
(2006) 04 AP CK 0072

In the Andhra Pradesh High Court

Case No : C.M.A. No"s. 542 and 607 of 2003

Krishna Rai

APPELLANT

Vs

United India Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Citation : (2006) 3 ACC 667 : (2007) ACJ 113 : (2006) 3 ALD 624 : (2006) 3 ALT 220

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : V. Atchuta Rao, in CMA No. 542/03 and V. Atchuta Rao, in CMA No. 607/03, for the Appellant; V. Atchuta Rao in CMA No. 607/03 and Naresh Byrapaneni in CMA No. 542/03, for the Respondent

Judgement

G. Chandraiah, J.—Heard both the counsel.

2. Since both the appeals are filed against the same award i.e., one by the Insurance Company and other by the claimant, they are being disposed of by this common judgment.

3. Not being satisfied with the compensation awarded by the Court of Chief Judge-cum-Motor Vehicles Accidents Claims Tribunal, City Civil Court, Hyderabad in O.P. No. 116/2001 dated 19-11 -2000, the claimant filed the appeal in C.M.A. No. 542/2003.

4. Aggrieved by the above said award in granting compensation by fastening the liability on the Insurance Company in spite of policy being cancelled on the ground of non-payment of premium, the appeal in C.M.A. No. 607/2003 is filed.

5. For the sake of convenience, the parties will be referred to as claimant and the Insurance Company.

6. The facts with regard to causing of the accident on 22-12-2000 by the lorry bearing No. AP 12-U-1688 due to rash and negligent driving of its driver and the

claimant receiving injuries in the said accident are not in dispute. The only grievance of the insurance company is that as the insured had issued a cheque with insufficient funds and as the cheque was dishonoured and though the same was intimated to the insured, no premium was paid and therefore the policy was cancelled and hence it is not liable to pay any compensation. This question is no longer *res integra*. A Full Bench of the Apex Court in the decision reported in *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, has categorically held that the rights of the third parties to claim compensation both from the insured and insurer are not affected under law by the conduct of insured in issuing a cheque, which was later on dishonoured. The relevant portion at paragraph No. 9 is extracted as under:

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.

7. In another decision reported in *New India Assurance Co. Ltd. Vs. Rula and Others*, the Apex Court following the earlier decision of Apex Court (1 *supra*) held as under:

9. Thus, any contract of insurance under Chapter 11 of the Motor vehicle 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. v. Pressumal Dhanamal Aswani* 1958 ACJ 559, 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.

11. The decision, which is a three Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place. If on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the insurance company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.

8. Even in the decision reported in *National Insurance Co. Ltd. Vs. Seema Malhotra and Others*, relied on by the counsel for the appellant, the Apex Court

while holding that when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise and that the corollary is that the insured cannot claim performance from the insurer in such a situation, also observed at paragraph No. 8 as follows:

... But to ask the insurance company to bear the entire loss or damages of somebody else without the company receiving a pie towards premium is contrary to the principles of equity, though the insurance companies are made liable to third parties on account of statutory compulsions due to the initial agreement, entered between the insured and the company concerned.

9. Therefore, as per the above judgment of the Apex Court (2 supra), the insurance company is liable to third parties on account of statutory compulsions due to the initial agreement entered between the insured and the company concerned. In fact the facts of the said case reveal that the Apex Court was dealing with damages to a car. Therefore, the ground that the cheque issued by the insured towards payment of premium was dishonoured and the same was intimated to the insured and in spite of the same no premium was paid, does not relieve the insurance company for payment of compensation in respect of third parties, which in the present case is the claimant. The same proposition of law had been laid down by a Division Bench of this Court in *M. Nageswara Rao Vs. New India Assurance Company Limited and Others*, Following the judgments of the Apex Court, learned single Judges of this Court in the decisions reported in *Oriental Insurance Co., Ltd., Hyderabad Vs. Pinjary Hussainamma and others*, and *United India Insurance Co., Ltd. Vs. Adepu Venkateswarlu and another*, held that even if the cheque issued by the insured towards the payment of premium is dishonoured, still the insurance company is liable to third parties and the insurer can proceed against the insured for recovery of the amount.

10. In view of the above settled position, the ground raised by the insurance company that since it has not received any premium owing to the dishonour of the cheque issued by the insured and as no premium was paid in spite of intimating the same, it is not liable to pay compensation, only merits for rejection and the same is accordingly rejected.

11. Coming to the appeal of the claimant is concerned, the learned Counsel appearing for the claimant submitted that in fact the claimant claimed an amount of Rs. 1,00,000/- but the tribunal below has taken it as Rs. 75,000/- and accordingly restricted the claim. He contended that the court below only granted general damages and did not grant any special damages.

12. The case of the claimant is that he is working as labourer. The Tribunal considering the evidence of the doctor who treated the claimant and who deposed as P.W.2, held that he sustained 50 per cent disability. The Tribunal considering the facts and circumstances have fixed the income of the deceased at Rs. 750/- per month and as the claimant was aged 30 years, applied the

multiplier of 12 and arrived at Rs. 1,08,000/-towards the loss of income due to permanent disability. The Tribunal also granted amounts of Rs. 536/- towards medical expenses and Rs. 3,000/-towards transportation, attendant charges and extra-nourishment and thus in all arrived at the amount of Rs. 1,11,536/- towards the grant of compensation. But noted that as the claimant claimed only an amount of Rs. 75,000/- restricted the claim. The learned Counsel for the claimant has produced copy of the claim petition filed by the claimant before the Tribunal. A perusal of the said petition shows that the claimant claimed compensation of Rs. 1,00,000/-. Therefore, the reference of the Tribunal that the claimant has claimed an amount of Rs. 75,000/- is concerned, is factually incorrect.

13. The Tribunal in my considered view, has rightly arrived at the compensation of Rs. 1,11,536/- but restricted the claim on the ground that the claimant has claimed only an amount of Rs. 75,000/-. A Division Bench of this Court in the decision reported in Branch Manager, Oriental Fire and General Insurance Co. Ltd. Vs. Dr. C. Chandra Obula Reddy and Others, held that if the claimants are entitled to more compensation than amount claimed, the same cannot (sic. can) be awarded and there is no restriction. The relevant portion is extracted as under:

15. The lower Tribunal did not award compensation more than that of the amount claimed by the claimants. It is only the learned single Judge who granted compensation more than the compensation claimed by the claimants. There is no restriction that compensation could be awarded only upto the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. What the Supreme Court in Nagappa v. Guru Dayal Singh 2003 (1) An.W.R. 135 (SC) has stated in the aforesaid decision is that the Courts have got jurisdiction to grant more compensation than claimed.

14. Following the above Division Bench judgment and judgment of the Apex Court, I feel it appropriate to grant an amount of Rs. 1,11,536/- to the claimant. Accordingly the claimant is granted an amount of Rs. 1,11,536/- towards compensation with interest at the rate of 7.5 per cent per annum from the date of the petition till payment. Further as already noted above, the Tribunal granted compensation towards loss of income and other amounts under different heads and they cover both general and special damages. Therefore, the contention of the counsel for the claimant that no amount is granted under special damages and only general damages are granted, is rejected.

15. The appeal filed by the claimant in C.M.A. No. 542/2003 is allowed to the extent indicated above and the appeal filed by the insurance company in C.M.A. No. 607/2003 is dismissed with costs of Rs. 1,000/-. These costs are in addition to the costs awarded by the Tribunal.