

(2006) 07 AP CK 0024

Andhra Pradesh High Court

Case No: M.A. A.A.O. No. 158 of 2006

United India Insurance Company
Limited

APPELLANT

Vs

Sakhamuri Venkayamma and
Others

RESPONDENT

Date of Decision: July 24, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 155

Citation: (2006) 4 ACC 610 : (2007) ACJ 1085 : (2006) 5 ALD 517 : (2006) 5 ALT 406

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: G. Purushotham Rao, for the Appellant; M.S.N. Prasad, for G.V.L Murthy, for Respondent Nos. 1 to 3 and P. Prabhakar, for Respondent Nos. 5 and 6 (LRs. of R-4), for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

This M.A.C.M.A. is filed by the insurer challenging the order, dated 31-12-1999, passed by the Motor Accidents Claims Tribunal, Ongole in OP. No. 365 of 1993.

2. Respondents 1 to 3 filed the O.P. claiming a sum of Rs. 1,00,000/- as compensation on account of the death of late Ganapathi. It was pleaded that Ganapathi was resident of Vemavaram village and on 31-3-1993 he died in an accident involving a tractor bearing No. AAG 9980 owned by the fourth respondent and insured with the appellant. It was pleaded that the deceased was aged about 40 years at the time of accident and that he was earning a sum of Rs. 2,000/- per month out of agriculture. The O.P. was opposed by the appellant on several grounds.

3. The owner of the vehicle died during pendency of the O.P. His legal representatives, respondents 5 and 6 herein, were brought on record. Through the

order under appeal, the Tribunal awarded a sum of Rs. 1,00,000/- with interest at 12% per annum and apportioned the same among respondents 1 to 3.

4. Sri G. Purushotham Rao, the learned Counsel for the appellant submits that the O.P. had abated on account of the death of the owner of the vehicle, particularly when the Tribunal recorded a finding to the effect that respondents 5 and 6 are not the legal representatives of the deceased fourth respondent. He further contends that the driver of the vehicle did not possess proper licence and in that view of the matter, the appellant ought not to have been held liable to pay the compensation.

5. Sri M.S.N. Prasad, the learned Counsel for respondents 1 to 3, on the other hand, submits that the O.P. did not abate on account of the death of owner of the vehicle in view of Section 155 of the Motor Vehicles Act (for short "the Act"). He further contends that the legal representatives of the owner of the vehicle have been brought on record and it is a different thing as to whether they have succeeded to the estate at all. It is also pointed out that the driver of the vehicle was neither identified nor examined as a witness and in such an event, there was no basis for adducing any evidence in relation to an unknown person.

6. Two contentions are urged before this Court on behalf of the appellant. The first is as to whether the O.P. did not abate on account of the death of the owner of the vehicle i.e., the fourth respondent herein and the second is as to whether the liability of the appellant does not cease on account of the fact that the driver of the vehicle did not possess valid driving licence.

7. So far as the first aspect is concerned, soon after coming to know of the fact that the owner of the vehicle died, respondents 1 to 3 have filed an application to bring respondents 5 and 6 as legal representatives. They are the daughter and grand-daughter of the deceased fourth respondent. It is true that the Tribunal recorded a finding to the effect that respondents 5 and 6 did not succeed to the estate of the deceased fourth respondent. That, however, is beside the issue. The Tribunal was not deciding the entitlement of succession. Impleadment of respondents 5 and 6 is only to continue the proceedings vis-a-vis the estate of the deceased. At any rate, Section 155 of the Act directs that the death of an insured does not bring about abatement of the proceedings. A Division Bench of this Court in [R. Kamala Vs. Shaik Mohd. Ghouse and Another](#), took note of the same and held that the non-participation of the owner of the vehicle or his legal representatives does not vitiate the proceedings.

8. Coming to the question relating to the nature of the licence held by the driver, the record discloses that no effort was made by the appellant to establish that a particular individual had driven the vehicle and that he was responsible for the accident. The question as to whether the licence held by the driver was valid would have become relevant, if only, there was no dispute as to the person, who drove the vehicle. Examination of R. W.2, an official from the R.T.A., hardly helps the matter, as

long as the dispute existed as to the identity of the driver. Further, it is not as if an individual can obtain the driving licence only from one particular R.T.A. All this controversy could have been avoided, had the appellant taken any steps to establish that the vehicle was driven by a particular person and that the said individual did not hold proper and valid licence. The evidence on record does not support the contention of the appellant.

9. The Tribunal awarded the interest at 12% per annum. In the claims arising under the Act, such a percentage is very high. In the recent past, the Supreme Court took the view that 7.5% would be the reasonable interest. Having regard to the time at which the accident occurred, this Court is of the view that 9% per annum would be adequate.

10. Hence, the M.A.C.M.A. is dismissed, upholding the order, dated 31-12-1999, passed by the Tribunal on OP. No. 365 of 1993, except to the extent of reducing the rate of interest from 12% per annum to 9% per annum. There shall be no order as to costs.