
(1999) 09 AP CK 0061
In the Andhra Pradesh High Court
Case No : CMA No. 404 of 1991

Vardhaneedi Pondu Venkatachala Prabhakar and others	APPELLANT
Vs	
Bunga Santhi Kumari and others	RESPONDENT

Date of Decision : 25-09-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2000) 1 ALD 91

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

Bench : Single Bench

Advocate : Mr. I. Sreerama Murthy, for the Appellant; Mr. M. Srinivasa Rao, for the Respondent

Judgement

1. This appeal arises out of the order dated 19-10-1990 in OP No.201 of 1996 on the file of Motor Accidents Claims Tribunal-cum-District Judge, West Godavari at Eluru.

2. The respondents 1 to 4 (claimants) filed the OP against the appellants and respondents 5 to 9 and others seeking a compensation of Rs.60,000/- due to the death of Bunga Jayaraju (deceased) aged about 20 years earning Rs.800/- per month as driver, on the ground that the accident occurred due to the rash and negligent driving of the tractor with trailer bearing No.AAW 3294 and APW 7720, by the deceased 2nd respondent in the OP who is the husband of 5th respondent, and father of respondents 6 to 8 (hereinafter called the driver). Appellants were added as the legal representatives of the deceased first respondent in OP, the owner of the vehicle involved in the accident, who died during the pendency of the OP before the Tribunal. Respondents 5 to 8 were added as legal representatives of the deceased driver who also died during the pendency of the OP in the Tribunal. First appellant filed a counter putting the claimants to proof of the allegations in the petition. Respondents 5 to 8 filed a memo adopting the counter of the first appellant. 9th respondent filed a counter putting the claimants to proof of the averments in the petition, and admitting

that the tractor, involved in the accident was insured with it. In support of their case the claimants have examined two witnesses as PWs.1 and 2 and marked Exs.A1 to A5. On behalf of the appellants the first appellant was examined as RW1, but no documentary evidence was adduced on their behalf. No evidence was adduced on behalf of respondents 5 to 8. On behalf of 9th respondent (insurer) no evidence either oral or documentary was adduced. The Tribunal held that the accident occurred due to the rash and negligent driving of the tractor by the driver and that the deceased and his brothers-in-law were travelling as gratuitous passengers in the tractor at the time of the accident, and that the claimants are entitled to Rs.60,000/- as compensation only from the first appellant and respondents 5 to 8, in their capacity as legal representatives of the deceased owner and driver of the tractor involved in the accident, and that the 9th respondent (insurer) is not liable to pay the compensation to the claimants and hence dismissed the claim against the 9th respondent. Aggrieved by the dismissal of the OP against the insurer respondents 3 to 5 in the Tribunal, who are the legal representatives of the deceased owner of the tractor preferred this appeal.

3. From the award passed by the Tribunal it is seen that though all the three appellants were initially added as legal representatives of the deceased first respondent in the OP as per order dated 5-4-1988 in IA No.302 of 1987, the claim against appellants 2 and 3 was given up on 11-9-1987 itself, and hence no award was passed against appellants 2 and 3 by the Tribunal. When the claim against them was given up and when no award was passed against appellants 2 and 3, why they are shown as parties to this appeal is not explained, when the estate of the deceased owner of the vehicle is sufficiently represented by the 1st appellant.

4. The point for consideration is whether the 9th respondent (insurer) also is liable to pay the compensation awarded against the first appellant.

5. The contention of the learned Counsel for the appellant, is that since the insurance of the tractor involved in the accident was admitted and since the 9th respondent did not produce the policy of the insurance the Tribunal was in error in dismissing the claim against the 9th respondent. It is his contention that the Tribunal was in error in holding that the deceased was travelling as a passenger in the tractor at the time of the accident, when in fact the deceased and his brother-in-law were travelling in the tractor as coolies of the owner of the tractor, for loading and unloading the goods that were being carried on in the trailer of the tractor involved in the accident, hence the 9th respondent is also liable to pay the compensation. He relied on National Insurance Co. Ltd. Vs. Mallabai and Others, , New India Assurance Co. Ltd. Vs. Ram Kishore and Others, , National Insurance Co. Ltd. Vs. Narendra Kumar and Others, , and Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , in support of his contention. The contention of the learned Counsel for the 9th respondent is that the averments in the petition disclose that the deceased and his brothers-in-law

made a request to the driver of the tractor to give lift to them and so it is clear that the deceased was travelling as a gratuitous passenger in the tractor at the time of the accident and so the 9th respondent is not liable to pay the compensation and relied on New India Assurance Co. Ltd. Vs. Suresh Chandra Patra and Others, , New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, , Oriental Fire and General Insurance Company Ltd. Vs. Ravulapalli Subbamma @ Subbulu and Another, , and The National Insurance Co. Ltd. Vs. Prasanna Kumar Mitra and Others and Pravati Khatei and Others, , in support of his contention.

6. The only point to be decided is whether the deceased was travelling in the tractor as a passenger or as a coolie. If he was travelling as passenger, in view of Ravulapalli Subbamma (supra) rendered by a Division Bench of this Court, the 9th respondent will not be liable to pay the compensation payable. The decisions Prasanna Kumar Mitra (supra) and Suresh Chandra Patra and others (supra) relied on by the learned Counsel for the 9th respondent are not applicable to the facts of this case, because they relate to the extent of liability of the insurer which is not the point in issue in this case. The decisions relied on by the teamed Counsel for appellants have no application to the facts of this case, because the 1st appellant as legal representatives of the deceased owner (i.e., insured) could have produced the policy insurance.

7. In the petition the claimants alleged that when the driver reached near Bhavanamma temple at about 7.00 p.m with the tractor the deceased and his two brothers-in-law requested him to give them a lift to Pulla, and so that the driver obliged and allowed them to travel in the tractor. The driver did not file a counter. PW1, the widow of the deceased, was not present when the deceased got into the tractor, and so she cannot say as to in what capacity the deceased was travelling in the vehicle at the time of the accident. During cross-examination on behalf of first appellant and respondents 5 to 8, PW1 stated that she mentioned in the report given to the police that the deceased, while attempting to get into the tractor as per the instructions of the owner, slipped and fell down and that the contents of the report given by her to the police are true. During cross-examination on behalf of the 9th respondent she stated that the deceased was not an employee of the owner of the tractor at any time, and that the deceased did not go to work as coolie either for loading or unloading of the tractor involved in the accident. PW2 is the brother-in-law of the deceased i.e., the brother of PW1, His evidence is that when he, his brother and the deceased were standing at Bhavanamma temple, the owner of the tractor came there on a motor cycle and informed them that his tractor would come with a load of paddy bags from his fields, and requested them to get into the tractor to go over to Pulla for unloading the paddy bags, and a short while thereafter the tractor being driven by the driver came there, and that he and his brother got into the trailer from behind and sat on the paddy bags, and when the deceased was attempting to get into the trailer the driver started the tractor and so the deceased fell down and the rear wheels of the trailer ran over the deceased

resulting in his death on the spot. During cross-examination on behalf of the first appellant and respondents 5 to 8 he denied the suggestion that the accident did not occur due to the rash and negligent driving of the driver. During cross-examination on behalf of the 9th respondent he denied the suggestion that he, the deceased and others requested the driver of the tractor to give a lift to go to Pulla and that the driver obliged their request and gave lift, and that the owner of the tractor did not request them to unload the paddy bags. The evidence of RW1, the first appellant is that his father (the deceased owner) informed him that when the deceased, while getting into the trailer loaded the paddy bags, as per his instructions for unloading the paddy bags fell down and died. During cross-examination on behalf of the 9th respondent he stated that he has no document to show that the vehicle was insured with the 9th respondent at the time of the accident, and did not see the insured policy and that he does not know the terms of the policy, and has no personal knowledge about the accident, and denied the suggestion that his father did not tell any thing to him about the accident and also denied the suggestion that the driver of the tractor gave lift to the deceased.

8. Ex.A1 is a certified copy of the FIR issued in connection with the accident, in which it is alleged that the owner of the tractor requested the deceased to drive the tractor loaded with 40 bags of paddy, as his regular driver Surya Rao, (the driver) cannot drive the tractor with so much load and when the deceased was trying to get into the tractor he fell down and died and that the owner of the tractor, who is a powerful ryot in the village got the dead body buried with a view to screen the offence, and so necessary action may be initiated against the owner of the tractor. Ex.A2 is a certified copy of the motor vehicles inspector's report. Ex.A3 is a certified copy of the post-mortem examination report. Ex.A4 is the panchanama of identification of the place of burial of the deceased. Ex.A5 is a certified copy of the charge-sheet filed by the police against the driver, and owner of the tractor involved in the accident.

9. From the above evidence on record it is seen that the claimants have come up with three versions. The earliest version in the shape of Ex.A1, FIR given to the police, is that the owner of the tractor made a request to the deceased to drive the tractor loaded with paddy bags since his regular driver cannot drive the tractor with so much load. The 2nd version, is the averment in the petition i.e., that the deceased sought for a lift from the driver. The third version is the evidence of PW2 that he, his brother and the deceased were requested by the owner of the tractor to unload the paddy at his godown. In Ex.A5 the charge sheet it is alleged that the deceased sought for a lift from the driver.

10. Though the claimants alleged in the petition that the deceased and PW2 asked for lift, the earlier version given by the wife of the deceased in Ex.A1 is that the owner of the tractor requested the deceased to drive the tractor since his driver (the driver) cannot drive the tractor with so much load. During cross-examination on behalf of the first appellant and respondents 5 to 8, PW1 stated

that the contents of the report given by her to the police are true. Though the averment in the petition is different, in view of the fact that in their earliest version, i.e., FIR, the claimants stated that the deceased got into the tractor as per the instructions of the owner, it can be taken as a true version. Since the averments in Ex.A1 show that the claimants made-complaint against the owner alleging that he screened an offence and that action must be taken against him, the averment in the petition, contrary to the version in Ex.A1, might have been probably made either innocently or on advice. The evidence of PW2 shows that he, his brother and the deceased got into the tractor on the instruction of the owner. RW1 also stated so. As per RW1, his father, (the deceased owner) informed him about what happened on the day of the accident. No doubt it is true that evidence contrary to pleadings, or evidence without a plea, will not be taken into consideration by the Tribunal. As stated above since the earlier version prior to the petition as to how the accident is available in the shape of documentary evidence i.e., Ex.A1, where it is not alleged that the deceased sought for lift from the driver, in the peculiar circumstances of this case I am inclined to believe the version of PW1, which is the same as the version given in Ex.A1. Either as per the evidence of PW2, or as per Ex.A1 read with the evidence of PW1, it is clear that the deceased got into the tractor on the instructions of the owner either as a coolie or to drive the tractor and not as a gratuitous passenger. When the deceased got into the tractor either as a coolie to unload the goods, or to drive the tractor on the instructions of the owner and met with an accident, the insurer would be liable to pay the compensation. Therefore, I hold that the 9th respondent (insurer) is also liable to pay compensation payable to the claimants. The point is answered accordingly.

11. In the result the appeal is allowed. The order under appeal dismissing the OP against the 9th respondent (insurer) is set aside. 9th respondent (insurer) is also liable to pay the amount awarded to respondents 1 to 4 (claimants) by the Tribunal. Parties are directed to bear their own costs in the appeal.