
(2012) 09 AP CK 0111
In the Andhra Pradesh High Court
Case No : C.M.A. No. 369 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Mohd. Hussain and Others

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Citation : (2013) 2 ALD 46 : (2013) 3 ALT 47

Hon'ble Judges : C. Praveen Kumar, J

Bench : Single Bench

Advocate : E. Venugopal Reddy, for the Appellant; Radhive Reddy, for the Respondent

Final Decision : Allowed

Judgement

C. Praveen Kumar

1. The United India Insurance Company preferred the present appeal is directed against the order dated 08.08.2003 passed in O.P. No. 938 of 1997 on the file of Motor Vehicles Accidents Claims Tribunal-cum-Additional District Judge, Nizamabad wherein a sum of Rs. 5,84,000/- was awarded as compensation to the claimants on account of death of one Saleem (hereinafter referred to as "the deceased"). The facts in issue are that on the intervening night of 16/17.11.1997 the deceased was travelling in a TATA Van bearing No. MH-26-8303 from Nizamabad to Hyderabad as owner of the goods. At about 2.00 AM when the van reached outskirts of Toopran village, the driver of the offending van drove the same in a rash and negligent manner and dashed against a lorry bearing No. KA-01-2223 from behind. As a result of which, the front portion of the van was completely damaged causing injuries to the deceased. The deceased was initially shifted to Gandhi Hospital, Secunderabad and thereafter while he was being shifted to Ahmednagar hospital succumbed to the injuries. According to the claimants, the deceased was hale and healthy and was earning Rs. 10,000/- p.m. by doing chicken business and as such made the above claim.

2. The first respondent who is the owner of the offending vehicle denied the allegations made in the claim petition and contended that the vehicle was insured with the second respondent and as such the second respondent alone is responsible to pay the compensation.

3. The second respondent-insurance company filed counter contending that they are not liable to pay any compensation as this is a clear case where the deceased was travelling as a gratuitous passenger and policy does not cover the risk of the death of the deceased in the said accident.

4. In support of their case the claimants examined three witnesses as P.Ws. 1 to 3 and got marked Exs. A1 to A4. On behalf of the respondents R.Ws. 1 and 2 were examined and Exs. B.1 to B.3 were marked.

5. P.W. 1 is the wife of the deceased and she is not an eyewitness to the accident. P.W. 2 was examined as an eyewitness to the incident. He categorically stated that the accident had occurred due to the rash and negligent driving of the driver of the van. Ex. A.1 is the copy of the F.I.R., which categorically describes the manner in which the incident took place. The Tribunal having considered the evidence of P.W. 2 coupled with Ex. A.1 held that the driver of the offending van is responsible for the accident. The said finding of the Tribunal is based on proper appreciation of evidence warranting no interference. Even the learned counsel for the appellant did not dispute the manner in which the accident took place.

6. P.W. 1 who is the wife of the deceased stated in her evidence that her husband was doing chicken business and was earning Rs. 10,000/- p.m. and because of the death of her husband, the entire family is put to hardship. P.W. 3 was examined to show that the deceased was doing chicken business and earning Rs. 10,000/- p.m. and after his death the chicken business was closed.

7. The Tribunal after considering the evidence of P.Ws. 1 and 3 and Ex. A.2 medical certificate came to the conclusion that the deceased was 33 years of age at the time of incident and after applying suitable multiplier, awarded compensation of Rs. 5,84,000/-. The said finding of the Tribunal with regard to awarding compensation to the legal heirs of the deceased is based on proper appreciation of entire evidence on record, which needs no interference.

8. The only point which the learned counsel for the appellant would contend is that the insurance company is not liable to pay any compensation to the claimants as the policy does not cover the risk of the death of the deceased. According to him the claimants tried to project their case by showing as if the deceased was travelling in the goods vehicle as owner of the goods. But the evidence on record clearly establishes that there were no goods in the said vehicle at the time of accident. The witness categorically admits that the lorry was empty and the deceased was going to Hyderabad to get chicken for doing the said business. Therefore, according to him, at the time of accident there were no goods in the offending vehicle as such it cannot be said that the

deceased was travelling in the goods vehicle as owner of the goods.

9. R.W. 1 who was examined on behalf of the appellant-insurance company, deposed that the said vehicle was not carrying any goods and the passengers travelling in the goods vehicle is violation of policy condition and that they are not liable to pay any compensation to the claimants. During cross-examination R.W. 1 admits that the policy is a comprehensive policy and six labourers can travel in the vehicle as per the policy and premium was also paid for two non-fare paying passengers, excluding the six labourers. On the other hand, R.W. 2, who was examined as owner of the vehicle admits that the deceased was travelling in his vehicle as a labourer and as such the insurance company is liable to pay compensation.

10. Taking a clue from the admission made by R.Ws. 1 and 2, the learned counsel for the respondents/claimants would contend that the policy covers the death of the deceased, as premium was paid for two non-fare paying passengers. Even otherwise he contends that the evidence of R.W. 2 would show that the deceased was travelling as a labourer in the said vehicle at the time of accident and the policy covers the risk of persons travelling in the vehicle as labourers. The said argument of the counsel for the respondents-claimants is unsustainable for the reason that on one hand claimants are claiming damages on the ground that the deceased was doing business of chicken and on the other hand R.W. 2 deposes that the deceased was travelling in the vehicle as a labourer. Both the pleas cannot go together as they run contrary to each other. Further, there are no goods in the vehicle at the time of accident. For the reasons best known to them, the claimants did not produce the panchanama of the scene of accident, which would have disclosed the presence of goods in the vehicle at the time of accident. Even according to the contents of the claim petition and the evidence of PWs. 1 and 2, the deceased was going to Hyderabad to get the goods i.e. chicken. Thus, there is no evidence on record to show that the deceased boarded the lorry with chicken. The Tribunal, without giving any specific finding as to the status of the deceased in the vehicle at the time of accident, on a surmise held that the deceased was travelling along with the goods, made the owner and the insurer of the vehicle jointly and severally liable to pay compensation to the claimants.

11. The Supreme Court in *National Insurance Co. Ltd. Vs. Kaushalaya Devi and Others*, dealt with a situation where the deceased was travelling in a truck for the purpose of collecting empty boxes as he was a vegetable dealer. He was not travelling in the truck as owner of the goods i.e. either with vegetables or with the empty boxes. He was travelling in the truck for the purpose other than the one for which he was entitled to travel in a public carriage goods vehicle. The Court held that the claimants are not entitled to any compensation from the insurer as the deceased was only travelling as a passenger in the said vehicle and not as an owner of the goods. The Supreme Court while applying the principle laid down in *Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others*, and

in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, held that the insurance company is not liable to pay any amount as compensation to the claimants. In *Asharani* case, the Supreme Court observed that Sub Clause (i) of Clause (b) of Sub-Section 1 of Section 147 of 1988 Act speaks of liability which the owner of a vehicle incurs in case of death or bodily injury to any person or damage to any property of a third party caused by or arising out of use of the vehicle in public place. The Court further held that an owner of a passenger carrying vehicle must pay premium for covering the risk of passengers travelling in the said vehicle. The said premium covers third party as also the owner of the goods or his authorized representative and not a passenger carried in a goods vehicle whether for hire or reward or otherwise. While dealing the difference in the language of goods vehicle appearing in the old Act and the goods carriage in the 1988 Act, the Supreme Court in *Smt. Thokchom Ongbi Sangeeta @ Sangi Devi and Another Vs. Oriental Insurance Co. Ltd. and Others*, held that the legislative intent was to prohibit goods vehicles from carrying any passengers. This is clear from the expression "in addition to passengers" as contained in the definition of "goods vehicle" in the old Act being omitted in the new Act. According to the Supreme Court, the position is further clear as the expression used goods carriage is solely for the "carriage of goods." Carrying of passengers in goods carriage was never contemplated in the Act. As stated earlier, Section 147 of the Act mandates coverage against death or injury to any passenger of public service vehicle. There is no reference to any passengers in "goods carriage." Therefore, the provisions of the Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passengers travelling in the goods carriage and the insurer would have no liability therefor.

12. In view of the legal position indicated above and in the facts and circumstances of the present case that there were no goods in the vehicle at the time of said accident, the deceased cannot be held to be owner of the goods which he proposes to purchase for doing business after reaching the destination. By no stretch of imagination it can be said the deceased was travelling in the goods vehicle as owner of the goods. The inevitable conclusion would be that the deceased was travelling in the offending vehicle not as owner of the goods, but, as a gratuitous passenger. Hence, the insurer is not liable to pay any compensation to the claimants. The order of the Tribunal below is set aside and the appeal filed by the insurance company is allowed.

13. The Docket proceedings in the present Civil Miscellaneous Appeal indicate that at the time of admission of the appeal, this Court directed the appellant to deposit half of the decretal amount and the first claimant was permitted to withdraw the said amount without furnishing any security. The learned counsel for the respondents-claimants submitted that the claimant has withdrawn the said amount treating the order passed by the Tribunal below with regard to the quantum of compensation as a decree against the owner of the offending vehicle. In view of the observations made by the Hon"ble Supreme Court in *National Insurance Company Ltd. Vs. Bhukya Tara and Others*, , the compensation

amount if any deposited and withdrawn by the claimants shall not be recovered by the insurance company. However, the insurer/claimants can take steps to recover the amounts which they are entitled to from the owner of the vehicle by initiating proceedings before the executing Court. With the above observation, this appeal is accordingly allowed. No order as to costs.