(1994) 07 AP CK 0004

Andhra Pradesh High Court

Case No: Appeal Against Order No. 1130 of 1988

The Chairman, Hyderabad Urban Development Authority		APPELLANT
	Vs	
J. Prameela and Others		RESPONDENT

Date of Decision: July 22, 1994

Acts Referred:

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

Citation: (1994) 3 ALT 254

Hon'ble Judges: B.S. Raikote, J

Bench: Single Bench

Advocate: P.M. Gopal Rao and P. Srinivas, for the Appellant; R. Sripathi Rao, for C. Malla Reddy, for Respondent Nos. 1 to 3 and K.V. Subbarao, for the Respondent

Judgement

B.S. Raikote, J.

This is an appeal filed by the Hyderabad Urban Development Authority, Hyderabad/the 2nd respondent in O.P. No. 272 of 1984 on the file of the Addl. Chief Judge, City Civil Court, Hyderabad, against the Judgment and Award dated 22-3-1988 passed by the learned Addl. Chief Judge, City Civil Court, Hyderabad.

2. The vehicle viz., Jeep bearing No. ABU 9165 belonging to the said Authority was being driven by the 4th respondent herein. On 28-7-1984 at about 1.40 p.m. near Military Dairy Farm on Medchal Road, the said vehicle turtled and as a result, the deceased Prabhakara Rao, who was travelling in the said Jeep, suffered severe injuries and died on the spot. The Claimants/ respondents Nos. l to 3 herein, filed the said O.P. No. 272 /84. The Claimant No. 1 is the wife and Claimants Nos. 2 and 3 are the sons of the deceased Prabhakara Rao.

3. The lower Court raised the following issues:

1. Whether the accident which occurred on 28-7-1984 at 1-40 p.m. near Military Dairy Farm on Medical Road resulting in the death of Prabhakara Rao who was travelling in the Jeep No. ABU 9165 was due to rash and negligent driving of the Jeep?

2. Whether the deceased was an unauthorised passenger in the Jeep? If so, what is the effect?

3. Whether the petitioners are the L.Rs. of the deceased?

4. To what the petitioners are entitled to and against whom?

4. The lower Court answered Issue No. 1 affirmative by holding that the accident in question occurred due to the rash and negligent driving of the jeep by the 4th respondent herein. Regarding Issue No. 2, the learned Chief Judge held that the deceased was not an unauthorised passenger. Regarding Issue No. 3, he held that the present claimants i.e., Respondents 1 to 3 herein, are the legal representatives of the deceased. However, while fixing the liability on the appellant as owner of the Jeep, the lower Court held that the appellant himself was liable, not the 5th respondent/Insurance Company. It is in these circumstances, the appellant, who was the 2nd respondent in the O.P. (the owner of the vehicle), has preferred this appeal.

5. The learned Counsel appearing for the appellant questioned the findings of the tribunal on all issues. Regarding Issue No.l, Mr. P. Srinivas, the learned Counsel for the appellant, contended that the lower court was in error in holding that there was rash and negligent driving by the 4th respondent herein. In fact, it was not a case of rash and negligent driving having regard to the pleadings and evidence on record.

6. In order to consider this issue, the only evidence available is P.W.2, who was examined in support of the claimants, and R.W.I, the driver of the vehicle examined on behalf of the appellant. P.W.2 was an architectural consultant to the appellant. On 28-7-1984 when P.W.2 along with Mr/Radhakrishna Murthy and the deceased Prabhakara Rao was going from Jahnaram at about 7-30 a.m. in the jeep belonging to the appellant, the accident occurred near Military Farm, outside Boinapalli. He has deposed that at that time, there was drizzling and the driver of the said jeep was driving the vehicle very fast and he had already overtaken 7 to 8 trucks on the road and at that spot the said jeep skidded, rolled thrice and capsized, that except the driver, all were thrown out of the jeep and they sustained fractures. He further stated that he himself suffered a fracture and he was the only person conscious and the deceased died on the spot. His further evidence is that while the driver of the jeep was overtaking 7 or 8 trucks, the drivers of those trucks were angry against him and even they wanted to beat him, and thus, he stated that the driver of the jeep /4th respondent herein was driving the vehicle very rashly and negligently. In the cross-examination, it has been suggested to him that at the place of accident, oil was spilled on the road and as a result, the road had become slippery and therefore,

the accident has occurred due to the fact that the vehicle itself skidded and slipped and it was not a case of driving the vehicle rashly and negligently by the 4th respondent herein. This suggestion is denied by P.W.2.

7. The driver of the vehicle viz., R.W.2, spoke to the fact that he was not driving the vehicle rashly and negligently, but the accident has occurred due to the fact that the road itself was oily and slippery and therefore, the vehicle was skidded and there was no fault on his part.

8. The lower Court disbelieved his version that the road was highly slippery because the oil had spilled over it on the ground that this version was put forth by him for the first time and while filing the counter, the 4th respondent herein (driver) has not made any such plea in his counter and such a plea is an after thought. Believing the evidence of P.W.2, the lower Court came to the conclusion that the first respondent in the O.P. i.e., 4th respondent herein, was driving the jeep rashly and negligently. Having gone through the Judgment and the material available on record, I am of the opinion that this finding of the lower Court that the driver of the jeep was driving the vehicle rashly and negligently does not call for any interference and I confirm the same.

9. The next issue pertains to the plea raised by the appellant that the deceased was an unauthorised passenger in the Jeep and therefore, the claimants are not entitled to any compensation. From the evidence of P.W.2, it is clear that the deceased, Radhakrishna Murthy and himself were travelling in the Jeep from Jannaram to Hyderabad. He further stated that they were travelling in the said jeep in connection with the work of the appellant. In his further cross- examination, he stated that the deceased and himself had discussion on the previous day regarding the work at Hyderabad required to be done for the appellant. This version of P.W.2 has been further corroborated by P.W.3, who was incharge Managing Director of the Forest Development Corporation and who was the Conservator of Forests, Adilabad. He stated that the deceased was working as a Divisional Forest Officer and he was going to Hyderabad in connection with the discussion as to the supply of timber to the appellant. P.W.3 has also produced the office copy of the letter, which has been marked in the case as Ex.X-1, addressed to the Chief Conservator of Forests. On the basis of this material it has been concluded by the lower Court that the deceased was travelling in the jeep in question in connection with the office work of the appellant and with the implied permission of the Officers of the appellant. While dealing with this issue, the learned Addl. Chief Judge came to the conclusion that he was not a gratutious passenger and he was a person required for the work of the appellant the owner of the jeep. He also gave a finding that he was even permitted by the driver to accompany the party in the vehicle and the driver having such implied authority of the master to take any person in the vehicle. On the basis of these reasonings, the lower Court concluded that the appellant was vicariously liable for the rash and negligent driving of its servant, the 4th respondent herein,

while answering this issue No. 2. Having myself perused the Judgment and also other material, I am of the opinion that the conclusions arrived at by the lower Court are quite correct and they do not call for any interference.

10. While considering this issue No. 4 regarding the liability of the owner, the lower Court noticed that the vehicle in question was insured as on the date of accident with the 5th respondent herein, the Insurance Company and the insurance policy was in force on the date of accident, this fact is not disputed by any one including the 5th respondent herein. But while fixing the liability the learned Addl. Chief Judge came to the conclusion that the deceased was not travelling in the said jeep either for hire or reward or in pursuance of the contract of employment as such, Respondent No. 5 was not liable. This finding of the learned Addl. Chief Judge has been seriously contested by the appellant on the ground that having regard to the material on record, it is clear that the deceased was travelling in the said jeep in pursuance of contract of employment, in the sense that he was employed for certain specific work of the appellant, i.e., to negotiate the supply of timber by the Forest Department to the appellant. His further contention is that the deceased was travelling for reward, in the sense, ultimately if the bargain between the Forest Department and the appellant was settled, it was a reward to him. Therefore, the appellant contends that the reasoning given by the learned Addl. Chief Judge is totally incorrect. In fact, according to him, the reasoning given by the learned Addl. Chief Judge in this behalf is contrary to the reasoning already given for fixing the liability on the appellant vicariously. Therefore, the learned Counsel for the appellant submits that this part of the Judgment is liable to be set aside.

11. I have given a very anxious consideration to this aspect of the case. Since the accident has occurred on 28-7-1984, it is the old M. V. Act, 1939 that applies to the case. Sub-section (1) of Section 95 of Motor Vehicles Act, 1939, hereinafter referred to as ''the Act'' reads as under:-

"95. REQUIREMENTS OF POLICIES AND LIMITS OF LIABILITY:

(1) In order to comply with the requirements of this Chapter, a policy of insurance may be a policy which-

(a) is issued by a person who is an authorised insurer or by a cooperative Society allowed u/s 108 to transact the business of an insurer, and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)------

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;.

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employees of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen''s Compensation Act, 1923 in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle,

(c) if it is a goods vehicle, being carried in the vehicle; or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability."

From Clause (ii) of proviso to Section 95 of the Act, it is clear that an exception is provided to Clause (i) of the proviso. By way of an exception, it is provided that where a vehicle is carried for hire or reward or in pursuance of the contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises and in such a case, the owner would be vicariously liable. Relying on this provision, the learned counsel for the appellant strenuously contended that this case falls in that exception. He brought to my notice a decision of Punjab & Haryana High Court reported in Sucha Singh v. Sehta Ram, 1984 ACJ 586 (P&H) in which interpreting Clause (i) of Section 95 of M.V. Act 1939, His Lordship held:-

"That the expression "Contract of employment" in Section 95 of the Motor Vehicles Act refers not only to a contract of employment with the insurer but also to a contract of employment of a person who is on the insured vehicle for specific or business reasons and had taken a contract of employment in pursuance of which he was on the vehicle. He need not be under a contract of employment with the insured so long as he was on the insured vehicle by reason of or in pursuance of his contract of employment. In other words, because of his contract of employment he was on the vehicle."

In other words, their Lordships have held that even a person, who is travelling in the vehicle, which was insured for specific reason or business connected with the owner of the vehicle, he would be a person falling under the category of persons under the

''contract of employment''.

12. The learned Counsel for the appellant also brought to my notice another Single Judge''s decision of the same High Court reported in Sushil Kumar v. National Insurance Co. Ltd, 1988 (1) ACJ 52 (P & H). Reiterating the principle laid down in an earlier Full Bench decision His Lordship held as follows:-

"The expression "contract of employment", as occurring in Section 95 of the Act same came up for consideration before the Full bench of this Court in Oriental Fire and General Insurance Co. Ltd. v. Gurdev Kaur(l967 ACJ 158), where it was observed that it refers not only to a contract of employment of a person, who is on the insured, but also to a contract of employment of a person, who is on the insured vehicle for sufficient or business reasons and has taken a contract of employment in pursuance of which he was on the vehicle. It was specifically stated that he need not be under a contract of employment with the insured so long as he was on the insured vehicle by reason of or in pursuance of his contract of employment. In other words, he was on the vehicle because of his contract of employment."

In the instant case, on the basis of the evidence of P.Ws.2 and 3, it is clear that the deceased was travelling in the said jeep in connection with the business or work of the appellant/Authority and in that sense of the term, he was under the contract of employment under appellant. The term "contract of employment" is understood in a wider sense, in the sense, he was employed or assigned the work on behalf of the insurer (sic. insured) for certain services to be rendered to it in connection with its work or business. The provision in question is a beneficial legislation. Therefore, the interpretation shall not be such so as to destroy the scheme or purpose of the scheme but to augment it. Therefore, I am of the opinion, relying on the principle laid down by the Punjab & Haryana High Court in Sucha Singh v. Sehta Ram (1 supra) Sushil Kumar v. National Ins. Co. Ltd. (2 supra), that the deceased was travelling in the jeep in question under contract of employment. Therefore, the appellant was liable to pay compensation to the claimants due to the death of the deceased in the accident in question. Once the appellant was legally liable, it follows, without saying that the insurance company also would be liable to make good the compensation payable to the claimants. Therefore, this part of the judgment and Award passed by the lower Court absolving the 5th respondent herein/Insurance Company of its liability is hereby set aside, and I hold that for the compensation which the appellant was liable to pay to the claimants, the Insurance Company/ 5th respondent is liable. At any rate, it has been held by the Court below that the deceased was not at all a gratutious passenger in the vehicle in question. The case put forth by the fourth respondent/driver that the deceased boarded the jeep on the way has been rightly disbelieved by the learned Addl. Chief Judge. Having regard to all the material on record, I am of the opinion that the Insurance Company/5th respondent herein is liable to make good the compensation payable by the appellant to the claimants.

13. Regarding the quantum of compensation awarded to the claimants, the learned Counsel for the appellant seriously contended that it is excessive. His contention is that though the lower Court has rightly disallowed regarding the alleged agricultural income of the deceased, the compensation awarded on the basis of the Salary Certificate itself was highly excessive. His further contention is that there is absolutely no material or evidence on record as to the age of the deceased.

14. In order to consider the above contention of the learned Counsel for the appellant, the relevant evidence would be P.Ws.3 and 4. Ex. A-6 is the Last Pay Certificate and in that, the emoluments of the deceased were shown as Rs. 2,625/- per month. Ex. A-6 has not been disputed by the Insurance Company or any other person. What is disputed is, the age of the deceased at the time of accident. P.W.3, who was the superior officer of the deceased, deposed before the lower Court that the deceased would have attained the age of superannuation in the year 1991. The other material was Ex.A-5/Post-mortem certificate in which there was an opinion regarding the age of the deceased. According to Ex. A-5, on the general appearance of the deceased, he was aged about 48 years. As contended by the learned Counsel for the appellant, it was possible for the claimants to produce the Service Register of the deceased. But having regard to the evidence of P.Ws.2 and 3, the non-production of the Service Register, I think, will have no adverse consequence. Having regard to the evidence record the lower Court came to the conclusion that the deceased was aged about 50 years and this finding also deserves to be considered. Once the Salary that was being drawn by the deceased was proved and the age was proved, the consequence that follows would be the computation as arrived at by the learned Addl. Chief Judge. The total compensation payable to the claimants would be Rs. 1,94,400/-. The learned Addl. Chief Judge has taken the multiples of 2 years for the purpose of lower scale and six years for the purpose of higher scale on the basis of the evidence on record. Regarding the loss of consortium of P.W.I/the claimant No. 1, it is fixed at Rs. 5,600/- and thus, he has awarded a total compensation of Rs. 2,00,000/- with 12% interest per annum. This conclusion of the learned Addl. Chief Judge is based on sound principles of law and evidence on record. Therefore, this aspect of award also does not call for any interference and I confirm the same.

15. In the result, the C.M.A. is partly allowed. The Judgment and Award passed by the lower Court is modified by holding that the insurance company/ 5th respondent herein is liable jointly and severally along with the appellant and 4th respondent herein. In all other respects, the Award and Judgment of the lower Court is hereby confirmed. Having regard to the facts and circumstances of the case, there shall not be any order as to costs.

16. Before parting with the case, it has been brought to my notice by Mr. Raja Sripathi Rao, the Counsel appearing for the claimants, that in pursuance of the interim order of this Court, the appellant has deposited the entire amount of Rs.

2,00,00/- with the lower Court, out of which as per the directions of this Court, the claimants have withdrawn 50% i.e., Rs. 1,00,000/-, of the amount deposited, and the other Rs. 1,00,000/- is with the lower Court. In view of the finding that I have arrived at, it is clearly that the appellant is entitled to withdraw that Rs. 1,00,000/- now in deposit with the lower Court and may recover the other Rs. 1,00,000/- withdrawn by the claimants from the Insurance Company/5th respondent herein, and for the balance amount, the insurance company would be liable to the Claimants.