
(2013) 11 AP CK 0076
In the Andhra Pradesh High Court
Case No : L.P.A. No. 367 of 2001

Imran Basha

APPELLANT

Vs

M/s. United India Insurance Company Limited and Another

RESPONDENT

Date of Decision : 05-11-2013

Acts Referred:

Citation : (2014) 3 ACC 45 : (2014) 1 ALD 547 : (2014) 1 ALT 641 : (2014) 1 AnWR 420

Hon'ble Judges : M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : M. Mehdi Hussain, for the Appellant; A. Malathi, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This Letters Patent Appeal is filed against the judgment, dated 29.11.2000, passed by a learned single Judge of this Court, in A.A.O. No. 1170 of 1996, preferred by the 1st respondent therein. The AAO was filed by the 1st respondent herein i.e. M/s. United India Insurance Company Limited, against the order, dated 20.02.1996 passed by the Motor Accidents Claims Tribunal-cum-District Judge, Kurnool in M.V.O.P. No. 182 of 1993. The order passed by the Tribunal, awarding compensation of Rs. 1,25,000/- in favour of the appellant herein, was reversed by the learned single Judge of this Court. The relevant facts are as under: The parents of the appellant are residents of Kurnool Town. The appellant, who was a student of L.K.G., was hit by a Tractor, bearing No. AAM-2287, owned by the 2nd respondent, on 17.12.1992, at about 2:00 p.m. Serious injuries were sustained on the right hand and right leg, so much so, he suffered paralysis. His left eye was totally affected. In spite of prolonged treatment for about one year, the disability remained. The Police registered a case in Crime No. 63 of 1992 against the driver of the Tractor and he was prosecuted in C.C. No. 24 of 1993 on the file of the Special Judicial Second Class Magistrate, Kurnool.

The appellant, through his parents, filed the O.P. claiming compensation of Rs.

3.00 lakhs from the 2nd respondent. Stating that, according to the information furnished by the Police, the vehicle was insured with the 1st respondent, they impleaded it as required under law. The 2nd respondent remained ex parte. The O.P. was contested by the 1st respondent alone. It was pleaded that the owner of the vehicle did not furnish the information about the accident, and that the driver of the vehicle did not have licence. It was also stated that the 2nd respondent did not extend co-operation. Through its order, dated 20.02.1996, the Tribunal awarded a sum of Rs. 1,25,000/-, as compensation and held the respondents, jointly and severally liable to pay the amount.

2. The 1st respondent filed A.A.O. No. 1170 of 1996 before this Court challenging the order passed by the Tribunal. It was pleaded that the vehicle was not insured with it. The learned single Judge of this Court allowed AAO by taking the view that the vehicle was not insured with the 1st respondent and thereby held that the 1st respondent is not liable to pay the compensation. The said judgment is under appeal in this L.P.A.

3. Sri M. Mehdi Hussain, learned counsel for the appellant, submits that in its counter, the 1st respondent did not raise the plea of absence of insurance policy. He contends that it was pleaded in the counter that the owner of the vehicle, the 2nd respondent, did not furnish any information about the occurrence of accident, thereby implying existence of the insurance coverage. He further submits that no oral or documentary evidence whatever was adduced to substantiate the plea as to the absence of insurance coverage and the view taken by the learned single Judge in this behalf, cannot be countenanced. Smt. A. Malathi, learned counsel for the 1st respondent, on the other hand, submits that neither the policy of insurance was filed into the Court, nor particulars thereof were furnished and in that view of the matter, the 1st respondent cannot be held liable. She contends that if the counter filed by the 1st respondent before the Tribunal is read in its entirety, it would emerge that the plea of absence of insurance coverage was also taken.

4. The 2nd respondent remained ex parte through out.

5. The occurrence of the accident and the sustaining of the injuries by the appellant, were not at all in doubt. Before the Tribunal, the father of the appellant was examined as PW.1 and an eye-witness was examined as PW.2. The Doctor, who treated the appellant, was examined as PW.3 to speak about the nature of injuries noticed by him. The certified copy of FIR in Crime No. 63 of 1992 on the file of the Kurnool Traffic P.S., was filed as Ex.A.1 and the charge sheet in C.C. No. 24 of 1993 on the file of the Special Judicial Second Class Magistrate, Kurnool, was filed as Ex.A.2. The judgment in that case was filed as Ex.A.4, and the wound certificate as Ex.A.3. Exs.A.5 and A.6 are in relation to the treatment. It has already been mentioned that the 2nd respondent i.e. the owner of the vehicle remained ex parte. Though the 1st respondent filed counter, it did not adduce any oral or documentary evidence.

6. It is not as if that the Tribunal jumped to immediate conclusion about the existence of policy, without any basis. A detailed discussion was undertaken in this behalf. It is on the basis of the information furnished by the police and the Motor Vehicles Inspector that the name of the 1st respondent was mentioned in column No. 17 of the claim statement. According to the Form prescribed at the relevant point of time, it was not necessary to furnish the number and other particulars of insurance. The relevant column reads, "17. Name and address of the Insurance Company of the vehicle". The particulars of the 1st respondent have been mentioned therein.

7. It is quite possible that even where the name of an insurance company is mentioned in the O.P., the policy may not exist as such. In such an event, the insurance company which receives notice, must be clear in its stand. Apart from there not being any statement in the counter filed by the 1st respondent, an indication was given as though there existed a policy, but the owner of the vehicle is not co-operating. For instance, paras 4 and 5 of the counter read as under:

It is submitted that as per reliable information received by this respondent the petitioner alone was responsible and he is guilty of contributory negligence as he was recklessly going on the road and without observing the opposite coming vehicles and the accident could not be averted in spite of the best care and precautions taken by the driver of the tractor and as such the petitioner alone as to be blamed for the occurrence and this respondent is not liable to pay any compensation. Further this respondent denies the fact that the driver of the tractor was having a valid driving licence, and the said vehicle was having valid R.C., permit, fitness certificate etc. and the said vehicle was insured with this respondent and the policy was in force on the date and at the time of the accident. Even if the policy is proved the liability of this respondent is subject to the statutory limits under M.V. Act, policy conditions and compliance of section 64B of Insurance Act by the insured.

It is submitted that the respondent No. 1 is not co-operating with this respondent and not contesting the case and he has not furnished any information so far with respect to the accident, vehicular documents and policy particulars. Hence, this respondent may kindly be permitted to plead and contest of all the grounds that are available to the owner of the vehicle and to recover the compensation from him in the event of passing an award against this respondent.

8. The very fact that the 1st respondent pleaded that the liability is subject to the statutory limits and policy conditions, discloses that it did not take an unequivocal plea of non-existence of the insurance policy.

9. It needs to be kept in mind that the Act was suitably amended to strengthen the social security measure of insurance to protect the interests of victims of accidents and approach in this behalf must be to advance the intention of the Legislature. If any doubt exists in this behalf, it must be read in favour of the

person for whose benefits the provisions are made. At any rate, the law permits an insurance company to pay the amount and recover the same from the owner of the vehicle in the event of there being any defect in the policy or the liability having been improperly fastened upon the insurance company.

10. Therefore, we hold that the 1st respondent is liable to pay the amount covered by the order passed by the Tribunal.

11. Though the arguments were also advanced as regards quantum of compensation, we are not impressed by the same. The Tribunal has taken into account the relevant factors and arrived at proper conclusion.

12. Hence, the appeal is allowed, setting aside the judgment in A.A.O. No. 1170 of 1996, dated 29.11.2000. As a result, the order, dated 20.02.1996, passed by the Tribunal in M.V.O.P. No. 182 of 1993, shall become enforceable in all respects.

13. There shall be no order as to costs. The miscellaneous petition filed in this appeal shall also stand disposed of.