(2002) 10 AP CK 0020

Andhra Pradesh High Court

Case No: CMA No''s. 2009 of 1999 and CRP No. 2993 of 1999

United India Insurance Company Limited		APPELLANT
	Vs	
Toorupu Vijaya and Others		RESPONDENT

Date of Decision: Oct. 30, 2002

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 171, 173

Citation: (2003) 5 ALD 640

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: V. Bhaskar for Ravi Sankar Jandhyala, Janardhan Reddy, V. Ravi Kiran Rao, Kota Subba Rao, P. Laxman Reddy and K. Goverdhan Reddy, for the Appellant;

Final Decision: Dismissed

Judgement

V.V.S. Rao, J.

All these CMAs., Cross-objections and the CRP can conveniently be disposed of by this common judgment as they involve common questions of fact and law.

2. Briefly stated the facts are as follows: On 22.1.1994 a group of persons from Vannel (B) Village in Armoor Mandal, were going in a jeep bearing No. AIL 4948 to Armoor to give representation to the Depot Manager of A.P. State Road Transport Corporation (APSRTC) for bus conveyance to that village. When the jeep reached the outskirts of Sirampur Village, a lorry bearing No.AP 25/T 1177, it was alleged, came in rash and negligent manner and dashed against the jeep. As a result of the accident 11 persons died instantaneously and two persons received injuries. The injured as well as the dependents of the deceased filed as many as 12 OPs before the Motor Vehicle Accidents Claims Tribunal-cum-the Court of District Judge, Nizamabad, being OP No. 61 of 1994 and Batch.

3. 3. The jeep was insured with the United India Insurance Company Limited and the lorry was insured with the New India Assurance Company Limited, which were arrayed as respondents 5 and 3 respectively in O.P. No. 61 of 1994 out of which CMA No. 2009 of 1999 arises. Be that as it may, the owners of the lorry and the jeep and the two insurers opposed the OPs filed by the claimants inter alia denying any negligence on the part of the driver of the lorry or the jeep. The Tribunal dealt the cases and framed the following issues in all the OPs.

1. Whether the accident occurred due to rash and negligent driving of the driver of the lorry AP 25/T 1177 or the driver of the jeep AIL 4948 ?

2. Whether the petitioners are entitled to compensation? If so, to what amount, and from whom ?

3. To what relief ?

4. The first claimant in O.P. No. 61 of 1994 examined herself as P.W.1 and examined one Balaiah as P.W.2 besides marking Exs.A.1 to A.28. The Assistant in the office of the United India Insurance Company was examined as R.W.1, and in some other cases R.W.2, who is Investigator-cum-Surveyor of the Insurance Company, was examined and Exs.B.l to B.13 were marked. On consideration of oral and documentary evidence and placing reliance on Exs.B.6 and B.7 came to the conclusion that the drivers of the jeep and the lorry were guilty of contributing negligence in the ratio of 50:50. The Tribunal also considered the evidence lead by the claimants with regard to the income of the deceased/insure and applied appropriate multipliers following the judgment of this Court in Bhagwandas Vs. Mohd. Arif, , and awarded appropriate amounts. The details of the various OPs, corresponding CMAs, amounts claimed and the amounts awarded are as under:

Sl. No.	O.P No.	C.M.A. Wo.	Insurance/ Assurance Co.	Death/ injuries	Amount claimed Rs.	Amount awarded Rs.
1.	60 of 1994	2014 of 1999	New India	Death	4.00,0001-	4,00,000/-
		2047 of 1999	United India			
2.	61 of 1994	2009 of 1999	United India	Death	4,00,000/-	4,00,000/-

		2015 of 1999	New India			
3.	73 of 1994	2016 of 1999	New India	Death	4,00,000/-	4,00,000/-
		2065 of 1999	United India			
4.	155 of 1994	2066 of 1999	United India	Death	3,00,000/-	2,10,500/-
		2017 of 1999	New India			
5.	158 of 1994	2018 of 1999	New India	Death	3,50,000/-	3,50,000/-
		1644 of 1999	United India			
6.	159 of 1994	2019 of 1999	New India	Injuries	3.00,000/-	2,50,000/-
		2209 of 1999	United India			
7.	160 of 1994	2067 of 1999	United India	Death	4,00,000/-	4,00,000/-
		2201 of 1999	New India			
8.	161 of 1994	CRP 2993 of 1999	New India	Injuries	1,50,000/-	4,000/-

		CRP (SR)56410 of 1999	United India			
9.	162 of 1994	2068 of 1999	United India	Death	4,00,000/-	3,91,500/-
		2020 of 1999	New India			
10.	194 of 1994	2069 of 1999	United India	Death	4,00,000/-	4,00,000/-
		2021 of 1999	New India			

5. Aggrieved by the Awards the United India Insurance Company has filed eleven CMAs and one CRP and the New India Assurance Company also filed eleven C.M.As and one CRP Cross-objections are also filed in CMA Nos. 2009, 2021, 2065, 2066, 2067, 2068, 2069 and 2201 of 1999.

6. I have heard Sri V. Bhaskar, learned Counsel representing Sri J. Ravi Shankar, panel advocate for United India Insurance Company. He submits that the findings recorded by the Tribunal that the drivers of the lorry and the jeep are negligent is erroneous. He placed strong reliance on the evidence of Balaiah, who was examined as P.W.2 in all the OPs to prove negligence on the part of the drivers.

7. Sri Kota Subba Rao, learned Counsel for the New India Assurance Company Limited submits that R.W.2, Investigator-cum-Surveyor was examined and Exs.B.1 to B.13 were marked with consent. He submits that the driver of the lorry which is insured with the New India Assurance Company Limited is not having valid and effective licence and therefore under the insurance policy Ex.B.3, the New India Assurance Company Limited is exempted from the liability when the vehicle is driven by a person who is not authorized to drive the vehicle.

8. Sri Ch. Janardhan Reddy, learned Counsel for the claimants-cross-objectors submits that the petitioners before the lower Tribunal have claimed interest at 25% per annum and the Tribunal has given only 12% interest and therefore cross-objections are filed. He also refuted the submissions made by the learned Counsel for both the Insurance Companies and contends that both the drivers were negligent.

9. P.W.2 in his evidence stated that when he and other villagers were travelling in the jeep the lorry bearing No.AP25/T1 177 driven by the driver in rash and negligent manner came in opposite direction with high speed and dashed against the jeep. This was disbelieved by the Tribunal placing reliance on Exs.B.6 and B.7. Ex.B.7 is the map of scene of offence prepared by Circle Inspector of Police, Balkonda Police Station, in connection with the Crime No.7 of 1994 registered under Sections 304A, 338 and 337 of Indian Penal Code against the driver of the lorry. The same would show that the jeep AIL 4948 came almost extreme right to a distance of 16 feet. Likewise, the lorry is also not of extreme left. This was further explained in the scene of offence panchanama prepared under Ex.B.6 which shows that the width of the road is 24 feet with a burm of 5 feet on each side, that the jeep came on to the right side to the extent of 15.6 feet on thar road and they found skid marks of the lorry to an extent of 35 feet. Applying the principle of res ipso loquitor it is clear that the driver of the lorry as well as the jeep were equally negligent. Either of them could have avoided the dastardly accident if only either of them had been little more careful in driving the vehicles especially when the vehicle was passing by another speeding vehicle in the opposite direction. Therefore, the submission made by Bhaskar cannot be accepted and no exception can be taken to the finding recorded by the Tribunal.

10. The other submission of Sri Kota Subba Rao that the driver of the vehicle was not having valid and effective licence as on the date of the accident, the Insurance Company has to be exonerated from the liability, cannot be countenanced.

11. In United India Insurance Company Limited v. Pasalapudi Musalamma, (unreported judgment in CMA No. 905 of 2001 and Batch, dated 3.10.2002) I considered this aspect of the matter. After referring to the decisions of the Supreme Court in Narcinva V. Kamat v. Alfredo Antonio Doe Martins 1985 ACJ 397 (SC), Rukmani and Others Vs. New India Assurance Co. and Others, , and judgments delivered by various High Courts in United India Insurance Company Ltd., Kurnool Vs. Madiga Thappeta Ramakka and others, , National Insurance Co. Ltd. Vs. Santosh and Others, , National Insurance Company Limited v. Mainabai, 2001 ACJ 1921 (MP), Divisional Manager, New India Assurance Co. Ltd., Cuttack Vs. Pranab Sundar Sahoo and Another, , and National Insurance Company Ltd. Vs. Smt. Shashi Bala Gupta and others, , I held as under:

The rulings of the Supreme Court and the High Courts would show that whenever the insurer claims that the driver of the offending vehicle was not having valid and effective licence as on the date of the accident, they have to prove the same by cogent and acceptable evidence. Mere producing a letter or endorsement from the Regional Transport Officer/Authority or any licensing authority that the licence relied on is not valid licence or effective licence would not amount to discharging the burden. The allegation that the driver was not having valid licence or effective licence and therefore the Insurance Company stands exonerated from the policy

obligations has to be proved by examining officials who gave endorsement or certificate with reference to the records maintained in the office of the licensing authority... In the absence of any driving licence it is always open to the insurer to get necessary records summoned from the office of the licensing authority and prove the documents by examining the licensing authority or a representative of the licensing authority. Mere filing of Xerox copy of the driving licence or endorsement to the effect that the driver was not having valid licence would not suffice to discharge the burden. In case, insurer pleads that the licence produced before the Tribunal is fake licence, it is for the insurer to summon the owner or the driver or appropriate authorities in licensing organization and examining them to prove that the licence relied on is fake licence. The claimants, who are third parties to the insurance policy cannot be burdened with proving allegations of the insurer that as the driver was not having valid licence they have to be exonerated from the liability.

12. After perusing the impugned orders/ awards, I am satisfied that the Tribunal has applied appropriate multipliers and also applied settled principles in deciding the multiplicand having regard to the evidence on record.

13. However, in O.P. No. 61 of 1994, out of which CMA No. 2009 of 1999 arises, the Tribunal deducted an amount of Rs. 8,000/- only towards personal expenses which cannot be sustained in view of the principle laid down in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . As rightly contended by the learned Counsel for the respondents-claimants Sri Ch. Janardhan Reddy as the deceased in the case is an agriculturist, there can always be slight elevation of multiplier and therefore it is not unreasonable to apply multiplier of 18. If multiplier of 18 is applied, and the annual income of the deceased is taken as Rs. 32,000/- after deducting 1/3rd towards personal expenses, the loss dependency would be Rs. 4,08,000/-. As the claim was made only to Rs. 4,00,000/- the Award is restricted to Rs. 4,00,000/- only in CMA No. 2009 of 1999.

14. Insofar as the rate of interest claimed by the claimants in these OPs is concerned, a Full Bench of five learned Judges of this Court in The Andhra Pradesh State Road Transport Corporation and Another Vs. B. Vijaya and Others, , after referring to entire case law has laid down.

It may be that in certain cases, u/s 167 of the M.V. Act, a claimant will have an option to opt for compensation under either of the Acts. If the claimant opts to seek compensation under the provisions of the Workmen''s Compensation Act, he will be governed by the said provisions subject to any other provisions of the said Act and in case he opts to seek compensation under the provisions of the M.V. Act the provisions of the said Act will only govern his case. Interest of 12% provided u/s 4A(3), therefore, may not be a guiding factor for awarding interest at 12% per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, in a case arising under the provisions of the M.V. Act.

15. Therefore, there is no hard and fast rule as to grant interest. It is purely discretion of the Tribunal as well as this Court having regard to the facts and circumstances of the case. In this case, the accident occurred on 22.1.1994 and at the relevant time the bank rate of interest as well as prime lending rate were at least 30% in excess of the present bank rate as well as the prime lending rate. Therefore, it is reasonable to award 12% interest from the date of petition till realization. Any amounts paid during the pendency of the appeals shall be given due credit.

16. In the result, the CMAs, the Cross-objections and the CRP fail and are accordingly dismissed.