
(2014) 02 AP CK 0112
In the Andhra Pradesh High Court
Case No : CMA No. 3758 of 2004

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Tadi Lova Raju

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 166
Penal Code, 1860 (IPC) — Section 337, 338

Citation : (2014) 3 ALD 601 : (2014) 5 ALT 707 : (2014) 2 AnWR 970

Hon'ble Judges : A. Shankar Narayana, J

Bench : Single Bench

Advocate : S. Agastya Sharma, Advocate for the Appellant; Jayanti S.C. Sekhar, Advocate for the Respondent

Judgement

A. Shankar Narayana, J.—This appeal is directed against the judgment, dated 4.5.2004 passed in MOP No. 290 of 2001 by the learned Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Visakhapatnam (for short "the Tribunal").Appellant-Oriental Insurance Company Limited was arrayed as the 2nd respondent, while the 1st respondent as the petitioner and the 2nd respondent-owner of lorry bearing Registration No. ADA 8478 as the 1st respondent in OP No. 290 of 2001 before the Tribunal.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

3. The petitioner laid the claim u/s 166 of the Motor Vehicles Act, 1988 (for short "the Act") before the Tribunal for award of compensation of Rs. 2,00,000/- for the injuries sustained by him in road accident.

4. The fact-situation occurring in the instant case is, that on 19.5.2000, the petitioner boarded lorry bearing Registration No. ADA 8478, along with his bicycle in order to transport it from Tuni to Nakkapalli. When the said lorry reached near Godicherla Kothuru Village, Nakkapalli Mandal on National High-

way-5 Road, at about 10.00 a.m., since the driver of the said lorry driven it in a rash and negligent manner, he lost control due to which, the lorry turned turtle on the road, resulting fracture injury to the left hand and other injuries to the petitioner. The petitioner was shifted to Government Hospital, Anakapalle for treatment. Even, the Station House Officer, Nakkapalli Police Station registered a case in Crime No. 43 of 2000 under Sections 337 and 338 IPC of his Police Station. He claimed that he incurred a sum of Rs. 10,000/- towards medical expenses; Rs. 1,000/- towards transportation charges and he laid claim for Rs. 2,00,000/-.

5. The owner of the lorry arrayed as 1st respondent remained ex parte before the Tribunal. The 2nd respondent-Insurer of the lorry, contested the claim, contending that the 1st respondent has violated the terms and conditions of the insurance policy by allowing the petitioner to travel as gratuitous passenger in a goods vehicle and, therefore, it is not liable to pay compensation; that the compensation claimed by the petitioner is excessive; and that the petitioner travelled on the roof of the vehicle, which is prohibited under Rule 273 of the Andhra Pradesh Motor Vehicles Rules (for short "the Rules") and, as such, there is contributory negligence on his part, and required the petitioner to prove that the driver of the lorry possessing valid driving licence at the relevant time including the age; income and involvement of the lorry.

6. The Tribunal framed the issues about the responsibility for the accident, and during the inquiry, examined the petitioner as PW 1 and exhibited the documents as Exs. A1 to A5 on behalf of the petitioner; whereas, on behalf of the 2nd respondent, one Ch. V. Viswanath was examined and exhibited the documents as Exs. B1 and B2, as to the entitlement of the petitioner for compensation.

7. The Tribunal, found Issue No. 1 in favour of the petitioner as to the negligence attributed to the driver of the lorry, accounting for accident and resulting injuries to the petitioner. However, the Tribunal did not accede to the stand of the 2nd respondent that there was contributory negligence.

8. On Issue No. 4, the Tribunal, though, framed second issue as to whether the petitioner is entitled for the compensation and if so, to what amount, dealt with the same under Issue No. 4. Placing reliance on Ex. A3 Wound Certificate and the evidence of PW 1, who sustained injuries described therein, granted a sum of Rs. 40,000/- towards pain and suffering for two grievous injuries; Rs. 6,000/- towards pain and suffering for three simple injuries; Rs. 2,000/- towards actual medical expenses, attendant charges, transport charges and extra nourishment; and Rs. 3,000/- towards loss of earnings for a period of three months and, thus, awarded a total sum of Rs. 51,000/- as compensation with interest at 9% per annum therein.

9. On Issue No. 3, which deals with liability of which of the respondents to pay the compensation, the Tribunal held that both the respondents are jointly and severally liable to pay the compensation, placing reliance on the decision of the

Hon''ble apex Court in United India Insurance Co. Ltd. Vs. Banshidhar Gupta and Others, and also in New India Assurance Co. Ltd. Vs. Abdul Sammad Chellappa and Others, , in which the purport of Section 147 of the Act was discussed.

10. It is that judgment which is impugned in the instant appeal preferred by the Insurance Company having got aggrieved of the judgment, despite there being violation of terms and conditions of the policy and on account of the driver allowing the petitioner to travel on the top of the lorry with his bicycle which is already hired and transporting the goods of some other person, still, the Tribunal fastened the liability on it. The 2nd respondent also submits that the Tribunal ought to have held that the petitioner was travelling as gratuitous passenger by sitting on top of the lorry, which amounts to violation of the rules, and that the petitioner is not even entitled to Rs. 51,000/- awarded by the Tribunal and, therefore, sought to dismiss the OP insofar as the Insurance Company is concerned by setting aside the judgment and decree to that extent.

11. The short point that arises for consideration is, Whether the liability can be fastened on the Insurance Company-2nd respondent to pay compensation to the petitioner?

12. Though, in the grounds of appeal, the Insurance Company, at one stage, contended that the claim made by the petitioner is exorbitantly high, and not even entitled for award of compensation at Rs. 51,000/- together with interest at 9% per annum, but during the course of arguments, the said ground was not stressed much. However, a perusal of the judgment impugned, would reflect that the Tribunal rightly granted the amounts under each head mentioned therein and, therefore, the amount of Rs. 51,000/- granted by the Tribunal, does not warrant interference, when kept in view, that the petitioner sustained two grievous injuries, one relates to the medial side of left arm and the other is on the right leg.

13. As to the liability of the appellant herein, the learned Counsel for the petitioner placed reliance on the decision rendered by this Court in Reliance General Insurance Co. Ltd. Vs. Mohd. Saleem and Another, , upholding the direction of the Tribunal that the Insurance Company to satisfy the award in the first instance and thereafter to recover the same from the owner of the vehicle, relying on the decision of the Hon''ble apex Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and it reads thus:

The Scheme of the Motor Vehicles Act, 1988 as can be seen from the provisions of Sections 147 and 149 is that after notice to the insurer when the award has been passed, the position of the insurer is that of a judgment debtor and it has legal obligation to satisfy the award, despite the fact that it is entitled to avoid liability on the ground of breach of terms and conditions of the contract or the statutory provisions so long as there is a valid third party insurance. A distinction has to be drawn between the defences which the insurance company can take u/s 149 of the Motor Vehicles Act and its obligation to satisfy the decrees and

awards insofar as victims/third parties are concerned. In MACMA Nos. 2535 of 2006 and 1661 of 2006, a Division Bench of this Court to which Court rendered a judgment applying the ratio laid down in Baljit Kaur and others case (supra), to the effect that even though the insurance company is not liable to pay compensation for violation of terms and conditions of the policy, it can be directed to satisfy the award in the first instance and then recover the same from the owner of the vehicle. (Para 10)

In the instant case also, by allowing the claimant to travel in a goods vehicle, the insured committed breach of terms of the policy, on account of which the insurance company cannot be held liable to pay compensation to the claimants. But, at the same time, the Tribunal is right in issuing a direction to the insurance company to satisfy the award in the first instance and thereafter recover the same from the owner of the vehicle. The said direction issued by the Tribunal is in accordance with law lay down by the Supreme Court in Baljit Kaur and others case (supra). The finding of the Tribunal is therefore upheld. (Para 11)

14. The petitioner has also relied on another decision in United India Insurance Co, Ltd., rep. by its Divisional Manager, Tadepalligudem v. N. Appi Reddy and others, 2011(4) ALD 778 (DB) :2011(5) ALT 611 (DB), to order payment of award of amount by the 2nd respondent and the 2nd respondent to recover the same from the owner of the vehicle by initiating a proceeding before the executing Court without filing a separate suit for the said purpose, and Paragraphs 13 and 14 of the said decision reads thus:

13. Applying the ratio laid down in the above cited cases, we would like to emphasis that the offending vehicle i.e., Tata Sumo bearing No. AP24 D 0999 had never been intended to be a vehicle which could be used for taking passengers on hire. It was registered and insured as a private vehicle and no extra premium was paid in respect of the passengers carried in the vehicle for hire. Therefore, in our view the learned trial Court went wrong in fastening the liability on the insurance company and the said finding is liable to be set aside.

14. Accordingly, the finding recorded by the trial Court that the insurance company is liable to pay compensation to the claimants is set aside and it is held that the owner of the vehicle shall be liable to first satisfy the award. However, following the ratio in Baljit Kaur's case (supra), we direct the insurance company (appellant in CMA No. 2535 of 2006 to first satisfy the award amount and recover from the owner of the vehicle by initiating a proceeding before the executing Court without filing a separate suit for the said purpose.

15. In view of the aforesaid discussion and the ratio laid down in the decisions, it is ordered that the appellant-2nd respondent to pay the awarded amount to the 1st respondent-petitioner and then recover the same from the owner of the vehicle by initiating a proceeding before the executing Court without filing a separate suit for the said purpose.

16. With the above said observation, the appeal is disposed of, but however, no

costs. As a sequel, civil miscellaneous applications, if any, pending in the appeal, shall stand closed.