(2009) 02 AP CK 0060

In the Andhra Pradesh High Court

Case No : C.M.A. No. 2673 of 2001

S. Chenchulakshmi and Another — APPELLANT

Vs

New India Assurance Company Limited — RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 147(1), 163A, 165, 166

Citation : (2009) ACJ 2835 : (2009) 3 ALT 31

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : P. Govind Reddy, for the Appellant; C.V. Rajeeva Reddy, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—D. Sekhar since deceased was owner-cum-driver or lorry bearing No. TN 21 4824. Lorry was insured with sole respondent herein. On 22-10-1999 while he was transporting batteries in his lorry to Amararaja Battery Factory, Karkambadi to Chennai, at about 7.00 a.m., a tanker came in opposite direction at high speed. So as to avoid head-on collision Sekhar turned lorry towards right side. As a result, lorry turned turtle. Sekhar sustained injuries and died on the spot. His wife and minor son filed claim u/s 163A of Motor Vehicles Act, 1988, claiming an amount of Rs. 10,00,000/- towards compensation. Learned Motor Accident Claims Tribunal-cum-III Additional District Judge, Tirupati, by impugned award dated 31-7-2001 dismissed M.V.O.P. No. 76 of 2000 dismissed Original Petition on the ground that owner of insured lorry is not covered under policy of insurance. This appeal is against the said finding.

2. Placing reliance on latest judgment of Supreme Court in Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, , learned Counsel for respondent contends that when owner of insured vehicle himself is involved in the accident, Tribunal constituted u/s 165 of Motor Vehicles Act, 1988 (the Act, for brevity) cannot maintain claim petition, as the owner is not covered by third party u/s

147(1)(b) of the Act.

3. In Dhanraj Vs. New India Assurance Co. Ltd. and Another, , Supreme Court interpreting Section 147 of the Act laid down as under.

Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle.... In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, , it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

4. In Jhuma Saha (1 supra), following the above dicta, Supreme Court laid down as under.

The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one, which he was driving. The question, which arises for consideration, is that the deceased himself being negligent, the claim petition u/s 166 of the Motor Vehicles Act, 1988 would be maintainable.... Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise.

5. In this case, deceased Sekhar was owner of insured motorcycle and, therefore, he cannot be considered as third party and insurance company does not cover personal injury to insured. Appellants therefore are not entitled to claim compensation. There are no reasons to interfere with impugned award.

6. The civil miscellaneous appeal is therefore dismissed. No costs.

