

(2004) 08 AP CK 0005

Andhra Pradesh High Court

Case No: CMA No"s. 1411 of 2000 and 3538 of 2004

Oriental Insurance Co. Ltd.

APPELLANT

Vs

B.T. Laxmi Suresh and Others

RESPONDENT

Date of Decision: Aug. 12, 2004

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173(1)

Citation: (2005) 3 ACC 288 : (2006) ACJ 2260 : (2004) 6 ALD 229

Hon'ble Judges: Elipe Dharma Rao, J

Bench: Single Bench

Advocate: A.V.K.S. Prasad, for the Appellant; P. Veera Reddy in CMA No. 1411 of 2001 for Respondent Nos. 1 to 4, for the Respondent

Judgement

Elipe Dharma Rao, J.

Both the appeals arising out of a common order passed in M.V.O.P.Nos. 330 of 1994 and 620 of 1994 dated 13.10.1997 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Cuddapah.

2. The Appellant-Insurance Company, assailing the common order passed by the Tribunal, awarding compensation to the petitioners therein i.e., legal heirs of the deceased, said to be Supervisor of Lorry owned by fifth respondent herein, who met his last in a road accident while travelling in the lorry, filed the above appeals contending that the Insurance Policy does not cover the risk of the Supervisor and therefore the Insurance Company is not liable to pay any compensation and the owner of the vehicle i.e., fifth respondent herein alone is liable to pay the compensation. That apart, it is contended that the owner of the vehicle remained ex parte before the Tribunal and the appellant-Insurance Company contested the matter by filing written statement.

3. The factual matrix in a narrow compass is that on 5.4.1993 at 8.30 a.m., when the husband of the first respondent i.e., the deceased was going as a checker in the

accident lorry belonging to fifth respondent insured with the appellant, it turned turtle, due to rash and negligent driving of its driver near Veerannagattupalli on Lakkireddipalli-Vempalli road and the deceased sustained injuries and was removed to Government Hospital, Vempalli where he succumbed to the injuries. Therefore the above two O.Ps. were filed by the heirs of the deceased, including no fault liability.

4. The defence set up by the appellant before the Tribunal is that the Insurance Company is not liable to pay any compensation as the policy does not cover the deceased, alleged to be supervisor. Learned Counsel for the appellant submits that the owner of the vehicle alone is liable to pay the compensation as the deceased was travelling as unauthorised passenger in the vehicle.

5. The Tribunal below after framing appropriate issues and on scrutiny of both oral and documentary evidence, available on record, held that the accident had occurred due to rash and negligent driving of the driver of the lorry and that both the insured and the insurer of the vehicle are liable to pay the compensation to the heirs of the deceased and accordingly awarded the compensation. Though the claimants claimed that the deceased was paid a sum of Rs. 1,000/- per month towards salary, and Rs. 15/- per day towards "batta" apart from earning Rs. 500/- per month from other sources, the Tribunal assessed the income of the deceased as Rs. 750/- per month and fixed the contribution to the family at Rs. 600/- per month after deducting his personal expenses, determined the loss of future earnings of the deceased at Rs. 7,200/- per annum and rounded to Rs. 7,500/-. Though the wife of the deceased deposed that her husband was 38 years, the Tribunal assessed the age of the deceased as 40 years and applied 15 as the multiplier and awarded compensation of Rs. 1,12,500/- and also Rs. 12,500/- towards non-pecuniary damages. The Tribunal also awarded Rs. 15,000/- to the wife of the deceased towards loss of consortium. The Tribunal in total awarded a sum of Rs. 1,40,000/- in O.P. No. 330 of 1994 and awarded a sum of Rs. 25,000/- in O.P. No. 620 of 1994 filed under "no fault liability", with interest at 12% p.a. in both the O.Ps.

6. Aggrieved by the same, the Insurance Company preferred these civil miscellaneous appeals.

7. The learned Counsel appearing for appellant-insurance company submits that the owner of the lorry was absent and was set ex parte before the Tribunal below. He also submits that the deceased was not authorized to travel on the lorry and mere was no coverage of risk under the Policy issued by the Insurance Company and travelling of the deceased in the lorry amounts to violation of conditions of the policy, and therefore the Insurance Company is not liable to pay any compensation. He also contends that as per the terms and conditions of the policy, the policy covers only the driver and cleaner of the vehicle, but not the alleged supervisor.

8. Having regard to the facts and circumstances of the case, prima facie I am satisfied with the contentions raised by the learned Counsel for appellant as correct. As can be seen from the terms and conditions of the policy that except the driver and cleaner of the vehicle, no other person is permitted to travel in the vehicle and the deceased who claims to be Supervisor of the lorry was not covered by the insurance policy. As per the judgment of the Supreme Court in [National Insurance Co. Ltd. Vs. Ajit Kumar and Others](#) , when the owner violated the conditions of the insurance policy, the Insurance Company is not liable to pay compensation. As seen from the facts and circumstances of the case, the Appellant-Insurance Company is directed to pay the compensation to the heirs of the deceased as awarded by the Tribunal and proceed against the owner of the vehicle for recovery of the same.

9. The CMAs, with the above observations and directions are accordingly allowed. No costs.