
(2006) 09 AP CK 0064
In the Andhra Pradesh High Court
Case No : A.A.O. No. 1799 of 2006

Oriental Insurance Company Ltd.

APPELLANT

Vs

Syed Yusuf and Others

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 167

Citation : (2007) ACJ 1851 : (2007) 3 ALD 266 : (2007) 2 ALT 734

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : N.S. Bhaskar Rao, for the Appellant; Shaik Anwar, for the Respondent

Judgement

L. Narasimha Reddy, J.—The appellant is the insurer of vehicle bearing No. AEK-2989, a passenger bus, owned by the 3rd respondent. The 1st respondent filed M.A.T.O.P. No. 755 of 1994, before the Motor Accidents Claims Tribunal-cum-Additional District Judge, Khammam, stating that, on 5-2-1993, he undertook repairs to the said bus, and after effecting repairs, he boarded in that, to come back to Yellandu. It was pleaded that the 2nd respondent herein was driving the bus, and when it reached the outskirts of Kamballapalli Village, it turned turtle, on account of rash and negligent driving on the part of the 2nd respondent. A sum of Rs. 80,000/-, was claimed, as compensation for the injuries said to have been received by him.

2. The owner and driver of the bus remained ex parte. The O.P., was contested by the appellant alone. According to it, the 1st respondent was not a passenger, but was, himself, driving the vehicle. It was alleged that since the accident occurred on account of the rash and negligent driving on the part of the 1st respondent himself, he was not entitled to be paid any compensation, and since the 1st respondent did not hold valid licence, it was not under obligation to pay the compensation. Through its order dated 5-3-2004, the Tribunal awarded a sum of Re. 34,000/-, as compensation, and held that the appellant and the owner of the vehicle are jointly and severally liable to pay the same. The same is

challenged in this C.M.A.

3. Sri N.S. Bhaskar Rao, learned Counsel for the appellant, submits that the Tribunal recorded a specific finding to the effect that the bus, at the relevant point of time, was being driven by the 1st respondent himself, and since the accident occurred on account of rashness on his part, there was no justification, in awarding any compensation to him. He submits that the 1st respondent does not answer the description of, "owner", or the "driver", even assuming that he is a driver, he ought to have presented a case under the provisions of the Workmen's Compensation Act, 1923 (for short "W.C. Act").

4. Sri Shaik Anwar, learned Counsel for the 1st respondent, on the other hand, submits that the plea of the appellant herein is contrary to the one, taken before the Tribunal. He contends that even if the 1st respondent is to be treated as a driver, he is entitled to be paid compensation, and that it shall be open to him to institute proceedings under the Motor Vehicle Act, 1988 (for short "the M.V. Act").

5. Basically, it is not in dispute that the bus in question was owned by the 3rd respondent and insured with the appellant, and in an accident involving the bus, the 1st respondent sustained injuries. While, the 1st respondent pleaded that he was travelling as a passenger, after effecting repairs to it, the appellant, who alone contested the matter, pleaded that the 1st respondent was not a passenger, but was himself driving the vehicle. The Tribunal virtually accepted the plea of the appellant and held that the accident occurred on account of rash and negligent driving on the part of the 1st respondent.

6. The contention advanced on behalf of the appellant is that, the 1st respondent is not entitled to be paid any compensation, since the accident occurred on account of his negligence. It is difficult to accept the same. Section 147 of the M.V. Act mandates that a policy to be taken by the owner of a vehicle must cover the liability towards a person, "engaged in driving of the vehicle". The coverage, however, is restricted to the one, arising under the W.C. Act. So far as the forum, in which the proceedings are to be instituted, is concerned, Section 167 confers power on the Tribunal, under the M.V. Act, to deal with the cases, arising under that enactment, as well as those, under the W.C. Act. The only condition is that, once the individual chooses one forum, he shall not be entitled to avail the remedy in the other.

7. Even assuming that the 1st respondent was himself driving the vehicle, he is entitled to be paid compensation under the W.C. Act, and such a remedy can be availed by him, by instituting proceedings in a Tribunal, constituted under the M.V. Act. This Court does not find any basis to interfere with the order under appeal.

8. Learned Counsel for the appellant has raised an objection as to the rate of interest. The Tribunal awarded interest at 9%, per annum. In the recent past, the Supreme Court has been granting interest at 7.5%, per annum, in the matters of this category. Hence, the rate of interest is reduced from 9% to 7.5%,

per annum. In all other respects, the order passed by the Tribunal holds good.

9. The appeal is partly allowed, to the extent indicated above. There shall be no order as to costs.