
(1996) 12 AP CK 0027
In the Andhra Pradesh High Court
Case No : C.M.A. No. 373 of 1991

Manager, Oriental Insurance Company Limited	APPELLANT
Vs	
Kothapalle Pauldas and Others	RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110C(2A), 96(2)

Citation : (1997) 2 ALT 15 : (1997) 1 APLJ 412

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : S.A.V. Ratnam, for S. Hanumaiah, for the Appellant; A.V. Sivaiah, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Somasekhara, J.—The Appellant is the Insurer/3rd respondent in the O.P. No. 293/87 on the file of the Motor Accidents Claims Tribunal, Tirupati. The award of the Tribunal dated 11-6-1990 is challenged. The respondents 1 and 2 herein who are the parents of the deceased Mohan Raj, who died in a motor vehicle accident which occurred on 19-9-1985, filed the claim petition u/s 110-A of the M.V. Act (for short, the Act), seeking compensation. The 3rd respondent herein is the owner of the RTC bus AAZ 8281 which was alleged to have been involved in the accident. The 4th respondent herein is the owner of the moped ADC 6225 which was alleged to have been involved in the accident and insured with the appellant herein. The Tribunal, during the enquiry, found that the accident was due to the negligence of the 4th respondent, the owner of the moped ADC 6225, and not due to the negligence of the driver of the RTC bus and having found that the moped was insured with the appellant/insurer, passed the award for Rs. 60,000/- as against respondents 2 and 3. Aggrieved by that, the appellant has come up with this appeal.

2. Smt. S.A.V. Ratnam, the learned Counsel appearing for the appellant/ insurer has contended that the finding of the Tribunal on the question of negligence

against the 4th respondent herein, the owner of the moped, is opposed to pleadings and also evidence and it is liable to be set aside.

3. The Tribunal has found that while the deceased was going on a motor cycle bearing No. TMC 5258, the 4th respondent herein who was going in the same direction on the moped ADC 6225 suddenly made a turn which resulted in the deceased falling down and coming under the wheels of the RTC bus and suffering injuries and succumbing to the same. The Tribunal has also held that the accident was due to the negligence of the 4th respondent herein, the owner of the moped, and not due to the negligence of the driver of the RTC bus. Smt. S.A.V. Ratnam, the learned Counsel for the appellant has contended that from the allegations made in the petition, it means that the deceased while going on the motor cycle fell down as a result of the other vehicle having taken a turn and coming under the wheels of the bus and consequently the accident was due to the negligence of either the deceased himself or due to the negligence of the driver of the bus and not at any cost that of the 4th respondent himself. The Tribunal having given reasons has recorded a finding of negligence as against the 4th respondent herein. The 4th respondent has not questioned such a finding. The appellant/insurer did not seek permission of the Tribunal u/s 110-C(2-A) of the Act to contest on merits including the question of negligence either on the ground that there is collusion between the owner of the bus and the claimants or for any other reason or that the owner of the bus did not contest the proceedings. Thus, all the respondents have suffered a finding of negligence recorded by the Tribunal as against the 2nd respondent in the OP. The law is settled that an insurer is not entitled to contest the claim petition u/s 110-A of the Act on merits except on the grounds specified in Section 96(2) of the Act. (Divisional Manager, New India Assurance Company Limited v. Bhagirathi Sabar AIR 1996 SC 108 and British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, . However, this shall be subject to obtaining permission from the Tribunal u/s 110-C(2-A) of the Act. When that is not done in the Tribunal in the first instance and secondly before this Court, if permissible under law, the insurer cannot be permitted to challenge the finding of negligence which is part of the merits of the case. The Tribunal has also given adequate reasons in support of the finding on the question of negligence and on the other hand this Court finds no reason to interfere with such a finding of fact and also on the ground of the appellant having no reason to con test such a finding.

4. The Appeal is dismissed. No costs.