
(2003) 12 AP CK 0029
In the Andhra Pradesh High Court
Case No : CMA No. 540 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

K. Anjaiah and Others

RESPONDENT

Date of Decision : 08-12-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 128, 168, 173

Citation : (2004) 4 ALD 444

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : R. Briz Mohan Singh, for the Appellant; P. Raghavender Reddy, for the Respondent

Final Decision : Partly Allowed

Judgement

Ghulam Mohammed, J.—This appeal is filed by the insurance company. OP No. 109 of 1999 was filed by the claimants-respondents herein u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 2,50,000/-on account of the injuries sustained by Yadaiah in the motor accident that occurred on 31-12-1998.

2. The case of the claimants before the Tribunal was that on 31-12-1998 when the injured claimant (since deceased) along with two persons was going to Vanampally village on a scooter bearing registration No. AP 11B 2488 and when they reached near Ibiza Factory near Sadasivpet, a lorry bearing registration No. ATT 1536 came in the opposite direction with a load of fodder in high speed and dashed the scooter due to the impact of which he Fell down from the scooter and received grievous injuries. It is further stated that on account of the accident he was in the hospital at Sangareddy from 6-2-1998 to 23-2-1999 and ultimately died during the course of the trial of the OP. Thus the claimants laid a claim for Rs. 2,50,000/- towards compensation.

3. The claim of the claimants was opposed by the appellant-insurance company and the owner of the accident lorry by denying the averments as to the nature of

the accident, age, income and avocation of the deceased.

4. The Tribunal, basing on the respective pleadings, framed necessary issues. As regards the culpability in causing the accident, the Tribunal, on evidence, held that the accident occurred due to the rash and negligent driving of the, accident, lorry by its driver and accordingly granted a compensation of Rs. 1,59,770/- as against the claim of Rs. 2,50,000/-. Aggrieved by the same, this appeal by the insurance company.

5. Learned Counsel for the appellant-insurance company vehemently contends that the finding of the Tribunal insofar as to the extent of holding that the driver of the accident lorry alone was responsible, for causing the accident is perverse inasmuch as admittedly the deceased along with two others were travelling on a scooter which is statutorily prohibited u/s 128 of the Motor Vehicles Act, 1988 (for short, "the Act"). Learned Counsel further contends that as there was triple riding on a scooter, which is meant for two persons, there would be congestion to the rider of the Scooter and might have lost control resulting in the accident thus there was contributory negligence on the part of the rider of the scooter and under those circumstances the Tribunal ought to have fastened the culpability in causing the accident on the rider of the scooter as well at least at 50 : 50 ratio. Learned Counsel lastly contends that the Tribunal totally eschewed the additional counter-affidavit filed in this behalf from consideration which resulted in erroneous conclusion by the Tribunal that the accident had occurred solely due to the rash and negligent driving of the accident lorry by its driver. In support of his contentions, learned Counsel relied on the decision rendered by a Division Bench of Madras High Court in the case of Managing Director, Tamil Nadu State Transport Corporation, (Coimbatore Division-I) Ltd. Vs. Abdul Salam, Jameela, Laila, Sainabha, Kabeer, Meharaj and P. Selvaraj,

6. On the other hand, learned Counsel for the respondents- claimants contends that though there was triple riding on the scooter, there was no independent evidence adduced by the insurance company that the accident took place solely on account of triple riding and in the absence of so doing, the Tribunal rightly held that the driver of the accident lorry was responsible for the, accident.

7. In the light of the rival contentions, the point that arises for consideration is whether the driver of the accident lorry alone was responsible in causing the accident or not.

8. There is no dispute as to the date and nature of the accident. There is even no dispute, as to the fact that there was triple riding and the injured (since deceased) was one of the pillion rider on the scooter. Undoubtedly, triple riding on a two wheeler, is, prohibited u/s 128 of the Act. Section 128 of the Act reads thus:

"128. Safety measures for drivers and pillion riders :--(1) No driver of a two wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a

proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in Sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two wheeled motor cycles and pillion riders thereon."

9. A plain reading of the above provision, it is clear that triple riding is prohibited on a two wheeler. When a statutory bar imposed under the Act, it is not made to be ignored by the riders of two wheelers, but to be followed in their own interest and safety. Though it has come in the evidence of PW-2 who claims to be an eye-witness to the accident that on the fateful day the driver of the accident lorry drove the lorry in a rash and negligent manner resulting in accident, but it is common understanding that one will certainly feel discomforted when riding a two wheeler with two pillion riders and naturally his balance over the vehicle will be limited by reason of accommodating two pillion riders and he will not have that ease and comfort of riding with one pillion rider. In the instant case, it is admitted that there was triple riding on the scooter. Under those circumstances, even in the absence of independent evidence adduced by the Insurance Company that the accident had occurred due to triple riding, it can be reasonable presumed that the rider of the scooter was discomforted by reasons of allowing two pillion riders and thus contributed in causing the accident. Had he been riding the scooter with one pillion rider, probably he would have averted the accident by swerving the scooter to the extreme left side, but could not do so probably, his hands and legs movement was limited due to the congestion. In such view of the matter, the culpability in causing the accident is fixed at 75% on the part of the driver of the accident lorry and 25% on the part of the rider of the scooter. I am fortified in my view by the decision *Managing Director, Tamil Nadu State Transport Corporation v. Abdul Salam* (supra), wherein at Paras 10 and 11, it was held thus:

"We are concerned as to whether such action of the individuals is permissible under law. The motor cycle and any other two wheelers are meant only for two persons, the rider and a pillion rider. If more than two persons are travelling in a motor cycle or any other two wheeler, undoubtedly such action of the individual would become illegal and unauthorized. It is an awful sight when we come across three persons travelling in a motor cycle. They are sitting in such a cramped manner that the rider of the motor cycle almost sitting on the petrol tank or at the front edge of the seat. When he was sitting in such a position, naturally because of the restricted movement of his legs, he cannot have the complete control over the brake. The movements of his hands also so restricted. When that be so, this Court is of the opinion that definitely the rider of the two wheeler cannot have full control over the vehicle. There is no gain saying that now-a-days it has become the normal course that three persons, are travelling in a motor cycle."

10. Coming to the question of compensation, the Tribunal took the income of the

deceased at Rs. 1200/- per month, after deducting 1/3rd and considering the age of the deceased at 28 years, applied a multiplier of 15.08, granted a sum of Rs. 1,44,768/- (wrongly mentioned in the award as Rs. 1,44,678/-) towards-pecuniary damages, which in my considered view warrants no interference. Inasmuch as it is now held that the rider of the scooter was also at fault and contributed in causing the accident by allowing two pillion riders in violation of Section 128 of the Act, from out of the compensation arrived at under the head pecuniary damages 25 % has to be deducted. Thus, the claimants are entitled to a sum of (Rs. 1,44,768 - 25%) Rs. 1,08,576/-towards non-pecuniary damages plus a sum of Rs. 15,000/- towards loss of consortium, totalling to Rs. 1,23,576/-. The awarded amount shall carry interest at the rate of 9 % per annum from the date of petition till the date of realization.

11. In the result, the appeal is partly allowed and the impugned award is modified to the extent indicated above. The appellant-insurance is directed to deposit the amounts awarded within a period of six weeks from the date of receipt of a copy of this order and on such deposit the claimants-respondents herein are permitted to withdraw the same without furnishing the any security. No costs.