

(1968) 02 AP CK 0004
In the Andhra Pradesh High Court
Case No : A.A.O. No. 455 of 1965

Branch Manager, Hindustan General Insurance Co. Ltd.	APPELLANT
Vs	
M. Saramma	RESPONDENT

Date of Decision : 14-02-1968

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B, 96(1), 96(2)

Citation : AIR 1969 AP 390

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : A.S. Prakasam, for the Appellant; P. Chinnakesava Reddy, for the Respondent

Judgement

1. This appeal is filed by the Hindustan General Insurance Company Ltd. Hyderabad, under S. 110D of the Motor Vehicles Act against an award of the Motor Claims Tribunal (Chief Judge, City Civil Court, Hyderabad at Secunderabad). The respondent therein received injuries as a result of an accident which took place on 7-2-1964 having been knocked down by a car bearing number APY 8415. She, therefore, applied for payment of compensation of a sum of Rs. 35,940 before the Claims Tribunal, impleading the insurer as the first respondent and the occupant of the car as the second respondent. The first respondent-insurer before the Tribunal objected that the application is bad for non-joinder of the owner of the car and further contended that the policy is vitiated by non-disclosure of material facts and by false representation that the assured is the owner of the car. It was further contended by the insurer that the amount of compensation claimed is excessive and fantastic. The second respondent before the Tribunal contended that he is not a necessary party as he was not the owner of the car and that he was occupying the car only with the permission of the owner. The Tribunal held that the second respondent was not the owner, that it is not necessary to implead the owner as a party to the application, that the plea of false representation would not help the insurer as in spite of the misrepresentation, the policy was to cancelled till 31-12-1964 and

accordingly granted a sum of Rs. 3,600 towards compensation. Against the said award, the insurer filed the present appeal impleading only the claimant as the sole respondent in this Court.

2. Shri A. S. Prakasam, the learned counsel for the insurer, raised two contentions; firstly that the petition is not maintainable without notice to the owner of the car and secondly, that the policy is void on the ground of non-disclosure of material facts.

3. Taking up the first point for consideration, I have no doubt that the owner of the car is a necessary party to the proceeding. The Tribunal found that the 2nd respondent who was travelling in the car at the time of the accident was not the owner. The original owner of the car was one Abdul Mohammad and the insurance policy taken by him expired on 5-2-1964 and before the expiry of the said policy, he appears to have sold the car to one Kantaraj who submitted his proposal to the insurer on 3-2-1964 representing that he purchased the car in February 1964, that he became the owner thereof and that it has been registered in his name and accordingly applied for an insurance certificate with effect from 3-2-1964 to 1-2-1965. On the basis of this representation, the insurer issued the policy. Exhibits B4 dated 8-2-1964 in favour of B. Kantaraj.

Under Section 96(1) of the Motor Vehicles Act, any judgment obtained against a person assured by the policy, is enforceable against the insurer as if he were the judgment-debtor. subject to the provisions of sub-section (2) under which the insurer is entitled to avoid the policy on certain specified grounds. As the insurer is, therefore, made liable by virtue of this statutory provision in respect of a judgment obtained by the claimant, a special procedure has been laid down to give notice to the insurer to that he may, before such judgment is to be pronounced, defend the action on any of the grounds mentioned in sub-section (2) of Section 96 of the Act.

It is now held by the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, , that unless the insurer makes a special provision in the contract of insurance that the insurer should be entitled to raise all defences in the name of the assured, he is not entitled to defend the action except on the grounds specified in S. 96(2) of the Act. It was accordingly held that, defences which relate to the factum of the accident or the quantum, of damages are not open to the insurer. Such defences can be raised by the insured person and if he succeeds in such a defence, the insurer also gets the benefit. It is for this reason that Rule 517 of the Rules framed under the Motor Vehicles Act makes a specific provision for notice being issued to all the parties concerned. If in spite of the notice having been issued, the person insured remains ex parte, the insurer alone has to defend the action only on the specified grounds. The mere fact that the Act has been amended in 1956 providing for the establishment of a Claims Tribunal and enabling a claimant to file an application instead of S.96 which remained intact. The provisions of R.517 itself make it clear that notice should be issued to all the parties including the insurer.

I do not, therefore, agree with the view taken by the Tribunal that the award can be passed in the absence of the necessary parties, because the law declares that the insurer is liable. If this argument is to be accepted, it follows logically that notice is required even to the insurer. I, therefore, hold that the person assured under the policy is a necessary party to the proceeding. Though for the purposes of the Act, the name of the purchaser, namely, Kantharaj was not shown in the registers of the transport authority as the owner, he is the person who has obtained the policy from the insurer and he alone is the person liable to reimburse the insurer with respect to claims enforceable under the policy. I do not, therefore, think that any notice should be sent to Abdul Mahmood who has not taken the policy.

4. The second point argued by the learned counsel for the appellant is that the insurer is entitled to raise the defences u/s 96(2)(c) of the Motor Vehicles Act which is as follows:-

"That the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by representation of a fact which was false in some material particular."

On this point, the Tribunal has not given any finding whether there was a non disclosure of any material fact or a false representation in obtaining the policy. But it is merely observed by the Tribunal as follows:-

"The plea of the first respondent (insurer) that there was false representation by Kantaraj will not help him as in spite of the misrepresentation of facts the policy was not cancelled till 31-12-1964."

The above observation proceeds on the footing that even if there is misrepresentation of facts, the policy was not cancelled till 31-12-1964 and that the plea will not avail the insurer. From the evidence it is clear that the insurer came to know about the misrepresentation only subsequent to the date of the accident and it is only when the true facts are brought to the knowledge of the insurer that the policy was immediately cancelled. Even otherwise, there is nothing in Section 96(2) of the Act which requires that the insurer should have already cancelled the policy. A statutory right is conferred on the insurer by the above provisions to raise all or any of the specified defences which would result in avoiding the policy itself. Hence it follows that the insurer is entitled to raise this defence, namely, that the policy was originally obtained by false representation. The Tribunal has to give a finding whether there was a false representation or not. If the finding is in favour of the insurer, then, there will be no liability on the part of the insurer.

I, therefore, set aside the award of the Tribunal and remand O. P. No. 130 of 1964 for fresh disposal in the light of the above directions, after issuing notice to the assured, that is, V. Kantaraj who has to be regarded as the owner of the car for the purpose of these proceedings. The insurance company, however, undertakes not to take steps to recover back the amount which is already

withdrawn by the claimant till the disposal of the petition. But this undertaking is given on the assurance that the claimant furnishes an additional security bond by her husband within one month from the date of receipt of these papers in the lower Court. In default of furnishing the additional security bond as aforesaid, the insurer will be entitled to take steps to get back the money.

5. Costs of this appeal will abide the result.

6. Order accordingly.