
(1985) 10 AP CK 0003
In the Andhra Pradesh High Court

Vemula Nancharayya

APPELLANT

Vs

Oliti Mutyalamma and Others

RESPONDENT

Date of Decision : 15-10-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(1)(a), 95(1)(b), 95(1)(c)

Citation : (1987) 2 ACC 52 : (1987) ACJ 274 : (1987) 1 APLJ 154

Hon'ble Judges : Sriramulu, J

Bench : Single Bench

Judgement

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 18-10-1978 resulting in the death of the deceased Oliti Swamy 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 the 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 contention raised by the owner of the lorry, the driver and the Insurance 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 negating 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 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 (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 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 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 use 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 Ex. B-3 I find that the liability of the Insurance company to pay compensation to the third parties is strictly governed by the conditions therein. It is not in dispute that the Policy in question Ex. B-3 covers its liability to the 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 organised 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 or 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 the 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 behind the limits of any carriage way 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 therefor. 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 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. The learned Counsel for the Insurance Company relying upon *Chargulla Sitarama Rao Vs. Patel Engineering Co. Ltd.*, contended that in view of the fact that the deceased was not employed under the owner of the vehicle, the Insurance Company is not liable for payment of compensation to the heirs of deceased. It was found that there was a violation of the terms of the policy and as such the Insurance Company was not liable for compensation. Of course the Court also relied upon the proviso u/s 95 (1) (b) 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 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 the hire or reward in the vehicle. Hence the decision relied upon by the learned Counsel for the Insurance Company reported in *N.I.A. Co. Ltd. v. S. Jaffer* 1982 (1) APLJ 316 has no application to the facts of the present case. In *Afeesala Suryanarayana v. Goli Satya-vathi and Ors.* 1979 ACJ 513 a Division Bench of

this Court has negated the contentions similar to one raised by the 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 on regular passengers in contravention of the conditions 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 Motor Vehicles Act. In that context, His Lordships observed that the Insurance policy is a contract between the insured on the one hand and the insurer on the other and that any breach of the conditions of the insurance policy affect the rights of the parties and that it does not have any impact upon the rights 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 conditions of the permit, it does not effect the right of the third party to claim compensation. Their Lordships placed reliance upon a decision reported in *New Asiatic Insurance Co. v. Pessumal* AIR 1964 SC 1737, wherein His Lordship of the Supreme Court observed thus:

Thus, the contract between the insured and the company may not provide 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 persons specified in the policy, the third parties right to recover any amounts under or by virtue of the provisions of the Act is not affected by any condition in the policy.

6. In *The Venguard 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 that:

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 with the owner of the insured vehicle, there is a preponderance of authority in favour of 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 contract of employment with the owner of the goods carried in the vehicle. The learned Tribunal place his reliance in support of his conclusion on a full Bench decision of the Punjab High Court reported in *Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others*, . The Full Bench has referred to a decision in

lizard v. Universal Insurance Co. Ltd. 1937 ACJ 773 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, it cannot be justified, that the Act is dealing with persons who are on the insured vehicle for sufficient practical or business reasons and has 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 employee of the insured person. The Full Bench also referred to similar decisions 1966 ACJ 284 on of the same Court in Prakashvati v. Delhi Dayalbagh Dairy Ltd. 1967 ACJ 82, as well as of the Madhya Pradesh High Court in 1967 ACJ 65 and of 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. Goli Satyavathi (Supra). 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 with 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 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 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 the 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 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 reported in United India Fire and 1959 ACJ 110 General Insurance Co. Ltd. v. Maddali Suseela page 116 that any breach of the conditions of the permit does not affect the rights of the third party to claim the amount of compensation. Further the appellant has not taken the specific plea in the counter filed by them to the claim petition complaining the violation of the conditions of the permit. Their pleas restricted only as regards the conditions of Insurance policy. There is nothing in Ex. B-3 to show that the Insurance Company is not liable to third parties in case there is violation of the conditions of the permit issued by the Road Transport Authorities is 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 or bodily injuries to any person in connection with the loading or unloading work of the goods in an insured vehicle.

9. For these reasons, CMA 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 conditions against the appellant, who is the owner of the lorry as well as the Insurance Company jointly and severally. The claimants are entitled to usual interest on the amount awarded from the date of the claim petition till the date of realisation. No costs.