

(1999) 12 AP CK 0067
Andhra Pradesh High Court
Case No: AAO No. 604 of 1995

S. Lolakshi and another

APPELLANT

Vs

N. Tatiah and others

RESPONDENT

Date of Decision: Dec. 21, 1999

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 166, 95

Citation: (2000) 2 ACC 134 : (2001) ACJ 1830 : (2000) 2 ALD 395 : (2000) 1 ALT 535

Hon'ble Judges: Ghulam Mohammed, J

Bench: Single Bench

Advocate: Mr. N. Subba Rao, for the Appellant; Mr. P. Prabhakara Rao and Mr. A.V.K.S. Prasad, for the Respondent

Judgement

1. This appeal is preferred against the award of the Tribunal made in MVOP No.76 of 1992, dated 5-12-1994 wherein the Tribunal has dismissed the claim of the petitioners on untenable grounds. Initially the claim was laid by the parents, sisters, brothers, wife and minor daughter of the deceased u/s 166 of Motor Vehicles Act claiming compensation of Rs.2,00,000/-. The brief facts of the case are as follows:

On 6-12-1991 the deceased went to Medarametla. There he purchased three bags of groundnut and in order to seel them, he left to Chilakaluripet along with the goods by boarding lorry Bearing No.ADM 5136 belonging to the first respondent. The driver of the lorry drove the vehicle in a rash and negligent manner at a high speed and on reaching Martur, dashed against a stationed lorry, and as a resulted the deceased-Ramaraju sustained fracture of both the legs and later succumbed to his injuries in the Government Hospital, Guntur.

2. The first respondent filed counter denying the averments made in the claim petition stating that the driver was driving the vehicle with reasonable care, and when buffaloes came across the road, he suddenly applied breaks and stopped the lorry, and as a result, the lorry dashed against the stationed lorry. He further stated

that he sold away the lorry to one K. Rosaiah on 11-9-1991.

3. The second respondent also filed counter denying the averments made in the claim petition and stated that the deceased never loaded any groundnut bags in the lorry and that the deceased travelled in the lorry as gratuitous passenger, and hence, there is no liability on the part of the second respondent-Insurance Company.

4. In view of the said pleadings, the Tribunal has framed necessary issues for consideration. On behalf of the petitioners, both oral and documentary evidence was adduced, whereas on behalf of the respondents RWs.1 and 2 were examined.

5. In the absence of any eye-witness, the Tribunal believed the version of RW1 and Ex.A1, and on consideration of the evidence on record, the Tribunal rightly found that the accident occurred due to rash and negligent driving of the lorry driver.

6. As regards the determination of compensation is concerned, the Tribunal has not followed a proper criteria, and it has dismissed the claim petition solely on the ground that the vehicle was sold to K. Rosaiah and excluded the liability on the part of the first and second respondents without determining the just compensation as contemplated u/s 166 of the Motor Vehicles Act and that the claimants have not impleaded the said Rosaiah. Though the vehicle stood in the name of the first respondent, nonetheless, the Tribunal erroneously dismissed the claim petition and exonerated the first and second respondents from the liability without determining the amount.

7. Mr. N. Subba Rao, learned Counsel for the appellants vehemently contended that the entire approach of the Tribunal is not in accordance with law. The learned Judge committed an error in not determining the compensation as per Section 166 of the Motor Vehicles Act. It is further contended that the vehicle was standing in the name of the first respondent and the first respondent cannot escape from its liability merely on the ground that he sold away the vehicle to Rosaiah. Learned Counsel for the appellants has also drawn my attention to the latest decision of the Supreme Court in [New India Assurance Company Vs. Shri Satpal Singh and Others](#), wherein the Apex Court has considered the effect of Section 147, particularly an Insurance Company Policy covering the third party risk. In the instant case, Ex.B1 is covering the third party risk. The Apex Court held that "under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class". The Apex Court further observed that "the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the new Act came into force."

8. Mr. A.V.K.S. Prasad, learned Counsel for the second respondent-Insurance Company vehemently contended that in the instant case the deceased was travelling as owner of the goods in the goods vehicle. The Legislature in its wisdom

also included the owner of the goods or his authoritative representative carrying the goods in the vehicle from 14-11-1994. The accident occurred on 6-12-1991, and therefore, the question of extending to benefit does not arise. He has also drawn my attention to a decision of this Court in [New India Assurance Co. Ltd., City Branch and Another Vs. Salapuriappa and Others,](#), wherein the Bench of this Court has held that in respect of no fault liability the limit prescribed under the statute on the date of the accident is the criteria and though the limit was fixed, the same subsequently cannot be extended. Following the said ratio, he contended that the owner of the goods would also include with effect from 14-11-1994 as in the instant case the accident occurred on 6-12-1991. The said provision has no application to the facts of this case.

9. He also drew my attention to the decision of the Apex Court in [Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others,](#), wherein the Apex Court ruled in respect of the passengers both gratuitous and fare paid, travelling in a goods vehicle. While considering the liability of the Insurance Company under the old Act, the Apex Court ruled that the Insurance Company is not liable to pay the compensation.

10. Having considered the rival contentions of both the parties and having regard to the facts and circumstances of the case, the Supreme Court in *New India Assurance Company v. Shri Satpal Singh* (supra), after examining Section 95 of the old Act and also Section 147 of the new Act, and after considering its judgments in [Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. \(P\) Ltd. and Another,](#) and *Mallavas* case (supra) observed that under the new Act, an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the new Act came into force.

11. Considering the above pronouncement of the Supreme Court and in view of the Ex.B1 and, as the policy in question is a third party risk, the Insurance Company cannot escape from its liability.

12. PW1 is the wife of the deceased, who deposed that the deceased was aged about 28 years and was drawing a monthly salary of Rs.3,000/- by doing kirana business and selling the articles. In the absence of any documentary evidence, I cannot rely upon the oral testimony of PW1.

13. As regards the monthly earning of the deceased is concerned, under the provision of Minimum Wages Act, Rs.25/- per day is fixed for an unskilled labour. Hence, by taking Rs.25/- per day, I calculate the monthly income of the deceased at Rs.750/-, and after deducting 1/3rd towards his personal expenses, the loss of dependency works out to Rs.500/- per month, and annually it comes to Rs.6,000/-. In

the instant case, the age of the deceased as on the date of the accident as per the post-mortem certificate Ex.A2 is 28 years, and to the age of 28 years, the suitable multiplier applicable is 16, and by applying that multiplier this Court works out the compensation at Rs.96,000/-, to which amount, the claimants are entitled to, apart from Rs.15,000/- to the wife towards loss of consortium and loss of estate.

14. In the result the appeal is allowed and the respondents are directed to pay the compensation jointly and severally with interest at the rate of 12% per annum from the date of petition till the date of its realisation, but, in the circumstances without costs.