
(1991) 11 AP CK 0006
In the Andhra Pradesh High Court
Case No : C.M.A. No. 294 of 1987

New India Assurance Co. Ltd.

APPELLANT

Vs

Anga Chinni Babu and Others

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A

Citation : (1992) ACJ 281

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : I.A. Naidu, for the Appellant; B.S.R. Narasimha Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Radhakrishna Rao, J.—On a claim petition filed by the parents on account of the death of a boy aged about nine years who had potential and was earning and assisting his parents in agriculture, claimed a sum of Rs. 20,000/-.

2. The Tribunal found that the lorry driver drove the vehicle rashly and negligently, basing on the direct testimony of an injured person, who also filed another O.P. The presence of the injured person at that point of time has been established and it cannot be denied. Nothing has been elicited in his cross-examination to discredit his testimony that he is coming out with some story which did not take place. So the lower court was perfectly justified in accepting the direct testimony and at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry and having found that the rash and negligent act is there, lower court fixed the liability on the insurance company also and awarded an amount of Rs. 15,000/- to the claimants in O.P. No. 55 of 1984. The lower court came to the conclusion that there is a policy and the insurance company is liable.

3. Aggrieved by the same, the insurance company who is the appellant herein

has filed this appeal.

4. The owner and the driver were served but they are absent. The court has to consider in this case, about the burden of proof, in a case where the policy itself has not yet been filed. It is very difficult for the claimants to produce a policy as the policy is generally presumed to be with the owner of the vehicle. In almost all the cases the owners are not giving any assistance to the court as they feel that even in their absence the liability will be fixed on the insurance company. If the claimants have not produced any material to show that there is policy at that point of time the burden can never shift. Their duty is only to show that a particular vehicle involved in the accident was insured with a particular company with a particular policy number. If that material has been supplied by the claimants, it is the duty of the insurance company to produce the evidence to the effect whether that policy was there on them or whether a wrong policy has been given or whether the policy mentioned in the O.P. belongs to some other vehicle. Non-production of the evidence to that effect and merely filing an appeal by the insurance company without any proof by taking advantage of the plea that has been taken by them cannot be entertained. In most of the accident cases, the Motor Vehicle Inspectors usually inspect the vehicles and they will note down the particulars that are available therein. There is a particular column in that report whether the policy has been there and whether that policy is in force. In this case, evidence has been let in by producing Motor Vehicle Inspector's report which was prepared by the official in due course of business. In connection with the enquiry with regard to this accident, it is mentioned that the accident vehicle was having insurance policy No. 631025 valid up to 29.1.1985. Exh. A-2 is the accident report given by the Motor Vehicle Inspector and that particulars have been mentioned therein and that particulars have been furnished by them. Time has been given to the insurance company to produce that policy, but it has not produced that policy. So when it has not produced that information, it cannot now contend that there is no policy at all. So whenever the claimants have produced or given the particulars of the policy with a branch which has been entered into the Motor Vehicle Inspector's report, the burden shifts on the insurance company to show that number does not relate to this vehicle or that number was not available or that number was never issued at all. This aspect has been dealt with the burden of proof in a case where information has been given. In this case, as the information has been given with regard to the particulars of the policy etc. and as the insurance company failed to produce the same an adverse inference has to be drawn. So the lower court is rightly justified in drawing the adverse inference. In cases of no fault liability u/s 92-A of Motor Vehicles Act, 1939, the courts are granting Rs. 15,000/- prior to the commencement of this Act. So even on that ground they are entitled to Rs. 15,000/- and the orders of the lower court cannot be said to be on the high side and it does not warrant any interference.