

(1985) 10 AP CK 0001
In the Andhra Pradesh High Court

Vemula Nancharayya

APPELLANT

Vs

Oleti Muthyalamma

RESPONDENT

Date of Decision : 15-10-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(1)

Citation : (1988) 64 CompCas 861

Hon'ble Judges : C. Sriramulu, J

Bench : Single Bench

Advocate : G. Poornaiah, for the Appellant; B. Siva Reddy and I.A. Naidu, for the Respondent

Judgement

C. Sriramulu, J.—This appeal has been preferred by the owner of the lorry APT-5384 which was involved in the accident that occurred at about 4-30 a. m. on October 18, 1978, resulting in the death of the deceased, Oleti Swami Reddy. The mother of the deceased and the minor daughter of the deceased claimed compensation of Rs. 25,000. On a consideration of the evidence on record, the lower Tribunal came to the conclusion that the accident in question leading to the death of the deceased was due to rash and negligent driving by the driver of the lorry. The insurance company disclaimed its liability for compensation on the ground that the policy of insurance covering the vehicle in question does not specify the class of persons like that of the deceased so as to entitle the legal heirs of the deceased to claim compensation from the insurance company. The lower tribunal negated all the company and awarded a compensation of Rs. 20,000 with interest and costs on the owner and the driver of the vehicle. The lower tribunal, while dealing with the contention of the insurance company that the insurance company was not liable for compensation to the legal heirs of the deceased, held that as the deceased was not an employee of the owner of the lorry but was an employee of one Mr. R. R. Murthy, who hired the lorry in question from the owner-appellant herein, the claim of the claimants against the insurance company is not maintainable inasmuch as there was violation of the permit issued by the Road Transport Authority for plying the lorry in question.

Accordingly, the lower Tribunal dismissed the claim petition against the insurance company and decreed the claim of the claimants jointly and severally against the owner and the driver.

2. In this appeal, the only contention urged on behalf of the appellant who is the owner of the lorry is that the insurance company is equally liable for the compensation granted by the lower Tribunal against the appellant as there was no violation of any of the conditions imposed in the insurance policy. I find that there is substance in the contention raised by the appellant, the owner of the lorry. Reliance is placed upon the decision reported in *The Venguard Insurance Co. Ltd., Madras Vs. Chinnammal and Others*, wherein it is held that the liability of the insurer to indemnify an employee is not restricted to the condition that the employee must be that of the insured and even if a person is on the vehicle in pursuance of a contract of employment with the owner of the goods carried in it, the insurer is liable. It further held that the words "contract of employment" in section 95 of the Motor vehicles Act would cover not only the contract of employment with the owner of the insured vehicle, but also those who were on the vehicle in pursuance of a contract of employment. The lower tribunal found that the appellant herein, who is the owner of the lorry, had entered into a contract with one Mr. R. R. Murthy to sue his lorry for the transportation of fish and in connection with that contract, Mr. R. R. Murthy had engaged coolies for loading and unloading the fish baskets and, therefore, the insurance company is liable to pay damages in respect of the death of the employee of the hirer, if there are no other statutory limitations. But strangely, the lower tribunal absolved the insurance company of the liability from paying compensation to the claimants for violation of the conditions of the permit issued by the Road Transport Authority. On a perusal of the insurance policy, exhibit B-3, I find that the liability of the insurance company to pay compensation to third parties is strictly governed by the conditions therein. It is not in dispute that the policy in question, exhibit B-3, covers its liability to third parties also. The limitation of liability is restricted to Rs. 50,000. The further limitations imposed as per the terms of the policy are that the policy does not cover :

- (1) use for organized racing, etc.,
- (2) use while drawing trailer, etc., and
- (3) use for conveyance of passengers for hire or reward.

Under the column "driver", the persons entitled to drive the vehicle are :

- (1) the insured himself, viz., the appellant
- (2) or any other person provided he is an employee of the insured and is driving the vehicle on his order or with his permission.

3. Thus, I find that these are the only limitations prescribed by the terms of the insurance policy. Though there are restrictions under the insurance policy as to who should drive the vehicle for purposes of determining the liability of the

insurance company, but there are no restrictions or conditions as per the terms of the policy as regards its liability to third parties in case of accident. It is found by the lower tribunal that the deceased was a coolie for loading and unloading of the goods that were being transported in the lorry in question. Proviso A of the general conditions governing the liability of the insurance company to third parties specifically lays down that subject to the limits of the liability, the company will indemnify the insured against all sums including claimant's costs and expenses which the insurer shall become legally liable to pay in respect of :

" (1) the death or bodily injury to any person caused by or arising out of the use including the loading and/or unloading of the motor vehicle, and

(2) the damage to property caused by the use including the loading and/or unloading of the motor vehicle.

4. Of course, there is a proviso incorporated in the same clause which says that the company shall not be liable in respect of the death, injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with bringing of the load to the motor vehicle for loading thereon or taking away of the load from the motor vehicle after unloading therefrom. The second proviso lays down that except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, the insurance company shall not be liable in respect of death or bodily injury to any person in the employment of the insured arising out of or in the course of such employment. Thus, the clauses of the insurance policy clearly hold the insurance company liable to third parties in respect of death or injury caused or arising within the limits of the use of the vehicle in carrying goods including loading and/or unloading work. Learned counsel for the insurance company relying upon *The Hindusthan Ideal Insurance Corporation Ltd. Vs. Manne Chimperamma and Others*, , contended that in view of the fact that the deceased was not employed by the owner of the vehicle, the insurance company is not liable for payment of compensation to the heirs of the deceased. It was found that there was a violation of the terms of the policy and such the insurance company was not liable for compensation. Of course, the court also relied upon the provision to section 95(1) of the Motor Vehicles Act and in that case it was found as a fact that the person who was injured was the owner of the goods that there were being carried in the vehicle and there was no contract of employment between the owner of the vehicle and the owner of the goods who claimed compensation for the injuries caused to him in the accident. The present case is distinguishable from that case, inasmuch as the deceased was not the owner of the goods ,but he was only a worker for the purpose of loading and unloading of the goods carried in the vehicle and he was employed by the person who took the vehicle on hire from the owner of the vehicle. The deceased was not a passenger for hire or reward in the vehicle. Hence the decision relied upon by learned counsel for the insurance company reported in *New India Assurance Co. Ltd. Vs. Shaik Jaffer* (1982) 1 APLJ 316 ; *New India Assurance Co. Ltd. Vs. Shaik Jaffer and Others*, has no application to the facts of the

present case. In *Meesala Surayanarayana V. Goli Satyavati* (1979) ACJ 513 (AP), a Division Bench of this court has negated contentions similar to the one raised by learned counsel for the insurance company.

5. The contention raised in that case was that in view of the fact that the lorry driver was carrying regular passengers in contravention of the condition of the permit, the insurer of the lorry was not liable and in support of that contention, reliance was placed on section 96(2)(b) (i) (c) and section 95(1)(b) of the Motor Vehicles Act. In that context, their Lordships observed that the insurance policy is a contract between the insured on one hand and the insurer on the other and that any breach of the condition of the insurance policy affects the rights of the parties and that it does not have any impact upon the right of the third party, the liability towards whom was insured with insurer. It was further observed that even assuming that there is alleged contravention of the policy or the condition of the permit, it does not affect right of the third party claimed compensation. Their Lordship placed reliance upon a decision reported in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, wherein their Lordship of the Supreme Court observed thus (at p. 702 of 34 Comp Cas). "Thus, the contract between the insured and the company may not provided for all the liabilities which the company has to undertake vis-a-vis the third parties, in view of the provisions of the Act. We are of the opinion that once the company had undertaken liability to third parties incurred by the person specified in the policy, the third parties' right to recover any amount or by virtue of the provision of the Act is not affected by any condition in the policy."

6. In *The Vanguard Insurance Co. Ltd., Madras Vs. Chinnammal and Others*, Alagiriswami J. happened to construe the words "contract of employment" occurring in section 95 of the Motor Vehicles Act. The learned judge observed thus (page 237):

"Though on a superficial view of the section, it might appear that the words 'contract of employment' found in section 95 of the Motor Vehicles Act would cover only a contract of employment found in section 95 of the Motor Vehicles Act would cover only a contract of employment with the owner of the insured vehicle, there is a preponderance of authority in favour of the other view that it would cover not only such persons but also persons who are on the vehicle in pursuance of a contract of employment with the owner of the goods carried in it. What is necessary is that for sufficient practical or business reasons, the person must be on the vehicle in pursuance of a contract of employment. If he is such a person, any injury caused to him would also be covered by the section."

7. In that case also as in the present case, the deceased who died in the accident was not the employee of the insured but he was an employee of the person whose goods were carried in the insured vehicle in pursuance of a contract of employment with the owner of the goods carried in the vehicle. The learned Tribunal placed reliance in support of its conclusion on a full Bench decision of the Punjab High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Smt.*

Gurdev Kaur and Others, . The full Bench has referred to a decision in *Izzard v. Universal Insurance Co. Ltd.* (1937) AX 773; (1937) 3 All ER 79; (1938) 3 Comp Cas (Ins) 91 (HL) and pointed out that the contention that the contract of employment should be construed in the Act as subject to the implied limitation that it should be with the person insured by the policy cannot be accepted and that such a departure from the clear language used, cannot be justified, that the Act is dealing with persons who are on the insured vehicle for sufficient practical or business reasons and have taken a contract of employment in pursuance of which they are on the vehicle as the adequate criterion of such reasons, and there is no sufficient ground for holding that this criterion should be limited to employees of the insured person. The Full Bench also referred to a similar decision of the same court in *Prakash Vati v. Delhi Dayal Bagh Dairy Ltd.*, (1967) ACJ 82 as well as of the Madhya Pradesh High Court in *South India Insurance Co.Ltd. v. Heeraai* (1967) ACJ 65 and *K.N.P.L Patel v. K.L. Kasar* (1966) ACJ 284 of the Bombay High Court. The above decision of Alagiriswami J. of the Madras High / court was referred to and was relied upon by a Division Bench of this court in *Meesala suryanarayana v. Golli satyavathi* (1979) ACJ 513 (AP). Applying the principle contained in the said decisions, I hold that the contract of employment found in section 95 of the said Act covers not only a contract the owner of the insured vehicle but also persons who are on the vehicle in pursuance of a contract of employment with the owner of the goods carried on it. The lower Tribunal found that the owner of the vehicle has given the vehicle on hire to one R.R. Murthy, a fish contractor. It is not in dispute the driver of the vehicle is the driver of the insured owner. R.R. Murthy will be deemed to have been operating the vehicle in question as an agent of the owner of the vehicle and the deceased who was employed as a loading and unloading cooli in the insured vehicle of the owner will be deemed to be in employment under the owner of the vehicle through R. R. Murthy who was operating the vehicle in question on behalf of the insured owner. Therefore, the deceased will be deemed to have worked on the vehicle in pursuance of a contract of employment with the owner of the vehicle also. The deceased being such a person, any injury caused to him would also be covered by section 95 of the Motor Vehicles Act. The deceased was traveling in the vehicle with the permission of the driver and also of R. R. Murthy,, the agent of the owner of the vehicle, in the course of their employment and under the contract of employment.

8. I have already observed above, relying upon the decision in *United India Fire and general Insurance Co. Ltd. v. Maddali Suseela* [1979] ACJ. 110, 116 (AP), that any breach of the conditions of the permit does not affect the rights of the third parties to claim the amount of compensation. Further, the appellant has not taken the specific plea in the counter filed by them to claim petition complaining of violation of the conditions of the permit. Their pleas were restricted only as regards the conditions of the insurance policy. There is nothing in exhibit B-3 to show that the insurance company is not liable to third parties in case the conditions of the permit issued by the road transport authorities are violated by

the driver or the owner of the vehicle. On a reading of sub-clauses (a), (b) and (c) of the provisos to clause (1) under the title "Liability to third parties, " it is very clear that the insurance company is liable to pay compensation in respect of the death of, or bodily injury to, any person in connection with the loading or unloading work of the goods in an insured vehicle.

9. In pursuance of a contract of employment with the owner of the goods carried on it. The lower Tribunal found that the owner of the vehicle has given the vehicle on hire to one R.R. Murthy, a fish contractor. It is not in dispute that the driver of the vehicle is the driver of the insured owner. R.R. Murthy will be deemed to have been operating the vehicle in question as an agent of the owner of the vehicle and the deceased who was employed as a loading and unloading cooli in the insured vehicle of the owner will be deemed to be in employment under the owner of the owner will be deemed to be in employment under the owner of the vehicle through R.R. Murthy who was operating the vehicle in question on behalf of the insured owner. Therefore, the deceased will be deemed to have worked on the vehicle in pursuance of a contract of employment with the owner of the vehicle also. The deceased being such a person, any injury caused to him would also be covered by section 95 of the Motor Vehicles Act. The deceased was travelling in the vehicle with the permission of the driver and also of R.R.Murthy, the agent of the owner of the vehicle, in the course of their employment and under the contract of employment.

10. I have already observed above, relying upon the decision in United India Fire and General Insurance Co. Ltd. v. Maddali Suseela [1979] ACJ 110,116,(AP), that any breach of the condition of the permit does not affect the rights of third parties to claim the amount of compensation. Further, the appellant has to taken the specific pleas in the counter filed by them to the claim petition complaining of violation of the conditions of the permit. Their pleas were restricted only as regards the condition of the insurance policy. There is nothing in exhibit B-3 to show that the insurance company is not liable to third parties in case the conditions of the permit issued by the road transport authorities are violated by the driver or the owner of the vehicle. On a reading of sub-clauses (a), (b) and (c) of the provisos to clause (1) under title "Liability to third parties," it is very clear that the insurance company is liable to pay compensation in respect of the death, of or bodily injury to, any person in connection with the loading or unloading work of the goods in an insured vehicle. For these reason, C.M.A is partly allowed only against the insurance company and dismissed against the others. There shall be a decree for compensation of Rs. 20,000 as awarded by the lower Tribunal on the same terms and condition against the appellant, who is the owner of lorry as the insurance jointly and severally . The claimants are entitled on the amount awarded for, the date of the claim petition till the date of realisation . No costs.