
(1989) 12 AP CK 0009
In the Andhra Pradesh High Court
Case No : C.M.A. No. 642 of 1986

Gandham Nagesh

APPELLANT

Vs

Pokala Nageswara Rao and Others

RESPONDENT

Date of Decision : 19-12-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)(c), 96(5)

Citation : (1990) ACJ 257

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : C. Trivikrama Rao, for the Appellant; V.V. Seshu Babu and S. Hanumaiah, for the Respondent

Final Decision : Dismissed

Judgement

G. Radhakrishna Rao, J.—In an accident that occurred on 15.11.1984 at about 9.20 a.m. one Pokala Sithamahalakshmi died due to the rash and negligent driving of the tractor by its driver. The husband and sons of the deceased filed the claim petition. On a consideration of the entire material on record, the Tribunal awarded a total compensation of Rs. 28,000/- as against the driver and owner of the tractor and dismissed the claim as against the insurance company. Aggrieved against the said order, the owner of the tractor alone has filed the present appeal claiming that the insurance company is liable to pay the amount as the vehicle was validly insured.

2. Unfortunately, in this case, the vehicle was insured with the insurance company on 15.11.1984 at 10.10 a.m. onwards under the insurance policy, Exh. B-I, whereas the accident took place on the very same day. In such circumstances, the intention of the insured has to be taken into consideration.

3. In this connection it is apposite to note Section 96 (2)(c) of the Motor Vehicles Act, 1939 which reads as follows:

96. Duty of insurers to satisfy judgments against persons insured in respect of

third party risks.?

(1) XXX XXX XXX (2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:?

(a) XXX XXX XXX

(b) XXX XXX XXX

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

4. It is, therefore, clear from a reading of the above provision that the insurer has a right to defend the claim on the ground that the policy was obtained by non-disclosure of a material fact or by a representation of fact which was false in some material particular.

5. The expressions "material fact" and "material particular" are defined in Section 96(5) of the Act which reads as follows:

In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

6. In this case the accident took place at about 9.20 a.m. and the insurance policy was taken at about 10.10 a.m. without disclosing that the accident took place on the very same day. The non-disclosure of the material fact about the accident amounts to fraud on the insurance company and, therefore, the insurance company is not liable to pay the compensation amount. In this case, as there is a malicious intention on the part of the owner in obtaining the policy by suppressing the material fact, the lower Tribunal is right in fixing the liability on the owner and the driver after giving a finding that there is no valid cover at the time of the accident.

7. With regard to the rash and negligent act on the part of the driver, there is ample evidence on record and the finding of the lower Tribunal has to be affirmed.

8. The appeal is accordingly dismissed. No costs.