

(2010) 11 AP CK 0055

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2461 of 2002 and M.A.C.M.A. No. 1960 of 2007

Gade Laxmi Reddy, Gade Prakash, Gade Satyanarayana and Laxmi Reddy APPELLANT

Vs

Yellisetti Krishna, Lingala Laxma Reddy and The National Insurance Company Limited and Gade Narsinga Reddy
 Akula Prasad Rao and Others Vs Yellisetti Krishna, Lingala Laxma Reddy, The National Insurance Company Limited RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Insurance Act, 1938 — Section 64VB

Motor Vehicles Act, 1988 — Section 145(1), 146, 147, 147(5), 149(1)

Citation : (2011) 6 RCR(Civil) 2744

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : K.L.N. Rao, for the Appellant; R. Venkat Rao, for the Respondent

Final Decision : Allowed

Judgement

Samudrala Govindarajulu, J.—These two appeals arise out of two awards dated 16.03.1994 passed by the Motor Accident Claims Tribunal, Warangal in O.P. Nos. 219 of 1988 and 70 of 1989 respectively awarding compensation of Rs. 52,500/- and Rs. 62,500/- respectively to the claimants in two death cases arising out of the same accident which took place on 11.04.1988. The lower Tribunal found that driver of the accident vehicle was at fault and was responsible for this accident due to rash and negligent driving of the said vehicle. The lower Tribunal awarded compensation amounts as against driver and owner only and disallowed the claim as against the injurer of the accident vehicle.

2. Facts relating to the insurance are not in dispute. The insured gave cheque towards premium to the agent by name Srinivasulu who issued cover note on 09.04.1988 on behalf of the insurance company. Though the insurance company did not file documents relating to these facts, R.W-1 who is an employee of the

insurance company speaks to these facts. But on 29.04.1988 dishonour memo of the cheque was received by the insurance company and on the same date, cover note was cancelled. On 04.05.1988, the insurance company dispatched letter of cancellation of cover note to the insured. On 11.05.1988 cancellation advice was also sent by the insurance company to the Road Transport authorities. In those circumstances, the lower Tribunal held that the insurance company is not liable to pay the award amount to the claimants by way of indemnifying the insured.

3. The Appellants' counsel contended on behalf of the claimants that on the date of accident when cause of action arose to the claimants to file petition before the lower Tribunal, the policy/cover note was in force and that subsequent cancellation of the cover note by the insurance company due to dishonour of cheque issued by the insured towards premium, cannot have any relevance in relation to claims made by third parties to the insurance policy.

4. In *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, which is a similar case like the present one, the insurance policy was issued on 30.11.1989 on payment of premium for the policy by way of cheque and the cheque was dishonoured and it was intimated to the insured on 23.01.1990 specifying that the insurance company was not at risk. Subsequently, the premium was paid by way of cash on 02.05.1990. In the meanwhile, on 09.04.1990 accident took place involving the insured vehicle. In those circumstances, the supreme Court observed:

(7) We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the Appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the Appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

(8) The policy of insurance that the Appellant issued was a representation upon which the authorities and third parties were entitled to act. The Appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

Ultimately the Supreme Court dismissed appeal of the insurance company holding that even in the circumstances the insurance company cannot avoid its liability as against third party risks.

5. In *New India Assurance Co. Ltd. Vs. Rula and Others*, of the Supreme Court, the truck owner obtained insurance policy on the basis of cheque dated 08.11.1991 towards payment of premium and the said cheque was dishonoured on 16.11.1991 resulting in cancellation of the policy and meanwhile the accident took place on 08.11.1991. The Supreme Court observed:

(8) The contract of insurance in respect of motor vehicles has, therefore, to be construed in the light of the above provisions. Section 146(1) contains a prohibition on the use of the motor vehicles without an insurance policy having been taken in accordance with Chapter 11 of the Motor Vehicles Act. The manifest object of this provision is to ensure that third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries.

(9) Thus, any contract of insurance under Chapter 11 of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. As pointed out by this Court in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, the rights of the third party to get indemnified can be exercised only against the insurer of the vehicle. It is thus clear that the third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party who is concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer.

Ultimately the Supreme Court held therein that if on the date of accident there was a policy of insurance in respect of a vehicle, the third party should have a claim against the insurance company and the owner of the vehicle would have to indemnify in respect of the claim of that party and that subsequent cancellation of the insurance policy on the ground of non payment of premium would not affect the rights already accrued in favour of third parties. Similar view was taken by the Supreme Court in subsequent decision rendered in *National Insurance Co. Ltd. Vs. Abhaysing Pratapsing Waghela and Others*, In that case, the accident took place on 27.01.1995. The vehicle owner insured his truck with the company by giving cheque to the officers of the insurance company on 23.01.1995. The cheque presented to the bank for clearance was dishonoured and so on 30.01.1995. In the meantime, accident took place on 27.01.1995. The amount of premium was paid by the truck owner in cash. The Supreme Court observed therein:

No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes

within the purview of Sections 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis-a-vis a contract of insurance qua contract.

The Supreme Court came to conclusion against the stand taken by the insurance company holding that third parties to the contract of insurance cannot be made to suffer for internal contractual dealings between the insured and the insurer. Ultimately the Supreme Court held that the insurance company cannot avoid its liability to pay compensation by way of indemnifying the insured.

6. If facts of the present case are examined in the light of above pronouncements of the Supreme Court, it must follow that the insurance company viz., the 3rd Respondent herein cannot be allowed to escape from its liability under the contract of insurance. In *Abhaysing Pratapsing Waghela* (3 supra), the Supreme Court held that a cover note issued comes within the definition of certificate of insurance in terms of Clause (b) of Sub-section (1) of Section 145 of the Motor Vehicles Act. The cover note was issued prior to the date of accident and it was cancelled subsequent to the date of accident for dishonour of cheque issued by the insured towards premium payable under the contract of insurance. The subsequent act of cancellation of policy cannot have any bearing in a claim made by a third party to the contract of insurance. Observation of the lower Tribunal that the cancellation relates back to the date of issuance of policy/cover note, is not tenable in law, particularly in the case of third party's claims arising under the contract of insurance.

Therefore, awards passed by the lower Tribunal in so far as dismissing the claim as against the insurance company, are not in accordance with law.

7. In the result, both the appeals are allowed making the third Respondent/National Insurance Company Limited liable to pay compensation jointly along with the insured/owner of the accident vehicle as per the awards passed by the lower Tribunal. No costs.