

(2001) 09 AP CK 0020

Andhra Pradesh High Court

Case No: A.A.O. No. 3208 of 1998

Manager, National Insurance Co.
Ltd.

APPELLANT

Vs

Koya Ratnam and Others

RESPONDENT

Date of Decision: Sept. 17, 2001

Citation: (2002) 2 ACC 257 : (2003) ACJ 1554

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

Bench: Single Bench

Advocate: P.R. Prasad, for the Appellant; B. Parameswara Rao, for the Respondent

Final Decision: Dismissed

Judgement

C.Y. Somayajulu, J.

Respondent Nos. 1 to 6 filed O.P. No. 336 of 1988 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Eluru, alleging that on 12.2.1988 at about 8 a.m. mini van bearing registration No. AEW 5472 belonging to the respondent No. 8, being driven in a rash and negligent manner by the respondent No. 7 and insured with the appellant, dashed against K. Ramanjaneyulu (the deceased) resulting in his death. Respondent Nos. 1 to 4 are the widow and children and respondent Nos. 5 and 6 are the parents of the deceased, who was aged about 33 years and was contributing Rs. 24,600 per year and claimed Rs. 1,00,000 from respondent Nos. 7, 8 and the appellant.

2. Respondent No. 8 filed his counter contending that the van was being driven by K. Sriram Murthy, who has a valid driving licence, but not the respondent No. 7 at the time of the accident and so the compensation, if any has to be paid by the insurer, i.e., the appellant. The respondent No. 7 adopted the counter of respondent No. 8.

3. The appellant filed a counter contending that since the respondent No. 7, who has no valid driving licence, was driving the van at the time of the accident, it is not liable to pay any compensation.

4. In support of their case, the respondent Nos. 1 to 6 examined two witnesses as PWs 1 and 2 and marked Exhs. A-1 to A-3. In support of his case, the respondent No. 8 examined one witness as RW 1 and appellant examined RW 2 and marked Exhs. B-1 to B-4 on their behalf. The Tribunal held that the accident occurred due to rash and negligent driving of the mini van bearing registration No. AEW 5472 by K. Sriram Murthy and that the respondent Nos. 1 to 6 are entitled to Rs. 70,000 as compensation against respondent No. 8 and the appellant and dismissed the claim against respondent No. 7. It is relevant to mention that appeal against respondent No. 7 was dismissed due to non-payment of process. Thus, the order of dismissal of the claim against respondent No. 7 became final.

5. The point for consideration is as to whether the appellant is not liable to pay the compensation to the respondent Nos. 1 to 6.

6. The contention of learned Counsel for the appellant is that the Tribunal was in error in holding that K. Sriram Murthy but not the respondent No. 7, was driving the vehicle at the time of the accident, when it is a specific case of the respondent No. 8 in Exh. B-2, claim form, and Exh. A-2 also shows that the respondent No. 7 was driving the vehicle involved in the accident at the time of the accident and in any event since K. Sriram Murthy is not made a party to the O.P., the O.P. is not maintainable and since respondent No. 8 committed a breach of condition of the policy by permitting the respondent No. 7 who was not having a valid driving licence, to drive the vehicle at the time of accident, appellant is not liable to pay any compensation to respondent Nos. 1 to 6.

7. It is now well settled that in a claim for compensation under Motor Vehicles Act, the driver of the vehicle involved in the accident is not a necessary party. So, the contention of the appellant that since K. Sriram Murthy, who allegedly was driving the vehicle at the time of the accident is not made a party, the O.P. is not maintainable, has no force and hence cannot be accepted.

8. The finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the vehicle became final, because the said finding, or the quantum of compensation awarded by the Claims Tribunal is not challenged in this appeal. The only grounds on which the appellant is questioning the award is that since there is a breach of terms of the policy by the owner permitting the vehicle to be driven by a person not having a valid driving licence, it is not liable to pay the compensation.

9. The question as to who was driving the vehicle at the time of the accident is not very relevant for deciding the eligibility of respondent Nos. 1 to 6 to claim compensation from respondent No. 8 and the appellant. So, the Tribunal, or this court giving a finding as to who was driving the vehicle at the time of accident, i.e., whether it was respondent No. 7 or K. Sriram Murthy that was driving the vehicle at the time of the accident is unnecessary for deciding the O.P. So, the finding of the

Tribunal as to the person driving the vehicle at the time of accident is set aside, as unnecessary. As stated above since the finding of the Tribunal on the question of rash and negligent driving and the quantum of compensation are not challenged, those findings became final.

10. The point for decision in this appeal is no longer *res integra* in view of [New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.](#), where the Supreme Court held in para 22 at page 849 as follows:

To repeat, the effect of the above provisions is this: When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

11. Since the insurance of the vehicle involved in the accident with the appellant is admitted, and since the claim arose in connection with the death of the third party, appeal is bound to satisfy the claim of respondent Nos. 1 to 6. After establishing that respondent No. 7 was driving the vehicle, and that respondent No. 7 was not having a valid driving licence at the time of accident, appellant can recover the amount paid by it to the respondent Nos. 1 to 6 from the respondent No. 8 but it cannot avoid liability to respondent Nos. 1 to 6. Therefore, the contention of the appellant that it is not liable to pay compensation to respondent Nos. 1 to 6 has no force and is to reject. The point is answered accordingly.

12. In the result, the appeal is dismissed without costs, holding that the appellant who also is liable to pay the compensation awarded to the respondent Nos. 1 to 6, is at liberty to proceed against the respondent No. 8, after establishing that respondent No. 7 was driving the vehicle at the time of the accident and that there was a breach of the terms and conditions of the insurance policy.