

**(2004) 07 AP CK 0114**  
**In the Andhra Pradesh High Court**  
**Case No : CMA No. 1215 of 1999**

|                                    |    |            |
|------------------------------------|----|------------|
| National Insurance Company Limited | Vs | APPELLANT  |
| Rangu Anjamma and Others           |    | RESPONDENT |

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**Date of Decision :** 05-07-2004

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 147(3), 151

**Citation :** (2004) 5 ALD 233

**Hon'ble Judges :** C.Y. Somayajulu, J

**Bench :** Single Bench

**Advocate :** B. Venkataratnam, for the Appellant;

**Final Decision :** Allowed

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## Judgement

C.Y. Somayajulu, J.—Respondents 1 to 3 filed a claim petition seeking compensation of Rs. 1,00,000/- from Respondents 4 and 5 and the appellant herein who are the driver, owner and insurer respectively of the lorry bearing No.AAW-5729 involved in the accident, contending that the deceased-Rangu Veera Venkanna, husband of first respondent, father of second respondent and son of third respondent, received injuries in an accident caused by the lorry AAW 5729 due to the rash and negligent driving of the fourth respondent and succumbed to those injuries. Fourth respondent chose to remain ex parte. Fifth respondent filed counter contesting the claim. Appellant filed its counter contending that it is not the insurer of the lorry bearing No. AAW 5729 involved in the accident. The Tribunal held that Respondents 1 to 3 are entitled to Rs. 50,000/- as compensation and passed an award for that amount against Respondents 4 and 5 and the appellant jointly and severally, on the basis that the appellant inspite of the fact that claimant mentioned the number of the policy in the claim petition, failed to produce the policy. Aggrieved by the award passed against it, the insurance company which is made liable to pay the compensation preferred this appeal.

2. The fact that some policy number is given by the claimants in the O.P. by

itself, is not sufficient to hold that the offending vehicle was insured with the insurance company named as a respondent in a claim petition. If I may say so the Tribunal was in error in drawing an inference against the appellant for non-production of the policy. When it is the contention of the appellant that the offending vehicle was not insured with it, question of the appellant producing the insurance policy does not arise, because no policy would be existing. As per Section 147(3) of the Motor Vehicles Act, 1988 (the Act), whenever insurance is made, a certificate of insurance has to be issued by the insurance company concerned. As per Section 151 of the Act, the owner of a vehicle is bound to furnish particulars of insurance if called upon to do so. So, it is for the 5th respondent, who is the owner of the vehicle involved in the accident, who contested the claim, to establish that the offending vehicle i.e., lorry bearing No. AAW-5729 was insured with the appellant by the date of the accident. Fifth respondent did not produce the certificate of insurance. The assumption of the Tribunal that the burden of proof is on the appellant to establish that it is not the insurer, is not correct. It is for the claimants or the owner of the vehicle to establish that a vehicle is insured with a particular insurance company, by producing necessary documents to show insurance, when the insurance company impleaded as a respondent denies insurance of the vehicle with it. Merely because some particulars are given in the claim petition as the policy particulars, without any basis whatsoever, the insurance company arrayed as respondent when it denies insurance, cannot be made liable unless the owner produces the policy of insurance. Therefore, the Tribunal passing an award against the appellant on the basis that the appellant failed to show that it is not the insurer is not a correct approach. Hence, the award passed against the appellant is liable to be suspended till either Respondents 1 to 3 or the 5th respondent establish that the offending vehicle is insured with the appellant by the date of accident.

3. Therefore, the appeal is allowed. The award passed against the appellant shall stand suspended till either Respondents 1 to 3 or the 5th respondent establish that the offending vehicle i.e., lorry bearing No. AAW 5729 was insured with the appellant by the date of accident i.e., 28.2.1990. On either Respondents 1 to 3 or the 5th respondent establishing that the vehicle bearing No. AAW 5729 was insured with the appellant by 28.2.1990, only can, the award against the appellant be executed. The appeal is ordered accordingly. Parties are directed to bear their own costs in this appeal.