
(2007) 11 AP CK 0074

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 1858 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Koduru Bhagyamma and Others

RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 149, 2(28), 2(44)

Citation : (2009) ACJ 514

Hon'ble Judges : Bilal Nazki, Acting C.J.; Nooty Ramamohana Rao, J

Bench : Division Bench

Advocate : T. Mahender Rao, for the Appellant; L.J. Veera Reddy and V. Hari Haran, for the Respondent

Judgement

Bilal Nazki, Actg. C.J.

1. This case has come before this Court on a reference made by a learned single Judge of this Court as it was contended before the learned single Judge by the appellant that as the trailer in which the deceased was travelling was not insured, although it was attached to the tractor which was insured, therefore, no liability could be fastened upon the insurer.

2. The appeal arises out of the award granting compensation of Rs. 4,00,000 to the legal representatives of the deceased who died in a motor accident.

3. Appellant placed reliance on judgments of this Court in Oriental Insurance Co. Ltd. Vs. Janarasupalli Kotiratnamma and Others, and Oriental Insurance Co. Ltd. Vs. Laxmanna (died) by LRs., . The respondents-claimants placed reliance on a judgment of this Court in New India Assurance Company Limited, Karimnagar Vs. Mamidi Mallamma and others, , which according to the respondents, lays down that if one among the tractor and trailer is insured, the liability can be fastened upon the insurer. All these three judgments have been rendered by the learned single Judge of this Court. Therefore, the learned single Judge thought it proper to refer the matter to Division Bench.

4. So this Court will have to decide as to whether the insurance company can be fastened with the liability of a person who dies while travelling in a trailer (not insured) attached to the tractor (insured)?

5. Various other judgments have also been cited. Before going to these judgments, it will be necessary to have a look at certain provisions of the Motor Vehicles Act (for short "the Act"). The expression "motor vehicle" or "vehicle" has been defined u/s 2(28) of the Act. Similarly, the expressions "tractor" is defined u/s 2(44) of the Act and the "trailer" is defined u/s 2(46) of the Act.

2(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;

6. So by the said definition, the motor vehicles are those vehicles which are mechanically propelled and adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source. Under Sub-section (44) of Section 2 of the Act, tractor is defined as a motor vehicle which is not itself constructed to carry any load. Tractor is a special type of motor vehicle which cannot by itself carry any load, but all the same it is a motor vehicle. Sub-section (46) of Section 2 of the Act defines trailer as a vehicle which is intended to be drawn by a motor vehicle. So if Sub-sections (28), (44) and (46) of Section 2 of the Act are read together, it becomes clear that a trailer is not a motor vehicle, but becomes part of a motor vehicle when it is drawn by a motor vehicle because Sub-section (28) of Section 2 of the Act makes a special reference to a trailer and trailer cannot be moved on roads except by a propulsion transmitted thereto from a motor vehicle. Therefore, in our view, a trailer attached to a motor vehicle is a part of the motor vehicle itself.

7. Now coming to the judgments of this Court, a learned single Judge in Oriental Insurance Co. Ltd. Vs. Janarasupalli Kotiratnamma and Others, (AP), held in para 15:

In view of the foregoing discussion, it must be held that once the trailer which is not insured with insurance company and the deceased who were travelling in the said trailer met with an accident and died, the insurance company by whom the tractor is insured is not liable as the accident would not be caused by tractor but a goods vehicle, i.e., trailer. If both the tractor and trailer are insured, the insurer would be liable to indemnify the owner against the claims arising out of use of tractor and trailer. This view of mine is in conformity with the other statutory provisions which require the trailer also to be insured under Sections 146, 147 and 149 of the Act. Admittedly, under Exh. B1 policy, the insurance company has not undertaken any liability for the trailer attached to the tractor. Therefore, the

insurance company cannot be fastened with any liability.

8. In Oriental Insurance Co. Ltd. Vs. Laxmanna (died) by LRs., , another learned single Judge of this Court said:

I have no hesitation to hold that the trailer also requires to be insured separately. Inasmuch as the trailer in this case has not been insured admittedly, the appellant insurer is not liable. Therefore, the appeal shall have to be allowed....

9. The third judgment of this Court in New India Assurance Company Limited, Karimnagar Vs. Mamidi Mallamma and others, , is not relevant because the present question did not arise as the learned single Judge found that the tractor and trailer were insured with different companies, whereas in the present case the Tribunal held that the trailer was not insured in which the deceased was travelling.

10. There is yet another judgment of this Court in Gunti Devaiah and Others Vs. Vaka Peddi Reddy and Others, , to which reference has not been made by the learned single Judge. In this case the learned single Judge held in para 15:

But the word "trailer" was separately defined apart from the inclusive definition which was made. In such an event, the meaning assigned to the respective words has to be culled out. As can be seen from various definitions like articulated vehicles, contract carriage, goods carriage, heavy goods vehicle, heavy passenger motor vehicle, invalid carriage, maxi cab, motor cab, motor car, motor cycle, omnibus, private service vehicles, they were defined as motor vehicles including the tractor, but trailer was defined as vehicle, which was intended to be drawn by a motor vehicle. Thus, it is evident that it is not a mechanically propelled vehicle where the power of propulsion is transmitted from external or internal sources. Therefore, even though, Section 2(28) embraces trailer within the definition of "motor vehicle" or "vehicle", but further distinction has to be drawn between vehicle and motor vehicle and that distinction has to be carved out on the basis of the specific definition given to the word trailer. Therefore, while all the motor vehicles may fall within the definition of vehicles, but all the vehicles are not motor vehicles. The trailer as such is an attachment made to the prime mover either a tractor or a mechanical contrivance and it has no independent propulsion. The trailer always is a detachable container which does not have independent driving system. Its movements are dependent on the prime mover, such as tractor, motor vehicle, etc.

The learned single Judge also held in para 28:

(28) ...Insurance of trailer is not a mandatory requirement under the provisions of Section 146 of Motor Vehicles Act and if the prime mover/motor vehicle/tractor is insured and the negligence of the driver of the said motor vehicle is established, the compensation is payable by the owner of the tractor and insurer irrespective of the fact whether the victim suffers injury with the tractor or with the trailer. However, the Tribunal without considering this aspect, absolved the

insurance company of the liability even though the tractor is admittedly insured with respondent No. 4, insurance company. Thus, I hold that the order of the Tribunal relieving the insurance company from the liability is not sustainable in law and accordingly, the C.M.As. are allowed making the respondent insurance company also liable along with the owner of the tractor and trailer.

11. There is a judgment of Karnataka High Court in *The Oriental Insurance Co. Ltd. Vs. N. Chandrashekaran and Others*, . In para 7 it said:

In the present case the appellant has only issued a policy in respect of the tractor and the appellant would be liable to indemnify the insured in respect of risk arising out of the use of tractor as such. But, if the tractor draws a trailer and the accident is caused by such a tractor-trailer then the vehicle causing the accident would not be a tractor but a goods vehicle. It is only if both tractor and trailer are insured the insurer would be liable to indemnify the owner against the claims arising out of the use of tractor and trailer. This view would be in conformity with the other statutory provisions which require even a trailer to be insured. As in this case it is undisputed that only the tractor was insured with the appellant and that the trailer was not insured and that the accident was caused by the tractor-trailer it has to be held that the appellant is not liable to pay the compensation awarded to the claimant.

12. There is another judgment of Division Bench of Madhya Pradesh High Court in *Jitendra and Others Vs. Bhai Ram and Others*, . In this case the present question did not arise because the court held that trailer was also insured along with tractor.

13. Then there is a judgment of Division Bench of Gujarat High Court in *United India Insurance Co. Ltd. Vs. Manjulaben Purshottamdas Patel and Others*, . In this judgment tractor and trailer was considered to be a one vehicle and it held:

(12) In our opinion, the Tribunal has committed an error of law in treating the tractor and trailer as different and separate vehicles and in holding the insurance company liable by observing that the driver was rash and negligent in driving the tractor and since the deceased was travelling in a trailer, he was a third party qua tractor and, hence, along with the owner and driver, the insurance company was also vicariously liable....

14. Now on analysis of these judgments and the provisions of law which have been quoted above, we feel that the law has been correctly appreciated by a learned single Judge of this Court in *Gunti Devaiah and Others Vs. Vaka Peddi Reddy and Others*, and the reasons given by him are sufficient to hold that under the Motor Vehicles Act no separate insurance is contemplated for a trailer and when the trailer is attached to the tractor which is insured, it becomes the part of the tractor. We reproduce the para 26 of the said judgment as under:

(26) The word "vehicle" mentioned in Section 147 is co-relatable to the words "motor vehicle", which are stipulated in Section 146. Therefore, the expression

"vehicle" wherever appearing in Chapter X has to be only read as motor vehicle. The principle of claim for compensation in accidents arising out of the use of the motor vehicle is based on tortious liability and the negligence of the driver of the motor vehicle is a sine qua non for maintaining a claim under the provisions of the Act. Inasmuch as the trailer by itself cannot be driven and it has to be carried or towed with a motor vehicle, namely, a tractor or a like self propelled vehicle. Therefore, the question of driving the trailer in a rash and negligent manner would not arise. It is only the prime mover or the motor vehicle which controls movement of the trailer and in case of the negligent driving of the tractor or the motor vehicle, the owner of the vehicle and its insurer alone will be made liable for payment of compensation. But, since the trailer is attached can it be said that trailer should also be independently insured so as to avoid the liability of compensation in case of rash and negligent driving by the driver. That contingency would not arise, as it is only a vehicle and not a motor vehicle. It may be for tax purposes, it is treated-as a goods vehicle. But under the provisions of the Motor Vehicles Act no separate insurance is contemplated. When the trailer is attached to the tractor it becomes a tractor-trailer. There is no provision requiring the trailer to be separately insured to cover the third party risk. The reasons are obvious that it cannot be driven by the driver as in the case of motor vehicles or tractors. Thus, a separate distinction has been drawn between the motor vehicle and a vehicle, i.e., visible in all the definitions and more especially in Chapter XI. The same situation also persists in Chapter X in case of no fault liability wherein it has been stated that whether a death or a permanent disability of any person has been resulted from an accident arising out of the use of a "motor vehicle" or "motor vehicles" and there is no reference to "vehicle" as such. This aspect was never considered in any of the decisions relied on by the learned standing counsel for insurance company and also for other side.

15. For these reasons, we answer the reference accordingly.