli and earning Rs. 3,000/- per month. On 30-10-2001 while the deceased along with his co-villagers went to weekly shandy at Kothavalasa on his cycle and by the time when he reached Tummakapalli gate, one Tata Sumo bearing No. AP-31-J-9777 came in his opposite direction in a rash and negligent manner and dashed, against the deceased and consequently the deceased received grievous head injury and fracture to his right leg. Immediately he was shifted to K.G. Hospital, Visakhapatnam for treatment. While undergoing treatment in the hospital, he died on 27-11-2001 due to the injuries sustained in the accident. The wife of the

deceased and the father of the deceased was predeceased and the claimant is the sole legal heir of the deceased claimed compensation from all the respondents jointly and severally for the fault of the driver of aforesaid offending vehicle.

2. The driver and owner of the offending vehicle who are respondents 2 and 3 remained ex parte. The Insurance Company filed its counter denying the averments made in the claim-petition and contended that the Insurance policy is not in the name of the owner of the offending vehicle and that the accident did not occur on account of negligence of the driver of Tata Sumo and that the compensation claimed is exorbitant and prayed to dismiss the claim-petition.

3. On the basis of the above pleadings, the Claims Tribunal framed the following issues for trial:

(1) Whether the deceased, husband of the petitioner died on account of the rash and negligence driving of Tata Sumo bearing No. AP-31-J-9777 driven by its driver?

(2) Whether the petitioner is entitled for compensation, if so, to what amount and from which of the respondents?

(3) To what relief?

4. To substantiate the claim, the claimant herself was examined as P.W. 1 and an eyewitness as P.W. 2 and marked attested true copies of Ex. A-1 FIR, Ex. A-2 post-mortem examination report, Ex. A-3 MVI report, Ex. A-4 charge sheet, Ex. A-5 altered FIR. The Insurance Company did not examine any witness but filed copy of Insurance Policy, which was marked as Ex. B-1.

5. On appreciation of both oral and documentary evidence placed on record, the Claims Tribunal firstly held that the husband of the claimant died on account of the negligent driving of Tata Sumo bearing No. AP-31-J-9777 by its driver. Secondly, taking into consideration the evidence of P.Ws. 1 and 2 and the documentary evidence marked thereon the Claims Tribunal awarded compensation of Rs. 2,00,000-00 together with proportionate costs and subsequent interest @ 9% p.a. thereon from the date of claim-petition till its realization. Aggrieved by the award passed by the Claims Tribunal, the Insurance Company filed the present appeal.

6. The learned counsel for the appellant contended that the Tribunal ought to have held that there is no rashness and negligent on the part of the driver of Tata Sumo bearing No. AP-31-J-9777. The Tribunal erred in fixing the income of the deceased at Rs. 2000/- per annum in the absence of any documentary evidence. Further the Tribunal erred in applying the multiplier 13 when the sole claimant is the wife of the deceased and the deceased was aged about 50 years at the time of accident by relying second schedule when the claim is made u/s 166 of the Motor Vehicles Act.

7. The learned counsel for the appellant further contended that according to Ex. B-1 Insurance Policy, one Mr. Dasaratharamaiah was the insured at the time of accident but not Mr. Narayana Murthy. The Claims Tribunal therefore erred in awarding compensation, as there is no contractual obligation with Mr. Narayanamurthy. Hence, the award of the Claims Tribunal liable to be set aside.

8. The learned counsel appearing for the respondent-claimant submitted that there are no reasonable grounds to presume that the Claims Tribunal had erred in granting compensation to the sole claimant who lost her husband in a motor vehicle accident. The claimant has placed both oral and documentary evidence before the Claims Tribunal and satisfied the Claims Tribunal that her husband died due to rash and negligent driving of Tata Sumo by its driver. The claimant also adduced evidence that her husband was working as cooli and earning Rs. 3,000/- per month but the Claims Tribunal after taking into consideration determined the income and calculated loss of dependency and arrived to total loss of dependency by applying relevant multiplier and granted just compensation. Further the offending vehicle in question is having valid coverage of insurance and therefore, the Claims Tribunal held that the appellant herein and respondents 2 and 3 are jointly and severally liable to pay the compensation to the claimant. The Claims Tribunal has rightly fastened the liability on the appellant-Insurance Company.

9. Heard the learned counsel on either side.

10. On reappraisal of oral and documentary evidence placed on record and the award of the Claims Tribunal, it appears that the Claims Tribunal after taking into consideration the evidence of PWs. 1 and 2 that the deceased was agricultural cooli and earning Rs. 3,000/- per month, the Claims Tribunal fixed the monthly income of the deceased at Rs. 2,000/- and calculated annual income at Rs. 24,000-00. Out of Rs. 24,000/- the Claims Tribunal deducted one-third towards personal expenses of the deceased and an amount of Rs. 16,000/- was arrived which was the annual contribution to the family of the deceased. By the date of accident, the deceased was 50 years old and the relevant multiplier applied is 13. Hence, the Claims Tribunal determined the compensation by taking annual contribution of the deceased at Rs. 16,000/- and multiplied with multiplier 13 and arrived the future loss of dependency on account of the demise of the deceased at Rs. 2,08,000-00. Further, the Claims Tribunal awarded Rs. 15,000-00 towards loss of consortium and Rs. 10,000-00 towards loss of estate and Rs. 2,500/- towards funeral and other expenses. In all, the Claims Tribunal granted Rs. 2,35,000-00 towards compensation. The wife of the deceased claimed only Rs. 2,00,000-00 towards compensation under various heads, the Claims Tribunal restricted the same to Rs. 2,00,000-00 together with proportionate costs and subsequent interest @ 9% p.a. thereon which shall be paid by all the respondents jointly and severally to the claimant from the date of claim-petition i.e., 09-5-2002 till its realization.

11. Having considered the rival contentions, I am not able to appreciate the

contentions raised by the Insurance Company in the absence of any oral and documentary evidence adduced during the course of trial of claim-petition. Now at this stage, without placing any cogent evidence, the Insurance Company cannot raise the aforesaid grounds, which were not raised before the Claims Tribunal. I have gone through the oral and documentary evidence placed on record and I am satisfied that the Claims Tribunal has rightly dealt all the issues and the quantum of compensation awarded is quite moderate and in consonance with calculation table mentioned in the second schedule of Section 163-A of the Motor Vehicles Act and holds good. I see no reason to interfere with the award passed by the Claims Tribunal.

12. In the result, the Civil Miscellaneous Appeal is dismissed with costs throughout.