(1993) 07 AP CK 0012

In the Andhra Pradesh High Court

Case No : C.M.A. No. 234 of 1988

United India Insurance Co. Ltd. APPELLANT

Vs

Gangadevula Bhadramma and Others RESPONDENT

Date of Decision : 09-07-1993

Acts Referred:
Motor Vehicles Act, 1939 — Section 92A, 95

Citation : (1994) 2 ALT 605

Hon'ble Judges : S. Dasaratharama Reddy, J

Bench : Single Bench

Advocate : M. Rama Rao, for S.V. Sundera Rajan, for the Appellant; B. Prakasa Rao, for Respondents 1 to 4 and G. Dharma Rao, for the Respondent

Judgement

S. Dasaratharama Reddy, J.—This is an appeal filed by the Insurance Company against the award of the Motor Accidents Claims Tribunal, Khammam in O.P.No. 43 of 1986 dated 30-6-1987 awarding total compensation of Rs. 27,000/- to the claimants as a result of fatal accident.

2. According to the claim petition, on 12-12-1985 the deceased boarded the lorry oil tanker bearing No. ADB 8575 to go to neighbouring village by paying Rs. 4/- towards fare to the driver of the lorry belonging to the 6th respondent herein and insured with the appellant and as a result of the rash and negligent driving of the lorry driver, the deceased while getting down from the lorry was run over by it causing instantaneous death. The claimants sought for compensation of Rs. 1,10,000/-.

3. The owner opposed the claim stating that the accident occurred on account of the negligence on the part of the deceased who was partly blind and in a drunken state, that the deceased was a gratuitous passenger and that in any event the compensation claimed is excessive.

4. The Insurance Company resisted the claim contending that it was not liable to reimburse the owner since the travel of the deceased in the lorry was in violation

of provisions of Motor Vehicles Act and also the terms and conditions of the insurance policy and that the driver was not holding any valid driving licence. The Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the lorry. On the liability of the insurance company, the Tribunal referring to the insurance policy Ex.B-1 observed that it is not disputed by the insurance company that it has to indemnify the owner and held that the deceased was a paid passenger and was not a gratuitous passenger accepting the evidence of P.W.I who was the wife of the deceased. On the quantum, the Tribunal awarded total compensation of Rs. 27,000/- payable by the owner as well as the Insurance Company.

5. Against this award, neither the owner nor the claimants has preferred any appeal. In the present appeal filed by the Insurance Company, it is contended that the Insurance Company is not liable to pay the compensation since the deceased travelled in violation of the provisions of the Motor Vehicles Act and also the terms and conditions of the insurance policy and that the accident occurred due to the negligence of the deceased himself who was in a drunken state and that as the deceased was a gratuitous passenger, the Insurance Company is not liable to pay the compensation. The Insurance Company has also in ground No. 5 challenged the observation of the Tribunal that it has not disputed its liability.

6. Section 95 of the Motor Vehicles Act does not require the Insurance Company to insure the owner of the goods vehicle to cover liability of passenger travelling in the vehicle for hire and accordingly the Insurance Company is not liable, as held by the Division Bench of this Court in Oriental Fire & General Insurance Co. Ltd. v. Bhanumati 1990 ACJ 1043 Similarly, the Act does not require compulsory insurance to cover liability in respect of gratuitous passenger in a goods vehicle other than the owner''s employee or his representative and the Insurance Company is not liable in respect of gratuitous passenger as held by the Division Bench of this Court in Premier Insurance Co. Ltd. v. Vaddeswarapu Siramonamma 1984 ACJ 760 However, if the Insurance Company contractually undertakes to cover any such liability, it will be liable.

7. In the instant case as per Ex.B-1 insurance policy, the owner has paid additional premium of Rs. 36/- to cover the liability in respect of death or bodily injury to any employee other than workman within the meaning of Workmen''s Compensation Act and not being carried for hire or reward and any other person not being carried for hire or reward, provided the person is the owner or the representative of the owner of goods or charterer or representative of the charterer or any person directly connected with the journey in one form or the other. Further, the indeminity is limited to Rs. 10,000/- in respect of any one of such persons and subject to maximum of Rs. 50,000/- in respect of any number of claims arising out of the same accident. This is what is otherwise known as Non-Fare Paid Passenger (N.F.P.P.) liability. The deceased does not come under any of these categories. Thus, whether the deceased was a paid passenger as

held by the Tribunal or gratuitous passenger as contended by the Insurance Company, the Insurance Company is not liable to reimburse the owner.

8. However, the Insurance Company is liable to the extent of Rs. 15,000/under no fault liablity u/s 92-A of the M.V. Act as held in K. Ramulu and Others Vs. Shaik Khaja and Others, wherein it was held that the Insurance Company is liable along with the owner for no fault liability even though there is breach of any of the conditions if the policy and that as long as the vehicle is insured and the death or permanent injury has taken place as a result of the accident involving the vehicle, the owner as as well as the Insurance Company is liable under the head of ''no fault liability''.

9. In the result, the appeal is partly allowed to the extent of Rs. 12,000/- and dismissed in respect of Rs. 15,000/-. No order as to costs.