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(1987) 01 AP CK 0020

In the Andhra Pradesh High Court

Boyapati Koteswararao and Another — APPELLANT

Vs

Pappu Veeranna and Another — RESPONDENT

Date of Decision : 18-01-1987

Acts Referred:
Motor Vehicles Act, 1939 — Section 110D

Citation : (1990) 68 CompCas 698

Hon'ble Judges : M. Jagannadha Rao, J

Bench : Single Bench

Advocate : S.V.R.S. Somayajulu, for the Appellant; Y.B. Tata Rao, for the Respondent

Judgement

Jagannadha Rao, J.—This is an appeal preferred jointly by the owner of the vehicle as also the insurance company questioning an award of Rs. 37,500 made by the court of Additional Distric Judge-cum-Additional Motor Accidents Claims Tribunal, Krishna. The accident occurred on April 21, 1981, at Vijayawada and the respondent who was injured suffered a fracture on his left ankle. THe respondent underwent treatment at Vijayawada and also at Madras, but he was, however, left with a permanent disability as he has to limp. On account of the said disability, te respondent who was photographer by profession, suffered detriment and claimed damages. The respondent has a photo studio called Veeranna Studio is also engaged in producing documentary films for private and Government institutions which are exhibite in cinemas and the TV. The respondent claimed a sum of Rs. 74,000 as compensation and the Tribunal below awarded a sum of Rs. 37,500. Against the said award, the owner of the bus as well as the insurance company have preferred this appeal jointly.

2. A preliminary objection has been raised by Sri A.V. Parthasarathy of Sri. Y.B. Tata Rao contending that a single appeal by the insurance company as well as the owner of the vehicle is not maintainable inas much as the defenes open to each of these appellants are different.For the above said purpose, reliance is placed upon a judgment of a Division Bench of the Allahabad High Court in

United India Fire and General Insurance Co. Ltd. v. Gulab Chndra Gupta, [1986] 59 Comp Cas 678, the learned judges therein held that inasmuch as u/s 96(2) of the Motor Vehicles Act read with section 110D the grounds available to the owner of the vehicles, the appeal is not maintainable jointly by both of them. The learned judges have further held that if the decree does not make the owner of the vehicle pay, he cannotbe treated as a "person aggrieved" within the meaning of section 11OD of the Act. This preliminary objection is resisted by learned counsel for the appellants, Sri S.V.R.S. Somayajulu.

3. I am of the view that the preliminary objection is not correct and that this appeal jointly preferred by the insurance company as well as by the owner of the vehicle is maintainable. The insurance company is only in the position of an indemnifier to the owner of the vehicle. Unless the owner of the vehicle is made liable, the isurer, being an indemnifier, cannot be made liable. I fail to see how the person primarily liable as well as the person who indeminifies him cannot be said to be "aggrieved persons" at the same time and, if so, why they cannot join together in a single appeal. It may be that the defences open to the indemnifier are statutorily restricted from those available to the erson principal liable but that does not mean that there is any confliciting or opposing interests between them. Under the Motor Vehicles Act, provision is made to recover the amount from the insurance company up to a particular limit and beyond that, the amount can be recovered from the owner of the vehicle. If the injured person is not able tor recover any part of the amount from the insuranced company (for some good reason), he can certainly recover it from the owener of the vehicle. The alternative argument that the owner of the vehicle is not an "aggrieved person" at all because his liability is taken over by the insurance company is not correct.it will be anomalous to say that the person mainly liable is not an " aggrieved person" mereley because the amount is not initially recoverable from him. Even in a case where the quantum of liability of the insurance comapany exceeds the total amount claimed by the injured person, the position, in my opinion, is not different. The inter se relationship of "indemnifier" and "indemnified" continues and there is no conflicting interest. Further,it may also be the duty of the owner of the vehicle to protect the interests of the "indemnifier" and see that the latter is not unnecessarily mulcted with liability. Merely because the claim in the case is less than the limits applicable to the indemnifier, the owner of the vehicle need not feel absolved of his liability to safeguard the interests of the indemnifier. The mere fact that certain defences open to the owner of the vehicle are not open to the insurance company does not make any difference.

4. Suppose in the very case, the parties have preferred independent appeals, nothing precludes thecourt form taking up the appeal preferred by the owner of the vehicle at the outset and (if the court comes to thecnclusion that (say) negligence is not made out or that the quantum is liable to be reduced) give relief in those respects to the owner of the vehicle. The court can then take up the appeal preferred by the insurance company and implement the result in the owner''s appeal while dealing with the other appeal preferred by the insurance

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company. The court cannot refuse to give this benifit to the insurance company in the connected appeal merely becausee the defences open to the insurance company are not the same as those available to the owner of the vehicle inasmuch as when two appeals arise out of the same petition filed by the injured person, there cannot be inconsistent decrees in the same matter. In such circumstance. I do not find abnything wrong in both the persons filing the same appeal. This is, however, subject to the condition that in case the appeal preferred by the owner of the vehicle is dismissed for default or on merits or for some other reason, the insurance company cannot fall back upon the grounds mentioned by the owner of the vehicle in hisappeal. But, the insurance comapany shall be confined only to the grounds available to it under the Motor Vehicles Act, I, therefore, dissent from the decision in United India Fire and General Insurance Co. Ltd, v. Gulab Chandra Gupta [1986] 59 Comp Cas 678.

5. Coming to the merits, I am not inclined to interfere with the various items of damages awarded by the Tribunal below. The Tribunal has awarded a sum Of Rs. 10,000 for the loss of earnings by the date of trial. This was based upon a reduction in the bill paid by the Andhra paper Mills, Rajahmundry, in respect of a documentary film which the respondent was not able to complete according to the schedule, on account of the accident. So far as the future loss of earnings is concerned, though a claim was made for a sum of Rs. 20,000, the court awarded only a sum of Rs.5,000 on the basis that the percentage of disability was said to be 10 per cent, The respondent is a person aged about 58 years and the business is run by a partnership in which his sons are also partners. The court below has awarded Rs. 7,000 towards expenditure for transport and extra nourisment during the period of medical treatment. A sum of Rs.500 was awarded towards clothing, Rs. 5,000 towards pain and suffering, Rs. 10,000 towards loss of amenity or loss on account of the injury.Inasmuch as the respondent has a limp and has to use a stick for the purpose of walking, I am of the view that the award is not liable to be redced further. The respondent''s counsel stated that a memorandum of cross-objections had been filed in the court on October 14, 1985, but the same is not found in the papers of the court and it is possible that the memorandum had been returned and not resubmitted to the court. Even so, I have considered the points mentioned in the cross-objections and do not think it a fit case for any further increase.

6. In the result, the appeal is held maintainable but is dismissed on merits. There shall be no order as to costs.

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