
(2004) 06 AP CK 0036

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 207 of 1999

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Degala Satyanarayanamma and Others

RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2005) 3 ACC 351 : (2006) ACJ 1985 : (2004) 6 ALD 584 : (2004) 6 ALT 769

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

Bench : Single Bench

Advocate : D. Gopala Krishna, for the Appellant; N.P. Anjana Devi and Satyanarayana, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Respondents 1 and 2, the widow and the son of deceased Balakrishna, filed O.P.No.10 of 1996 on the file of Motor Accidents Claims Tribunal-cum- III Additional District Judge, Kakinada, seeking compensation of Rs.2,33,000/- for the death of the deceased in an accident, caused by a van bearing No.K.A.O.6-2028 belonging to fourth respondent and insured with the appellant, under hire purchase agreement with fifth respondent, while being driven in a rash and negligent manner by the third respondent. Third respondent remained ex parte before the Tribunal and this Court. Respondents 4 and 5 and the appellant contested the claim. The contention of the appellant, inter alia, is that it is not liable to pay any compensation because the vehicle involved in the accident was not insured with it by the time of the accident and was insured with it subsequent to the accident.

2. In support of the case of respondents 1 and 2, first respondent examined herself as PW.1 and another witness as PW.2 and marked Exs.A1 to A3. Third respondent, owner of the offending van examined himself as RW.1 and another witness as RW.2 but did not adduce any documentary evidence. Appellant did not

adduce any oral evidence but marked Ex.B1 to Ex.B4 on its behalf.

3. The Tribunal having held that the accident occurred due to the rash and negligent driving of the third respondent awarded Rs.2,20,500/- as compensation to respondents 1 and 2 from respondents 3 and 4 and the appellant jointly and severally, over ruling the objection of the appellant that it is not liable to pay the compensation. The Tribunal relied on New India Assurance Co. Ltd. Vs. Ram Dayal and Others, and V. Ravi Vs. M/s. New India Assurance Company Ltd. and others, for fastening the liability on the appellant. Aggrieved thereby the insurer of the offending vehicle preferred this appeal.

4. The point for consideration is whether the appellant is not liable to pay the compensation payable to respondents 1 and 2.

5. In the claim petition it is stated that the accident involving the deceased took place at 9.30 am on 29-5-1995. In column No.8 of the particulars given in the claim petition, it is stated " Near Swapna theatre on 29-5-1995 at about 9.30 a.m., in Cinema Street, Kakinada." In Ex.A1, F.I.R., issued in connection with the accident it is stated that accident took place at 9.30 am on 29-5-1995. PW.1, during the cross-examination on behalf of the appellant who is the third respondent before the Tribunal stated that she received information about at 10.a.m., that the accident occurred at 9.30 a.m., and that she reached the hospital by around 11 a.m., and that by that time the deceased was alive.

6. RW.1 is the fourth respondent before the Tribunal he is the owner of the offending Van. He during cross-examination on behalf of the appellant, stated that he came to know that the accident occurred about 9.30 a.m., on 29-5-1995 and that he did not bring the policy issued by the appellant and that his cousin (RW2) Balakrishna paid the insurance premium in the office of the appellant and that the office hours of that office are from 10-30 a.m., to 5 p.m., with one hour lunch recess and that he does not know at what time the insurance premium was paid by his cousin. The evidence of RW.2, the cousin of RW.1, is that since he was asked to pay the premium for the offending van on 26-5-1995, he went to the office of the appellant around 5 p.m., on 26-5-1995, but was asked to come on Monday and so he went to the office on Monday at 10 a.m., and paid the premium. During cross-examination he stated that he cannot say who asked him (on 26-5-1995) to come on Monday for payment of the premium and admitted that he gave Ex.B1 letter (which shows that it was given at 12 noon) on 29-5-1995 and denied the suggestion that he paid the premium after the occurrence of the accident. Since fourth respondent (RW1) owner of the offending van did not produce the original policy of insurance, appellant produced Ex.B5, the duplicate policy of insurance, as per which the effective date for commencement of insurance for the purpose of the Act (Motor Vehicles Act, 1988) is from 12 Noon of 29-5-1995. So it is clear that by 9.30 a.m. on 29-5-1995 the offending van was not insured with the appellant and in fact the said van was insured a few hours after the occurrence of the accident.

7. Ramdayal's Case and V. Ravi's case relied on by the Tribunal for holding against the appellant have no application to the facts of this case, in as much as in those cases time of commencement of insurance was not mentioned, and in this Ex.B5 clearly states that the insurance for the purpose of the Act commences from 12 Noon of 29-5-1995. That time of commencement of the insurance is not mentioned but "date" of commencement of policy only was mentioned in Ramdayal's case (1 supra) is evident from the fact that their Lordships" held that the day commences from mid-night for full 24 hours. In Ravi's case (2 supra) the certificate of insurance showed that it is valid from 18-2-1992 to 17-2-1993, though the receipt for payment of insurance premium was dated 19-2-1992 when it was actually paid on 18-2-1992. The accident in that case took place between 6 p.m. and 7 p.m. on 18-2-1992. The High Court held that insurer also is liable to pay the compensation payable to the claimant, and if any mistake or fraud is committed either by the parties or by its officers, the remedy of the insurance company may be to initiate a separate proceeding for realization of the amount so paid by it from the owner of the vehicle. So it is clear that time of commencement of the policy is not mentioned in that case.

8. The facts of this case are very much identical to the facts in ORIENTAL INSURANCE COMPANY v. SUNITHA RATHI AIR 1998 SC 257, 1998 (2) C LJ 548. In that case the accident took place at about 2.20 p.m. and the insurance cover-note was obtained at 2.55 p.m. The Supreme Court distinguishing Ramdayal case (1 supra) and relying on M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, held that the insurer cannot be made liable on the basis of a policy taken after the accident.

9. Ex.B4, earlier policy of insurance for the offending van, was from 11.45 p.m. of 27-5-1994 to the mid-night of 26-5-1995. So it is clear that Ex.B4 expired by the mid-night of 26-5-1995. Ex.B5 is from 12 Noon of 29-5-1995 to 28-5-1996. The accident involving the deceased admittedly occurred prior to 12 Noon of 29-5-1995 i.e., prior to the commencement of Ex.B5 policy and so by the time of accident the offending van was not insured with the appellant. Therefore, as held in Sunita Rathi case (3 supra), appellant cannot be made liable for payment of the compensation payable to respondents 1 and 2. The point is answered accordingly.

10. The learned counsel for the respondents 1 and 2 relying on the observation in Sunita Rathi case (3 supra), that the claimants in that case need not refund the amount already paid to them by the insurer, wanted this court to make a similar observation. That observation was confined to that particular case. It is not, and cannot also, be the intendment of the Supreme Court that in all cases where the claimants in Motor Vehicle Accident Cases received compensation from the insurer during the pendency of the appeal by the insurer, prior to the decision on the liability of the insurer is given by the High Court or Supreme Court, the insurer cannot recover the amount from the claimants in spite of its being held that it is not legally liable to pay the compensation to the claimants. This appeal

is not filed for academic purpose as in Sunitha Rathi's Case (3 supra) as seen from the observations in paragraph-4 thereof, which reads "the question now is on the final order to make in the present case. We find that the insurer has made the payment to the claimants in the present case in satisfaction of the entire claim and it has been fairly stated by the insurer that this appeal was filed only for getting a decision on this point pertaining to its liability in such a situation. In the circumstances of the case, we deem it fit to say that the amount already paid by the insurer to the claimants is not required to be refunded by the claimants to the insurer" . The law laid down by the Supreme Court in the above decision is that if the owner of the offending vehicle takes out insurance to his vehicle subsequent to the accident, the insurance company cannot be made liable to pay the compensation payable to the claimants. That is binding on all courts in India in view of Article 141 of the Constitution. The benefit given to the claimants in that case is confined to that case, in the facts and circumstances of that case and so such a benefit cannot be extended to respondents 1 and 2.

11. In the result the Civil Miscellaneous Appeal is allowed and the claim against the appellant stands dismissed. No costs.