Divisional Manager, New India Assurance Company Ltd., Vijayawada Vs Abdul Sammad Chellappa and others

Court: Andhra Pradesh High Court

Date of Decision: April 6, 2000

Acts Referred: Motor Vehicles Act, 1988 â€" Section 173, 95

Citation: (2000) 5 ALD 485 : (2000) 3 ALT 509

Hon'ble Judges: V. Eswaraiah, J; P. Venkatarama Reddi, J

Bench: Division Bench

Advocate: Mr. Kota Subba Rao, for the Appellant; Mr. P. Murali, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P. Venkatarama Reddi, J.
This LPA arises out of the order of the learned single Judge u/s 173 of the Motor Vehicles Act confirming the

award passed by the Motor Accidents Claims Tribunal. The respondent No. 1 was injured in an accident on 29-6-1997 while he was travelling in

a lorry (goods vehicle) and he suffered amputation of leg below the knee. The contention that he was not travelling with the goods was negatived

by the learned single Judge. On a consideration of the evidence, the learned single Judge recorded the conclusion that the respondent No.1 (PW1)

was travelling in the lorry along with the goods after paying hire charges to the driver of the lorry. The learned Judge then relied on Rule 277(3) of

the APMV Rules, which permitted a person connected with the conveyance of goods to travel in a goods vehicle and held that the prohibition

against the passenger being carried for hire or reward in a goods vehicle which is usually found in the insurance policy does not apply to the instant

case. The learned Judge followed certain decisions of this Court relating to interpretation of Section 95(2) of the old Motor Vehicles Act A sum of

Rs.1,54,900/-was awarded as compensation. We are informed that a part of the compensation has been withdrawn by the respondent-claimant.

2. The learned Counsel for the appellant Insurance Company has placed reliance on the three Judge decision of the Supreme Court in Smt.

Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, . This decision supports the contention of the appellant that the Insurance

Company is not liable to pay compensation for the death or bodily injury of a person travelling in a goods vehicle with his goods. The Supreme

Court interpreted Section 95 and held as follows:

for the purposes of Section 95 ordinarily a vehicle could have been regarded as a vehicle in which passengers have carried if the vehicle was of

that class. Keeping in mind the classification of vehicles, by the Act the requirement of registration with particulars including the class to which is

belonged, requirement of obtaining a permit for using the vehicle for different purposes and compulsory coverage of insurance risk, it would not be

proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions of that vehicle for carrying

passengers for hire or reward. For that purpose of construing a provisions, like proviso (ii) to Section 95(1)(b), the correct test to determine

whether a passenger was carried for hire or reward, would be whether there has been systematic carrying of passengers. Only if the vehicle is so

used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward. The High Courts have expressed divergent

views on the question whether a passenger can be said to have been carried for hire or reward when he travels in goods vehicle either on payment

of fare or alone with his goods. It is not necessary to refer to those decisions which were cited at the Bar as we find that all the relevant aspects

were not taken into consideration while expressing one view or the other.

3. The Supreme Court affirmed the view taken by Orissa High Court in New India Assurance Company Ltd. Vs. Kanchan Bewa and Others, ,

and allowed the appeals of the Insurance Company. It is to be noted that the ratio of the decision of the Supreme Court does not rest on the

question whether there is prohibition or lack of it in the Rules against carrying owners of the goods conveyed in the lorry. The ratio rests on the

interpretation of Section 95(2) on its own terms. We are, therefore, constrained to set aside the award of the Tribunal as confirmed by the learned

single Judge. However, we direct that in view of the long lapse of time, we consider it a fit case to direct that the amount to the extent already

withdrawn by the respondent No.1 should not be recovered back from him by the appellant-Insurance Company. It is, however, open to the

respondent No.1 and the appellant to recover the amount from the owner of the vehicle, if so advised.

4. The LPA is accordingly disposed of. No costs.