(1998) 10 AP CK 0021

Andhra Pradesh High Court

Case No: A.A.O. No. 938 of 1992

Oriental Insurance Co. Ltd.	APPELLANT
Vs	
Golagani Nagamani and Others	RESPONDENT

Date of Decision: Oct. 6, 1998

Acts Referred:

- Motor Vehicles Act, 1939 - Section 95

Citation: (2000) ACJ 1527

Hon'ble Judges: Vaman Rao, J

Bench: Single Bench

Advocate: S. Hanumaiah, for the Appellant; M. Lakshmana Sarma, for the Respondent

Final Decision: Dismissed

Judgement

Vaman Rao, J.
This appeal is directed against the judgment and award dated 24.2.1992 passed in O.P. No. 476 of 1990 on the file of the Motor Accidents Claims Tribunal (District Judge), East Godavari, Rajahmundry. The parties will be referred to with reference to their status in O.P. before the Tribunal.

2. The Oriental Insurance Co. Ltd. which was respondent No. 3 before the Tribunal is the appellant herein and respondent Nos. 1 to 5 are the petitioners-claimants before the Tribunal. Respondent No. 6 is said to be the driver of the vehicle and respondent No. 7 is the owner of the vehicle involved in the accident. The Tribunal awarded a total compensation of Rs. 93,000 in favour of petitioner Nos. 1 to 5 on the basis of the finding that the accident on 26.6.1990 occurred due to the negligence of the driver (respondent No. 6) resulting in the death of G. Venkata Rao on whom the petitioner Nos. 1 to 5 were dependent for their maintenance. In this appeal, the finding as to negligence of the driver and the quantum of compensation awarded are not under challenge. The appellant insurance company questions its liability to pay the compensation under the Motor Vehicles Act as arrived at by the Tribunal.

3. The contention raised by Mr. S. Hanumaiah, the learned counsel for the appellant, firstly, is that the deceased in this case was travelling as an unauthorised passenger in the goods vehicle and as such, the insurance company is not liable to pay compensation. It is further contended that even assuming that the deceased was travelling in the lorry as an employee of the owner of the vehicle, his legal representatives could claim compensation only to the extent provided for under the Workmen''s Compensation Act, which according to the learned counsel, based on the finding as to the income of the deceased, would be only Rs. 78,000. Thus, it is contended that the award of compensation to the extent of Rs. 93,000 by the Tribunal is erroneous and cannot be sustained.

4. The question for consideration, therefore, is whether the deceased was travelling as an unauthorised passenger in a goods vehicle or at any rate, even if he was travelling as an employee of the owner of the vehicle, whether compensation has to be worked out in accordance with the Workmen''s Compensation Act, in view of the terms of the policy.

5. PW 2, examined on behalf of the petitioners has unambiguously stated that his father (owner of the vehicle) engaged two drivers including the deceased on the vehicle. From this, the irresistible inference would be that the deceased was travelling as a spare or alternate driver for the said vehicle. In fact, the statement of PW 2 has not been challenged during his cross-examination. It must, therefore, be assumed that the deceased was travelling as a spare or alternate driver for the said vehicle at the relevant time of the accident. The learned counsel for the appellant, however, contends that the policy of insurance in this case covers only one driver and one cleaner for meeting the unlimited liability, whereas in the case of other employees, the coverage would be for limited liability under the Workmen''s Compensation Act, in view of the provision in Section 95 of Motor Vehicles Act, 1939.

6. The question that would arise for consideration under the facts and circumstances is, whether the deceased could be said to have been covered under the insurance policy, Exh. B-1, for unlimited liability for payment of compensation.

7. The learned counsel for the appellant, relying on the proviso to Section 95 of the Motor Vehicles Act, 1939, contends that as admittedly at the relevant time, respondent No. 1 (in the O.P.) was driving the vehicle, the unlimited coverage must be held to be related to the said driver who was actually driving the vehicle, and the deceased, even though a driver by profession, must be deemed to be travelling in the vehicle merely as an employee, who must be deemed to be covered only to the extent as provided under Workmen''s Compensation Act. For the sake of convenience, the relevant portion of Section 95 of the Motor Vehicles Act, 1939 is extracted below:

95. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer or by a co-operative 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 employee 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, or

(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 a 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.

8. The contention is that unless the contract of insurance specifically provides for unlimited liability in respect of an employee, the liability under the Act in respect of an employee engaged in driving the vehicle shall be limited in view of proviso to Section 95 of the Act, to the compensation which is payable under Workmen''s Compensation Act for death of or bodily injury to such an employee. The learned counsel for the appellant submits that the contract of insurance in this case provides for unlimited liability in respect of one driver and inasmuch as the deceased was not actually driving the vehicle at the time of the accident, it must be held that the contract providing for unlimited liability for one driver must be related to the driver who was actually driving the vehicle and not to additional or alternate driver travelling in the vehicle. Proviso to Section 95 of the Motor Vehicles Act restricts the liability of the insurance company in respect of employees enumerated in

Sub-clauses (a), (b) and (c) to Clause (i) under the proviso to the extent which would arise under the Workmen''s Compensation Act. An employee ''engaged in driving the vehicle'' covered by Clause (a.) is one such category of employees. In this case, as contended by the learned counsel for appellant there is a contract of insurance which provides for unlimited liability in respect of one driver. The question is whether it is applicable to the employee who was actually driving the vehicle and whether it does not cover the additional driver who was travelling in the said vehicle on duty. When two drivers are assigned on a vehicle proceeding on a long trip, the purpose is that to avoid fatigue and exhaustion resulting from continuous driving, they would share the duties of driving alternately.

In view of this, it has to be presumed that both the drivers would be on duty from the moment the vehicle leaves a place and till it reaches its destination. The fortuitous circumstance which purely depends on the mutual allocation of duties between the two drivers, that at the relevant time of the accident one of them was driving the vehicle and the Other was waiting for his turn of duty does not lead to an inference that the other driver who was not actually driving was not on duty as a driver. The fact that only one driver was covered by the contract of insurance for the purpose of unlimited liability does not necessarily exclude the driver who was not actually engaged in driving at the time of the accident. When both the drivers are held to be on duty, the question as to who among them was driving at the time of the accident is not a relevant criterion to ascertain as to who among the two drivers is covered by the contract of insurance providing for unlimited liability of only one driver.

9. In the absence of any specific provision in the contract of insurance on this aspect, the driver who sustained injuries or died in the accident which occurred first in time after the date of contract must be deemed to have been covered by the contract providing for unlimited liability in respect of one driver. But, the learned counsel for the appellant canvassed for an extreme view and contended that for a driver who was not driving the vehicle at the time of the accident not only the benefit of contract of insurance providing for unlimited liability of one driver was not available, even the coverage of insurance limiting the liability to the extent arising under Workmen''s Compensation Act in respect of death of or bodily injury to an employee shall not be available inasmuch as according to his contention in the proviso (i) (a) to Section 95 of the Act, the words ''engaged in driving the vehicle'' must be interpreted to refer to an employee who was actually driving the vehicle at the time of the accident. This contention is far-fetched. Even apart from the question of the applicability of the provision to an alternate or spare driver, the interpretation propounded by the learned counsel would lead to wholly absurd and unjust results to avoid liability in respect of even a single driver on duty. For instance, when a vehicle while proceeding towards its destination happens to be parked at a place and meets with an accident and the driver on duty sustains injuries, can it be said that as driver of the vehicle was not actually in the process of driving the vehicle,

inasmuch as the vehicle was parked, he was not ''engaged in driving the vehicle''. The answer must be emphatic ''No''. A driver on duty on a vehicle must be deemed to be ''engaged in driving'' even though he was not actually at the steering wheel and the vehicle was not in motion at the time of the accident. Under the circumstances, the words ''engaged in driving'' in proviso (i) (a) to Section 95 of the Act must be construed as "assigned with duty of driving at the relevant time on a particular trip or engagement".

10. However, this question in this case does not arise inasmuch as 1 am of the view that the deceased driver in this case must be held to be covered by the contract of insurance providing for unlimited liability in respect of one driver. If this interpretation of the contract of such insurance providing for unlimited liability to only one driver and the interpretation of the words ''engaged in driving'' in proviso (i) (a) to Section 95 of the Act is not accepted, it may result in total avoidance of any liability either under the contract of insurance providing for the unlimited liability of one driver where two drivers were engaged on a vehicle on the ground that the driver who actually died or was injured though was on duty was not actually driving the vehicle. In view of the above discussion, it is held that the deceased in this case who was assigned the duty as an alternate driver on that trip was covered by the terms of policy providing for unlimited liability in respect of one driver.

11. In view of the above discussion, it is held that the trial court did not commit any error in giving the benefit to the petitioners, legal representatives of the deceased, under the terms of the contract of insurance providing for unlimited liability for one driver.

12. The appeal is, therefore, dismissed but no costs.