
(2010) 02 AP CK 0053
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 339 of 2007

New India Assurance Company Limited	APPELLANT
Vs	
Palamoni Suresh	RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 147(1), 147(2)

Citation : (2011) ACJ 2345 : (2010) 3 ALT 451

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P. Bhanu Prakash, for the Appellant; V. Atchuta Ram, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This appeal filed by the New India Assurance Company Limited arises out of award dated 06-11-2006 in M.V.O.P. No. 1665 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short, "the Tribunal").

2. The appellant filed this appeal feeling aggrieved by the abovementioned award, whereby the Tribunal fixed joint and several liability on the appellant along with respondent No. 2, owner of the vehicle, for payment of Rs. 1,49,250/- along with interest @ 7.5% per annum assessed for the injuries sustained by respondent No. 1. For disposal of the appeal, it is not necessary to refer in detail to the manner in which the accident has occurred. It will suffice to note that respondent No. 1 was travelling in jeep bearing No. ADF 3391 owned by respondent No. 2 and insured with the appellant from Bhongir to Raipole Village along with driver of the jeep. In course of journey, the driver hit the culvert causing injuries to respondent No. 1. The said jeep is covered by insurance policy with the appellant. On this ground, the Tribunal held that the appellant is jointly and severally liable for payment of compensation along with the owner of the jeep.

3. At the hearing, Sri P. Bhanu Prakash, learned Counsel for the appellant confined his argument to that part of the award, whereby the appellant has been made liable for payment of compensation along with the owner of the jeep. According to him, the appellant is liable to pay compensation in respect of the accidents involving third parties according to the provisions of the Motor Vehicles Act, 1988 (for short, "the Act") and the terms of the policy and that neither under the Act nor under the terms of the policy, respondent No. 1, who was neither the owner nor driver, is not entitled to make any claim for compensation against the appellant. The learned Counsel placed reliance on the judgment of the Supreme Court in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, in support of his submission.

4. Opposing these contentions, Sri V. Atchutaram, learned Counsel for respondent No. 1, submitted that as the vehicle is covered by the insurance policy, the appellant is entitled (sic. liable) for payment of compensation even in respect of a third party, if death occurs or injuries are sustained by such a third party while travelling in the vehicle. In support of his contention, the learned Counsel placed reliance on order dated 26-03-2009 of this Court in CM. A. No. 2328 of 2003.

5. I have considered the submissions of the learned Counsel for the parties.

6. Chapter XI of the Act deals with insurance of motor vehicles against third party risks. Section 146 prohibits the use of a motor vehicle in a public place without an insurance policy issued in compliance of the requirements of that chapter. Section 147, which is a pivotal provision, laid down the requirements of policies and limits of liability. It is useful to reproduce this provision below:

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; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (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.

(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter, unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters, and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those

classes of persons.

7. From the above extracted provision, it is clear that a policy of insurance must insure the person or classes of persons specified in the policy against any liability, which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place 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. The limits of such liability are specified in Sub-section (2), according to which, in case of damage to any property of a third party, the limit is up to Rs. 6,000/- and in all other cases the limit is up to the amount of liability incurred. The proviso to Section 147 exempts the categories of persons mentioned in (i) and (ii) from being covered by the policy.

8. A careful analysis of this provision clearly reveals that while an insurance policy is a condition precedent for plying any motor vehicle, the risks covered under the policy vary depending upon the person or classes of persons specified in the policy as insured. It is thus clear that no person can claim compensation under an insurance company, unless he is covered by the policy. The only exception in this regard is proviso to Section 147, referred to above, wherein the categories of persons mentioned therein are deemed to have been covered by the insurance policy irrespective of whether premium is paid or not.

9. In the instant case, the policy is marked as Ex.B-1, standard conditions of policy are marked as Ex.B-2 and the standard conditions pertaining to private car package policy are contained in Ex.B-3. Ex.B-1 policy contains the registration particulars of the vehicle in question which, inter alia, include its capacity to carry 6 persons. The schedule of premium paid by the owner shows that he has paid Rs. 700/- towards TP basic which means third party basic, Rs. 100/- towards compulsory PA, meaning, personal accident to owner-driver and further premium of Rs. 25/- to cover the risk of an employee up to Rs. 2,00,000/- under the Workmen's Compensation Act, 1923.

10. The learned Counsel for the appellant submitted that the risk under Ex.B-1 policy covers only the owner-driver and any person, who is allowed as driver by the owner. I do not find merit in this submission.

11. The expression "third party" is wide enough to cover any person other than the insured and the insurer. Nothing is given in the policy that the premium of Rs. 700/- is received towards a third party driver. It, therefore, follows that if a private vehicle is allowed by carry persons other than the owner or the driver as per the conditions of registration, all such persons come within the expression "third party". Ex.B-1 policy contains certain limitations and they are mentioned as under:

The policy covers use of the vehicle for any purpose other than

(a) Hire or Reward

- (b) Carriage of Goods (other than samples or personal luggage)
- (c) Organized racing
- (d) Pace making
- (e) Speed Testing and Reliability Trials
- (f) Use in connection with Motor Trade

12. It is not the case of the appellant that the vehicle in question was used in contravention of any of the abovementioned conditions. Respondent No. 1 was permitted to travel in the private vehicle, which is authorized to carry up to 6 persons. Admittedly, there were only 2 persons in the vehicle including the driver. Therefore, in my considered opinion, the policy covers the third party risks arising out of the accident in the use of the insured vehicle. Respondent No. 1 squarely falls under the category of "third party", who is insured against the accident.

13. Coming to the judgment of the Supreme Court in United India Insurance Co., Ltd., (1 supra), on which the learned Counsel for the appellant placed heavy reliance, that was a case where a pillion rider of a two wheeler received injuries. The Apex Court, after examining the terms of the policy, found that for fastening liability on the insurance company in case of pillion passengers, endorsement of IMT 70 is required on the insurance policy on payment of additional premium and that the insurance policy covering the Scooter in question did not contain an endorsement of IMT 70. The Supreme Court referred to its earlier judgment in New India Assurance Co. Ltd. Vs. Asha Rani and Others, which has overruled its earlier judgment in New India Assurance Company Vs. Shri Satpal Singh and Others, holding that in respect of the gratuitous passengers travelling in a goods vehicle, the insurance companies are not liable for payment of compensation, and held that there is no reason why the same analogy can be made applicable to the gratuitous passengers travelling in a private vehicle other than a goods vehicle. Having found that the pillion rider was not covered by the policy in that case, the Supreme Court disallowed the claim against the insurance company.

14. As noted hereinbefore, the policy in this case covers the third party risk. Therefore, respondent No. 1, who was permitted to travel and the vehicle was not used in violation of conditions (a) to (f) contained in the policy, the appellant, insurance company, is liable for payment of compensation.

15. On the above premises, I do not find any reason to interfere with the award of the Tribunal and the appeal is accordingly dismissed.