
(2011) 10 AP CK 0038

In the Andhra Pradesh High Court

Case No : Review MACMAMP. No. 1921 of 2011

The New India Assurance Company Ltd.

APPELLANT

Vs

Palamoni Suresh and Another

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Motor Vehicles Act, 1988 — Section 146, 147, 147(1)

Citation : (2011) 10 AP CK 0038

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P. Bhanu Prakash, for the Appellant; V. Atchuta Ram, Counsel for Respondent No. 1 and None Appeared, Counsel, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy

1. Order, dated 18-02-2010, passed by this Court, in MACMA. No. 339 of 2007, is the subject matter of this Review Petition.

2. The review petitioner - New India Assurance Company Limited filed the aforesaid MACMA against award, dated 06-11-2006, in MVOP.No.1665 of 2004, on the file of the Motor Accidents Claims Tribunal -cum-X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, (for short "the Tribunal"), whereby the Tribunal has fixed the joint and several liability on the review petitioner along with respondent No.2-owner of the vehicle for payment of Rs. 1,49,250/- along with interest @ 7.5% p.a., for the injuries sustained by respondent No.1 herein. Since the facts have already been set out in Order, dated 18-02-2010, passed by this Court, in the aforesaid MACMA, it is not necessary to repeat the same. It will suffice to note that respondent No.1 was travelling in the jeep, owned by respondent No.2 and insured with the review petitioner, from Bhongir to Raipole Village along with the driver of the jeep. In the course of journey, the driver hit the said jeep to a culvert causing injuries to

respondent No.1. As the jeep was covered by insurance policy with the review petitioner, the Tribunal held that the review petitioner is jointly and severally liable for payment of compensation to respondent No.1 along with respondent No.2-owner of the jeep. While disposing of the MACMA, this Court has, on the interpretation of the provisions of Sections 146 and 147 of the Motor Vehicles Act, 1988 (for short "the Act"), inter alia held as under:

The expression "third party" is wide enough to cover any person other than the insured and the insurer. Nothing is given in the policy that the premium of Rs. 700/- is received towards a third party driver. It, therefore, follows that if a private vehicle is allowed to carry persons other than the owner or the driver as per the conditions of registration, all such persons come within the expression "third party". Ex. B1 policy contains certain limitations and they are mentioned as under:

The policy covers use of the vehicle for any purpose other than

- a) Hire or Reward
- b) Carriage of Goods (other than samples or personal luggage)
- c) Organized racing
- d) Pace making
- e) Speed Testing and Reliability Trials
- f) Use in connection with Motor Trade

It is not the case of the appellant that the vehicle in question was used in contravention of any of the abovementioned conditions. Respondent No.1 was permitted to travel in the private vehicle, which is authorized to carry up to 6 persons. Admittedly, there were only 2 persons in the vehicle including the driver. Therefore, in my considered opinion, the policy covers the third party risks arising out of the accident in the use of the insured vehicle. Respondent No.1 squarely falls under the category of "third party", who is insured against the accident.

3. On the premises as above, this Court treated respondent No.1 as the third party, whose risk is covered by the policy, and accordingly, declined to interfere with the award of the Tribunal.

4. In this Review Petition, the review petitioner has pleaded that since the policy taken by respondent No.2 was not a comprehensive policy and the same is only an act policy covering third party risk alone, respondent No.1, who was only travelling in the jeep, does not fall within the expression of "third party" u/s 147(1)(i) of the Act. In support of his submission, the review petitioner placed reliance on the judgment of the Supreme Court in Dr. T.V. Jose vs. Chacko P.M. and Others 2001 ACJ 2059 and also of the Division Bench judgment of this Court in Oriental Insurance Company Limited Vs. Bhoomi Reddy Peddi Reddy Lakshmi

Devi Reddy and Others,

5. In *Dr.T.V.Jose* (1st cited supra), the car bearing No. KLO 4828, driven by respondent No.1 therein, met with an accident. One of the passengers viz., Anthony Alexander was seriously injured in the said accident and he has, thereafter, succumbed to the injuries. The legal representatives of the deceased filed a claim petition before the Motor Accidents Claims Tribunal against the owner, driver and the Insurance Company. The Tribunal has passed an award only against the driver and absolved the owner and the Insurance Company of the liability mainly on the ground that the person, who was made party to the claim petition, was not the owner of the car at the time of the accident and therefore, neither he nor the Insurance Company, which issued the policy, when he was not the real owner, was liable for payment of compensation. The High Court, however, reversed the award of the Tribunal to the extent of the owner but confirmed the award of the Tribunal qua the Insurance Company by holding that the policy was an Act policy covering only the third party risk and that therefore, the Insurance Company was not liable. While upholding the judgment of the High Court, the Supreme Court observed as under:

In this case only the first sheet of the policy is on record. This clearly shows that the policy is a third party policy. The terms and conditions governing this Policy are not on record. What was shown to Court was terms and conditions of a comprehensive policy relating to private cars. These cannot apply to this policy. In the absence of terms and conditions governing this policy, it is not possible to accept the submission of Mr.Iyer that this policy covered liability to occupants of the car. As has been set out hereinabove, the law on this subject is clear, a third party policy does not cover liability to gratuitous passengers, who are not carried for hire or reward. The 8th Respondent Company will, therefore, not be liable to reimburse the Appellant.

4. Before the Supreme Court, the Learned Counsel for the claimant submitted that the policy being a third party policy, the insurance company would be liable for a claim by a passenger in the car. He relied upon the judgment of the Supreme Court in *Amrit Lal Sood and another vs. Kaushalya Devi Thapar and Others* 1988 ACJ 531 (SC), in support of the said submission that the expression "any person" would include an occupant of the car, who was gratuitously travelling in the car. While considering the judgment in *Amrit Lal Sud* (3rd cited supra), which dealt with the *pari materia* provisions under the Motor Vehicles Act, 1939, the Supreme Court held as under:

(22) Therefore, it is not required that a policy of insurance should cover risk to the passengers, who are not carried for hire or reward. As u/s 95 the risk to a passenger in a vehicle, who is not carried for hire or reward, is not required to be insured, the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.

(23) The insurer can always take policies covering risks which are not covered by the requirements of Section 95. In this case, the insurer had insured with the insurance company the risk to the passengers. By an endorsement to the policy, the insurance company had insured the liability regarding accidents to passengers in the following terms:

In consideration of the payment of an additional premium, it is hereby understood and agreed that the company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger...

(24) The scale of compensation is fixed at Rs. 15,000/- . The insurance company is ready and willing to pay compensation to the extent of Rs. 15,000/- according to this endorsement but the Learned Counsel for the insured submitted that the liability of the insurance company is unlimited with regard to risk to the passengers. The counsel relied on section II of the policy which relates to liability to third parties. The clause relied on is extracted in full:

Section II. Liability to third parties.-

The company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of (a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of and in the course of the employment of such persons by the insured.

(25) It was submitted that the wording of clause (1) is wide enough to cover all risks including injuries to passengers. The clause provides that the company will indemnify the insured against all sums including claimant's costs and expenses, which the insured shall become legally liable. This, according to the Learned Counsel, would include legal liability to pay for risk to passengers. The legal liability is restricted to clause (1) (a) which states that the indemnity is in relation to the legal liability to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. Clauses (1) and (1) (a) are not very clearly worded but the words "except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939" would indicate that the liability is restricted to the liability arising out of the statutory requirements u/s 95. The second part of clause (1) (a) refers to the non-liability for injuries arising in the course of employment of such person. The meaning of this sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy also provides for insurance of risks, which are not covered u/s 95 of the Act by stipulating payment of extra premium. These clauses would themselves indicate that what

was intended to be covered under clauses (1) and (1) (a) is the risk required to be covered u/s 95 of the Motor Vehicles Act.

5. The Supreme Court has, thus, distinguished between the cases of mere Act policy and comprehensive policy in relation to gratuitous passengers travelling in a motor vehicle and, eventually, upheld the award of the Tribunal as confirmed by the judgment of the High Court in absolving the Insurance Company of the liability on the premise that the policy was only third party policy and not the comprehensive policy covering the risk of a gratuitous passenger.

6. In the instant case, it is not the pleaded case of the claimant that the vehicle, which caused the accident, is covered by a comprehensive policy and unless the risk of gratuitous passengers is also covered over and above what is envisaged by the Act policy, such passengers are not covered by the policy and afortiori, the review petitioner is not liable to pay compensation for the risk of a gratuitous passenger such as respondent No.1.

7. In the light of the above settled legal position, Order, dated 18-02-2010, in MACMA.No.339 of 2007, suffers from error apparent on the face of the record, and therefore, the same is set aside to the extent of the review petitioner-New India Assurance Company only and confirmed qua respondent No.2- owner of the vehicle.

8. The Review Petition is, accordingly, allowed to the extent indicated above.

9. this Court acknowledges the assistance rendered by Sri Kota Subba Rao, Learned Counsel, on behalf of Sri Bhanu Prakash, Learned Counsel for the review petitioner, and places on record its appreciation therefor.