
(2004) 10 AP CK 0052
In the Andhra Pradesh High Court
Case No : CMA No. 1917 of 1999

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Kadium Yestorama and Others		RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(3), 143, 147

Citation : (2005) 1 ALD 617

Hon'ble Judges : L. Narasimaha Reddy, J

Bench : Single Bench

Advocate : I. Mannu Vani, for the Appellant; V.R. Avula, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimaha Reddy, J.—This appeal is filed by the Oriental Insurance Company, assailing the order, dated 20.4.1999, passed by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Guntur (hereinafter referred to as "the Commissioner") in W.C. Case No. 7 of 1996.

2. Respondents 1 and 2 submitted a claim before the Commissioner stating that late Yesupadam, the husband of the 1st respondent and father of 2nd respondent, was working as a Cleaner on a vehicle bearing No. AIW 4419 , and on 8.9.1995, at about 11.00 p.m. when the vehicle was on the way to Piduguralla in Guntur District with a coal load, he fell down and died. They claimed a sum of Rs. 1,50,000/-, as compensation. The 3rd respondent herein, the owner of the vehicle, did not oppose the claim. The appellant herein filed a counter denying its liability. It disputed the existence of relationship of employer and employee between the Respondent No. 3 and the deceased. It was also pleaded that the conditions of the policy are violated, and thereby the liability cannot be fastened on it.

3. The 1st respondent was examined as AW.I, and she filed various documents, such as, the charge-sheet, M.V.I, report and Post-mortem certificate. On behalf

of the appellant, RW.I was examined. Through the order under appeal, the Commissioner awarded a sum of Rs. 50,000/-, as "no fault liability."

4. Learned Counsel for the appellant submits that the very claim is not maintainable, for the reason that there did not exist any relationship of employer and employee between the deceased and the 3rd respondent, and the documents, such as, First Information Report, Charge-Sheet, filed in relation to the same incident, disclose that the deceased was none other than the father of the driver of that vehicle. She submits that the concept of "no fault liability" cannot be imported to the proceedings under the Workmen's Compensation Act, 1923 (for short "the W.C. Act"), unless there exists the relationship of employer and employee. It is also contended that if for any reason, the appellant is required to meet the liability, it may be left open to it to recover the amount from the 3rd respondent by filing a E.P., and without any necessity to initiate fresh proceedings.

5. Learned Counsel for Respondents 1 and 2, on the other hand, submits that the employer, namely, the 3rd respondent, did not dispute the relationship, and in that view of the matter, the Commissioner ought to have awarded the amount claimed, by applying the provisions of the W.C. Act. He submits that whatever may have been the justification for the Commissioner in not allowing the claim in its entirety, no exception can be taken for awarding the "no fault liability", u/s 140 read with Section 143 of the Motor Vehicles Act, 1988 (for short "the M.V.Act").

6. The Commissioner doubted the existence of the relationship of employer and employee between the deceased and the 3rd respondent. However, since the factum of death, involving the vehicle insured with the appellant, was not in dispute, he has chosen to award a sum of Rs. 50,000/-, towards no fault liability u/s 140, read with Section 143 of the M.V. Act. A reading of the said provisions clearly indicates that the concept of payment of a fixed amount, in the event of death or bodily injury, in an accident, involved in a motor vehicle, is to be treated as part of the W.C. Act.

7. Learned Counsel for the appellant places reliance upon several decisions to the effect that even to fasten the "no fault liability" on an insurer, the question as to whether the liability is covered by the policy or whether there exist any extenuating circumstances, needs to be considered. It is contended that the evidence on record did not disclose that the deceased was an employee with the 3rd respondent, and that the appellant cannot be made to pay any amount towards no fault liability. Such a preposition, in its general sweep, is difficult to be accepted. Parliament has a definite object before it, when it extended the provisions of Section 140 of the M.V. Act, to the cases arising under the W.C. Act. Where the relationship of employer and employee is not in dispute, the W.C. Act is so exhaustive, that it takes care of all the situations, ranging from death to the minutest injury caused to a workman. The necessity to extend the concept of "no fault liability" u/s 140 of the M.V. Act to the W.C. Act is only to ensure that the

technicalities, such as, existence of relationship etc., do not leave the claimants in a situation, where, the death or bodily injury to a worker is not compensated at all. A reading of sub- section (3) of Section 140, in relation to the matters dealt with under the M.V. Act, amply demonstrates this.

8. Be that as it may, as long as the existence of policy is not disputed, the appellant cannot avoid its liability. It is true that, in case, the policy does not cover the liability arising out of an accident, an insurer cannot be made to meet a "no fault liability". In such cases, the Supreme Court has taken the view that after satisfying the claim arising out of the order passed by the Tribunal, the insurer can recover the amount from the owner of the vehicle, by straight away filing the E.P. The possibility to consider such a measure, in the, present case, is rendered difficult on account of the fact that the appeal was dismissed "for default", against the owner of the vehicle. however, it is not as if the appellant is without any remedy. In case, it is of the view that the policy did not cover such a liability, it can certainly initiate proceedings against the owner of the vehicle, in accordance with law.

9. For the foregoing reasons, the CMA, is dismissed. There shall be no order as to costs.