
(2014) 12 AP CK 0012
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 616 of 2009

United India Insurance Company Limited	APPELLANT
Vs	
Thammineni Ramachandraiah	RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Citation : (2015) 2 ACC 396

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : E. Venugopal Reddy, Advocate for the Appellant; K. Maheswara Rao, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.—Challenging the Award dated 09.02.2005 in O.P. No. 40 of 2001 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge, (FTC), Anantapur (for short the Tribunal), the appellant/United India Insurance Company Limited preferred the instant MACMA.

2. On factual side, the case of the claimants is that on 26.10.2000, when the deceased Thammineni Mallikarjuna was travelling from Nizamabad to Kesepalli village along with paddy harvester in the Van bearing No. AP 02 T 7110 the driver drove the vehicle in a rash and negligent manner without observing the electric wires and one of the wires touched the deceased and he received electric shock and died on the spot. It was averred that van driver was responsible for the accident and due to sudden death of the deceased the claimants who are his dependants became destitutes. On these pleas, the claimants, who are parents of the deceased filed O.P. No. 40 of 2001 against respondents 1 and 2, who are the owner and insurer of the offending van and claimed Rs. 2,00,000/- as compensation.

a) Respondent No. 1 remained ex parte.

b) Respondent No. 2/Insurance Company filed counter contending that there was no rash and negligent driving on the part of driver of crime vehicle and deceased

himself was negligent and contributed to the accident. R2 also contended that deceased travelled as passenger and policy will not cover the risk of passenger. R2 further contended that driver had no valid driving licence at the time of accident. Finally, contending that claim is excessive and untenable, R2 prayed to dismiss the OP.

c) During trial, PWs. 1 and 2 were examined and Exs. A1 to A13 were marked on behalf of claimants. Policy copy filed by 2nd respondent was marked as Ex. B. 1.

d) The Tribunal after considering the evidence on record awarded total compensation of Rs. 2,00,000/- with proportionate costs and interest at 6% p.a. from the date of O.P. till the date of realization. Hence, the appeal by the Insurance Company.

3. The parties in the appeal are referred as they stood before the Tribunal.

4. Heard Sri E. Venugopal Reddy, learned counsel for appellant/Insurance Company and Sri K. Maheswara Rao, learned counsel for respondents 1 and 2/claimants. R3 is not necessary as per cause title.

5. The main ground on which learned counsel for appellant challenged the award is that deceased travelled in the goods vehicle only as a passenger and hence his risk will not be covered under the terms of the policy, but Tribunal on an erroneous appreciation of facts and evidence held as if he travelled in the vehicle as owner of the goods and thereby fastened liability on the Insurance Company along with owner of the vehicle. He thus prayed to allow the appeal and exonerate the Insurance Company from liability.

6. Per contra, while supporting the award, learned counsel for respondents 1 and 2/claimants argued that the deceased and his family owns paddy harvester which the deceased brought to Nizamabad during harvesting season and he engaged the crime towing van to transport the harvester and he sat on the harvesting machine and travelled as owner of the goods and on the way, due to a live wire touching the harvester, he got electrocuted and died. Learned counsel vehemently argued that deceased thus was not an unauthorised or gratuitous passenger, but owner of the harvester and hence, his risk squarely covered under the terms of Ex. B1 policy and the Tribunal rightly held so. He thus prayed to dismiss the appeal.

7. In the light of above arguments, the point for determination in this appeal is:

Whether the award passed by the Tribunal is factually and legally sustainable?

8. POINT: Accident, involvement of crime vehicle bearing No. No. AP 02 T 7110 and death of the deceased are not in dispute. The point is whether the deceased travelled in the harvester as a mere passenger or owner of the goods.

a) In this regard, the evidence of PW 1 who is the father of the deceased is to the effect that his son besides doing cloth business, was running paddy harvester and during October, 2000 he took his harvester to Nizamabad District, since it

was paddy harvesting season and on 26.10.2000 he engaged the crime van for transporting paddy harvester from Nizamabad to Kesepally and on the way driver of the van drove the vehicle in a rash and negligent manner and without observing the electric wire hanging across the road and thereby live wires in the outskirts of Kesepally village touched the said paddy harvester and his son who was sitting in the harvester was electrocuted and died on the spot.

b) It may be noted that in the cross-examination of PW 1 counsel for Insurance Company has not at all suggested that the deceaseds family was not owning harvester and the said harvester was not brought to Nizamabad District during the relevant period and further that the deceased had not engaged the crime vehicle to tow the harvester from Nizamabad to Kesepally. On the other hand, it was suggested that accident was occurred due to negligence of the deceased himself and the said suggestion was denied by PW 1. So, tenor of cross-examination of PW 1 would give an inference that Insurance Company did not dispute that deceaseds family owned harvester which was being carried by the deceased to Kesepally village for attending harvesting before accident. Hence, it is clear that deceased travelled on the paddy harvester as its owner. Since the crime vehicle i.e. towing van was towing the harvester at the relevant time of accident, the deceased can be referred as owner of the goods with reference to crime van also. Ex. B1 policy copy would show that owner of the crime vehicle paid premium to give coverage to non-paid passengers i.e. owner of the goods. Therefore, it is clear that risk of deceased was squarely covered under the terms of Ex. B1 policy. The Tribunal rightly held that the deceased was owner of the goods but not as passenger. In view of above discussion, the contention of learned counsel for appellant/Insurance Company cannot be accepted.

9. Accordingly, this MACMA is dismissed by confirming the award passed by the Tribunal in O.P. No. 40 of 2001. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.