
(1985) 06 AP CK 0011
In the Andhra Pradesh High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

P. Seethamma and Others

RESPONDENT

Date of Decision : 14-06-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1986) 1 ACC 423 : (1988) 63 CompCas 47

Hon'ble Judges : K.R. Ramaswamy, J

Bench : Single Bench

Advocate : I.A. Naidu, for the Appellant; C. Padmanabha Reddy and K. V. Reddy, for the Respondent

Judgement

Ramaswamy, J.—The appellant-insurance company is assailing the legality of the award passed by the Tribunal below raising a substantial question of law based on endorsement No..14(a) attached to the policy, namely, that the insurance company is not liable to pay compensation to a person unauthorisedly travelling in the vehicle unless it is covered by the contract as per the endorsement and premium paid. The endorsement reads as follows:

"In consideration of the payment of an additional premium and notwithstanding anything to the contrary contained in section II 1(b) and (c) it is hereby understood and agreed that the company will indemnify the insured against his legal liability other than liability under statute (except the Fatal Accidents Act, 1855) in respect of death or bodily injury to:

(1) Any employee of the within named insured who is not a workman within the meaning of the Workmen's Compensation Act, 1923, and subsequent amendments to that Act prior to the date of this endorsement and not being carried for hire or reward.

(2) "Any other person" not being carried for hire or reward being carried in or upon or entering or mounting or alighting from any motor vehicle described in the Schedule to this policy but such indemnity is limited to the sum of Rs. 10,000

in respect of any one such person, and subject to the aforesaid limit in respect of any one person, to Rs. 50,000 in respect of any number of claims in connection with any one such vehicle arising out of one cause."

2. In order to appreciate the contention, it is necessary to see the legislative intent adumbrated u/s 95 of the Motor Vehicles Act, 1939 (4 of 1939), for short, "the Act". Section 95(2)(a) is relevant for the purpose of this case which reads as follows:

"(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-

(a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury, employees (other than the driver) not exceeding six in number, being carried in the vehicle."

3. In *Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavaji Modi* [1982] 52 Comp Cas 454, their Lordships of the Supreme Court have interpreted the clause "any one accident" in sub-section (2)(a) of section 95 of the Act and held that if more than one person is injured in the course of the same transaction, each one has met with an accident and each is entitled to total compensation limited by the statute. In this case, the lower tribunal has found as a fact that the deceased is the owner of the goods and his goods are being carried in the lorry, AAC 1995, belonging to the first respondent. It was driven by the second respondent, driver. They were transporting tomatoes belonging to the deceased. The deceased was permitted to travel in the lorry. While he was travelling, due to the rash and negligent driving of the driver, the accident had occurred as a result of which the deceased, D. Lakshminarayana Reddi, died on the spot. The respondents laid a claim in a sum of Rs. 1,00,000. The tribunal below found as a fact that the monthly dependency is Rs. 750 and the annual dependency comes to Rs.9,000. The total dependency to which the respondents are entitled is Rs. 1,26,000 as tabulated in the Bench judgment of this court in *The Chairman, A.P.S.R.T.C., Hyderabad Vs. Shafiya Khatoon and Others*, . The Tribunal limited the liability to Rs. 50,000 in terms of subsection (2)(a) of section 95 of the Act. Section 95(2)(a) of the Act permits the owner to carry passengers up to six and if the accident occurs to any one of the six persons permitted under the statute and any one of the persons in the vehicle receives injury or dies, then the owner becomes liable to pay compensation either to the injured or to the legal representatives of the deceased, as the case may be. The question raised in this case is that in terms of the contract, the liability should be fastened only to the extent of Rs.10,000. The question, therefore, is, whether the insurance company can contract out of the statute and permit the liability to the extent of Rs. 10,000 only when the statute limited it to Rs. 50,000 if the deceased owner of the goods is travelling in a goods carriage with the permission of the owner. It is found as a fact, and I do not find any reason to disagree with the Tribunal below, that the deceased is the

owner of the goods booked and was permitted to travel in the vehicle and death resulted as a result of rash and negligence driving of the driver, the second respondent. In *M. Suryanarayana v. G. Satyavati* [1979] 1 ALT 391, 395 it was held that a servant of the owner of the goods also is entitled to compensation and much more so, in the case of the owner of the goods himself meeting with his death. If it were a case where the deceased is a mere passenger for hire and was permitted by the driver without authority, as contended by learned counsel for the appellant, Sri I.A. Naidu, there may be justification that under endorsement No. 14(a) attached to the policy needs a payment of a separate premium and the liability springs from the contract of policy. But when the statute permits the owner of the goods to travel in the vehicle and the accident occurs, the liability springs u/s 95(2) (a) of the Act, but not under the contract of policy. As a result, the appellant-company is liable to pay up to the maximum compensation of Rs. 50,000 and I do not find any illegality committed by the Tribunal below in awarding this maximum compensation.

4. The appeal is accordingly dismissed with costs.