
(2007) 04 AP CK 0072
In the Andhra Pradesh High Court
Case No : CMA No. 3353 of 2002

Divisional Manager, Oriental Insurance Co. Ltd.	APPELLANT
Vs	
G. Roshanna and Another	RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1), 149(2), 149(4), 149(5), 149(7)

Citation : (2007) 5 ALD 261

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : I. Maamu Vani, for the Appellant; K. Gopal, for the Respondent

Judgement

G.V. Seethapathy, J.—This appeal is directed against the order dated 27.2.2002 in MVOP No. 421 of 1999 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), (for short "Tribunal") Kumool, wherein the claim of the first respondent herein was allowed in part awarding compensation of Rs. 54,272/- with interest at 9% per annum from the date of petition.

2. The first respondent-claimant herein filed claim application before the Tribunal claiming compensation of Rs. 2,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 8.3.1999. According to the claimant on that day he was proceeding in the lorry bearing No. ADQ 7155 to go to Gouraram Village on Rajiv National Highway and another lorry bearing No. AP 23 T 8388 came in the opposite direction and the lorry ADQ 7155 in which he was travelling, dashed against the opposite lorry due to rash and negligent driving by its driver, resulting in multiple injuries including fracture of left leg and loss of three fingers and the claimant was admitted in Gandhi Hospital, Secunderabad. Wargal Police registered a case in Cr. No. 50 of 1999 against the driver of the lorry ADQ 7155. It is further pleaded that the claimant was aged 25 years and was working as cleaner and earning Rs. 1,200/-per month besides batta of Rs. 50/- per day. After the accident he is unable to do any work.

3. The 2nd respondent-owner of the lorry and the appellant herein-insurer filed counters before the Tribunal opposing the claim and denying their liability to pay the compensation and further contending that the driver of the tractor-trailer had no valid driving licence.

4. On the strength of the above said pleadings, the Tribunal framed the following issues for trial.

1. Whether the accident occurred due to rash and negligent driving of the lorry bearing NoADQ 7155?

2. Whether the petitioner is entitled to receive compensation, if so, to what amount and from which of the respondents?

During the enquiry, the appellant-insurer amended the counter by raising additional plea that the driver of the offending lorry was holding fake licence and so, the Insurance Company is not liable to pay the compensation.

5. PWs. 1 and 2 were examined and Exs. A.1 to A.3 and Ex. X.1 were marked on behalf of the claimant. RW. 1 was examined and Exs. B.1 and B.2 were marked on behalf of the appellant.

6. On a consideration of the evidence on record, the Tribunal gave finding on issue No. 1 that the accident occurred due to the rash and negligent driving of the lorry bearing No. ADQ 7155 by its driver; on issue No. 2 the Tribunal held that the claimant is entitled for a total compensation of Rs. 54,272/-. Accordingly an award was passed for the said amount against the respondents with interest at 9% per annum from the date of petition, till realisation.

7. Aggrieved by the said award, the Insurance Company preferred the present appeal.

8. Arguments of the learned Counsel for the appellant and respondents are heard.

9. Learned Counsel for the appellant contended that the driver had no valid driving licence and so, the appellant-insurer is not liable to pay the compensation. She further contended that though the Tribunal observed that the Insurance Company is at liberty to recover the compensation from the owner of the vehicle, the same is not reflected in the decretal order. She further contended that the claimant being admittedly a cleaner and the accident having occurred in the course of his employment, the appellant-insurer is liable to reimburse only to the extent permissible under the Workmen Compensation Act and not the entire amount awarded.

10. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the lorry ADQ 7155 by its driver is not seriously disputed in this appeal. Even otherwise, the testimony of PW. 1 coupled with Ex. A.1 FIR goes to show that the driver of the said lorry was at fault. The question, which arises for consideration in this appeal, is whether the appellant-insurer is liable to pay the compensation, if so to what extent?

11. According to the appellant, the driver of the vehicle was holding a fake driving licence and therefore, the Insurance Company is not liable to pay the compensation. RW. 1 Assistant Administrative Officer of the appellant company at Kurnool testified that the driver was not holding valid driving licence and it was found to be a fake licence. It is also in his evidence that the investigator appointed by the Insurance Company, gave a report Ex. B.1, which contains the endorsement made by the Additional Licencing Authority to the effect that no such DL No. 7138/1990 dated 13.6.1990 was issued to one Ranga, who is said to be the driver. Ex. B.2 is the copy of the policy, which stipulates that a person who driving the vehicle, shall hold an effective and valid driving licence. RW. 1 has not been cross-examined and the genuineness of contents of Ex. B. 1 has not been challenged. The testimony of RW.1 that the terms and conditions of the policy have been violated as the vehicle was alleged to be driven by a person who was not having valid driving licence, therefore, remained un-contraverted. Though the 2nd respondent-owner of the vehicle filed counter and was represented by an Advocate before the Tribunal, he has not chosen to give evidence. In the counter the 2nd respondent has stated that he took all the care and employed the driver who is having valid driving licence and fully competent to drive the lorry. The evidence on record adduced by the appellant-insurer shows that the driver was holding a fake licence and the said evidence is not rebutted by owner of the vehicle. It cannot for a moment be believed that the 2nd respondent-owner of the vehicle was not aware of the fact that the driver was not having valid driving licence. Under those circumstances, it must be held that the appellant-insurer has discharged the burden of establishing that there has been conscious violation of terms and conditions of the policy Ex. B.2. However the fact that the driver was not holding driving licence does not absolve the appellant-insurer of their liability altogether to pay the compensation. Ex. B.2 shows that the risk of the workman is duly covered, as additional premium was also collected regarding the same.

12. In *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, , the Apex Court held as follows:

A reading of the proviso to Sub-section (4) as well as the language employed in Sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

13. In *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , wherein it was held as follows:

(i) ...

(ii) ...

(iii) The breach of policy condition i.g., disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty or negligent and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time;

(iv) Insurance Companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) ...

(vi) ...

(vii) ...

(viii) ...

(ix) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal.

14. In National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , the Apex Court directed that "the interest of justice would be sub-served if the insurer is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle".

It is further held as follows:

For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as

can be resolved by the Tribunal in such a proceeding.

15. In *Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others*, , the Apex Court reiterated the legal position stated in *Baljithkaur's* case (supra) and held that the insurer shall pay the quantum of compensation fixed by the Tribunal and recover the same from the owner of the vehicle.

It was further held in Para 8, as follows:

Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur's* case (supra), that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimant within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimant. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

16. Recently a Division Bench of this Court in *United India Insurance Co. Ltd. Vs. Smt. Dhulipalla Prameela Devi Choudary and Others*, , after referring to various decisions on the subject, held that "the principle of asking the insurer to pay compensation in the first instance and recover the same from insured next for any negligence on his part for breach of any conditions of policy is a settled proposition of law which is *stare decisis*".

17. In fact the Tribunal also held that the appellant-insurance company is liable to pay the compensation and is entitled to recover the same from the insured, but the said direction regarding the recovery from the insured is not incorporated in the decretal order.

18. Learned Counsel for the appellant contended that as the claimant was a cleaner, and so a workman and he met with the accident in the course of such employment, the appellant is liable to pay only to the extent permissible under the provisions of the Workmen Compensation Act by virtue of the proviso to Section 147(1) of the Motor Vehicles Act. In support of her contention she relied upon a decision of the Apex Court in *National Insurance Co. Ltd. Vs. Prembai Patel and Others*, , wherein it was held as follows:

The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in Sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show, with a clause to that effect that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited, depending upon the quantum of premium paid and the terms of the policy. Where the policy mentions "a policy for Act liability" or "Act liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

19. In the present case, a perusal of Ex. B.2 shows that risk in respect of cleaner who is a workman is covered by payment of basic premium but no additional premium is paid to cover the liability without any limit. The policy Ex. B.2 is not the one, which the owner has taken to cover the unlimited liability in respect of death or bodily injury to an employee. The unlimited liability under Ex. B.2 is specifically mentioned as against third party property damage but not in respect of liability for the workman. Under those circumstances and in the light of the decisions of the Apex Court, it must be held that the appellant-insurer is liable to pay the compensation only to the extent arising out of the Workmen Compensation Act and the rest of the compensation is liable to be recovered from the owner of the vehicle.

20. The claimant was aged 25 years by the date of the accident and the Tribunal has taken his wages at Rs. 1,200/- per month and awarded a sum of Rs. 54,272/- as compensation. As per IV Schedule of the Workmen Compensation Act, the suitable multiplier factor would be 216.91 for the age of the claimant. As the claimant suffered a partial permanent disability, 60% of his monthly wages have to be taken into consideration. As per the evidence on record, the extent of permanent disability is 14%. Accordingly the liability of the appellant-insurance company towards loss of earning capacity comes to Rs. 21,865/-.

21. In the circumstances and for the reasons stated above and in the light of the above decision of the Apex Court, it is held that the appellant-insurance company is liable to pay the compensation to the extent of Rs. 21,865/- and is entitled to recover the same from the 2nd respondent herein (owner of the vehicle) in terms of the decision of the Apex Court in "Nanjappan's case (stated supra). The claimant is entitled to recover the rest of the amount awarded by the Tribunal from 2nd respondent herein (owner of the vehicle). The award dated 27.2.2002 passed by the Tribunal in MVOP No. 421 of 1999 is modified accordingly.

22. In the result, the appeal is disposed of with the above directions. No order as to costs.