(2004) 06 AP CK 0046

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1401 of 1999

Cheekati Nageswara Rao — APPELLANT

Vs

G. Rama Rao and Another — RESPONDENT

Date of Decision : 16-06-2004

Acts Referred:
Motor Vehicles Act, 1988 — Section 2(13)

Citation : (2006) ACJ 2248 : (2004) 5 ALD 395 : (2004) 2 APLJ 395

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Subba Rao Korrapati, for the Appellant; S. Bharathi Devi, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Alleging that he received injuries while travelling in the lorry bearing No.APH-2933 belonging to the first respondent and insured with the second respondent, due to the rash and negligent driving of the lorry driver, appellant filed a claim petition seeking Rs.50,000/- as compensation from the respondents. After contest by the respondents, the Tribunal passed an Award for Rs.25,000/- against the first respondent only and exonerated the second respondent from its liability on the ground that appellant was travelling as passenger in a goods vehicle.

2. The contention of the learned counsel for appellant is that since the appellant was travelling with a deflated tyre to get it repaired, he should be treated as a passenger traveling with his goods, who also is covered by the insurance, second respondent also should be made liable to pay the compensation awarded by the Tribunal, more so, because in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., it is held that even cases where there is a breach with conditions of the policy by the insured, the insurer has to pay the compensation to the claimants and recover that amount from the owner.

3. Appeal against the first respondent was dismissed for default for non-compliance of the Order dated 27-08-2002. There is no representation on behalf of the second respondent.

4. The point for consideration is whether second respondent is not liable to pay the compensation payable to the appellant?

5. The evidence of R.W.1 is that the policy issued by the second respondent does not cover the risk of passengers travelling in the lorry, which is a goods vehicle. During cross-examination, he admitted that the policy covers the risk of the owner of the goods traveling in the vehicle. Even assuming that the appellant was travelling with a deflated tyre in the lorry, he cannot be treated as the owner of the goods travelling with his goods in the lorry. ''Goods'' is defined in Section 2(13) of the Motor Vehicles Act, 1988 (''the Act''), as per which luggage or personal effects of passengers are not covered and so they i.e., personal effects and luggage of passengers are not ''goods'' within the meaning of the Act. Since lorry is a goods vehicle, it would be engaged by one or more persons to transport their ''goods'' in bulk, which cannot be carried with them as their personal effects or luggage, from one destination to another. A person who engages a lorry to transport his goods from one destination to another, for his own reason, may either travel along with those goods or send his representative with those goods in that lorry. Obviously, for that reason only owner of the goods being transported in his lorry or his authorized representative, are covered by the insurance. If a person stops the lorry in the midway and boards it with his luggage or personal effects it should be taken that he is using the lorry as a ''stage carriage'' but not as a goods vehicle and so he is not covered by the insurance. It is not the case of the appellant that he engaged the lorry all by himself for transporting his deflated tyre from one place to another. Appellant did not state as to where he boarded the lorry and his destination. Deflated tyre allegedly being carried with the appellant is a "luggage " but not goods as defined in the Act. Therefore, the finding of the Tribunal that the appellant was a passenger in a goods vehicle needs no interference.

6. KAMALA''s case (1 supra) relied on by the learned counsel for the appellant is of no help to the appellant because the point for consideration in that case was whether the insurer can avoid liability on the ground that the driver was not having a valid driving licence, when one of the conditions for the insurer to cover the risk is that the person driving the vehicle at the time of accident should have a valid driving license. Driver, not having a valid driving license is a breach of the terms and conditions of the policy. Carrying ''passengers'' in a goods vehicle is a violation of the provisions of the Act. If a person engages a lorry to transport his goods from one destination to another and if he or his authorized representative travels with those goods, they are not travelling as "passengers" in a goods vehicle, but are accompanying the goods in the capacity of the owner of the goods or as his authorized representative and such persons are covered by the policy issued by the second respondent as stated by R.W.1.

7. As stated earlier, even if the appellant was carrying a deflated tyre to get it repaired, he is a passenger travelling with his luggage but not the owner of the goods being transported in his lorry, and so is not covered by the policy of insurer issued by the second respondent and so, I, uphold the findings of the Tribunal that second respondent is not liable to pay the compensation payable to the appellant. The point is answered accordingly.

8. Therefore, I find no merits in the appeal and hence the appeal is dismissed. No costs.