
(2014) 03 AP CK 0164
In the Andhra Pradesh High Court
Case No : M.A.C.M.A No. 419 of 2009

National Insurance Co. Ltd.

APPELLANT

Vs

Kesari Ravi and Another

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147 147(1) 95 95(1)(b)

Citation : (2014) ACJ 2606 : (2014) 4 ALD 472 : (2014) 4 ALT 216 : (2014) 2 AnWR 435

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : Ramachandra Reddy Gai, for the Appellant; T. Damodar for Respondent No. 1 and Sri Md. Saleem, for the Respondent

Final Decision : Allowed

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the award dated 29-03-2004 in O.P. No. 123 of 2000 passed by the Chairman, M.A.C.T.-cum-II Additional District Judge, Madanapalle (for short "the Tribunal") the National Insurance Company Limited/3rd respondent in the O.P preferred the instant appeal. The factual matrix of the case is thus:

a) Kesari Ravi - injured is the claimant. His case is that he works as a cleaner in the jeep bearing No. AP 04 T 2341 owned by the 2nd respondent, insured with 3rd respondent. While so, on 17-03-2000 at about 8 am when the claimant was proceeding in his jeep as a cleaner, the jeep driver drove the vehicle in a rash and negligent manner and when the jeep reached near Piler Railway Station on Piler - Madanapalle Road he dashed against another jeep bearing No. PY 01 M 4745 owned by 1st respondent and insured with 3rd respondent. As a result, the claimant sustained grievous injuries to his left leg. He was shifted to S.V.R.R. Hospital, Tirupathi where he took treatment as inpatient from 17-03-2000 to 11-05-2000 and his left leg upto knee joint was amputated as it was badly damaged and he also incurred Rs. 20,000/- towards medical and other

expenditure. It is pleaded that prior to accident, he was working as a cleaner under the 2nd respondent and getting Rs. 1,500/- p.m. as salary. It is submitted that a case in Crime No. 43/2000 was registered against the driver of jeep bearing No. AP 04 T 2341 and in the said crime, C.C. No. 48/2000 was pending before the Judicial Magistrate of First Class, Piler. On these pleas, the claimant filed O.P. No. 123 of 2010 against respondents 1 to 3, who are owner of Jeep bearing No. PY 01 M 4745, owner of Jeep bearing No. AP 04 T 2341 and insurer of the said two Jeeps respectively and claimed Rs. 2,50,000/- as compensation under different heads.

b) Respondents 1 and 2 remained ex parte.

c) Respondent No. 3/insurance company filed written statement and opposed the claim. R.3 denied the age, avocation and income of the claimant and urged to put him to strict proof of the same. R.3 denied the method and manner of occurrence of the accident. R.3 further pleaded that unless it was proved that the person who drove the said two Jeeps were having valid and subsisting licence at the time of accident, it is not liable to pay any compensation. Finally, it contended that the claim is highly excessive and untenable and thus prayed to dismiss the O.P.

d) During trial, P.W. 1 was examined and Exs. A.1 to A.7 were marked on behalf of claimant. R.W. 1 was examined and Exs. B1 and B2 were marked on behalf of respondents.

e) A perusal of the award would show that having regard to the evidence of P.W. 1 coupled with Ex. A1-F.I.R, Ex. A.3-charge sheet and Ex. A.4-certified copy of judgment in C.C. No. 48 of 2000, the Tribunal held that the accident was occurred due to the fault of driver of 2nd respondent's Jeep bearing No. AP 04 T 2341.

f) Regarding quantum of compensation, having regard to the evidence on record, the Tribunal observed that claimant has suffered 60% disability due to amputation of his left leg. In such consideration, the Tribunal granted compensation under different heads as follows:

g) Thus, the Tribunal granted total compensation of Rs. 2,43,000/- with proportionate costs and simple interest at 9% per annum from the date of O.P till the date of realization against the respondents 2 and 3. The Tribunal dismissed the claim against respondent No. 1.

2. Hence the appeal by the insurance company. 3) Heard arguments of Sri Ramachandra Reddy Gadi, learned counsel for appellant/insurance company, Sri T. Damodar, learned counsel for 1st respondent/claimant and Sri Md. Saleem, learned counsel for 3rd respondent. Case against R2 was dismissed for default on 15-12-2008. However, since in the tribunal R2 suffered decree, his absence in the appeal will not have any difference (vide Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others,

3. a) Learned counsel for appellant/insurance company argued that the tribunal committed a gross mistake in fastening the liability of the claimant on the appellant/insurance company. Expatiating it, learned counsel firstly submitted that the crime vehicle i.e., jeep bearing No. AP 04 T 2341 was no doubt covered under Ex. B1 - insurance policy. However, the said policy is only an Act-policy issued to the insured to use the vehicle for his private purpose i.e. social, domestic and pleasure purposes and insured's own business. The policy does not cover the use for hire or reward. Learned counsel submitted that in view of the nature of Policy and its terms of the use of the vehicle, the owner is restricted from using the vehicle for hire or reward. However, contrary to the terms stipulated in Ex. B1-policy, the 2nd respondent-owner hired his vehicle to LM Bank, Piler. As per Ex. A1 - FIR, the vehicle was in fact being used to bring the bank's Supervisor and on the way the driver admitted some passengers for hire. This is a gross violation of the terms of policy. Since at the time of accident the vehicle was being used for hire in contravention of the terms of policy, he argued, the liability of the insurance company ceased and so it is not liable to pay compensation.

b) Secondly, the learned counsel argued that according to claimant, he was working as a cleaner of crime jeep under 2nd respondent and at the time of accident, he travelled in the jeep in the said capacity and met with an accident. Learned Counsel argued that as per terms of the policy, it is only an Act-policy and the liability of a cleaner is not covered under Ex. B1 and therefore, on that ground also the Appellant/Insurance company cannot be made liable to pay compensation. He submitted that without considering the above facts, the Tribunal committed an error in awarding compensation against the insurance company. He therefore prayed that the insurance company may be exonerated from the liability, by allowing the appeal.

c) He finally submitted that the compensation awarded under different heads is exorbitant inasmuch as the tribunal without there being any cogent evidence regarding the disability of claimant, has granted compensation to him. He submitted that the compensation needs to be scaled down.

4. a) Per contra, the learned counsel for 1st respondent/claimant firstly argued that the vehicle in question i.e. jeep bearing No. AP 04 T 2341 is registered as a transport vehicle and that is why in its registration number i.e. AP 04 T 2341, "T" is specifically mentioned. He submitted that the letter "T" indicates a transport vehicle. Therefore, the owner of the jeep is entitled to ply the vehicle for hire or reward. Learned counsel argued that in Ex. B1-policy also the vehicle is referred as AP 04 T 2341 which means it is a transport vehicle. Without understanding the nature and purpose of its registration, the appellant/insurance company cannot claim that it issued policy as an Act-policy only by restricting the use of the vehicle for private purpose. Having known that the vehicle is a transport vehicle and having issued policy as such, the insurance company cannot contend that its user as per the terms of policy is restricted for private purpose. He thus,

argued that the 2nd respondent-owner was well within the limits of permit when he hired the vehicle to LM Bank and there was no violation of terms of the permit and also the policy.

b) Secondly, so far as the claimant is concerned, he submitted that the claimant has been working as cleaner in a passenger vehicle under 2nd respondent-owner. Therefore, though it is an Act-policy issued in terms of Section 147(1) of Motor Vehicles Act, 1988 still his risk will be covered under the terms of policy and in fact the trial Court having relied upon the decision reported in *The Oriental Fire and General Insurance Company Ltd. Vs. Matta Chandra Rao and Another*, submitted by the claimant held that his risk was covered under Ex. B1-policy. He submitted that the tribunal rightly fastened the liability on the insurance company.

c) Finally, he submitted that the claimant lost his leg in the resultant accident and having considered the said aspect, the Tribunal rightly granted just and reasonable compensation and there is no necessity to revise the same. Thus he prayed to dismiss the appeal.

5. In the light of above rival arguments, the point for determination in this appeal is:

Whether the award passed by the tribunal is factually and legally sustainable?

6. a) POINT: The accident, involvement or first respondent's jeep bearing No. PY 01 M 4745 and second respondent's jeep bearing No. AP 04 T 2341 and their insuring with the appellant/insurance company and claimant's travelling in the jeep bearing No. AP 04 T 2341 and suffering amputation of his left leg in the resultant accident are all admitted facts. It is also an admitted fact that the concerned criminal court and tribunal found fault with the driver of 2nd respondent's jeep No. AP 04 T 2341. Hence, the tribunal fixed the liability on the second respondent and its insurer i.e. appellant/insurance company. It is also an admitted fact that crime vehicle was covered with Ex. B1-policy by the relevant date of accident.

b) Now, the first contention of the appellant is that the policy is only an Act-policy permitting use of the vehicle for private purpose i.e. social, domestic and pleasure purpose and insured's own business, whereas the 2nd respondent hired the vehicle to LM Bank, Piler and further at the time of accident the jeep was carrying some passengers in contravention of terms of policy and hence its liability ceased.

c) On the other hand, the contention of first respondent/claimant is that the crime vehicle was registered as transport vehicle and that is why in its registration No. AP 04 T 2341, the letter "T" was specifically mentioned and knowing it Ex. B1-policy was issued with the same registration number and therefore appellant/insurance company cannot now contend that its user is restricted to private purpose only.

7. I am unable to agree with the argument of learned counsel for 1st respondent/claimant because the 1st respondent/claimant has not summoned the certificate of registration pertaining to the crime vehicle to show the nature of its user as permitted therein. Even otherwise, Ex. B1 shows that policy was specifically issued for user of private purpose i.e. social, domestic and pleasure purposes and insured's own business. The owner obtained the policy with that condition only. As such he cannot now contend that he can use the vehicle for any purpose and policy should cover for all the purposes. In my considered view the second respondent committed breach of contract of policy and thereby the liability of insurance company is ceased. The tribunal's observation basing on decision in Matta Chandra Rao's case (supra) cannot be approved. The said decision relates to Section 95 of the M.V. Act as it stood prior to amendment basing on clause (ii) of proviso to Section 95(1)(b) of M.V. Act which was in existence by then. It was observed that risk of a cleaner in a passenger vehicle shall cover under an Act-policy. However, the accident in the instant case was occurred on 17-03-2000 i.e. subsequent to amendment to MV Act in 1988 and also in 1994. Clause (ii) to proviso to Section 147 of the present Act which is equivalent to Section 95 of old Act do not contain the wordings as contained in clause (ii) of proviso to Section 95 (1)(b) of old Act. So, in essence it can be said that the appellant/insurance company cannot be held responsible in view of clear violation of terms of contract of policy. Therefore, second respondent who is the owner of the jeep bearing No. AP 04 T 2341 is liable to pay compensation. However, pending appeal if any compensation is paid by the appellant/insurance company, it shall recover the same only from the second respondent/owner. In the result, this MACMA is allowed. Appellant/insurance company-third respondent in O.P is exonerated from the liability and it is directed that second respondent/owner shall pay compensation to the first respondent/claimant. However, pending appeal if the appellant/insurance company paid any compensation, it can recover the same from the second respondent/owner. No order as to costs.

As a sequel, miscellaneous applications pending, if any, in this appeal shall stand closed.