
(2000) 10 AP CK 0013
In the Andhra Pradesh High Court
Case No : CMA No. 612 of 1996

Oriental Insurance Company Limited, Secunderabad	APPELLANT
Vs	
A. Balraj and another	RESPONDENT

Date of Decision : 27-10-2000

Acts Referred:

Insurance Act, 1938 — Section 64
Motor Vehicles Act, 1988 — Section 146, 147, 149

Citation : (2002) ACJ 1724 : (2001) 1 ALD 125

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Mr. KLN Rao, for the Appellant; Mr. C.V.N. Reddy, for the Respondent

Judgement

N.V. Ramana, J.—This appeal is filed by the Insurance Company questioning the award on the ground that the owner of the vehicle has paid the premium on 3-7-1989, subsequent to the accident. The accident took place on 2-7-1989 at about 7 p.m.

2. The brief facts of the case: On 2-7-1989 at about 7 p.m., Balaraj 1st respondent herein along with his family members boarded one RTC bus at Anantasagar to go to Malkapur. When the bus reached Malkapur bus stage on N.H.No.9, they got down and while they were collecting their luggage by the side of the road, one Car MYQ 9925 driven by its driver rashly and negligently came in a wrong direction and hit the first respondent herein, due to which he sustained multiple injuries all over his body. He was shifted to Sangareddy Headquarters Hospital and from there he was referred to Gandhi Hospital at Secunderabad. Due to the accident the spleen of the 1st respondent was removed. The injured Balaraj was aged 9 years and studying 4th class at the time of the accident. First respondent filed OP claiming a total compensation of Rs.1,00,00/-.

3. Before the Tribunal, the appellant herein and the 1st respondent herein filed separate counters denying their respective liability to pay compensation.

4. The Tribunal after framing appropriate issues and on appreciation of oral evidence of PWs.1 and 2 and RWs.1 and 2 and the documentary evidence of Exs.A1 to A5 and B1 to B10, and considering the contention of the Insurance Company and held that the policy which was issued was subsisting from 30-6-1989 to 29-6-1990 even though premium was paid subsequently by receipt No.859628, and taking into consideration Ex.B.1 insurance policy, granted a sum of Rs.33,000/- as compensation to the first respondent herein.

5. Aggrieved by the said order, the Insurance Company filed this appeal.

6. Heard the learned Counsel for the appellant. Perused the record and the order under appeal.

7. In this appeal, Counsel for appellant-Insurance Company contended that the Insurance Company has not received the premium amount on the date of the accident and so the Insurance company is not liable to pay compensation to the claimant/ petitioner in the OP. Dealing with an identical contention, a three-Judge Bench of the Honourable Supreme Court in *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, , held that the insurance company is liable to indemnify the third parties in respect of the liability which the policy covers and must satisfy the award of compensation even if the Company does not receive the premium, and the provisions of Section 64-VB of the Insurance Act, 1938 does not absolve the insurer of its liability. In this context, the Honourable Supreme Court said:

"6. Chapter 11 of the Motor Vehicles Act, 1988, provides for the insurance of motor vehicles against third party risks. Section 146 thereunder states that no person shall use or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle a policy of insurance that complies with the requirements of the Chapter. Section 147 sets out the requirements of policies and the limits of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorised insurer. Section 5(5) reads thus:

(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".

Section 149 refers to the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Sub-section (1) thereof reads thus:

"(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as it required to be covered by a policy under clause (b) of subsection (1) of S. 147 (being a liability covered by

the terms of the policy) [or under the provisions of Section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments".

7. We have, therefore, this position. Despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

8. The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

9. We may note in this connection the following passage in the case *Montreal Street Railway Company v. Normandin*, AIR 1917 PC 142;

"When the provisions of a statute relates to the performance of public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done".

10. It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant".

8. In view of the above settled legal position, I do not find any merit in the contention of the learned Counsel for the appellant that the Insurance Company is not liable to pay compensation. When once the Insurance Company issues the insurance policy even without receiving the premium, the Insurance Company is bound to pay the compensation to the third parties, unless the policy is cancelled or rescinded by the Insurance Company by adopting the procedure prescribed

under law. Issuance of insurance policy by the Insurance Company without receiving the premium from the owner of the motor vehicle is the mistake of the Insurance Company, and on that score the third parties cannot be penalised and denied compensation.

9. For the afore-mentioned reasons, the appeal fails and the same is hereby dismissed, confirming the order under decree and appeal. There shall be no order as to costs.