
(1969) 12 AP CK 0007

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 157 of 1969

The Premier Insurance Co. Ltd., Madras

APPELLANT

Vs

Gokar Ranfaraju and Others

RESPONDENT

Date of Decision : 03-12-1969

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 96(2)

Citation : AIR 1970 AP 310

Hon'ble Judges : N. Kumarayya, C.J.; Sambasiva Rao, J

Bench : Division Bench

Advocate : N. Bapi Raju, for the Appellant; M. Rajesekhara Reddy, S. Venkatramani Reddy and E. Monoher, for the Respondent

Judgement

N. Kumarayya, C.J.—This is an appeal under clause 15 of the Letters Patent against the order of A. D. V. Reddy, J., in C. M. A. No. 306 of 1968.

2. The C. M. A. arose out of O. P. No. 30 of 1965, a petition for compensation, filed before the Motor Accidents Claims Tribunal (District Court, West Godavari) at Eluru. One Chinna Venkanna died of a lorry accident. The 1st respondent was the owner of the said lorry and the 2nd respondent, the driver therefore. The latter was prosecuted, convicted u/s 304-A, L. P. C. and sentenced to six months' rigorous imprisonment. The heirs of the deceased then filed the said O. P. for compensation u/s 110-A(1)(b) of the Motor Vehicles Act. They are the wife and two minor children of the deceased. The 3rd respondent is the Insurance Company with which the lorry was insured. It was made a party at its own instance. The 2nd respondent, the driver of the lorry remained expert. The 3rd respondent disclaimed its liability.

3. The Tribunal held that the 1st respondent, the owner of the lorry, was liable to pay compensation in a sum of Rs. 3,500/- to the petitioners, and that the 3rd respondent, the Insurance Company, was not liable for the same because at the time of the accident, the Vehicle was being driven on a route which was being on a route which was not covered by the permit and there was thus a breach of

conditions of the contract with insurance company.

4. Aggrieved by the award of the Tribunal, the Ist respondent preferred an appeal in this Court and the petitioners preferred cross-objections contending that the compensation awarded was inadequate. Our learned brother dismissed the cross-objections and also the appeal so far as they related to the quantum of compensation. The only other question that then fell for determination was whether the insurance company, the 3rd respondent was liable to pay compensation to the petitioners? Before the learned Judge it was contended that the question as to the liability between the insured and the insurer inter se could not be gone into in such proceedings and therefore the appeal as preferred by the insured against the insurer was not maintainable. The learned Judge repelled this contention on a consideration of the provisions in Sections 96 and 119-A of the Motor Vehicles Act and ordered remand of the case to the Tribunal directing amendment of pleadings framing of issues and adducing of fresh evidence in support thereof and disposal of the point at issue there after. This according to the learned Judge was warranted by the fact that whereas the statutory liability of the insurer u/s 96(1) could be avoided by substantiating any of the ground enumerated in Section 96 (2), apart from the averment in the petition which was generally denied by the Ist respondent and which was not supported by the judgment in the criminal case, there was no proper plea taken in this behalf by the respondents and no issue was in fact raised. Against the order of remand, the insurer has come up in appeal.

5. The first point raised by learned counsel Mr. N. Bapiraju is that S. 110-A does not permit a decision on questions that are raised between the insured and the insurer so that the insurer (insured?) may have a right to appeal, that the liability of the insurance company as against a third party is not by virtue of any contract for no privity of contract exists between the two, that the liability, if any is a creature of statute and that arises out of Section 96(1), subject to the conditions specified therein that it is confined to that provision and cannot extend beyond and that in that event, whatever the liability that has to be determined is the liability as between the third party and the insurance company and not the mutual rights and liabilities of the insured and the insurance company. It is thus argued that the appeal preferred by the insured as against the insurer was not maintainable in law.

6. In order to appreciate his argument it is necessary to refer to some of the provisions of the Motor Vehicles Act. The present proceeding be remembered, arises under the provisions of the Motor Vehicles Act of 1939. The said Act inter alia provides for a machinery for adjudication of claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of Motor Vehicles. Section 110-A provides for application for compensation before such Tribunal which should be made within a certain period in such form and with such particulars as may be prescribed. These applications can be made only by such persons as mentioned in that section, namely, the

injured person, and in case of his death by accident, his legal representatives or the duly authorised agent of the injured or legal representatives of the deceased. Section 110-B relates to the award to be made section 110-C, to the procedure in making the said award. It is provided inter alia therein that the Claims Tribunal shall specify the amount which shall be paid by the insurer. Section 110-D gives right of appeal to the aggrieved party in cases where the amount in dispute in the appeal is not less than two thousand rupees. Section 110-E provides for recovery of money from insurer as arrears of land revenue and Section-F bars the jurisdiction of civil courts to entertain any claim for compensation which may be adjudicated upon by the claims Tribunal for that area and precludes them from issuing any injunction against the Tribunals in respect of any action taken or to be taken. Thus it is clear that all actions in relation to compensation of this kind are regulated by provisions of this Act. There are some further provisions in Chapter VIII with regard to insurance of motor Vehicles against third party risks. Section 96 which finds place in this chapter reads thus:

"(1) If, after a certificate of insurance has been issued under sub-section (4) of Section 95 in favour of the person by whom a policy has been effected judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (2) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal: and an insurer to whom notice of the bringing or any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely-

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with provisions of section 105; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely-

(1) a condition excluding the use of the vehicle:

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit ply for hire or reward, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached, where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of a fact which was false in some material particular.

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(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

" " " (6) No insurer to whom the notice referred to in sub-section (2) or sub-section (2-A) has been given shall be entitled to the benefit of any such judgment as is referred to in sub-section (1) or sub-section (2-A) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the State of Jammu and Kashmir or of the reciprocating country, as the case may be".

7. It would appear from the above extract that though the decree is passed against the insured, the insurer shall pay the person entitled to the benefit of the decree any sum not exceeding the assured amount as though he were a judgment-debtor. This he shall pay notwithstanding that he may be entitled to avoid or cancel or might have avoided or cancelled the policy. This liability does not arise under annoy privity of contract. It is purely a creature of law by reason of policy of insurance. The liability so cast under the express terms of the section is subject to the provision of section 96 (2). That sub-section however, lays condition precedent for attachment of the liability. Even though it is not necessary for the claim petitioners to make insurer a party to the petition, for he is not a necessary party for the constitution of the claim petition, he has to be given nevertheless due notice through the Court before or after commencement of proceedings. On such notice being given, he is entitled to be made a party, and has a right to defend the action though the grounds on which he can take defence are, however, limited by the terms of the sub-section. It is manifest

nevertheless that within the framework of that sub-section he can effectively defend himself against the extension of liability to him enjoyed by sub-sec. (1) of S. 96. One of the permitted grounds of defence in S. 96(2) (b) (i) (c) is that there has been a breach of the condition of the policy in that the vehicle has been used for a purpose not allowed by the permit at the time when the accident took place. It is this ground that the insurer is said to have taken in this case.

8. We may notice here one other sub-section. Sub-section (6) provides that no insurer to whom notice in sub-section (2) has been given shall be entitled to avoid liability otherwise than in the manner provided for in sub-section (2) of S. 96. To put it in a different form the statutory liability imposed by sub-section (1) can be avoided by effectively taking the defences open under sub-section (2).

9. To sum up the above discussion. It is clear that under the scheme of the Act all claim petitions for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles have to be made before the Claims Tribunal. Any question relating to any claim for compensation which may be adjudicated upon by such Tribunals shall not be entertained by the civil court in that area. Appeals against awards of such Tribunal can be preferred by the aggrieved party to the High Court provided the amount in dispute in appeal is not less than two thousand rupees. Insurers in relation to decrees against insured in respect of third party risks have statutory liability to pay the decretal amounts not exceeding the assured amount but such liability is subject to the provisions in section 96(2) and may be avoided by taking effective defences permissible under the said provisions.

10. In this case the contention of the insurer was that the lorry was plying not on a sanctioned route but on a different route when the accident took place. There was thus a breach of one of the conditions of the policy and as such the insurer can avoid liability within the meaning of Section 96(2) of the Motor Vehicles Act. This plea rested on the averment in the petition and not on any evidence. This averment was not sufficiently traversed by the Ist respondent who contented himself with general denial of the allegations. There was no issue framed and no evidence adduced. The conclusion was reached only on the averment in the petition even though the finding in the criminal court was otherwise. The learned Judge therefore in view of such unsatisfactory state of record made a remand order directing amendment of pleadings, framing of issues and disposal of the case after taking evidence which the parties may adduce.

11. The learned counsel has stressed not so much on the order but on the maintainability of the appeal itself. The whole controversy boils down to this: If the defence permissible u/s 96(2) is effectively taken with the result that the insurer is absolved from liability, can the insured, who is aggrieved by the adverse finding prefer an appeal against this Order?

12. We have already noticed that Section 110-D gives right of appeal to the aggrieved party. If the insured is the aggrieved party within the meaning of the

term his right to appeal cannot then be open to question. In the circumstances of the case, it is not possible to say that the insured is not the aggrieved party. In fact, both the decree-holder and the insured are aggrieved parties in relation to the decision of the said defence. They are aggrieved because the advantage that they had u/s 96(1) is taken away by the decision. The decree-holder can now by reason of the finding enforce his decree against the insurer. The insured is aggrieved because what the insurer would have paid otherwise has become payable exclusively by him. The defence on being accepted has in this way hit both the decree-holder and the insured. Even so, the contention of the learned Counsel Sri Bapi Raju is that whereas the decree-holder can prefer an appeal, the insured in law cannot do so. But once it is clear that the insured is the aggrieved party no such limitation can be spelled out of section 110-D of the Act. The argument is that the insured can seek his relief against the insurer in a separate action and hence the said point in dispute between the insurer cannot form the subject matter of appeal. It is not easy to see how such a limitation which is not there can be introduced in S. 110-D.

13. In support of his contention Sri Bapi Raju relied upon the decision of this court in *Chavali Kotaiah v. Alla Ramanaiah* (1962) 2 AnWR 232. The question that arose there was whether the decree in such claim petitions before the tribunal should be passed only against the owner of the vehicle which caused the accident or it can as well be passed against the insurer. It was held that according to the intendment of the Act the decree should be passed against the insurer. It was held that according to the intendment of the Act the decree should be passed only against the owner of the vehicle which caused the accident though it may be that the insurer by reason of section 96(1) is liable to pay the amount due under the decree. We have already referred to this provision which casts liability, subject to the provision in Section 96(2) on the insurer as though he were a judgment-debtor. In other words, he will yet be treated as a judgment-debtor although under the terms of the decree, he may not be expressly so. The other point raised in that case was whether the liability for damages can be attached to the insurer when the insured was not a party to the suit. In fact, the Court dismissed the suit as against the insurer on that very ground. That case is no authority for the proposition now sought to be raised.

14. The other case relied on is *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, . There the question was whether grounds other than those specified in Section 96(2) can be taken in defence. It was held that no ground can be added to those specified in that provision to avoid the liability u/s 96(1).

15. When the statute has specified the only defences that can be taken in cases of third kind, certainly any defence which goes beyond them can neither be raised nor gone into by the Court. None of the decisions relied on can assist the contention of the learned counsel. It is impossible to accept the contention that notwithstanding that the insured is aggrieved, he cannot file an appeal even

though statute entitled the aggrieved party to file an appeal. The argument that the insured can seek his relief in a separate action and the remedy of appeal conferred by the statute is not therefore available to him cannot commend to us. It is not necessary to expatiate of the provision embodied in section 110-F, which related to bar of civil court's jurisdiction, to entertain any question relating to any claim for compensation which may be adjudicated upon the Claims Tribunals in their areas. Nor are we called upon to pronounce on the scope thereof and consider as to whether this bar is confined to questions so far as they touch or affect inferred alone. These questions need not be gone into for the purposes of this case. The simple fact that the defence taken is one permissible u/s 96 (2) and decision thereon has adversely affected the insured as well is sufficient to hold tat the insured as aggrieved party can prefer appeal under the express provision of section 110-D, which admits of no further or other qualification. We are of the view that our learned brother has rightly held that the matter whether the insurer has been rightly absolved from statutory liability by reason of the permissible defence taken by him, can be canvassed by the insured as well in appeal.

16. The order of remand does not merit interference. The appeal, therefore, fails and is dismissed.

17. Appeal dismissed.