

**(2006) 12 AP CK 0090**

**In the Andhra Pradesh High Court**

**Case No : Civil Miscellaneous Appeal No. 1488 of 1993**

The New India Assurance Co. Ltd

APPELLANT

Vs

Smt. S. Gangu Bai and Another

RESPONDENT

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**Date of Decision : 06-12-2006**

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 4A(3)

**Citation : (2007) 3 ALD 1488**

**Hon'ble Judges : C.Y. Somayajulu, J**

**Bench : Single Bench**

**Advocate : Kota Subbarao, for the Appellant; V. Tulasi Reddy, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

C.Y. Somayajulu, J.—First respondent filed a petition under the provision of the Workmen's Compensation Act (the Act) against the second respondent and the appellant alleging that her son S. Mohan (the deceased) who was working as a driver of the tractor of the second respondent died in an accident arising out of and during the course of employment and so she is entitled to Rs. 1,50,000/- as compensation.

2. Second respondent filed a counter admitting that the deceased was the driver of the tractor and trailer belonging to him on a monthly salary of Rs. 1,200/- besides batta of Rs. 20 per day and was having a valid driving licence and that the deceased died due to an accident that took place on 27-02-1990 and as the vehicle is insured with the appellant, it is the appellant that has to pay the compensation payable to the first respondent.

3. Appellant filed its counter admitting the insurance of the vehicle of the second respondent with it by the date of accident and as an I.A.305 of 1991 was filed in the Court of the District Judge, Nizamabad seeking compensation for the death of the deceased first respondent cannot file a petition under the Act for the same relief.

4. In support of her case, first respondent examined herself as P.W.1 and marked Ex.A1 on her behalf. No evidence either oral or documentary was adduced on behalf of the second respondent and the appellant. The Commissioner under the Act held that the first respondent is entitled to Rs. 89,600/- as compensation and directed the appellant to pay that amount with interest at 6% p.a. and 50% compensation u/s 4A(3) of the Act. Questioning the said order this appeal is preferred by the insurer.

5. The contention of the learned Counsel for the appellant is that inasmuch as the specific case of the appellant is that the first respondent filed a petition before the Motor Accidents Claims Tribunal seeking compensation for the death of the deceased and since that point is not adverted to by the Commissioner in the order under appeal and since the delay is also not properly explained by the first respondent and since the insurance policy is not produced, the Commissioner erroneously held that as per the terms of the policy the appellant is liable to pay the compensation and relied on United India Assurance Co. Ltd, rep. by its United India Insurance Company Ltd. Vs. Smt. B. Jaya Lakshmi and Others, and United India Assurance Co. Ltd, Bhimavaram rep. by its United India Insurance Co. Ltd. Vs. Purrai Kishore and Others, where it is held that the burden of proof is on the claimants to establish that the offending vehicle was insured with a particular insurance company and also relied on P.J. Narayan Vs. Union of India (UOI) and Others, where it is held that the insurance company is not statutorily liable to pay interest on the amount of compensation as it can contract out in respect of the interest.

6. It is no doubt true that the order under appeal is silent as to the effect of filing a petition under the Motor Vehicles Act, 1988. But that cannot have any relevance in this case because it is well known that mere taking a plea is not sufficient, but there must be some evidence on record to show that first respondent had in fact initiated proceedings under the Motor Vehicles Act and had simultaneously initiated proceedings under the Act also. As stated earlier, appellant did not adduce any evidence to prove that aspect. So merely because the appellant took a plea in its counter that the first respondent initiated proceedings by filing an I.A.305 of 1991, it cannot be presumed that a claim petition under the Motor Vehicles Act was filed. Probably that I.A.305 of 1991 could be a petition for condonation of delay. Whether the delay was condoned or not, and whether the OP was numbered or not are questions of fact which are to be established by the appellant who took the plea. But there is no evidence on record. If there is a double claim, the insurer can always take an objection even during execution proceedings also, contending that a fraud was played. But merely on the ground that the order under appeal is silent about the plea taken by the appellant in its counter, it cannot be said that the order under appeal is erroneous.

7. United India Insurance Company Ltd. Vs. Smt. B. Jaya Lakshmi and Others, and United India Insurance Co. Ltd. Vs. Purrai Kishore and Others, have no

application to the facts of the case because in this case the appellant admitted insurance of the vehicle with it by the date of accident. So there is no need for the first respondent to again establish that the appellant is the insurer of the vehicle involved in the accident. Since the Commissioner awarded compensation only in accordance with the provisions of the Act, I find no grounds to interfere with the compensation awarded by the Commissioner to the first respondent.

8. No doubt, in P.J. Narayan Vs. Union of India (UOI) and Others, it is held that the insurance company is not statutorily liable to pay interest on the amount of compensation. That decision was given in a writ petition directing the insurance company to delete the clause in the insurance policy, which provided that in case of compensation payable under the Act, it will not be liable to pay interest. Their Lordships held that as the insurance is a matter of contract between the insurance company and the insured, it is always open to the insurance company to refuse to insure and so they need not give a direction to the companies to delete the clause in the policy. In this case, when the appellant wants to avoid its liability to pay interest, it should have produced the policy of insurance to show the terms agreed between it and the second respondent. In fact in Ved Prakash Garg v. Premi Devi AIR 1999 SC 3854 the apex Court made the insurance company also liable to pay interest but held that it cannot be made liable to pay additional amount of compensation imposed by way of penalty.

9. Therefore, only the clause in the operative portion of the order under appeal that the appellant should pay 50% of the compensation u/s 4A(3) of the Act also to the first respondent is not sustainable. But the order directing the appellant to pay Rs. 89,600/- with interest at 6% p.a. needs no interference from this Court.

10. Therefore, the appeal is allowed in part and the order of the Commissioner directing the appellant to pay Rs. 89,600/- with interest at 6% p.a. is confirmed and the order directing the appellant also to pay 50% compensation u/s 4A(3) of the Act is set aside. Parties are directed to bear their own costs in this appeal.