(1990) 07 AP CK 0004

In the Andhra Pradesh High Court

Case No : A.A.O. No. 135 of 1987

New India Assurance Co. Ltd. APPELLANT

Vs

Ratan Prakash Rao and Another RESPONDENT

Date of Decision : 26-07-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95

Citation : (1991) ACJ 332 : (1990) 2 APLJ 507

Hon'ble Judges : Iyyapu Panduranga Rao, J

Bench : Single Bench

Advocate : S.V.R.S. Somayajulu, for the Appellant; V.L.N.G.K. Murthy, for the Respondent

Final Decision : Allowed

Judgement

Iyyapu Panduranga Rao, J.—This is an appeal against the order and decree of the learned Additional Chief Judge, City Civil Court, Secunderabad, awarding Rs. 95,000/- t wards compensation in O.P. No. 11 of 1983 on his file. Aggrieved by the same, the appellant insurance company, which is the 2nd respondent in the O.P., has preferred this appeal.

2. The only point for consideration is whether the Tribunal erred in awarding compensation exceeding Rs. 50,000/-.

3. The first respondent filed O.P. u/s 110-A of the Motor Vehicles Act, 1939 claiming compensation of Rs. 1,36,000/-alleging that on 11.9.1982 at about 4.00 p.m. he was proceeding on a motor cycle bearing No. ATY 9815 from Ravindra Bharati towards Nampally; when he reached the bus stop near Police Control Room a lorry bearing registration No. APM 532 (hereinafter referred to as the ''accident vehicle''), owned by the 2nd respondent in the appeal, came from the opposite direction in a rash and negligent manner and dashed against him and as a result of which he sustained grievous injuries; he was shifted to the Osmania General Hospital where he was treated initially; later he was treated by Dr.

Vedaprakash, Hyderabad and it is further alleged that he sustained permanent disability due to the said accident. The owner of the accident vehicle, having entered appearance through an advocate, has not chosen to file any counter and the O.P. was resisted by the insurance company. Along with other pleas, the insurance company has specifically pleaded that PW 1 in no event is entitled to over and above Rs. 50,000/-towards compensation, even though rashness and negligence is established on the part of the driver of the accident vehicle. Having considered the oral and documentary evidence, the lower court held that the accident vehicle was driven in a rash and negligent manner at the time of the accident and caused the accident and awarded a sum of Rs. 95,000/-towards compensation. Aggrieved by the same the insurance company has preferred this appeal.

4. It is to be seen that the specific plea of the appellant insurance company is that the statutory liability of the insurance company is to pay a sum of Rs. 50,000/- only and hence the award passed by the lower court granting Rs. 95,000/- towards compensation is not according to law.

5. It is true that u/s 95 of Motor Vehicles Act (hereinafter referred to as ''the Act'') as it stood on 11.9.1982, the liability of the insurance company is only Rs. 50,000/- in all and consequently it is submitted that any amount awarded over and above Rs. 50,000/-is not according to the provisions of Section 95 of the Act. Section 95 of the Act along with some other provisions of the Act were amended under the Amendment Act No. 47 of 1982 (hereinafter referred to as the ''Amending Act''). u/s 13 of the Amending Act which came into force on and from 1.10.1982, the liability of the insurance company u/s 95 of the Act in question is enhanced to Rs. 1,50,000/-. But it is to be seen that the Amending Act came into force from 1.10.1982. As such it is to be seen whether the claimants are entitled to the benefits of the Amending Act.

6. Before proceeding further it is to be seen that some comment is made about the non-filing of the insurance policy by the insurance company. The learned counsel for the claimant relying upon National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270, submits that a responsible and a statutory body like the insurance company should not be permitted to take shelter behind the abstract doctrine of burden of proof, the insurance companies which are instrumentalities of the State are under an obligation to act fairly and it is under an obligation to file a copy of the insurance policy. This decision has no application to the case on hand, since the claimant has already filed a copy of the insurance policy which the insurance company has not chosen to question. Thus, when the policy was already filed by the claimant, which the insurance company has not chosen to question and admits the same to be correct, there is no reason for making any comment against the insurance company for not filing a copy of the insurance policy available with it. In the order under appeal, comment was made about the fixing of a rubber stamp below a particular line showing that the liability of the insurance company is only limited to Rs. 50,000/-. It is to be seen that the

insurance policy filed by the claimant clearly shows that the limit is only Rs. 50,000/-and to the same effect is Section 95 of the Act. So the statutory liability itself is Rs. 50,000/-which is also mentioned in the policy. Under these circumstances any comment about the non-filing of a copy of the insurance policy lying with the insurance company is not warranted.

7. Applicability of the Amending Act to an accident that took place prior to 1.10.1982 was considered by the Bombay High Court in Inderjeet Singh & Co. v. Kamal Prakash Pawar 1989 ACJ 132 (Bombay). This is a case where the accident took place on 15.1.1981. It was contended in the said case that the Amending Act must be given retrospective effect, having regard to the fact that there is no retroactive clause in the Amending Act and also because it is a social legislation to alleviate the sufferings of the dependants of the deceased involved in the accident. Considering the said argument the court observed as follows:

We are unable to accept this argument for the simple reason that the liability of the insurance company is incurred on the date of the accident. The merely determines the quantum of compensation payable to the claimants arising out of the accident. It is the date of the accident, therefore, which is the relevant date for the applicability of Section 95 (2) of the Act which provides for the liability of the insurance company incurred in respect of any one accident. (Vide para 6)

In the present case the accident took place, admittedly, prior to the commencement of the Amending Act No. 47 of 1982. Therefore, the provisions of Section 95 (2) as they stood on the date of the accident, which is the date of the accrual of the cause of action, must be applied. (Vide para 8)

There is nothing in the provisions of the Amending Act which suggests that the legislature expressly or impliedly intended to make amendment to Section 95 (2) retroactive. It is needless to state that the amendment to Section 95 (2) affects the rights and liabilities of the parties which were vested prior to the amendment. In the absence of clear intendment on the part of the legislature to make the provisions retroactive, it is not possible to accept the contention that Section 95 (2) as amended by Act 47 of 1982 is retrospective. (Vide para 9)

Similar question arose in Padma Srinivasan v. Premier Insurance Co. Ltd. 1982 ACJ 191. The facts of the said case are that the accident took place on April 5,1970. The owner of the truck involved in the accident had taken a statutory insurance policy with the insurance company which was operative from June 30, 1969 to June 29, 1970. The claimant filed an application before the Claims Tribunal u/s 110-A of the Act seeking compensation for her husband''s death in the accident. The Tribunal limited the liability to a sum of Rs. 50,000/-. The insurer filed an appeal in the High Court stating that on the date on which the insurance policy was issued the statutory liability was limited to only Rs. 20,000/- and therefore, the Tribunal erred in granting the sum of Rs. 50,000/-. The Tribunal limited the liability of the insurer to the sum of Rs. 50,000/-in view of the Amendment Act which came into force on March 2, 1970. The Supreme

Court set aside the judgment of the High Court holding that the liability must mean the liability as determined in Chapter VIII of the Act at the relevant time, that is to say, at the time when the liability arises; and since the liability of the insurer to pay the claim under the motor accidents policy arose on the occurrence of the accident and not until then.

8. Padma Srinivasan''s case 1982 ACJ 191, is a direct case on the point and Inderjeet Singh''s case 1989 ACJ 132 (Bombay), was decided on the ratio decidendi of Padma Srinivasan''s case (supra).

9. Basing on the Padma Srinivasan''s case 1982 ACJ 191 (SC) and Inderjeet Singh''s case 1989 ACJ 132, it is submitted on behalf of the insurance company that the Tribunal erred in awarding any amount in excess of Rs. 50,000/-. But the learned counsel appearing for the claimant relies upon decision of this court in T. Srinivasulu Reddy Vs. C. Govardana Naidu and another, . This is a case where a boy of nine years died in a motor accident that occurred on 7.9.1981. A claim was made for Rs. 30,000/-. On enquiry the Tribunal held that there was no negligence on the part of the driver of the lorry and consequently dismissed the claim. But in the appeal, it was urged that the claimant can take advantage of Section 92-A of the Act which came into force on 1.10.1982 introducing no fault liability. Accepting the said contention it was held as follows:

We accordingly hold that all actions for compensation pending on the day when the provision came into force are governed by the provision irrespective of the fact whether the accident took place prior or subsequent thereto.

Thus it was held that Section 92-A of the Act is retrospective in application and applies to accidents that took place prior to 1.10.1982, the date on which Section 92-A of the Act was introduced. Relying upon this decision, the learned counsel for the claimant submits that the amendment to Section 95 of the Act increasing the liability of the insurance company to Rs. 1,50,000/- was made as a measure of welfare legislation as in the case of Section 92-A of the Act and on the same analogy on which Section 92-A of the Act was held retrospective in operation, the Amending Act must also be held to be retrospective in operation. This submission cannot be accepted for more than one reason. The decisions in Inderjeet Singh''s case 1989 ACJ 132 (Bombay) and Padma Srinivasan''s case 1982 ACJ 191 (SC), arose out of Section 95 of the Act and the case on hand is also one under the said section.

10. Priorto 1.10.1982 when Section 92-A of the Act was not introduced, there was no question of payment of compensation unless negligence or rashness was established and for the first time the statute recommended no fault liability u/s 92-A of the Act. Consequently this court held that Section 92-A of the Act is retrospective in operation. But u/s 95 of the Act, prior to the Amending Act, there was liability, but the same was restricted to only Rs. 50,000/- and the same was enhanced to Rs. 1,50,000/- under the Amending Act. Thus under the Amending Act it is not as though for the first time the liability is created u/s 95 of

the Act as in the case of Section 92-A of the Act which came into force with effect from 1.10.1982, but under the Amending Act the liability was increased from Rs. 50,000/- to Rs. 1,50,000/-.

11. Hence I find that the decision of this court which is rendered u/s 92-A of the Act is not applicable to the case on hand. Relying upon Inderjeet Singh''s case 1989 ACJ 132 and the decision of the Supreme Court in Padma Srinivasan''s case 1982 ACJ 191, I find that the liability of the insurance company is only upto Rs. 50,000/-.

12. Accordingly the appeal is allowed restricting the liability of the insurance company to the extent of Rs. 50,000/- only. No costs.