

(2011) LLR 221 : (2011) 3 TAC 338

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No. 254 of 2008

The New India
Assurance Company
Limited

APPELLANT

Vs

Smt. Noorjahan Begum
and Others

RESPONDENT

Date of Decision: March 15, 2011

Acts Referred:

Penal Code, 1860 (IPC) " Section 302

Citation: (2011) LLR 221 : (2011) 3 TAC 338

Hon'ble Judges: K.S. Appa Rao, J

Bench: Single Bench

Advocate: C.V. Rajeeva Reddy, for the Appellant; G. Narender Reddy, for the Respondent

Final Decision: Allowed

Judgement

K.S. Appa Rao, J.

This C.M.A is preferred against the order of the Commissioner for Workmen's Compensation and Asst.

Commissioner of Labour-IV in W.C. No. 11 of 2006 dated 24-01-2008.

2. The counsel for the Appellant mainly urged that the accident was not due to the rash and negligent driving of the driver of the auto and that the

death was not during the employment of the deceased. He further urged that the deceased was not having valid driving license at the time of the

accident. In support of his arguments he placed reliance on a decision reported in Rashida Haroon Kupurade Vs. Div. Manager, Oriental Ins. Co.

Ltd. and Others, wherein the Supreme Court held that the employer is not liable to pay compensation when there is no nexus between death and

accidents. He also relied on decision reported in *Malikarjuna G. Hiremath Vs. The Branch Manager, The Oriental Insurance Co. Ltd.* and

Another,

3. The counsel appearing for the Respondent while submitting his arguments drawn the attention of the Court to the observation of the lower Court

wherein it has clearly held that the death was during the employment of the deceased and therefore the Insurance Company should pay the

compensation.

4. Now the point for consideration is, whether the order of the lower Court is sustainable?

5. As already stated, it is the contention of the counsel for the Respondent that the deceased had a valid driving license at the time of accident. As

seen from the evidence of P.W.1, the deceased was having driving license and the same is marked as Ex.A.6. A perusal of Ex.A.6 shows that the

deceased was given driving license to drive the vehicles. Against the evidence of P.W.1, none were examined on behalf of the Insurance Company

to rebut the evidence urging that the deceased had no valid driving license. However, in view of the documentary evidence-Ex.A.6 and non-

examination of any witness to falsify the document-Ex.A.6, it remains un rebutted that the deceased was having valid driving license.

6. The next point for consideration is, whether the deceased died while he was in employment and the accident was due to the negligence of the

opposite party?

7. During course of evidence, the applicants filed Exs.A.1 to A.11. Ex.A.1 is the certified copy of the F.I.R; Ex.A.2 is the charge sheet; Ex.A.3 is

the certified copy of inquest report; and Ex.A.4 is the certified copy of post-mortem examination report.

8. On perusal of Exs.A.1 and A.2, the police, after due investigation, filed the charge sheet against the driver of the opposite vehicle for the offence

punishable u/s 302 I.P.C.

9. The evidence of P.W.1 is with regard to the involvement of the deceased who was driver of the auto bearing No. AP 9V 8790 and also the

involvement of the driver of the seven sweater auto bearing No. AP 24U7512. The deceased sustained injuries and succumbed to his injuries in

Gandhi Hospital on the same day of accident while undergoing treatment.

10. As per Ex.A.1-F.I.R and the evidence of P. Ws.1 and 2 is that the deceased, while he was on duty as driver of Auto bearing No. AP 9V

8790, on 23-09-2005 proceeding to Nizampet cross roads at 12.00 noon. When the said auto reached near Ashwini hospital, Kukatpally,

another auto bearing No. AP 24U 7512 came in the opposite direction, suddenly dashed against the auto of the deceased. When the deceased

questioned the driver of the opposite auto the reason for driving the vehicle so rashly and negligently, there was a quarrel between them. In that

quarrel the deceased fell down on the road and sustained head injury. Thereafter succumbed to the injuries in the hospital.

11. The main contention of the counsel for Appellant is that the quarrel was not in the course of employment and it is a private quarrel between the

deceased and the opposite party and it cannot be said that the injuries sustained by the deceased while he was in the course of employment.

Exs.A.1 and A.2 are the crucial documents, which clearly reveals that the deceased died due to attack of the other side auto driver resulting head

injury leading to his death.

12. The counsel for Respondent placed reliance on the decisions reported in Ravindra Singh Negi v. Workmen"s compensation Commissioner,

Chamoli and Ors. 2005 III LLJ 115 and Oriental Insurance Company, Ltd., Chennai v. Santhi and Ors. 2005 (4) L.L.N. 230 The facts stated in

those decisions are not applicable to the present case on hand in view of the clear finding of the police that the death was due to quarrel between

the deceased and the driver of the opposite vehicle.

13. In recent decision reported in Rashida Haroon Kupurade case, the Bench of the Apex Court held that in case, cases falls under Workmen"s

compensation Act for granting compensation, the employer liability was extensively discussed. It has also held that the accident arising within and in

the course of employment and the claimant should prove the nexus between the death and the accident, and if they failed to prove the same,

employer is not liable to pay any compensation. In the present case on hand, it has to be seen whether there is any nexus between the accident and

the death. Admittedly the deceased died due to head injury when he was fallen on the ground due to violent attack by the opposite driver. The

facts noted in the aforesaid decision are squarely applicable to the present case on hand. Further in another decision reported in Malikarjuna G.

Hiremath"s case, the apex Court also held that if there is no sufficient material to connect the death with the rash and negligent driving, the

Insurance Company cannot be fastened with liability. These two decisions of the apex Court amply focussed the doctrine in proving the nexus

between the death and the accident. Therefore the Court below ought not to have awarded any compensation as the deceased auto driver died

due to the quarrel between him and the driver of the seven-sweater auto and not died during the course of employment in view of the clear

admission of P.W.1 coupled with documentary eviedence-Exs.A.1 to A.3 which cuts the root of the defence that deceased died in the course of

employment. So when there is no nexus between the death and the accident, the Insurance Company cannot be fastened with liability. Therefore,

in the totality of the circumstances, the finding of the labour Court that the deceased died while he was on duty as auto driver at the time of

accident cannot be sustained.

14. Accordingly, the Civil Miscellaneous Appeal is allowed. During course of arguments, the counsel for the Appellant submitted that 50% of the

award amount deposited by the Insurance Company was withdrawn. Pursuant to finding while allowing the appeal, the Insurance Company is at

liberty to take recourse for recovery of the said amount which was withdrawn by the claimants/Respondents. There shall be no order as to costs.