
(2002) 04 AP CK 0080

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2341 of 2001

United India Insurance Co. Ltd.

APPELLANT

Vs

Lingampally Mondhi and Others

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2004) ACJ 233 : (2002) 3 ALD 670

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K.L.N. Rao, for the Appellant; B. Narayana Reddy, for the Respondent

Final Decision : Partly Allowed

Judgement

C.Y. Somayajulu, J.—Respondents 1 to 3 filed O.P.No.269 of 1996 in the Motor Accidents Claims Tribunal, Adilabad, against respondents 4 and 5 and the appellant, seeking compensation of Rs.1,34,000/- consequent on the death of L.Rajakka (deceased), wife of 1st respondent and mother of respondents 2 and 3, alleging that on 23-5-1996 when the deceased, who was earning Rs.2,000/- per month as a vegetable vendor, was traveling in a jeep bearing No.AHT.9521 belonging to the 4th respondent, being driven by 5th respondent and insured with the appellant, from Bellampally to Ghanapur, she fell out of the jeep due to the rash and negligent driving of the 5th respondent and sustained a head injury and died on the spot.

2. Respondents 4 and 5 remained ex parte. Appellant filed its counter putting respondents 1 to 3 proof of the averments in the petition, and contending that it is not liable to pay compensation because the deceased was traveling in the jeep, as a fare paying passenger though it is not meant to be used as a taxi.

3. In support of their case, respondents 1 to 3 examined two witnesses as P.Ws.1 and 2 and marked Exs.A1 to A4. In support of its case, appellant examined one witness as RW.1 and marked Ex.B1 on its behalf. On the basis of the evidence on

record, the Tribunal held on issue No.1, which relates to the question whether the accident occurred due to the rash and negligent driving of 5th respondent, in favour of the respondents 1 to 3. On issue Nos.2 and 3, relating to the quantum and the liability of respondents 4 and 5 and the appellant, it held that respondents 1 to 3 are entitled to Rs.1,34,000/- from respondents 4 and 5 and appellant jointly and severally, with interest at 15% per annum from the date of petition till the date of payment, and passed an award accordingly. Aggrieved thereby, this appeal is preferred by the insurer of the vehicle involved in the accident.

4. The main contention of Mr.K.L.N.Rao, learned counsel for the appellant, is that the Tribunal grossly erred in adopting "13" as multiplier when the deceased was aged more than 50 years and was also in error in computing the income of the deceased at Rs.15,000/- per annum and her contribution to respondents 1 to 3 at Rs.10,000/- per year, without any evidence on record, and in any event since the terms and conditions in Ex.B1 show that the insurance does not cover passengers traveling in the vehicle for hire or reward, and since the deceased was traveling in jeep by paying hire, the Tribunal was in error in passing an award against the appellant. The contention of the learned counsel for the respondents 1 to 3 is that this appeal is not maintainable in view of the ratio in SHANKARAYYA AND ANOTHER vs. UNITED INDIA INSURANCE CO. LTD., AND ANOTHER¹.

The points for consideration in this appeal are-

1. Whether the appeal filed by the insurer is not maintainable?
2. To what compensation, if any, are the respondents entitled to?

POINT NO.1:

5. In SHANKARAYYA case (1 supra) it is held that the insurance company is not entitled to file an appeal on merits of the claim before the High Court. The driver and owner of the vehicle involved in the accident in this case chose to remain ex parte before the Tribunal and have also not preferred an appeal against the award passed by the Tribunal. Recently the Supreme Court in UNITED INDIA INSURANCE CO. LTD. vs. BHUSHAN SACHDEVA AND OTHERS² after referring to Sections 170 and 173 of the Motor Vehicles Act, 1988 (the Act) held that it is open to the insurance company to invoke the right u/s 173 of the Act to file an appeal if the insured had failed to appeal against the award passed against him. In view of the said decision of the Supreme Court, since the insured did not prefer an appeal against the award of the Tribunal, the contention of the learned counsel for the respondents that the appeal filed by the insurance company is not maintainable has no force, and so I hold that the insurance company is entitled to file the appeal. Point is answered accordingly.

POINT NO.2:

6. Ex.A1-F.I.R. is registered on the complaint given by Lingampally Venkatesam,

son of 1st respondent. Since in column 6 of Ex.A2 (inquest panchanama), it is stated that the deceased was the first wife of the 1st respondent and that 1st respondent has another wife by name Yellamma and since in column No.1-B of Ex.A2 Lingampally Venkatesam, who gave Ex.A1 is shown as the son of the sister of the deceased, it can be taken that the said Venkatesam is the step son of the deceased. In column No.II of Ex.A2 the deceased was described as a coolie aged about 60 years. The entry in column No.3 of Ex.A3 (post mortem report) relating to the age of the deceased is not decipherable but appears as 50 years. It could be 56 or 58 also. Since the Tribunal basing on the entry in Ex.A3 only, and ignoring Ex.A2, held that the deceased was aged about 50 years, and since Ex.A2 preceded Ex.A3, the age of the deceased mentioned in Ex.A2 should have preference to the undecipherable entry relating to the age of the deceased in Ex.A3. Significantly 2nd respondent, who was examined as a witness No.3 at the time of the inquest is described as a person aged about 35 years, but he described himself as person aged about 25 years in the petition. The age of the 1st respondent shown in the petition cannot be taken to be true because from his photograph affixed to the petition he appears to be aged more than 60 years. Since the age of the deceased was shown as 60 years in Ex.A2, and since the age shown in Ex.A3 is not very clear and since no independent evidence regarding the age of the deceased was adduced by respondents 1 to 3, the deceased can be taken as aged more than 55 years at the time of her death.

7. The evidence of PW.2 that he was witnessed the accident cannot be accepted, because his name is not shown as a witness to the accident in Ex.A2 or in Ex.A1. Respondents 1 to 3 did not explain as to how they came to know about the presence of PW.2 at the time of accident, when there was nothing on record to show that PW.2 was present at the time of the accident. For reasons best known to the respondents 1 to 3, Venkatesam, son of the 1st respondent, who gave the report to the police and was also examined as an eye witness to the accident at the time of the inquest was not examined as a witness before the Tribunal. Since PW.1 was examined as a witnesses at the time of the inquest and since Ex.A2 (inquest panchanama) shows that the deceased who was sitting in the back seat of the jeep was thrown out of the jeep, it can be prima facie taken that the accident occurred due to the rash and negligent driving of the driver of the jeep. Since the driver of the jeep against whom an allegation of rash and negligent driving is made, and the owner also, chose to remain ex parte, it can be taken that the accident occurred due to the rash and negligent driving of the driver of the jeep.

8. Exs.A1 and A2 do not show that the deceased boarded the jeep at the place where accident occurred. In fact the averments in Ex.A1 (F.I.R.) clearly show that the deceased boarded the jeep somewhere else and came to the place of accident in the jeep. The case of respondents 1 to 3, and the evidence of PW.1, that the deceased was a vegetable vendor cannot be believed or accepted because if the deceased was a vegetable vendor, she would not have been described as a coolie in Ex.A2 (inquest panchanama) where PW.1 also was

examined. Therefore, it has to be taken that the deceased was only a coolie but not a vegetable vendor. Whether the deceased was a vegetable vendor or coolie can be of no relevance for deciding this appeal because, from the evidence on record, it is clear that the 1st respondent who is the first claimant has another wife and has another son through his other wife. Therefore, the 1st respondent i.e., the husband of the deceased cannot be said to be a dependant on the earnings and or services of the deceased alone, because he has another wife to look after his needs. Respondents 2 and 3 are the sons of the deceased. As stated earlier, 2nd respondent described himself as person aged 35 years at the time of inquest. So he does not depend on the services or earnings of the deceased. 3rd respondent is described as a person aged 17 years in the petition, which may not be his correct age. Even assuming that the 3rd respondent was aged 17 years and was a minor at the time of death of the deceased, he could be said to be dependant on the earnings of his parents till such time as he attained the age of majority only. Therefore, in the death of the deceased, respondents 1 to 3 cannot be said to have suffered monetary loss. Even assuming that the deceased was earning about Rs.50/- per day or Rs.18,000/- per year, her contribution to respondents 1 to 3 can at best be only Rs.10,000/- per year because she may not go to work on all the days in the year. Since age of the deceased was fixed above 55 years, the multiplier can be fixed at 6.5 in view of BHAGWANDAS vs. MOHD.ARIF³. So the pecuniary damages payable to the respondents due to the death of the deceased would come to $10,000 \times 6.5 = \text{Rs.65,000/-}$. As held in Y.VARALAKSHMI vs. M.NAGESWARA RAO⁴ in every case of a fatal accident, a minimum compensation of Rs.15,000/- should be awarded towards non-pecuniary damages. Keeping in view the income of the deceased, the non-pecuniary damages can be fixed at Rs.25,000/-. Since the 1st respondent lost his wife though he has a second wife, he can be awarded Rs.6,000/- towards loss of consortium. Thus, respondents 1 to 3 are entitled to Rs.65,000/- + Rs.25,000/- + Rs.6,000/- Rs.96,000/- as compensation due to the death of the deceased.

9. If the table in the II schedule of the Act is applied, since the age of the deceased fixed as more than 55 years, the multiplier would "8" and since the income of the deceased is fixed as Rs.18,000/- per year, the compensation, as per the table in Schedule II of the Act would be Rs.1,44,000/-. As per the note appended to the table, in fatal accident cases that amount has to be reduced by 1/3rd. So we deduct 1/3rd of Rs.1,44,000/- from Rs.1,44,000/- the amount comes to Rs.96,000/-. Therefore, the compensation payable to respondents 1 to 3 due to the death of the deceased would be Rs.96,000/-.

10. The contention of the learned counsel for the appellant is that since the deceased was traveling in the jeep as a fare paying passenger and since the insurance does not cover the liability of the fare paying passengers, the appellant cannot be made liable for compensation to the respondents 1 to 3. The Supreme Court in NEW INDIA ASSURANCE COMPANY vs. KAMLA⁵ held that when a valid insurance policy has been issued in respect of a vehicle, the burden is on the

insurer to pay third parties whether or not there has been any breach or violation of the policy conditions, but the amount so paid by the insurer to the third parties can be allowed to be recovered from the insured, if there is a violation of the terms of the policy of insurance. In this case, as per Ex.B1 read with the evidence of RW.1, the appellant-insurer is not liable to pay compensation in respect of passengers carrying in the jeep for hire or reward. The deceased, a stranger to the owner and driver of the vehicle, was traveling in the jeep, as seen from Exs.A1 and A2, with other passengers. So it is clear that the jeep in which the deceased was traveling was being used as a taxi. Therefore, there is a violation of the terms of the policy by the insured, and so the appellant after paying the amount of compensation payable to respondents 1 to 3 can recover the said amount from the insured, i.e., the owner of the vehicle. So I hold that respondents ` 1 to 3 are entitled to Rs.96,000/- from respondents 4 and 5 and the appellant. Point is answered accordingly.

11. In the result, the appeal is allowed in part. The award of the Tribunal is modified and an award is passed for a sum of Rs.96,000/- (Rupees ninety six thousand only) with interest at 9% per annum from the date of petition till date of deposit into Court with proportionate costs against the appellant and respondents 4 and 5. The rest of the claim of the respondents 1 to 3 is dismissed. From out of the said amount, 1st respondent is entitled to Rs.36,000/- (Rupees thirty six thousand only) and interest thereon and respondents 2 and 3 are each entitled to Rs.30,000/- (Rupees thirty thousand only) and interest thereon. The appellant is entitled to recover the amount paid by it to the respondents 1 to 3 from the owner i.e., 4th respondent.