
(1990) 04 AP CK 0014
In the Andhra Pradesh High Court
Case No : A.A.O. No. 797 of 1985

Mandulova Satyanarayana

APPELLANT

Vs

Bodiredoy Lokeshwari and others

RESPONDENT

Date of Decision : 09-04-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 108, 110, 110A, 95(1)
Workmens Compensation Act, 1923 — Section 4

Citation : (1990) ACJ 971 : AIR 1991 AP 323

Hon'ble Judges : P.L.N. Sarma, J;Amareswari, J

Bench : Division Bench

Advocate : G. Krishna Murthy, for the Appellant; N. Ramakrishna Reddy and A. Naidu, for the Respondent

Judgement

Amareswari, J.—The claimants are the legal representatives of a person who was in the employment of the owner of the motor vehicle on the date of accident. He was working as a cleaner. The finding of the Tribunal is that the driver was guilty of rash and negligent driving. The said finding was not challenged. The Motor Accidents Claims Tribunal awarded a sum of Rs.25,000/-towards compensation, but held that liability of the Insurance Company is limited to Rs.18,000/- only and is recoverable from the owners. The Tribunal limited the liability of the Insurance Company under the proviso to S. 95(1)(b)(ii) of the Motor Vehicles Act, 1939 saying that the Insurance Company is liable only to the extent of the amount that can be awarded under the Workmen's Compensation Act, 1923. The owner of the vehicle has now preferred this appeal. The main contention in the appeal was that under the policy, Ex.B.5 the Insurance Company had covered the liability in respect of the death of the driver and the cleaner to the extent of Rs.50,000/- and the Tribunal was in error in limiting their liability to the amount award-able under the provisions of Workmen's Compensation Act. This matter came up before our learned Brother Ramanujulu Naidu J. Before the learned single Judge, reliance was placed by the Insurance Company on the decision in New India Assurance v. K. Sunkamma, (1980) 2 APLJ 271, wherein it was held

that the liability of the Insurance Company was limited to the liability arising under the Workmen's Compensation Act. The learned single Judge felt that the decision in *New India Assurance v. K. Sunkamma* requires reconsideration holding that under the policy of insurance, Insurance Company was liable to pay compensation up to a tune of Rs.50.000/- and their liability cannot be limited to the amount of compensation that would have been awarded under the Workmen's Compensation Act. The learned single Judge referred the matter to the Division Bench.

2. In order to decide this question it is necessary to refer the provisions of Section 95 of the Motor Vehicles Act, 1939.

Section 95. Requirements of Policies and limits of liability:

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed under S. 108 to transact the business of an insurer, and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person incurred by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, bodily injury to, and such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets in the vehicle, or

(c) If it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability."

In this provision there is nothing to indicate, that when a liability is passed on the insurer, the extent of liability should not extend beyond what is provided in the Workmen's Compensation Act. The abovesaid provision accepts the requirement of a policy in the cases contemplated thereunder and it has also not excluded the insurer from entering into a contract of indemnity to cover circumstances and conditions countenanced by the provision. Because of this statutory entitlement, an employee or his legal representatives are entitled to exercise option under S. 110-AA to sue the owner of the motor vehicle either under the Workmen's Compensation Act or file claim against him under the Act as contemplated under Ss. 110 and 110-A. There is nothing in the aforementioned section to suggest that when a liability is taken by the insurer thereunder, the extent of liability in such a case would be limited to that as allowed under the Workmen's Compensation Act. What is said under S. 95 is only the nature of the liability and not the extent of the liability. The section itself is captioned as "Requirements of policies and limits of liability". The proviso shows that the policy shall not be required to cover the liability in respect of the death arising out of and in the course of his employment, of the employee of a person incurred by the policy or in respect of bodily injury sustained by such an employee other than the liability arising under the Workmen's Compensation Act. It is an exception to an obligation of taking a policy in respect of the liability arising under the Workmen's Compensation Act. But where an agreement was entered into and a policy is taken under which the company undertakes the liability prescribing a limit, it is bound by the policy. Otherwise, the provisions of the Motor Vehicles Act empowering the persons to claim compensation either under the Motor Vehicles Act or under the Workmen's Compensation Act would be defeated. The provisions contained in S. 110-AA are beneficial and intended to enable the workmen or the legal representative of the deceased workmen to claim higher compensation if the same can be awarded either under the Motor Vehicles Act or under the Workmen's Compensation Act. If the liability of the Insurance Company is restricted to that specified under the Workmen's Compensation Act, the object of S. 110-AA of the Motor Vehicles Act would be frustrated. In the present case, the amount of compensation awarded is Rs.25,000/-. Inasmuch as the Insurance Company has undertaken the liability to the extent of Rs.50,000/- under the Policy, Ex. B5, the Company is liable to pay the entire amount of Rs. 25,000/-. Under Ex. B. 5, the owner had paid the premium covering the risk of the driver and the cleaner also.

3. The learned counsel for the respondent, however, relied upon the decision of a single Judge of this Court in *New India Assurance v. K. Sunkamma* mentioned supra. The learned Judge does not appear to have noticed S. 110-AA under which a person entitled to compensation can claim such compensation under either of the Acts, viz., Workmen's Compensation Act or the Motor Vehicles Act. The view expressed by the learned Judge in *New India Assurance v. K. Sunkamma* mentioned supra does not represent the correct legal position. We,

accordingly allow the appeal and set aside the order of the lower Court and direct the third respondent, M/s. United India Insurance Company Ltd., with which the lorry was insured to bear the entire liability of Rs.25,000/- and the claimants are entitled to recover the same from the Insurance Company. No costs.

4. Appeal allowed.