
(2004) 09 AP CK 0036
In the Andhra Pradesh High Court
Case No : CMA No. 737 of 2004

Madhukuri Raghu Ram Murthy and Another	APPELLANT
Vs	
Koyyada Sakku Bai and Others	RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2005) 4 ACC 405 : (2006) ACJ 2194 : (2004) 6 ALD 497 : (2004) 6 ALT 727

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; P. Jagadish Chandra Prasad, for the Respondent

Judgement

Elipe Dharma Rao, J.—This civil miscellaneous petition was filed by the appellants herein challenging the Award dated 19-1-2004 in O.P. No. 4 of 2001 on the file of the Motor Accidents Claims Tribunal (District Judge), Karimnagar.

2. For the sake of convenience the parties hereinafter be referred to as they are arrayed in original petition.

3. It is expedient to look at the factual matrix at the threshold for brevity and for better understanding of the matter is that one Koyyeda Madunaiah (hereinafter referred to as "the deceased") who was working as Postal Assistant in the Head Post Office, Karimnagar. While so, on 15-9-2000 he had been to his native place, Nedunur on his scooter, at about 10-30 a.m., he stopped his scooter on the left side of the road. A private bus was also found stopped in front of him. In the meantime a car bearing No. AP-12-C-3074 came in the opposite direction driven in high speed, rashly and negligently and overtook the stationed private bus, came on the wrong side and hit the deceased, as a result of which the deceased received multiple head injuries, though the deceased was shifted to the Government Head Quarters Hospital, Karimnagar, but the deceased died while undergoing treatment. The deceased's scooter was also badly damaged. The

deceased was drawing a salary of Rs. 9,314/- per month at the time of his death in the Postal Department. The deceased was aged about 51 years and therefore had 9 more years of service. Hence, filed the above said O.P. for grant of compensation of an amount of Rs. 10,00,000/-.

4. Respondent Nos. 1 and 2 filed counter denying the averments made in the petition and alleged that Respondent No. 2 did not drive the car rashly and negligently. It is further alleged that the deceased himself contributed for the accident and there is no negligence on the part of the 2nd respondent. The age, avocation and the income of the deceased were also disputed. Respondent No. 3 also filed counter denying the accident as narrated in the petition and it alleged that insurance company is not liable to pay the compensation as the policy was taken by the owner of the crime vehicle after the accident as the accident occurred at 10-30 am, on 15-9-2000 and the policy was taken at 5-45 p.m., on 15-9-2000.

5. Before the Tribunal FWs.1 and 2 were examined and Exs.A-1 to A-7 were marked. On behalf of third respondent RWs.1 and 2 were examined and Exs.B-1 to B-10 were marked.

6. The Tribunal after considering the oral and documentary evidence awarded Rs. 5,50,780/- in favour of the petitioners and against the Respondent Nos.1 and 2 only with proportionate costs and interest @ 9% per annum from the date of the petition till the date of the payment by apportioning the compensation amount among the petitioners. Questioning the validity of the said Award the Respondent Nos.1 and 2-owner and driver of the offending vehicle preferred this appeal.

7. The learned Counsel for the appellants vehemently contended that the lower Court failed to see that there is valid insurance coverage and also the policy came into force from the previous day from 00.00 hours. It is further contended that the Tribunal mislead about the payment of premium and failed to see the cover note wherein it is clearly mentioned that the policy came into force on the previous night of 15-9-2000 and as such there is valid insurance coverage. Both cover note and policy are contracts and insurance company cannot make any changes and alterations unilaterally behind the back of the other party i.e., owner of the vehicle and the Tribunal also erred in holding that there is no negligence on the part of the driver of the vehicle. It is further contended by the learned Counsel for the appellants that the Tribunal misread the judgments, even the Hon"ble Supreme Court held, time and again, that the insurance company is liable to pay compensation to the claimants.

8. It is further contended by the learned Counsel for the appellants that the Tribunal had committed apparent error in taking into consideration, the gross salary of the deceased and the Tribunal ought to have taken the net salary of the deceased into consideration while deciding the dependency. Therefore, the grant of compensation is exorbitant and sought for interference of this Court.

9. Though the award is silent about adoption of multiplier, but, during the course

of arguments it was brought to my notice that multiplier 11 was adopted. The Tribunal also awarded Rs. 15,000/-towards loss to the estate and Rs. 10,000/-towards consortium. Thus in all it awarded Rs. 5,50,780/-.

10. Now, I shall dwell upon the issue as to which of the respondents shall be mulcted with liability of payment.

11. It is the contention of the learned Counsel for 3rd respondent that the crime vehicle was not insured with it, as such, the insurance company is not liable to pay the compensation. Respondent No.1, who is owner of the crime vehicle has not produced any document to show that his Car AP-12-C-3074 was insured with the 3rd respondent and the policy was in force by 10-30 a.m., on 15-9-2000. On the other hand, petitioners also did not produce any document in that regard. Whereas, the 3rd respondent produced Ex.B-1, the original proposal form submitted by the 1st respondent. After verifying the contents of Ex.B-1 it was found that the vehicle number was noted as AP-12-3074 and not AP-12-C-3074. The other documents relied on by the 3rd respondent also do not disclose the crime vehicle number as AP-12-C-3074 was issued by it The Tribunal had also noticed that there is a mistake in noting down the vehicle number in Ex.B-1 proposal form. Ex.B-2 is the copy of the cover note of the policy. Ex.B-3 is the insurance policy.

12. It is submitted by the learned Counsel for Respondents 1 and 2 that by mistake the owner of the vehicle who is 1st respondent, noted number of the car as AP-12-3074 in proposal form and taking advantage of the same the 3rd respondent is contending that the crime vehicle was not insured with the company and the policy was taken at 5-45 p.m., on 15-9-2000, i.e., after the accident took place at 10-30 a.m., on the same day.

13. On the other hand the contention of the petitioners is that the vehicle was insured at 00.00 hours on 15-9-2000 that even otherwise the policy would be effective from the above timing and therefore the 3rd respondent is liable to pay the compensation.

14. A bare reading of Ex.B-1, the original proposal form it is evident that it was submitted by the 1st respondent at 5-45 p.m., on 15-9-2000 and the cover note-Ex.B.2 was also issued at the same time. Ex.B-3 is copy of the policy, which was issued in pursuance of Ex.B-2 cover note. It is noticed that there is some controversy with regard to the entry in Ex.B-2, which discloses that the policy came into force from 00.00 hours on 15-9-2000. Touching the above controversy, the evidence of RW-1 is that they would send the policy for computer printing by setting time at 00.00 hours and that the exact time of issuing of the policy would be noted when they print the details on it. He further added that though in the instant case time of the issuance of the policy was noted as 5-45 p.m., by mistake, they could not enter the same in Ex.B-3 policy and the said mistake was realized on 16-8-2001 during the audit and the same was rectified under Ex.B-4 proceedings.

15. The petitioners have gone to the extent of attributing manipulation in Ex.B-3 and contended that the rectification was done behind the back of the 1st respondent without his knowledge and unilaterally. The alleged correction in Ex.B-3 could not be accepted. In support of the contention reliance is placed on a decision United India Insurance Co. Ltd. Vs. Sashiprava Swain and Another, in this case, the accident occurred at 7-00 a.m., but the policy was obtained at 11-30 a.m., and the insurance company did not take the plea in the written statement. This judgment was relied to say that even though time is mentioned in the policy it is operative from the beginning of the day. Once policy was obtained on the same day, it would be operative on the commencement of the day, irrespective of the specific time indicated thereon. Therefore, the Tribunal did not consider this judgment and held that the same is not applicable to the facts of the case.

16. The learned Counsel for the petitioners also relied on another judgment in a case of New India Assurance Co. Ltd. Vs. Ram Dayal and Others, in V. Ravi Vs. M/s. New India Assurance Company Ltd. and others, and Oriental Insurance Company Limited Vs. Naravath Najiram and others, On considering the above said decisions, the Tribunal observed that the policy obtained on the date of accident becomes operative from the previous midnight of the date of insurance, as such, the Insurance Company would be liable.

17. On the other hand, the latest judgment of the Supreme Court in a case of New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors, , wherein, it was held that the policy would not be effective from the mid night of the date of policy taken, but from the time noted. The learned Judge, while considering another judgment of the Supreme Court in a case of New India Assurance Co. Ltd. Vs. Rakesh Talwar, observed that the policy would be effective from the time noted in the cover note and not from 00.00 hours. Another judgment of the Supreme Court in a case of National Insurance Company Ltd. Vs. Mrs. Chinto Devi and Others, it was held that the policy would not cover the liability of the Insurance Company from the previous night from the date of issuance of the policy. On considering plethora of decision and the ratio that emerged from the above judgments, the Tribunal held that since, the crime vehicle was insured at 5-45 p.m., it would be operative from that time only and not 00.00 hours. The accident took place on 15-9-2000 prior to taking of the policy, as such, 3rd respondent is liable to pay compensation. Aggrieved by the above, the present appeal is filed.

18. The learned Counsel for the appellants has drawn my attention to the pleadings and the award rendered by the Tribunal and my attention was also drawn to the documents. As seen from the cover note Ex.B-1 proposal form submitted at 5-45 p.m., covering the period from 15-9-2000 to 14-9-2001 by the owner of the vehicle and in Ex.B-2 cover note, the vehicle number was mentioned as AP-12-3074 and the period of policy is from 15-9-2000 to 14-9-2001. The time was mentioned as 5-45 p.m. on 15-9-2000 in the cover

note and coming to Ex.B-3 policy issued in respect of the vehicle, it was typed on the computer and the time is mentioned as 00.00 hours on 15-9-2000 to 14-9-2001 i.e., period of insurance. At this juncture, it is apposite to extract the evidence of R.W.2, which reads thus:

"I have been working as the Development Officer in R-3's Company for the past about 20 years. I issued Ex.B-2 cover note basing on Ex.B-1-proposal submitted by the Insured. I issued the Cover Note in respect of the Vehicle No. AP-12-3074 at 5-45 p.m., on 15-9-2000. The Cover Note would be prepared in Triplicate and the original would be issued to the Insured. The other two copies would be retained by us. The contract was effective from 5-45 p.m., on 15-9-2000. The Cover Note particulars are endorsed on the reverse of Ex.B-1. I have not filled the columns or anything in it on the reverse of Ex.B-1 except signing it. Exs.B-5 to B-10 were also issued by me in respect of other vehicles.

In the cross-examination RW-2 slated that:

In good faith basing on the details mentioned in the proposal form we issue cover note without verifying the vehicle. It is not true to suggest that we created Ex.B-2 and that I made the entries on the reverse of Ex.B-1. It is not true to suggest that we issue the policy after verifying the particulars in the Registration Certificate. It is not true to suggest that we created the documents to avoid making payment of the compensation to the petitioners."

19. From Exs.B-1 to B-3 coupled with the evidence of RW-2 who was examined on behalf of Respondent No. 3 it is evident that without verifying the vehicle, on the basis of the particulars given by Respondent No.1 in his proposal form Ex.B-1, Insurance Policy was issued and the time of the operation of the policy was noted as 00.00 hours on 15-9-2000. It is only when the Auditor found fault and when the O.P. was filed, Respondent No. 3 rectified the time and issued Ex.B-4.

20. In Rakesh Talwar's case, the Hon'ble Supreme Court held with regard to liability of the insurance company, when the policy was taken couple of hours after the accident, but on the same day copy of the cover note shows 2-30 p.m., as time when the policy was issued, whereas, accident occurred at 1-00 p.m., in those circumstances whether the insurance company is liable or not. The Apex Court held that the insurance company is not liable on the ground that copy of the cover note shows the time when the policy was issued. Accepting the evidence of the company that the policy was issued at 2-30 p.m., on 17-10-1996 whereas the accident occurred on 1-00 p.m., on 17-10-1996 held that the operation of the policy commences from that time onwards i.e. at 2-30 p.m. Therefore, the company is not liable to pay any compensation.

21. In another judgment in a case of New India Assurance Co. Ltd. Vs. Rula and Others, Navarath Najiram after considering the judgment of the Supreme Court that accident occurred at 2-30 p.m., it was only thereafter on the same day at 2-55 p.m., the insurance policy and cover note were obtained by the insured-

owner of the vehicle involved in the accident and there explicitly mentioned in the cover note the effective date of commencement of the insurance for the purpose of the Act was at 2-55 p.m. In the light of the facts and circumstances of the case, the Hon"ble Supreme Court has considered its judgment in Ram Dayal case as it was expressly mentioned the effective date and time of the commencement of the insurance for the purpose of the Act, 10-12-1991 at 2-55 p.m. Therefore, insurer cannot be held liable on the basis of the above policy. Therefore, the liability was fixed on the owner of the vehicle. Applying the above principle laid down by the Hon"ble Supreme Court to the facts and circumstances of the case in Ram Dayal case it was held that in the absence of any specific time, in that behalf, the contract would be operative from the mid night of execution of policy. But, in view of said contract mentioned in the policy, namely, it would be operative from 4-00 p.m., on 15-10-1983 and the accident had occurred earlier thereto.

22. Taking into consideration the above principle of law laid down by the Supreme Court as it is noticed from the policy under Ex.B-3, wherein, the operation of the policy is categorically mentioned as 00.00 hours on 15-9-2000 and the same was corroborated by evidence of RW-2 wherein he stated that by mistake, the time was not mentioned when the policy was issued. But under bona fide impression and out of good faith, without verifying the vehicle and the contents mentioned in the proposal form submitted by the owner of the offending vehicle-Appellant No.1, the insurance policy was issued, wherein the insurance coverage over the vehicle was in vogue for a period of one year commencing from 15-9-2000 at 00.00 hours till mid night of 14-9-2001.

23. From the above stated facts and circumstances of the case, I have no hesitation to hold that the 3rd respondent who is custodian of the public money should have taken some care in issuing the insurance policy covering the crime vehicle. The mistake pleaded by RW-2 cannot be accepted, we have to go by the document available on record. Thus, the liability has to be mulcted as on the date of accident and consequently the insurance of the vehicle was covered by Ex.B3 Insurance policy. Therefore, the third respondent is liable to pay the compensation on behalf of the 1st respondent. Hence, in those circumstances, as held by the Hon"ble Supreme Court, when time and date is mentioned in the insurance policy, it comes into effect from the time and date mentioned in the insurance policy and the company is liable to pay the compensation. Though the proposal form was submitted at 5-45 p.m., on 5-9-2000, but the operation of the policy was mentioned as 00.00 hours on 15-9-2000. Therefore, it will come into effect from 00.00 hours on 15-9-2000. Therefore, the insurance company is jointly and severally liable to pay compensation.

24. Adverting to calculation and determination of future loss of earnings, which the claimants sustained, the Tribunal has committed an error in assessing the loss by adopting gross income, as reflected in Ex.A-7. The issue that net income of the deceased has to be taken while assessing the loss of dependency of the

claimants, is no more *res Integra*, in view of the decision of the Apex Court in a decision *Asha and Others Vs. United India Insurance Co. Ltd. and Another*, The deceased was working as Postal Assistant and as can be gathered from Ex. A-7, his net salary was Rs. 5,281/- and 1/3rd requires to be deducted for the personal expenses of the deceased. Thus, the loss of dependency of the claimants per month comes to Rs. 3,521/-. As can be seen from the award of the Tribunal, on evidence it determined the age of the deceased at 40 years. Therefore, the proper multiplier that would be applicable is 11, in terms of the decision of the Apex Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, . Thus, adopting this multiplier, the loss of future earnings of the deceased comes to Rs. 4,64,772/-. Since, the widow of the deceased has lost compassion of her life partner at young age, she is entitled to Rs. 10,000/- towards consortium. The claimant are also entitled to Rs. 15,000/- towards loss of estate. Thus, claimants in all are entitled to a total compensation of Rs. 4,89,772/-, which is rounded off to Rs. 5,00,000/-.

25. Adverting to the finding of the Tribunal with regard to the fastening of liability against the driver of the vehicle, it is the contention of the learned Counsel for the appellants that the Tribunal went wrong in mulcting the driver also with the liability of the payment of compensation, and therefore, the finding of the Tribunal cannot sustain.

26. It is true, this High Court in a decision *Kollipara Veera Raghavamma and Another Vs. S. Raghavaraju and Others*, , has held that under Rule 517 of the A.P. Motor Vehicle Rules, 1964, the requirement is only that the Claims Tribunal should send notice to the owner of the motor vehicle involved in the accident and its insurer and not to the driver and further held that the claim is maintainable in the absence of driver, being made a party to the proceeding. Therefore, having regard to the ratio decidendi that emerges from this decision, the finding of the Tribunal below in fastening the liability on the driver, is unsustainable. Therefore, the award and decree passed by the Tribunal is liable to be set aside and is accordingly set aside, instead the liability is fastened on the 5th respondent herein i.e., insurance company, for the tortuous act committed by Respondent No. 2 owner of the vehicle.

27. Subject to these findings, the appeal is disposed of, modifying the award passed by the Tribunal, as indicated above. No costs.

28. Before parting with the judgment, a plain reading of the evidence of RW-2, abundantly makes it clear how the officers placed at the realm of the Company are dealing with while issuing insurance policy covering the vehicles. Evidently, he did not move his little finger to at least verify the registration number of the vehicle with the proposal form, much less condition of the vehicle, which is mandatory, under the procedure. Added to that, he pleads mistake and corrected the policy Ex. B-3, when it was found fault by the Audit Department and unilaterally changed the time mentioned in the policy after lapse of one year by

issuing Ex. A-4. All these deeds of RW-2, are in utter violation of the procedure contemplated for issuance of insurance policy. Therefore, to arrest recurrence of such incurable defaults by the officers placed at the realm of affairs and in the interest of public money, I deem it appropriate to direct the Regional Manager of the United India Insurance Company Limited, Hyderabad, to initiate disciplinary proceedings against the said witness for his dereliction of duties, under appropriate Rules governing the service conditions of the Company, and impose appropriate punishment commensurate with the gravity of laxity on the part of the said witness.

29. I am fortified in my views both on the merits of the case so also in observing laxity on the part of the officials of the insurance company, by the judgment of the Apex Court in *New India Assurance Company Limited v. Kiran Singh* AIR 2004 SCW 4212, wherein Their Lordships have held that the Insurance is a covenant of good faith, where both parties are covenanted to abide by the terms and conditions of the policy. In that premise, it is clear that the company has made a deliberate attempt to escape the liability by introducing a copy of the policy other than the insured. It is further observed that the insurance company must bear in mind that they are the trustee of the public and keeper of the public coffer. Often, even genuine claims are being hotly contested in a routine manner by dragging the parties to Courts wasting enormous time and money for the claimants to get their claims settled; whereas the Act like Motor Vehicles Act being beneficial legislation aimed at quick redressal of the victims of accident arising out of the use of motor vehicles, the attitude routinely adopted by the Insurance Company would render the object of the Act frustrated.