(2006) 11 AP CK 0103

In the Andhra Pradesh High Court

Case No : CMA No. 3417 of 1999

Oriental Insurance Co. Ltd. APPELLANT

Vs

Palla Nageswara Rao and Others RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2007) 3 ALD 67

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

Bench : Single Bench

Advocate : A. Anasuya, for the Appellant; V.S.R. Anjaneyalu and R. Manmadha Reddy, SC for APSRTC, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—First respondent who received injuries due to collision between a bus belonging to the second respondent and a lorry belonging to the third respondent insured with the appellant filed a claim petition u/s 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs. 3,60,000/- from respondents 2 and 3 and the appellant. The Tribunal after enquiry held that the first respondent is entitled to Rs. 90,000/- as compensation from the appellant and respondents 2 and 3. Aggrieved by the said award passed against it, the appellant insurer preferred this appeal.

2. The only contention raised in this appeal is that inasmuch as the driver of the lorry of the third respondent was not having a valid driving licence at the time of the accident, the Tribunal was in error in making the appellant liable to pay the compensation payable to the first respondent.

3. Appellant examined R.W.4 to show that a person who was not authorized to drive the lorry was driving the lorry. In Para-20 of the award under appeal, the Tribunal held that the evidence of R.W.4 need not be taken into consideration because she admitted that she did not make any independent enquiry and did

not appoint an investigator to find out as to how actually the accident occurred and whether the driver of the vehicle was having a valid driving licence or not.

4. The admitted fact is that the third respondent appointed one Nagulu as his driver and that Nagulu does possess a valid driving licence. The contention of the appellant is that Nagulu permitted a person who is not having a valid driving licence to drive the vehicle. The Tribunal relying on the ratio in Sohan Lal Passi Vs. P. Sesh Reddy and others, , held that even assuming that the driver permitted an unauthorized person to drive the vehicle, the owner and the insurer cannot avoid their liability because the duty of the owner ends by entrusting a vehicle to a person having a valid driving licence. The ratio in Sohanlal Passi''s case (supra), is reiterated in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , also. In that case it is held that the burden to establish that it is not liable to pay compensation in view of the breach of the policy conditions is on the insurer. The fact that third respondent entrusted the vehicle to Nagulu who has a valid driving licence is admitted. If the third respondent entrusted the vehicle to a person not having a valid driving licence it cannot be said to be a breach of the conditions in the policy by the owner. Therefore, the appellant cannot avoid its liability.

5. Therefore, the appeal is dismissed. Parties are directed to bear their own costs in this appeal.

