
(2006) 07 AP CK 0091
In the Andhra Pradesh High Court
Case No : CMA No. 1656 of 2006

Senior Divisional Manager, New India Insurance Co., Ltd.	APPELLANT
Vs	
K. Kiran and Another	RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 167, 170
Workmens Compensation Act, 1923 — Section 147(1), 4

Citation : (2007) ACJ 1153 : (2007) 1 ALD 463 : (2006) 6 ALT 1

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : I. Mammu Vani, for the Appellant; K.L.N. Rao, for the Respondent No. 1 and M. Vijay Reddy, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

G. Chandraiah, J.—Heard Mrs. I. Mammu Vani learned Standing Counsel for the appellant - Insurance Company and Sri K.L.N. Rao and Sri M. Vijay Reddy, Counsel for the respondents.

2. Aggrieved by the judgment and decree dated 17-9-1999 passed by the Chairman, A.P.M.V. Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad in O.P.No. 140/ 1998, the Insurance Company filed this appeal.

3. The facts with regard to the occurrence of the accident on 1-6-1998 at 5.00 a.m., while the claimant was proceeding on a lorry bearing No. AIK 6856 as a cleaner from Siddipet side towards Secunderabad due to rash and negligent driving of the driver of the lorry and the claimant suffering 75 per cent of disability on account of amputation of both of his legs, are not in dispute and further the quantum of compensation is also not being disputed by the Insurance Company, The only dispute is with regard to the liability of the Insurance Company.

4. The learned Counsel appearing for the appellant-Insurance Company submitted that the claimant is the son of the owner of the lorry and that he is not the cleaner and further the cleaner is not covered under the policy, as no additional premium was paid. In support of this contention, the learned Counsel relied on the judgment of the Apex Court in Ramashray Singh v. New India Assurance Co. Ltd and Ors. 2003 (1) DT (SC) 632 . She further submitted that if this Court comes to the conclusion that the cleaner is entitled to compensation, the liability of the Insurance Company is limited u/s 4 of the Workmen's Compensation Act, 1923. In support of this contention, the learned Counsel for the appellant relied on the Full Bench judgment of the Apex Court in National Insurance Co. Ltd. Vs. Prembai Patel and Others, , and the judgment of a learned Single Judge of this Court in Oriental Insurance Co. Ltd., Warangal Vs. Thudi Mallamma and others, . With regard to maintainability, the learned Counsel submitted that as the quantum of compensation is not being questioned and only the liability, no permission need be taken u/s 170 of the Motor Vehicles Act, 1988 and the statutory defenses u/s 149(2)(a) of the said Act, are always available.

5. On the other hand, the learned Counsel appearing for the claimant Sri K.L.N. Rao mainly contended that as permission u/s 170 of the Motor Vehicles Act was not obtained, the appeal itself is not maintainable. In support of this contention, the learned Counsel relied on the judgment of the Apex Court in Dama Kothilingam @ Kotilingaiah Vs. Joint Collector and Another, . He contended that there is no bar to employ son of the owner as cleaner and that no evidence is lead by the Insurance Company. He stated that 1st respondent -owner is not set ex parte. He further contended that there is no evidence to show that Ex.B-1 policy does not cover the cleaner or that no premium was paid, which is matter of evidence. He contended that mere marking of the policy is not sufficient. As the claimant is employed under the 1st respondent driver and the lorry was insured and further as the accident occurred due to rash and negligent driving of the driver of the lorry, he contended that the claimant is entitled to file claim petition either under Motor Vehicles Act or under Workmen's Compensation Act. He contended that as the claimant who is employed as cleaner of the crime lorry filed claim. petition under the Motor Vehicles Act, the compensation cannot be restricted u/s 4 of the Workmen's Compensation Act. In support of this contention, the learned Counsel relied on the judgment of the Apex Court in Suresh Chandra Vs. State of U.P. and Another, .

6. In the present case, as already noted and as submitted by the learned Counsel for the appellant, the Insurance Company is not questioning the quantum of compensation and the dispute is only with regard to liability. Therefore, the Insurance Company has to confine to the statutory defenses u/s 149(2) of the Motor Vehicles Act. In the judgment relied on by the Counsel for the respondents in Nicolletta Rohtagi's case (supra), the Apex Court while answering the questions raised by the Insurance Company that, whether in the absence of an appeal to the High Court by the insured against the Accidents Claims Tribunal's award, the insurer could maintain an appeal against such

award to challenge the quantum of compensation as well as the Accidents Claims Tribunal's finding as regards the negligence of the offending vehicle; held that unless permission is taken u/s 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. However, Apex Court held that the exception to such limitation is that in the absence of permission u/s 170 of the Act, the insurer has to confine the grounds provided for u/s 149(2) of the Act. Hence, the objection of the Counsel for the respondents in this regard is not sustainable and is accordingly rejected.

7. u/s 167 of the Motor Vehicles Act, the option is left to the claimants to approach either the Workmen's Compensation Act, 1923 or the Motor Vehicles Act and they cannot approach both. The Apex Court in the decision reported in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , held as under :

The object of both the Acts, viz., the Motor Vehicles Act and the Workmen's Compensation Act is to provide compensation to the victims of accidents. The only difference between the two enactments is that so far as the Workmen's Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapters X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle...

8. Therefore, it is clear that the claimant can file claim petition either under the Workmen's Compensation Act or under the Motor Vehicles Act. In the present case, the case of the claimant is that he is working as a cleaner on the crime lorry. Therefore in view of Section 167 of the Motor Vehicles Act, the claimant is entitled to file claim petition under the said Act and there cannot be any dispute with regard to this aspect, as the claimant has not filed any claim petition under the Workmen's Compensation Act.

9. The next question is with regard to liability of the Insurance Company. The main grievance of the Insurance Company is that the insured had not paid any extra premium covering the cleaner and the policy taken is an "act policy".

10. In order to consider the above issue, it is necessary to look into Ex. B-1 policy marked by the Insurance Company. The objection of the learned Counsel for the appellant is that policy cannot be looked into and that mere marking is not sufficient, as no evidence has been lead by the Insurance Company and that whether the insured had paid any additional premium or not, is a matter of evidence. Though the insurer had not lead any evidence, it is not the case of the insured that he paid any additional premium. Further the objection with regard to perusal of Ex.B-1 at this appellate stage, cannot be countenanced for the reason that the claimant is basing his claim on the said policy. In the decision reported in Ramashray Singh's case (supra) in similar facts and circumstances when an objection was taken in production of the policy before the Apex Court while advancing arguments, the Apex Court held that "We would have understood and

upheld the submission had the appellant not based his claim on the policy. Indeed, in the absence of the policy, we could not have entertained the appellant's claim at all (See : Dr. T. V. Jose v. Chacko P.M. alias Thankachan 2001 (8) SCC 748)". From the above observation it is clear that this Court is not precluded from considering the policy for the purpose of adjudicating the liability.

11. From a perusal of the policy it is clear that it is an "act policy" and the insured had paid premium of Rs. 1,335/-. In the decision reported in the National Insurance Co. Ltd. v. Prembai Patel and Ors. (supra), the Apex Court while considering a claim petition under Motor Vehicles Act, 1988 wherein the deceased died during the course of employment and the policy taken by the insured was an "act liability" held that the liability of the Insurance Company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Compensation Act. In the said judgment, the Apex Court had restricted the liability of the Insurance Company to that arising under the Workmen's Compensation Act and the remaining liability under the award was directed to be satisfied by the owners of the vehicle. The relevant portion of the judgment is extracted as under :

15. . . . It is thus clear that in case the owner of the vehicle wants the liability of the Insurance Company in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the Insurance Company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

17. .. The liability of the appellant Insurance Company to satisfy the award would be restricted to that arising under the Workmen's Act. Respondents 1 and 2 (owners of the vehicle) would be liable to satisfy the remaining portion of the award.

12. A learned Single Judge of this Court in Oriental Insurance Co. Ltd., Warangal v. Thudi Mallamma (supra), while considering a claim petition under the Motor Vehicles Act, 1988 wherein a labourer who was employed for loading and unloading in a tractor died during the course of employment due to rash and negligent driving of the driver of the tractor, held that the Insurance Company is liable to pay compensation only to the extent of the amount fixed under the Workmen's Compensation Act but not under the provisions of the Motor Vehicles Act and the rest of the compensation, the owner of the vehicle alone can be made liable.

13. Coming to the facts of the present case, it is not in dispute that the claimant was the cleaner of the lorry belonging to 2nd respondent herein and that on 1-6-1998 at about 5.00 a.m., when the claimant was proceeding from Siddipet

side towards Secunderabad side with the load of sand, the accident occurred due to rash and negligent driving of the driver of the lorry and that both the legs of the claimant were amputated and as per the evidence of P.W. 2, doctor who treated the claimant, the claimant received 75 per cent disability. The Tribunal also found that as both the legs of the claimant upto the thigh were amputated, it would be very difficult for him to get employment anywhere and to do any work and further the claimant throughout his life has to depend on some one else for his movement and he has to forego several pleasures and amenities in his life. The case of the claimant is that he is earning an amount of Rs. 2,000/- per month apart from batta of Rs. 10/- per day and accordingly he claimed a total compensation of Rs. 4,50,000/- under all the heads. The Tribunal granted Rs. 1,000/- towards transport charges to hospital; Rs. 3,000/- towards extra nourishment and for medicines; Rs. 40,500/- towards medical expenses; Rs. 15,000/- towards pain and suffering; Rs. 3,90,000/- towards continuing permanent disability and loss of pleasures in life and thus in all granted an amount of Rs. 4,49,500/- with 12 per cent interest per annum from the date of the petition till realization.

14. As already noted above, as per the judgment of the Apex Court National Insurance Co. Ltd. v. Prembai Patel (supra), the Insurance Co. is liable only to the extent of statutory liability u/s 4 of the Workmen's Compensation Act, as the insured had not paid any extra premium covering the cleaner. In the present case, as the claimant became permanently disabled due to the injury, clause (b) of Section 4 of the Workmen's Compensation Act, is applicable. As per the said clause, for grant of compensation, sixty per cent of the monthly wages of the injured has to be taken and the same has to be multiplied with the relevant factors.

15. The case of the claimant which is not in dispute is that he is working as a cleaner in the crime lorry under the employment of the insured and he is being paid an amount of Rs. 2,000/- per month and Rs. 10/- per day as batta. This is certified by the insured himself by giving Ex. A-4 certificate. A learned Single Judge of this Court in New India Assurance Co. v. Kotam Appa Rao 1995 (3) ALD 1108, while considering a claim petition under the Workmen's Compensation Act, held that while determining the compensation, even the batta paid per day has to be included in the wages of the workman, for determining the compensation. Therefore, the income of the claimant per month can be fixed at Rs. 2,300/- per month. Out of this amount, as per Section 4(b) of the Workmen's Compensation Act, sixty per cent has to be taken, which comes to Rs. 1,380/-. Further the age of the injured as per Ex.A-8 transfer certificate, as on the date of the accident is 18 years. Therefore, as per Schedule IV u/s 4 of the Workmen's Compensation Act, the compensation that can be arrived at is Rs. 3,12,404.40 ps. (Rs. 1,380/- x 226.38), which can be rounded off to Rs. 3,12,404/-.

16. The quantum of compensation granted is not in dispute and only the liability

is under dispute, as the insured had taken an "act policy". As per the judgments of the Apex Court and the learned Single Judge of this Court in the decisions cited National Insurance Co. Ltd. v. Prembai Patel and Oriental Insurance Co. Ltd., Warangal v. Thudi Mallamma (supra), the Insurance Co. is liable only to the extent of liability u/s 4 of the Workmen's Compensation Act, which is Rs. 3,12,404/- and remaining amount of compensation of Rs. 1,37,096/- (Rs. 4,49,500/-- Rs. 3,12,404/-) has to be paid by the owner of the vehicle.

17. In view of the Full Bench judgment of the Apex Court in National Insurance Co. Ltd. v. Prembai Patel (supra), the other judgments relied on by the Counsel for the claimant cannot be made applicable and even the Division Bench judgment of the Apex Court in Ramashray Singh's case (supra) relied on by the Counsel for the appellant for the proposition that cleaner is not entitled to compensation on the ground that no extra premium was paid, cannot be made applicable.

18. For the foregoing reasons, the award passed by the Tribunal is modified to the extent that the Insurance Company is liable to pay only an amount of Rs. 3,12,404/- and the remaining amount of Rs. 1,37,096/- has to be paid by the owner of the crime vehicle involved in the accident i.e., the 2nd respondent herein. As the interest portion is not disputed, the interest shall be paid as awarded by the Tribunal.

19. The appeal is accordingly allowed to the extent indicated above. No costs.