
(2014) 07 AP CK 0159
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 685 2007

National Insurance Company Limited	Vs	APPELLANT
Gunji Balakrishna and Others		RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 149, 166, 173

Citation : (2015) 2 AnWR 538

Hon'ble Judges : C. Praveen Kumar, J

Bench : Single Bench

Advocate : Naresh Byrapaneni, Advocates for the Appellant; T.C. Krishna, Advocates for the Respondent

Judgement

C. Praveen Kumar, J.—Aggrieved by the order and decree dated 07.06.2006 passed in O.P. No. 470 of 2002 on the file of the III Additional Motor Accidents Claims Tribunal, Nellore, the National Insurance company Limited preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act").

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

3. The facts in issue are as under:

4. The claimant filed a petition under Section 166 of the Act claiming compensation of Rs. 3,00,000/- for the injuries sustained by him in a road accident that took place on 09.11.2001, stating that on that day the claimant along with a crop cutting machine was traveling in a lorry bearing No. AP 02 T 8010, that the driver of the said lorry, who drove the same in a rash and negligent manner, lost control resulting in vehicle turning turtle; that as a result of the accident, the claimant sustained grievous injuries and became permanently disabled, that since the accident took place due to the rash and negligent driving by the driver of the vehicle, owned by respondent No. 1, and as

the vehicle was insured with the second respondent, the petition was filed making both the respondents jointly and severally liable to pay the compensation.

5. The first respondent, owner of the lorry, remained ex parte, while the second respondent filed a counter denying the manner in which the accident took place. According to it, the petitioner is an un-authorised passenger and as such, the insurance company is not liable to pay any compensation, that the driver of the vehicle was not having a valid driving licence to drive the vehicle as such the liability of the insurance company is limited as per the terms and conditions of the policy.

6. Basing on the above pleadings, the Tribunal framed the following issues:

"1) Whether the accident is occurred due to the rash and negligent driving of the driver of the Lorry bearing Regn. No. AP 02 T 8010?

2) Whether, the claimant is entitled to the compensation amount, if so, to what amount and from which of the Respondent?

3) To what relief?"

7. In support of his claim, the petitioner got examined himself as PW.1 and four others as PWs.2 to 5 and got marked Exs.A1 to A11 and the Court also marked Exs.C1 to C3. On behalf of the second respondent, RW1 was examined and marked Ex.B1.

8. After considering the oral and documentary evidence available on record, the Tribunal held that the accident took place due to rash and negligent driving of the driver of the Lorry and that the claimant is entitled to a sum of Rs. 1,14,680/- as compensation with interest at 7.5% p.a. from the date of petition till the date of realization with proportionate costs. Challenging the same the present appeal is filed.

9. The points for consideration in this appeal are;

"(i) whether the accident took place due to rash and negligent driving by the driver of the lorry;

and

(ii) whether the insurance company is liable to pay any compensation."

10. PW1 in his evidence stated that on the fateful day he was traveling along with crop cutting machine from Nizamabad to Anantapur in a lorry bearing No. AP 02 T 8010 and that the driver of the lorry drove the vehicle in a rash and negligent manner and lost control over the vehicle resulting in the accident. The First Information Report which was given at the earliest point of time corroborates the version of PW1 in all material aspects. After registration of the crime, the police investigated into the matter and filed a charge sheet holding the driver of the lorry responsible for the accident.

11. The learned counsel for the appellant mainly submits that the insurance company is not liable to pay any compensation to the claimant for the reason that the owner of the goods by name D. Rama Mohan was also present in the vehicle at the time of the accident. In the absence of any extra premium being collected, it is contended, the insurance company is not liable to indemnify the owner of the vehicle.

12. Per contra, the learned counsel for the claimant would contend that the policy covers the risk of the claimant and as such the insurance company is liable to pay compensation.

13. PW1 in his evidence stated that he was working as a crop cutting operator under D. Ram Mohan, who was the owner of not only the crop cutting machine but also the crime vehicle. His evidence discloses that on the date of the accident he was proceeding in the crime vehicle along with crop cutting machine from Nizamabad to Anantapur. The said vehicle was driven by one K. Satish Reddy and due to rash and negligent driving by the driver of the lorry, the said vehicle turned turtle along with crop cutting machine. The evidence of PW1 also discloses that D. Ram Mohan, who was the owner of the crime vehicle and crop cutting machine, was also present in the vehicle at the time of the accident. The criminal law was set into motion pursuant to a report given by Mr. D. Ram Mohan, owner of the crime vehicle and crop cutting machine. PW1 admits that he has not filed any documents to show that he used to work under D. Rama Mohan and was earning Rs. 3,000/- per month. However, it is elicited from his evidence that he was an operator of crop cutting machine, working under D. Ram Mohan from 9.00 a.m. to 8.00 p.m. on every day and if there was work, he used to attend the same even during late hours. His evidence also discloses that one Venkata Ramanaiah was also traveling in the lorry. The rest of the cross examination was with regard to the nature of injuries sustained, nature of treatment taken by the claimant and also with regard to the expenses incurred by him.

14. RW1, who was working as Senior Assistant in the office of insurance company deposed that the first respondent is the owner of the Lorry, which was insured with the company and the same was in force as on the date of the accident. His evidence further discloses that as per the terms and conditions of the policy, neither the owner of the vehicle nor his authorized representative are entitled to travel in the lorry as NFPP. According to him, the policy does not cover the risk of any other passengers except loading and unloading coolies in the said lorry. His evidence further discloses that as the owner of the goods was also traveling in the lorry on the date of the incident the claimant does not come under the care taker of the goods as mentioned in the claim-petition. Therefore, his evidence is to the effect that the policy does not cover the risk under NFPP. According to him, the claimant was traveling as an un-authorised passenger in the lorry on the date of the accident for which the policy does not cover the risk of an un-authorised passenger as it is a commercial goods vehicle. It has been

elicited from the cross examination of RW.1 that as per Ex.B1, six persons can travel in the vehicle as coolies or concerned with load apart from care taker. It is also elicited from him that the claimant was a operator of crop cutting machine and as per the contents of charge sheet and F.I.R.D. Ram Mohan (owner), claimant and Satish Reddy (Driver) were traveling in the lorry at the time of the accident. Apart from that, the insurance policy, which is placed on record as Ex.B1, would show that the owner of the lorry, who is also the owner of the crop cutting machine, has paid a basic premium of Rs. 2,779/-, legal liability to passenger (NFPP) Rs. 50/-, for employees (vehicle) Rs. 30/-, for employees (other) Rs. 90/- and Rs. 75/- for PA (Pass) Unlimited and Rs. 3,024.00 for Auto Association Membership.

15. From the above, it is clear that, on the date of the accident, the claimant, who was working as a crop cutting machine operator, was proceeding in the lorry along with the crop cutting machine. The owner of the lorry by name D. Ram Mohan, who is also owner of the crop cutting machine, was also present in the vehicle at the time of accident.

16. Relying upon the Section 149 of the Act, the learned counsel for the appellant strenuously contends that since the owner of the goods was present in the vehicle at the time of the accident, the person, who was accompanying the goods will not be entitled to any compensation from the insurer of the vehicle.

17. The learned counsel for the appellant relied upon the judgments of the Apex Court in Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, and National Insurance Co. Ltd. Vs. Prema Devi and Others, to show that coolie, who was traveling in the vehicle, was a gratuitous passenger not covered under Section 147(1) of the Act and also to show that the insurance company is not liable to indemnify the owner of the vehicle when he violates the conditions of the policy.

18. The learned counsel for the appellant also relied upon the following observation of the Apex Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, wherein the Apex Court, while overruling the decision in New India Assurance Company Vs. Shri Satpal Singh and Others, , observed as under:

"25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling

in a goods vehicle, the insurers would not be liable therefor."

19. At this stage it may also be relevant to refer Section 147 of the Act which reads as under:

"Section 147: 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 authorized insurer; or (b) insures the person or classes of persons specified in the policy to the extent specified in subsection (2),-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle 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 insured 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, or bodily injury to, any 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 on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability.

Explanation:-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

20. Section 147 indicates the extent to which, the policy must cover the liability. Clause (a) of sub-section (1) mandates that the policy must be issued by the authorized insurer. Clause (b) refers to the classes of persons, that must be covered by the policy. The extent to which they are covered is referred to, in sub-section (2). Sub-clause (i) of sub-section (1)(b) deals with the obligation to meet the liability incurred by the owner of the vehicle, in respect of death or bodily injury, or damage of any property of a third party. Sub-clause (ii) of sub-section

(1)(b) deals with the obligation arising out of death, or bodily injury to a passenger of a public service vehicle.

21. Proviso to sub-section (1) of Section 147 is, in a way, the continuation of the list of persons, that are required to be covered in the event of any accident. It covers the persons employed in the vehicle as against third parties, or passengers. These include, (a) drivers, irrespective of class of vehicle, (b) conductors, engaged in a public service vehicle, and (c) persons, being carried in a goods carriage, obviously as labourers. These classes of persons were dealt with under the proviso, obviously because the Parliament felt it fit, not only to identify the persons, but also the extent of coverage under the one and the same provision. As regards this category of persons, the liability was restricted to the one, under the Workmen's Compensation Act. Reference to that Act clearly suggests that the persons mentioned in the proviso are workmen of one category, or the other, in contra distinction to third parties mentioned in sub-section (1)(b)(i), and passengers in a public service vehicle (1)(b)(ii). If sub-section (1) is read together with the proviso, it emerges that the Act requires the insurance policy to cover three categories of persons, viz., third parties, passengers in a public service vehicle and employees, such as drivers, conductors and labourers, engaged in a goods vehicle.

22. In the instant case, the owner of the lorry and also the owner of the crop cutting machine is one and the same. Owner of the lorry was present in the vehicle at the time of the accident and the claimant, who was also present for the purpose of operating the crop cutting machine was an employee of the owner of the vehicle. Therefore, the claimant cannot be a gratuitous passenger. There is enough material available on record to show that the claimant was the crop cutting operator.

23. Further, the insurance policy, which has been produced on record as Ex.B1, would show that the owner of the vehicle has paid a premium of Rs. 50/- for legal liability to passenger/NFPP, Rs. 30/-for Employees (Vehicle) and Rs. 90/- for employees (other). The purpose for which the premium was collected was explained by RW1 stating that the policy does not cover the risk of any other passenger except loading and unloading coolies, who were traveling in the said lorry. His evidence is to the effect that the claimant can only be treated as an unauthorised passenger. But, the evidence would show that the claimant was the operator of the crop cutting machine and his presence is necessary not only for the use of the machine but also for loading and unloading the machine. Even otherwise, the policy covers the risk of the claimant for the reason that the owner of the vehicle paid a sum of Rs. 30/- for employees (Vehicle) and Rs. 90/- for employees (others). The policy as well as the evidence is silent as to the purpose for which Rs. 90/- was collected from the owner of the vehicle. The word "employees (others)" mentioned in policy may include coolies or it could include Employees of the owner of the vehicle including the person engaged by the owner of the vehicle to operate a machine of which he is the owner, or for

loading or unloading the machine. Therefore, the argument of the learned counsel for the appellant that the policy does not cover the risk of the claimant as the owner of the vehicle was traveling in the vehicle and no extra premium was paid covering the risk of the claimant cannot be accepted.

24. Apart from that, the evidence of RW.1 would show that the premium paid covers six coolies traveling in the vehicle as coolies or concerned with load. Since it is an admitted fact that the claimant was an operator of a crop cutting machine, belonging to the owner of the vehicle, the policy covers his risk even on that count.

25. In view of the discussion made above, it can be said that the policy covers the risk of the claimant and the insurance company is liable to indemnify the insured/owner of the vehicle to pay compensation to the claimant for the damages caused to him in the accident.

26. The finding of the Tribunal that the accident took place due to the rash and negligent driving of the driver of the vehicle i.e. Lorry bearing No. AP 02 T 8010 also warrants no interference.

27. Since the learned counsel for the appellant did not dispute the quantum of compensation awarded to the claimant, the same need not be gone into in this appeal.

28. For the aforesaid reasons, this Court is of the view that there are no merits in the appeal and the same is liable to be dismissed.

29. Accordingly, the appeal is dismissed confirming the order and decree, dated 07.06.2006 passed in O.P. No. 470 of 2002 on the file of the III Additional Motor Accidents Claims Tribunal, Nellore.

30. There shall be no order as to costs. Miscellaneous petition pending in this appeal, if any, shall stand closed.