

(2004) 06 AP CK 0052
In the Andhra Pradesh High Court
Case No : CMA No. 2473 of 2003

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
M. Das and Another	RESPONDENT

Date of Decision : 16-06-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 149
Workmens Compensation Act, 1923 — Section 22, 30

Citation : (2005) 1 ACC 253 : (2004) 5 ALD 135

Hon'ble Judges : M. Narayana Reddy, J

Bench : Single Bench

Advocate : M. Srinivasa Rao, for the Appellant; K. Jagathpal Reddy, for the Respondent

Judgement

M. Narayana Reddy, J.—This judgment, according to law, arises out of a civil miscellaneous appeal, filed by the sole appellant, against Respondent 1 and Respondent 2, u/s 30 of the Workmen's Compensation Act, 1923, questioning the, validity and legality, of the adjudications made by, set forth in para 2, infra.

2. Orders, dated 21-4-2003, of the Commissioner for Workmen's Compensation, Hyderabad, made in WC No.70/2001, of his file.

3. Perused the material papers of the Record.

4. Arguments were heard of the learned Counsel for the contesting parties.

5. The sole appellant in this CMA, corresponds to Opposite Party No.2 in the said WC No.70/2001, of the file of the said Commissioner, being the Insurance Company. Respondent 1 in this CMA corresponds to the sole applicant in that WC, being the injured. Respondent 2 herein corresponds to Opposite Party No.1 in that WC, being the owner of the accident vehicle, being a lorry.

6. The parties are, hereinafter, referred to, as the applicant, the owner and the Insurance Company, lest, so specified.

7. The sole applicant filed the said WC No.70/2001, before the said Commissioner, against the owner and the Insurance Company, u/s 22 of the said Workmen's Compensation Act, 1923 (WC Act, 1923), for recovery of compensation, in respect of the injuries and disability, alleged to have been sustained by him, on 27-11-2000, around 11.00 p.m., near Gandhi Maisamma, of Dundigal, out of, and, in the course of, his employment, as the driver of the accident lorry, Bearing No.AP 9 U 1963, owned by the owner, and insured with the Insurance Company etc., etc.

8. In the said W.C., the owner remained ex parte and did not contest it.

9. In the said W.C., the Insurance Company filed a written statement, inter alia, denying all the material allegations made therein by the applicant, and urging its non-liability, to pay any compensation, whatever, etc.

10. Subsequently, the said Commissioner enquired into the said WC No.70/2001, in the process whereof, he recorded the oral evidence of PWs.1 and 2, and RW.1, and exhibited the documentary evidence, by way of Exs.A1 to A5, and Exs.B.1 to B.7, and also Exs.C1 to C.4, and, later, after due arguments there-into, finally, adjudicated thereupon, by his now impugned Orders, dated 21-4-2003, set forth in para 2, supra, as under :

(a) Awarded total compensation of Rs.1,59,838/-;

(b) Awarded Advocate-fee of Rs.1,000/-;

(c) Awarded interest on the foregoing compensation, at 9% per annum, from the date of accident; and

(d) Directed, the owner and the Insurance Company, to pay the foregoing monies, jointly and severally, by deposit thereof, before, the Commissioner, etc.

11. Questioning the, validity and legality, thereof, or, any part, or, parts thereof, or, any findings recorded therein, the applicant, as well as, the owner, did not file any independent CMAs.

12. However, the Insurance Company filed the present CMA, questioning the said Orders, and the adjudications made thereby, but, only, insofar as the same fixed liability upon it, to pay the foregoing awarded compensation, etc., either, joint and severally with owner, or, exclusively.

13. The basis for the Insurance Company, to so urge its non-liability to pay any compensation, etc., is that the said accident lorry, bearing specific Registration No.AP 9 U 1963, was not insured with it, at all, and, much less, was it insured with it on the crucial date of the accident, on 27-11-2000.

14. The applicant by himself did not exhibit any Insurance Policy in respect of the said accident lorry, nor, did, he exhibited any Cover Note in respect thereof.

15. Nor, did the owner of the said accident lorry do so. In fact, he remained ex parte, and did not choose to contest the W.C. claims.

16. However, the Insurance Company exhibited, inter alia, certain documents pertaining to insurance, but, claimed, that, they do not pertain to the said accident lorry, bearing specific Registration No.AP 9 U 1963.

17. Exs.B1 and B2 are not correctly described in the Appendix of Evidence of the impugned Orders. A direct examination thereof will disclose, that, Ex.B1 is the Certificate of Insurance, and Ex.B2 is the Schedule thereof They will disclose that they pertain to a specific vehicle, described therein, as bearing Registration No.AP 25 T 2300.

18. Ex.B3, which is the format of the Cover Note of the Insurance Company, doesn't disclose, even remotely, as that it pertains to the specific accident lorry.

19. Ex.B4 is the Cover Note. Ex.B5 is the Policy. Ex.B7 is the Policy Schedule Form. They pertain to a vehicle Bearing No.AP10 L 9568, in the name of one, by name Syed Munwar Pasha, and that, that vehicle is a two wheeler. While so, the accident vehicle, in the case, is a four wheeler lorry, owned by the said owner.

20. So, therefore, none of the foregoing documents pertain to the specific accident lorry, Bearing No.AP 9 U 1963.

21. A direct examination of the said Ex.C.3 Cover Note will reveal, that, it pertains to a totally different vehicle, Bearing NO.AP 12T-1083 of CANTOR make. It is wrongly described in the Appendix of Evidence of the impugned Orders, as pertaining to the specific accident vehicle, Bearing No.AP 9 U 1963.

22. The rest of the material, on record, also, doesn't disclose, that, the said specific accident lorry, Bearing No.AP.9 U 1963, was, either, insured with the Insurance Company, much less, even if so insured, the policy was in force as on the crucial date of the accident, on 27-11-2000.

23. When so, no liability, whatsoever, can be fixed upon the Insurance Company, in respect of liability, to pay any compensation, in respect of the said accident lorry, Bearing No.AP 9 U 1963, and the consequences thereof. Much less, any such liability can be fixed upon it on the basis of the other policies, referred to supra, which are in respect of a two wheeler, or, other four wheel vehicle.

24. The learned Counsel for the Insurance Company relied upon Oriental Insurance Co., Ltd., Hyd. Vs. Mohd. Abdul Quadir and another, , inter alia, interpreting Section 149 of the Motor Vehicles Act, 1988, and postulating, that, the absence of evidence by the applicant, that, the vehicle was insured with the Insurance Company, and where the Insurance Company denies the same, no liability can be fixed upon the Insurance Company.

25. Hence, the Insurance Company proved, that, it is not liable to pay any compensation in respect of the accident, covered by the said accident lorry, but, that, however, the said Commissioner illegally fixed liability upon it also, jointly and severally, with the owner.

26. Hence, the same is liable to be corrected, by modifying the impugned Orders,

exonerating the Insurance Company, from its liability to pay any compensation, interest, etc., as directed by the said Commissioner, as is being done, hereunder.

27. Hence, the High Court doth hereby adjudicate upon the civil miscellaneous appeal, as under:

(I) Modifying the impugned Orders, set forth in paras 2 and 10 supra, as under:

"That, Respondent 2 in the WC No.70/ 2001, being, the M/s. New India Assurance Company Limited is not liable to pay any compensation, interest and costs, either jointly with Respondent 1 owner therein, or, much less, exclusively;

(II) Not interfered with the foregoing impugned Orders, on any other aspect, or, aspects; and

(III) Direct Respondent 1 in the CMA, to pay the sole appellant, costs thereof.