
(2014) 02 AP CK 0127
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 457 of 2005

G.A. Lakshmi

APPELLANT

Vs

Md. Abdul Quadar and Another

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(2)(B), 166

Citation : (2014) 02 AP CK 0127

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : Balaji Medamalli, Advocate for the Appellant

Final Decision : Partly Allowed

Judgement

Dr. B. Siva Sankara Rao, J.—The claimant in the claim petition O.P. No. 1646 of 2001 u/s 166 of the Motor Vehicle Act, 1988 (for short, "the Act") filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short, "Tribunal") dt. 09.12.2004, dismissing the relief of compensation of Rs. 1,00,000/- as prayed for the damages caused to her car bearing No. AP 9S 5569 against the respondents 1 to 3, driver, owner and Insurer of the Crime Lorry bearing No. AP 12 T 4855.

2. Heard Sri Balaji Medamalli, the learned counsel for the appellant The appeal against respondents 1 and 2(driver and owner) is dismissed for default vide court orders dated 02.01.2012. The respondent No. 3-insurer served with notice but called absent with no representation. Taken as heard the 3rd respondent for his absence to decide on merits and perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal as well as submissions during course of hearing in nutshell are that the award of the Tribunal is contrary to law, weight

of evidence and probabilities of the case, that the Tribunal failed to see that since the Ex.B.1 policy issued in respect of the crime lorry the change in the ownership of lorry does not vitiate the policy, that Tribunal ought to have seen that as on the date of accident the policy of crime vehicle is in force and ought not to have gone into the ownership aspect of the lorry that the Tribunal ought to have seen that there is no need of transfer of policy in favour of the owner of the vehicle whenever there is change in ownership and the insurance policy will be issued in the name of the owner as on the date of policy, that Tribunal ought to have seen that there is no denial on the part of the respondents that the vehicle is not validly insured, that ought to have seen that Ex.X.1 clearly shows that the car was given on hire and as such the finding is baseless. Hence, to set aside the award of the Tribunal.

4. Now the points that arise for consideration in the appeal are:

1. Whether the award of the Tribunal is unjust and unsustainable and requires interference by this Court while sitting in appeal against the award and if so to what extent to arrive a just compensation and with what rate of interest with what liability?

2. To what result?

Point-1:

5. The facts of the case are that on 07.03.2000 at about 10.30 p.m. a lorry bearing No. AP 12T 4855 belongs to the 2nd respondent and insured with the 3rd respondent covered by Ex.B.1 policy, being driven by its driver-1st respondent in rash and negligent manner in high speed dashed against the Maruti Esteem car bearing No. AP9S 5569 of the claimant, as a result the car extensively got damaged, and the claimant got the same repaired with the Varun Motors Work Shop, Balanagar, Hyderabad and incurred an amount of Rs. 84,045/- towards repairs. The Tribunal from the evidence of P.Ws.1 to 3 and R.W.1 employee of Insurer with reference to Exs.A.2 to A.5 bills, Ex.A.6 payment receipt and A.7 gate pass besides Ex.A.8 photos with negatives in this regard believed the damages caused to the car of the claimant but not believed that she hired her car to her husband and earned income prior to the accident and also further held that the claimant failed to prove the 1st respondent is driver of the crime lorry and even Ex.A.1FIR not shown the name of the driver of crime lorry and no charge sheet is filed and further held that as per Ex.B.1 policy the 2nd respondent is not owner of the crime lorry and unless the original owner of the crime lorry is made party and liability is fixed, the 3rd respondent cannot be made liable to pay any compensation and hence dismissed the claim petition. It is by impugning the same, the present appeal is filed. In fact, the evidence of R.W.1 Administrative Officer of the Insurance Company-R.3 is that the Insurer issued policy of the lorry goods carriage to one Mahd. Fazuluddin subject to limitations and the policy is not in the name of 2nd respondent and thereby the Insurer is not liable to pay compensation unless proved cause of accident was

due to negligent driving of the vehicle and any liability otherwise cannot be more than Rs. 6,000/- u/s 147(2)(B) of the Act and policy terms and conditions. In the cross-examination, he deposed that even after transfer of ownership of vehicle insured, the validity of the policy continues till expiry of the whole period of the policy and third party is entitled to claim compensation for damages to the property. He deposed that since the policy Ex.B.1 is an Act policy liability of the Insurer is limited to Rs. 6,000/- or if the actual expenditure is less to it only such amount. Therefrom the very policy in force covering the risk under Act policy to sum of Rs. 6,000/- not in dispute but for to say the transfer of the vehicle from the original owner who obtained the policy by name Md. Fajuluddin to the present 2nd respondent-Madhusudhan Gaikwad if at all not intimated to the Insurer. It is in fact, the Apex Court in Uttar Pradesh State Road Transport Corporation Vs. Kulsum and Others, held that the owner of the vehicle even without intimation to the Insurer of the policy, given the vehicle on hire on transfer, that is not a breach of non-intimation of hire or transfer so allowing as policy covers risk to indemnify by the Insurer by referring earlier expression in United Insurance of India Vs. Santrodevi 2009 (1) SCC 558 and that was also reiterated by FB expression of this Court in APSRTC Vs. B.Kanakaratnabai 2013 (1) ALD 644. In the claim petition, the respondent Nos. 1 and 2 remained ex-parte and did not even choose to say the 2nd respondent is not the owner. What the 3rd respondent -Insurer contested was there is breach of terms of policy to exonerate the Insurer and the Insurer has to ascertain whether policy issued to the 2nd respondent of the claim petition for the said lorry. He did not deny liability from policy much less pleaded as Act policy but for saying there is breach of terms of the policy and he has to verify whether the policy issued (transfer effected) in the name of 2nd respondent in the claim petition. Thus, from the very evidence supra, the policy covers the risk leave about for the third party liability and Act policy is to be confined to Rs. 6,000/- to decide. As per the very FIR Ex.A.1 which is the report given by the husband of the claimant that while he was travelling from Ameerpet to Secunderabad driving the car after crossing NTR Statue at S.P. Road on left side the crime lorry while overtaking from the right side of the car and hit by virtue of which he lost control and lorry dashed engine of the car and caused damage to the car. From what is stated supra, a owner can use the vehicle or even permit any person with driving licence to drive even the driver was husband of the owner, it is on behalf of the owner and not as third party to the car. Here, the claim is not against Insurer of the car is thus but against the lorry driver, owner and Insurer. The claimant-owner of the car is third party in entitlement to the claim. The police registered FIR pursuant to it sufficient to say there is an accident and the evidence of P.W.1 as well as her husband-P.W.2 and another witness P.W.3 in this regard in proof of the rash and negligent driving of lorry which dashed the car is crystal clear. There is nothing for the Tribunal to disbelieve said evidence much less not to rely or to say the so called owner referred in the policy not shown as a party to the claim to exonerate the Insurer. Once the claimants say 2nd respondent is the owner to whom the vehicle is transferred from the original owner who insured the vehicle and 2nd

respondent not disputed the fact and even for the 3rd respondent to say the vehicle is not transferred, not chosen to seek RTA record of effected transfer or not but for simply relied on the policy referring the name of owner by then there is no basis to negate the claim of the claimant by the lorry Insurer.

6. Now coming to the quantum of compensation concerned, the Ex.B.2 to B.5 repair bills covered by Ex.B.6 payment receipt are for a sum of Rs. 84,045/-. The invoice as well as the receipts for the amounts shown received by Varun Motors- an authorized dealer of the Maruthi Cars, where the car is repaired proves from the same so also of the factum of the gate pass of Varun Motors, of the car taken to their shed for the repairs covered by repairs order 002070 dated 10.06.2000 and the accident was dated 08.03.2000. There is nothing from the owner or Insurer to say the said bills are excessive or uncorrelated. Ex.B.1 is the policy which shows Act policy. Under the Act, the limit of liability to the third party vehicle damage is Rs. 6,000/-. Thus to that extent the 3rd party-Insurer has to indemnify the 2nd respondent-owner and 1st respondent-driver of the vehicle to the claimant to pay compensation and the rest, the claimant is entitled from the respondents 1 and 2 personally. Accordingly Point No. 1 is answered.

Point No. 2:

7. In the result, the appeal is partly allowed by fixing joint and several liability to the extent of the risk covered by Ex.B.1 policy against the driver, owner and Insurer (Respondent Nos.1 to 3) to pay to the claimant Rs. 6,000/-(Rupees Six thousand only) and for the remaining Rs. 78,045/-(out of Rs. 84,045/-), the claimant to recover from the respondent Nos. 1 and 2 (driver and owner of the lorry). The respondents are directed to pay or deposit respective sums if not deposited any amount out it otherwise for the balance to the extent of liability supra within one month. Failing which the claimant can execute and recover. There is no order as to costs.

8. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.