

(2014) 09 AP CK 0044

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No. 199 of 2005

The New India Assurance Co.
Ltd.

APPELLANT

Vs

Kurva Nagamma

RESPONDENT

Date of Decision: Sept. 17, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 146, 147, 147(1), 147(1)(b)(i), 167

Citation: (2016) 1 ACC 337 : (2015) ACJ 2338 : (2015) 3 ALD 362 : (2015) 1 ALT 661 : (2015) 146 FLR 515

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: T. Ramulu, Advocate for the Appellant; K. Venkata Rao for G. Venugopala Reddy, Advocate for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.

This Civil Miscellaneous Appeal arises out of Order, dated 17-11-2004, in W.C. No. 15 of 2003 (F) on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner for Labour at Mahabubnagar (for short "the Commissioner").

2. Respondent No. 5, who is the owner of tractor and trailer bearing registration Nos. AP 26 T 3218 and AP 26 T 3219 respectively, engaged one Kurva Chandraiah (hereinafter referred as "the deceased") as a labourer on a monthly salary of Rs. 4,000/-. The said Chandraiah died in an accident, during the course of his employment, on 28-05-2001. Therefore, respondent Nos. 1 to 4, who are the wife and minor children of the deceased, filed the W.C. against respondent No. 5 and the appellant herein.

3. It is the case of respondents 1 to 4 that on 28-05-2001, the deceased and other labourers loaded gravel into the tractor at a well in the limits of Rangareddipally

Village and that, while the deceased was on the spot, the driver of the tractor and trailer drove the same in reverse direction with high speed and in negligent manner and dashed against the deceased, as a result of which the deceased was crushed under the tractor and died on the spot. A claim for compensation of Rs. 3.00 lakhs was, therefore, made.

4. Respondent No. 5 is the owner of the tractor and trailer and the appellant is its insurer vide Policy No. 611501/31/00/05572, which was valid from 20.11.2000 to 19.11.2001. The claim was, therefore, made for joint and several liability against both of them.

5. Respondent No. 5 filed a counter-affidavit wherein he has admitted that the deceased was his employee and that as on the date of his death, he was earning Rs. 3,000/- per month. He has, however, pleaded that if at all any compensation is payable to the claimants, the vehicle in question having been insured with the appellant, the liability must be fastened on respondent No. 2-insurer alone. The appellant filed a counter-affidavit, wherein it has denied its liability.

6. On behalf of respondents 1 to 4, the wife of the deceased was examined as A.W. 1 and Exs. A.1 to A.8 were marked. On behalf of the appellant, its Assistant Administrative Officer was examined as R.W. 1 and Exs. B.1 and B.2 were marked.

7. On appreciation of the oral and documentary evidence and having regard to the rival pleadings, the Commissioner has framed the following points for consideration:

"i. Whether the deceased died during the course of his employment as labour under respondent No. 1?

ii. Whether Act Policy covers the risk of the labour or labourers traveling in Tractor for loading and unloading?

iii. What was the age of the deceased at the time of accident?

iv. What were the wages paid upto the deceased at the time of accident?

v. Who (is) liable to pay compensation?"

8. Upon answering all the points, the Commissioner awarded the compensation of Rs. 2,06,857/- with interest @ 6% p.a., from the date of filing the W.C. till the date of its realization, holding the respondents jointly and severally liable to pay the compensation. Feeling aggrieved by this order, respondent No. 2-Insurance Company has filed this appeal.

9. The appeal against Respondent No. 5 was dismissed for non-service of notice vide order dated 04-01-2012.

10. I have heard Mr. T. Ramulu, learned Counsel for the appellant, and Mr. K. Venkata Rao, learned Counsel representing Mr. G. Venugopala Reddy, learned

Counsel for respondent Nos. 1 to 4.

11. The learned Counsel for the appellant advanced the only point viz., that Ex. B.1-Insurance Policy covers only driver and that, therefore, the appellant is not liable to pay the compensation for the death of the deceased. In support of his submission, the learned Counsel placed reliance on the judgment of this Court in [Ramashray Singh Vs. New India Assurance Co. Ltd. and Others](#), , [The New India Assurance Co. Ltd. Vs. Lodya Shankar and Others](#), and [Dudekula Salabee v. R. Siva Sankar Reddy](#) LAWS(APH)-2007-6-4.

12. The learned Counsel for respondents 1 to 4, while seeking to support the award in question, has placed reliance on the judgment in [Mahesh Singh and Another Vs. Umesh Pandey and Another](#), .

13. I have carefully considered the submissions of the learned Counsel for the parties with reference to the record.

14. Chapter XI of the Motor Vehicles Act, 1988 (for short "the M.V. Act"), pertains to "Insurance of Motor Vehicles Against Third Party Risks". Section 146 of the M.V. Act ordains that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the said Chapter.

15. Under Section 147 of the M.V. Act, the requirements of policies and limits of liability are envisaged. Under sub-clause (b)(i) of clause (1) of the said Section, the risks covered by the Insurance policy are enumerated. They include death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Proviso to Section 147(1) of the Act, which is very pivotal to this case, reads as under:

"Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

16. On a careful analysis of the proviso extracted above, it is evident that the risk of certain categories of persons employed in a motor vehicle is statutorily covered irrespective of whether the policy covers such risk or not. That is why in respect of this category of persons, it is called an Act policy. Under this proviso, except in respect of the liability arising under the Workmen's Compensation Act, 1923 (for short "the W.C. Act"), the following categories of employees appointed for running a motor vehicle are covered by this policy viz., a driver of the vehicle, a conductor or ticket examiner in case of public service vehicle (passenger vehicle) and an employee being carried in a goods carriage. Irrespective of whether premium is paid for this category of persons by the owners of the insured vehicles, the insurance company is liable to pay compensation.

Under Section 167 of the M.V. Act, where the death of, or bodily injury to, any person gives rise to a claim for compensation under the M.V. Act and also under the W.C. Act, the person entitled to compensation may without prejudice to the provisions of Chapter X of the M.V. Act claim such compensation under either of these Acts, but not under both.

In [National Insurance Co. Ltd. Vs. Prembai Patel and Others,](#) the Supreme Court, while dealing with the case of a driver whose risk was not covered by payment of premium, held that he is nevertheless entitled to compensation under M.V. Act, subject to the maximum compensation which is payable if he had made a claim under the W.C. Act.

On an analysis of the above statutory provisions, it is apparent that while the M.V. Act protects the interests of the driver of every motor vehicle, the Conductor or Ticket Examiner of a public service vehicle (passenger vehicle) and an employee of a goods carriage vehicle, no such protection is available to any other category of employees or persons unless their risk is covered by payment of premium.

The conclusion of mine is supported by the judgment of the Supreme Court in Ramashray Singh (supra). In that case, "khalasi" (cleaner) was engaged in a passenger vehicle and premium was not paid covering his risk. Interpreting the Section 147(1)(b)(i) of the Motor Vehicles Act and the proviso thereto, the Supreme Court held that as no separate premium was paid for "khalasi", the Supreme Court disallowed the claim for compensation.

In New India Assurance Company Limited v. Lodya Shankar and another (supra), this Court held that the contract of insurance is a contract of indemnity and that the insurer is liable only to the extent of the liability it undertakes. It was further held that when the owner of the vehicle chose to insure the risk of the driver and cleaner only, by paying Rs. 30/- as premium, and when he did not pay any premium to cover the risk of coolies being carried in his lorry, the insurance company is not bound to indemnify the owner for the risk that occurred to his workers or coolies that were being carried in the lorry. The judgment in Dudekula Salabee v. R. Shiva Sankar

Reddy (supra) is also to the similar effect.

The Commissioner, in his order, has noted that there is a conflict of opinions of this Court between [United India Insurance Company Limited Vs. Syed Anwar Ali and Another](#), and New India Assurance Company Limited v. Lodya Shankar and another (supra).

I have carefully read both the said judgments and I find no conflict between these two judgments. In United India Insurance Company Limited, Nirmal v. Syed Anwar Ali (supra), the premium was paid for driver. The question was whether a second driver was covered by the Act Policy under Section 147 of the M.V. Act. Interpreting the said provision, this Court felt that even a second driver is also covered by the policy. In my opinion, both the above-mentioned judgments arise out of different set of facts and I do not find any conflict whatsoever between the two judgments. The Commissioner has thoroughly misread the judgment in United India Assurance Company Limited, Nirmal, v. Syed Anwar Ali (supra) and formed wholly an incorrect opinion that the views under these two judgments are conflicting with each other.

In the instance case, a perusal of Ex. B1-policy clearly shows that respondent No. 5 has paid only Rs. 15/- under the head "legal liability to driver, coolies/other employees in connection with operation and/or maintaining/and/or unloading of motor vehicle".

The learned counsel for respondents 1 to 4 did not dispute that premium for covering the risk of each person is Rs. 15/-. It, therefore, necessarily follows that the policy covers only driver and no additional premium covering other employees or coolies was paid. As this category of persons is not covered by the Act Policy, the appellant is not liable for the compensation awarded for the death of the deceased. Since the liability is fixed on respondent No. 5 also, respondents 1 to 4 are entitled to proceed against him for recovery of the money.

17. A perusal of the proceeding sheet shows that this Court, by order dated 06.04.2005, permitted respondents 1 to 4 to withdraw half of the amount without furnishing any security. The learned counsel appearing for both parties are unable to state whether the amount was withdrawn or not. In the event, respondents 1 to 4 have withdrawn the amount, I am of the opinion that it would create hardship to recover money from them, as they appear to belong to the lowest strata of the society. Therefore, if respondents 1 to 4 have withdrawn any part of the amount deposited by the appellant, the same shall not be recovered by it. The appellant is, however, entitled to take return of the balance amount, which is lying in deposit before the Commissioner along with interest if any accrued thereon.

For the above-mentioned reasons, the order of the Commissioner is set aside qua the appellant only and the civil miscellaneous appeal is allowed to the extent indicated above.