

National Insurance Company Ltd. Vs Syed Zameela and Others

Court: Andhra Pradesh High Court

Date of Decision: June 10, 2005

Acts Referred: Motor Vehicles Act, 1988 " Section 166, 173
Penal Code, 1860 (IPC) " Section 337

Citation: (2007) 1 ACC 524

Hon'ble Judges: R. Subhash Reddy, J

Bench: Single Bench

Judgement

R. Subhash Reddy, J.

This civil miscellaneous appeal u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") is filed by the

appellant Insurance Company questioning the award of the Motor Accident Claims Tribunal-cum-III Additional District Judge, Guntur, passed in

O.P. No. 59 of 2000.

2. The said O.P. was filed by claimant-respondent No. 1 u/s 166 of the Act and Rule 455 of the A.P. Motor Vehicles Rules, claiming

compensation of Rs. 2,00,000, on account of the death of her son by name Syed John Sydulu in a motor vehicle accident that occurred on

18th/19th May, 1999. As stated in the claim petition, it was the case of the claimant that the deceased was aged about 18 years and was working

as a cleaner on the tipper bearing No. A.P. 16-U 9016. Respondent No. 1 before the Tribunal was the owner of the said vehicle and respondent

No. 3 was also made party, who was the earlier owner before the transfer of the said vehicle, in favour of respondent No. 1. The appellant herein

is respondent No. 2 who insured the said vehicle. In the claim petition, it was stated that, on 18th/19th May, 1999, the deceased was on duty as

cleaner and the vehicle was proceeding to Guntur on National Highway No. 5. Due to negligent driving by the driver, it met with an accident by

hitting another vehicle bearing No. A.D.J. 3432, which was coming from opposite direction. In the said accident he received grievous injuries and

succumbed to the injuries after three days, while undergoing treatment in the Government Hospital, Guntur. It is stated that on a complaint made, a

criminal case was also registered in Cr. No. 118 of 1999 on the file of the Guntur Rural Police, u/s 337 of Indian Penal Code, 1860. In the claim

petition it was stated that the deceased was contributing a major portion out of his income to the claimant and in view of sudden and untimely death

of her son, the claimant lost dependency.

3. The owner, the respondent No. 1, remained ex parte before the Tribunal, The insurer, respondent No. 2, contested the proceedings. While

generally denying the allegations of the claimant, respondent No. 2 mainly contested before the Tribunal that the accident occurred not due to

negligent driving by the driver of the tipper, but it was due to negligent driving by the driver of the lorry bearing No. A.D.J. 3432. The previous

owner of the vehicle respondent No. 3, also filed counter affidavit opposing the claim against him.

4. On the above said referred pleadings, the Tribunal below framed the following issues for trial:

(1) Whether the accident occurred due to the rash and negligent driving of the driver of tipper bearing registration No. A.P. 16-U-9016?

(2) Whether the petitioner is entitled to compensation, and if so, what amount and against whom?

(3) To what relief?

5. To prove the claim, the claimant herself was examined as PW 1 and driver of the lorry bearing No. A.D.J. 3432, was also examined on her

behalf as PW 2 and Exts. A-1 to A-3 were marked. On behalf of the respondents, no evidence either oral or documentary was adduced.

6. The Claims Tribunal below, while appreciating the oral and documentary evidence on record, had recorded the finding that the accident

occurred due to rash and negligent driving of the driver of tipper. Then, proceeding to assess the compensation, though it was the case of the

claimant that the deceased was earning Rs. 2,500 per month, Tribunal assessed the earnings at Rs. 15,000 per annum and after deducting 1/3rd

for personal living expenses, taking the contribution of Rs. 10,000 annually and by applying the multiplier of 8, awarded the total compensation of

Rs. 80,000 with interest at 9 per cent per annum from the date of petition till realisation.

7. The present appeal is filed mainly on the ground that the driver of the tipper did not possess valid driving licence. Though such a plea is taken,

no evidence is adduced by appellant insurer before the Tribunal below. Even before the Tribunal, the claim was mainly resisted on the ground that

the accident occurred only due to negligence on the part of the driver of the lorry, but not on account of negligence of the driver of the tipper. In

that view of the matter, even the present defence was not taken in clear terms before Tribunal and, as such, there was no occasion for the Tribunal

to frame a specific issue in this regard to decide the same.

8. The above said question has been dealt by the Supreme Court in the case reported in National Insurance Co. Ltd. Vs. Swaran Singh and

Others, , wherein it was held that the Insurance Company, in order to avoid its liability towards third party, has to prove that the insured was guilty

of negligence and failed to exercise reasonable care in the matter of fulfilling conditions of the policy regarding driving of vehicle by a duly licensed

driver or one who was not disqualified to drive at the relevant time. In the very same judgment, it is further held that mere absence, fake or invalid

licence or disqualification of the driver for driving, are not in themselves defences available to the Insurance Company.

9. In view of the above said judgment, in the absence of any evidence from the side of the appellant-insurer and further, merely on the ground that

the driver of the offending vehicle was not possessing valid driving licence, the Insurance Company cannot escape its liability. If the insured has

violated the conditions of the insurance policy, it is always open for the Insurance Company to take steps against the insured, but the same cannot

be a ground to interfere with the award of the Claims Tribunal. In that view of the matter, keeping it open for the Insurance Company to take steps

against the insured, I do not find any merit to interfere with the award passed by the Tribunal.

10. The C.M.A. is devoid of merits and the same is accordingly dismissed. No order as to costs.