(2002) 09 AP CK 0070

In the Andhra Pradesh High Court

Case No : AAO No. 799 of 1998

Divisional Manager, Oriental Insurance Co. Ltd. APPELLANT

Vs

Koduri Venkata Chary and Others RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:
Motor Vehicles Act, 1988 — Section 11, 166

Citation : (2002) 6 ALD 167 : (2002) 3 APLJ 383

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Supriya, for the Appellant;

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The Divisional Manager, Oriental Insurance Company Limited, Warangal Branch, is the appellant in the C.M.A. filed against the Award dated 31.7.1997 in O.P.No. 312 of 1995 passed by the Motor Vehicle Accidents Claims Tribunal, Warangal. On 29-1-1994 the first respondent, who was working as Teacher in Rajendra Convent School, was going to school. At 8.45 a.m. when he reached Ajantha Bar at Pochamma Maidan, the scooter driven by the second respondent herein came from backside and dashed against the first respondent causing multiple injuries to him. He filed the O.P. before the Tribunal claiming an amount of Rs. 25,000/-as compensation. The driver and owner of the scooter remained ex pane. The Insurance Company opposed the claim inter alia on the ground that as the driver was not having valid licence, the Insurance Company stands exonerated under the policy. The claimant examined himself as PW1 and marked Exs.A1 to A5. The Insurance Company did not lead oral evidence, but marked Ex.B.1, which is driving licence of Bairu Sudershan, second respondent herein, who was driving the vehicle. The Tribunal having regard to the documentary evidence Exs.A2 to A4 and nature of injuries, awarded a sum of Rs. l5,000/-payable by the petitioner with interest at 12% per annum from the date of the petition till the date of realisation.

2. In this appeal, Ms. Supriya, learned Counsel for the appellant submits that as second respondent herein was driving the scooter without valid licence, the Insurance Company is not liable to pay any compensation to the first respondent. She also placed reliance on the judgment of the Supreme Court in United India Insurance Co. Ltd. Vs. Gian Chand and others, . She placed reliance on Section 11 of the Motor Vehicles Act, 1988 (for short, ''the Act'') in support of the contention that the driver was having a licence to driver light motor vehicle and as per Section 11 he was required to seek appropriate orders for addition of other class or description of motor vehicles to drive. As there is no such endorsement, she would submit that, the Insurance Company is not liable.

3. The only point that arises for consideration is whether the appellant-Insurance Company is liable to pay compensation.

4. Ex.A5 is the policy issued by the appellant in favour of the third respondent herein, who is the owner of the scooter. As per the coverage clause, any person including insured is entitled to drive the vehicle provided that such persons holds effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. Ex.B.1, which was marked with the consent of the parties by the learned Tribunal, is licence of the second respondent, which shows that the holder of licence is permitted to drive light motor vehicle only and not transport vehicles. Therefore, under Ex.B.1 the second respondent was not entitled to drive the scooter involved in the accident. Therefore, ex facie the insurance policy does not cover the accident.

5. A reference may be made to Chapter-II of the Act, which deals with ''Licensing of Drivers of Motor Vehicles''. The terms "light motor vehicle" and "motor cycle" are defined in clauses (21) and (27) of Section 2 of the Act respectively. By reason of Section 3 in Chapter-II, no person is entitled to drive a motor vehicle in public place unless he/she holds effective driving licence issued to him or her authorising him to drive the vehicle. Section 3 further lays down that no person shall drive a transport vehicle unless his/her driving licence specifically entitles him/her to do so. u/s 11 of the Act a person holding driving licence to drive any class or description of motor vehicles, who is not disqualified for holding or obtaining a driving licence has to apply to the licensing authority for addition of other class of motor vehicles. Unless this is done, a person holding light motor vehicle licence is not entitled to drive the motor cycle (scooter). Therefore, the second respondent herein under law was not entitled to drive the scooter though he holds light motor vehicle licence.

6. In Gian Chand''s case (supra), a question arose whether in all cases where vehicles are driven by unlicensed drivers, insurance company can be exonerated from liability under the policy. After referring to various decisions their Lordships laid down the law as under.

The first line of cases consists of fact situations wherein the insured are alleged to have committed breach of the condition of insurance policy, which required them not to permit the vehicle to be driven by an unlicensed driver. Such a breach is held to be a valid defence for the Insurance Company to get exonerated from meeting the claims of third parties who suffer on account of vehicular accidents which may injure them personally or which may deprive them of their breadwinner on account of such accidents caused by the insured vehicles. The other line of cases deals with the insured owners of offending motor vehicles that cause such accidents wherein the insured owners of the vehicles do not themselves commit breach of any such condition and handover the vehicles for driving to licensed drivers who on their own and without permission, express or implied, of the insured, hand over vehicles or act in such a way that the vehicles get available to unlicensed drivers for being driven by the latter and which get involved in vehicular accidents by the driving of such unlicensed drivers. In such cases the insurance company cannot get benefit of the exclusionary because and will remain liable to meet the claims of third parties for accidental injuries, whether fatal or otherwise.

7. In this case, there is no denial that the second respondent was driving the vehicle and it is not a case which falls under second category of cases as laid down by the Supreme Court in Gian Chand''s case (supra). Therefore, the Insurance Company can seek exoneration from meeting the claims of the third parties, who suffered by reason of the accident.

8. In the result, the appeal succeeds and is accordingly allowed. No costs.

