

(2009) 07 AP CK 0005

Andhra Pradesh High Court

Case No: M.A.C.M.A. No's. 2512 and 2348 of 2005, 4797 of 2008 and 2 of 2009 and C.R.P.
No. 4846 of 2005

V. Bhavani

APPELLANT

Vs

Manabala Bangaraju and Others

RESPONDENT

Date of Decision: July 28, 2009

Acts Referred:

- Constitution of India, 1950 - Article 227
- Motor Vehicles Act, 1988 - Section 147, 173

Citation: (2010) ACJ 2082 : (2009) 6 ALD 415 : (2009) 5 ALT 626 : (2011) 2 TAC 763

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Kota Subba Rao, N. Mohana Krishna, for the Appellant; K.B. Ramanna Dora, for the Respondent

Judgement

L. Narasimha Reddy, J.

These four miscellaneous appeals, u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act), and the revision, under Article 227 of the Constitution of India, are filed against the orders passed by the Motor Accidents Claims Tribunals, in different claim petitions. Their common feature is that they arise out of O.Ps., filed in relation to one, and the same accident. The appeals and revision are filed by the owner of the vehicle.

2. The relevant facts, in brief, are that, O.P. Nos. 1761, 1762 and 1763 of 2003 were filed before the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Visakhapatnam, by the respective claimants, stating that, they have received injuries, in an accident that took place, on 15.10.2002, involving the tanker, bearing No. AP 35 P 2534, owned by the appellant herein and insured with M/s. United India Insurance Company Limited. O.P. Nos. 1248 of 2004 and 890 of 2006 were filed in the Court of Motor Accidents Claims Tribunal-cum-VI Additional District Judge,

Visakhapatnam, for similar relief. The only difference is that the claimants in O.P. No. 1248 of 2004 are the dependants of late Babu Rao, who died in the accident, and the claimant in O.P. No. 890 of 2006 is an injured in the same accident. It was pleaded that the claimants and Babu Rao boarded the tanker at Atchuthapuram Village, to go to their native places and that after the tanker proceeded to some distance, the driver of the tanker lost control, and as a result, the vehicle fell into a ditch, leading to death of Babu Rao and injuries to the respondents/ claimants. A claim was made for Rs. 50,000/-, Rs. 40,000/- and Rs. 50,000/-, 1,00,000/- and 4,00,000/-, respectively, by pleading the nature of injuries and the treatment received therefor. Except that the intensity and gravity of injuries differed, the facts pleaded by all the claimants were common.

3. The appellant filed counter in the respective O.Ps., denying her liability. According to her, the claimants did not board the lorry, at all, and that the accident took place, at a time, when they were about to board it. It was pleaded that, the lorry was proceeding without noticing the attempt of the passengers, who were trying to board it. It was stated that the cleaner raised hue and cry saying that the passengers are trying to board the lorry, and in the panic, the driver lost the control, and the accident took place, leading to his death and injuries to various persons. It was also pleaded that, if at all any compensation is to be paid, the Insurance Company has to be held liable for it.

4. The Insurance Company filed counters, stating that all the claimants are gratuitous passengers in a goods vehicle, that too, an oil tanker, and that it is not, at all, liable to pay any compensation. In the set of four cases, referred to above, the Tribunal awarded compensation of Rs. 11,000/-, Rs. 7,000/-, Rs. 19,000/-, and Rs. 25,000/-, respectively. In O.P. No. 1248 of 2004, a sum of Rs. 2,00,500/-, was awarded as compensation. In all the cases, the liability to pay the compensation was fixed upon the appellant alone.

5. Sri Kota Subba Rao, learned Counsel for the appellant, submits that the claimants were not, at all, the passengers in the goods vehicle and that they suffered injuries, on account of the accident, which took place, before they boarded into the vehicle. He contends that, in addition to the statutory coverage, the insurance policy taken out for the vehicle covers the liability towards a non-fare paid passenger and that the Tribunals are not justified in relieving the Insurance Company from its obligation to pay the compensation. He also contends that, in case this Court comes to conclusion that no compensation can be awarded against the Insurance Company, in respect of injuries sustained by passengers in a goods vehicle, relevant clause in the insurance policy is enforced to the extent of one passenger, who was awarded the highest compensation. He places reliance upon the judgment of the Supreme Court in [National Insurance Co. Ltd. Vs. Anjana Shyam and Others](#),

6. Sri K.B. Ramanna Dora, learned Counsel for the claimants, has supported the appeals to a large extent and insists that the Insurance Company ought to have

been held liable to pay the compensation.

7. Sri N. Mohana Krishna, learned Counsel for the Insurance Company, submits that the vehicle was an oil tanker and taking any passengers, in it, with, or without goods, is prohibited under the Act, and the Rules made thereunder. He contends that whatever may be the justification for persons travelling in goods vehicles, while accompanying the goods, such a situation does not exist in the case of oil tankers. He submits that the Tribunals have taken the correct view of facts and law, and that the orders passed by them, do not warrant interference.

8. The appeals and revision are filed by the owner of the vehicle, that was involved in the accident. Her grievance is much about the fixation of liability to pay the compensation exclusively upon her, than the quantum. All the four claimants have uniformly stated that they boarded the tanker at Atchuthapuram, and on the way, it fell into a ditch, when its driver lost control. An attempt was made by the appellant to prove that the claimants received the injuries, before they boarded the tanker. For this purpose, the cleaner was examined as RW.2, in some cases. There would have been some possibility for accepting the evidence of the cleaner, in case the victim of the accident was not available to speak. When all the four claimants, in one voice, said that they have boarded the tanker and that it had fallen into a ditch, the evidence of the cleaner, to the contrary, cannot be accepted.

9. The Tribunals awarded compensation to the respective claimants, depending upon the gravity of injuries. The dependants of the deceased victim were also awarded the compensation. They have totally absolved the Insurance Company from the liability to pay compensation. It was held that Section 147 of the Act does not provide for coverage of insurance for the death or bodily injury for persons, who travel in goods vehicles. The vehicle was an oil tanker. Even the little possibility of persons choosing a goods vehicle to transport their goods, though in limited quantities, does not exist in the case of an oil tanker. Therefore, the Insurance Company could not have been held liable under any provisions of the Act. That, however, is not end of the matter.

10. The policy, which covered the accident vehicle, was marked as Ex.B.1, in all the cases. A copy of the same is made available to this Court. A perusal of that document discloses that separate premium of Rs. 75/- was paid for NFPP i.e., Non Fare Paid Passenger, and it was limited to one. Learned Counsel for the Insurance Company does not dispute this. Therefore, independent of the provisions of the Act, the Insurance Company is under obligation to cover the liability towards one passenger, as a contractual obligation, in return for the extra premium received by it.

11. Naturally, a question would arise, as to who, among the claimants, would be entitled for this benefit. In National Insurance Company Limited's case (supra), the Supreme Court held that wherever there exist large number of persons, who are

awarded compensation, and the liability of the insurer is limited to some of them, the coverage would be in respect of relatively higher claim. Among the claimants in this batch of matters, those in M.A.C.M.A. No. 4797 of 2008, were awarded the highest amount, viz., Rs. 2,00,500/-. Therefore, the Insurance Company would be under obligation to cover that liability.

12. Hence, M.A.C.M.A. Nos. 2348 & 2512 of 2005, 2 of 2009 and C.R.P. No. 4846 of 2005, are dismissed. M.A.C.M.A. No. 4797 of 2008 is partly allowed, to the extent of holding the Insurance Company i.e. the 5th respondent therein, also jointly and severally liable to pay the compensation awarded in O.P. No. 1248 of 2004 by the Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Visakhapatnam. In case the appellant paid any amount towards discharge of liability under the order in the said O.P., she shall be entitled to receive the same from the Insurance Company.

13. There shall be no order as to costs.