

(2001) 01 AP CK 0010

Andhra Pradesh High Court

Case No: C.M.A. No. 777 of 1994 and Cross Objections

The New India Assurance Co.
Ltd.

APPELLANT

Vs

Ijjagiri Kanakamma and Others

RESPONDENT

Date of Decision: Jan. 21, 2001

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 166

Citation: (2002) 1 APLJ 305

Hon'ble Judges: G. Yethirjulu, J

Bench: Single Bench

Advocate: I. Aga Reddy, for the Appellant; S.V.R.S. Somayajulu, for the Respondent

Judgement

G. Yethirjulu, J.

This is an appeal preferred by the New India Assurance Company, which is the 2nd respondent in O.P.No.1678 of 1992 on the file of the Motor Accident Claims Tribunal-cum-Additional District Judge, Karimnagar.

2. The averments of the petition are briefly as follows:

The 1st petitioner is the wife, petitioners 2 to 4 are the minor children of the deceased Ijjagiri Yellaiah. He was about 35 years old and was working as a coolie earning Rs.30/- per day. On 20-2-1992 the deceased and others have taken a tractor and trailer AP-15-8830 and 8831 and proceeded on the said vehicle to attend Sammakka and Sarakka Jathara. The 1st respondent was the driver of the tractor. The deceased and others sat in the trailer. Due to the rashness and negligence of the driver in driving the tractor, it turned turtle and the deceased and others who were traveling in the trailer fell down on the road and the wheels ran over them, resulting in multiple injuries. The deceased succumbed to the injuries. The petitioners therefore claimed a sum of Rs.1,00,000/- towards compensation under various heads.

The 2nd respondent filed a counter denying the accident and the liability of the insurance company.

3. The petitioners in order to prove the claim examined P.Ws.1 and 2 and marked Exs.A.1 to A.3. The insurance company adduced no oral or documentary evidence.

4. The tribunal after taking into consideration the evidence adduced by the petitioners passed an award dated 01-10-1993 holding that the accident occurred due to the rashness and negligence of the driver of the tractor and that the claimants are entitled for a sum of Rs.96,000/- towards compensation with interest and proportionate costs. The tribunal, however, fixed the liability of the 2nd respondent-insurance company only to the extent of Rs.25,000/- under "no fault liability".

5. The 2nd respondent-insurance company being aggrieved by the order of the tribunal preferred the present appeal challenging the validity and legality of the order on three grounds viz., 1) that the tractor and the trailer were used as taxi to go to jathara; 2) that there cannot be any liability for "no fault" when it was held that the deceased was an unauthorized passenger; and 3) that the trailer in which the deceased was traveling was not insured with the company.

6. The petitioners also filed Cross-Objections on the ground that the tribunal erred in holding that Insurance Company is not liable to pay the total compensation awarded to the Petitioners and in not holding that the passengers of the vehicle are also 3rd parties to the vehicle.

7. Keeping in view the arguments of the learned counsel for appellant, and the counsel for the Cross-Objectors, the following points are taken up for consideration:

1) Whether the tractor and trailer were used as taxi and whether the deceased was an unauthorized passenger of the trailer?

2) Whether the insurance company is liable for "no fault liability" when it was held that the deceased was an unauthorized passenger?

3) Whether the insurance to the trailer is compulsory to cover the risk of the persons traveling in the trailer at the time of accident?

POINT NO.1:

According to P.W.1, wife of the deceased, the deceased and sixty others boarded the trailer attached to the tractor and proceeded to attend Sammakka and Sarakka Jathara. When the tractor reached near Ragadimaddikunta Village the tractor and trailer fell down due to the rash and negligent driving of the same by the driver. P.W.2, another passenger of the trailer, also deposed that they were proceeding in the trailer attached to the tractor to attend jathara and on the way the accident occurred due to the rashness and negligence of the driver in driving the same. It is not the contention of the claimants that the tractor and trailer were not used for the

above purpose. Therefore, the tribunal was right in holding that the tractor and trailer, which are goods vehicles were unauthorisedly used as taxi for passengers.

POINT NO.2:

The learned counsel for the insurance company contended that about sixty persons traveled in the trailer, which is a goods vehicle. Therefore, the insurance company is not liable to pay any compensation, including the compensation under "no fault liability".

8. The tribunal observed that the tractor was insured with the appellant through a valid policy, but the trailer was not insured with the appellant. The policy of the tractor was said to be an ACT policy and in such a case the insurance company is not liable to pay any compensation on behalf of the owner of the vehicle, if any unauthorized passenger of a goods vehicle expires because of an accident. Therefore, the tribunal while holding that the tractor was used for unauthorized purpose of carrying the passengers held that the claimants are not entitled to claim any compensation from the insurance company. The tribunal further held that the liability of the insurance company is to an extent of Rs.25,000/- towards "no fault liability" u/s 140 of the Motor Vehicles Act.

9. The learned counsel for the appellant represented that since the deceased and others traveled in the trailer, which was not insured with the appellant, and since the insurance coverage under the ACT policy was only to the tractor, the insurance company cannot be made liable for "no fault liability" also.

10. The tribunal categorically observed in its order that the claimants are not entitled to claim any compensation from the insurance company since the deceased and others were traveling as unauthorized passengers of the goods vehicle. In [National Insurance Co. Ltd. Vs. Jethu Ram and Others](#), the Supreme Court held that if the insurance company is not liable to pay any compensation by virtue of the order passed in the final adjudication, it cannot be made liable for "no fault liability". In view of the above decision, the insurance company, which was not made liable to pay compensation, cannot be made liable for "no fault liability" compensation of Rs.25,000/-. Therefore, this point is answered in favour of the insurance company and against the claimants-Cross Objectors.

POINT NO.3:

In view of the finding given under point No.2 that the insurance company cannot be made liable to pay compensation on account of the death of an unauthorized passenger traveling in a goods vehicle either u/s 166 or u/s 140 of the Motor Vehicles Act, 1988, there is no necessity to answer this point.

11. In the result, the appeal is allowed by holding that the insurance company is not liable to pay the compensation under "no fault liability". Consequently the Cross-Objections are rejected. The rest of the order of the tribunal regarding the

liability of the driver-cum-owner of the vehicle remains undisturbed. Each party to bear its own costs in Appeal as well as Cross-Objections.