
(2010) 08 AP CK 0116
In the Andhra Pradesh High Court
Case No : C.M.A. No. 480 of 2001

United India Insurance Co. Ltd. and Another	APPELLANT
Vs	
K. Narasimlu and Others	RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Motor Vehicles Act, 1988 — Section 181, 3, 4, 5

Citation : (2011) 2 ALT 478

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G. Bhavani Prasad, J.—This appeal is directed against the award in O.P. No. 1248 of 1996 on the file of the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, dated 31-07-2000 awarding a compensation of Rs. 41,500/- with proportionate costs and interest at 12 per cent per annum from the date of the petition till the date of realization against all the Respondents jointly and severally.

2. The factual background for the appeal is that on 09-07-1996 at about 9.45 A.M., the 1st Respondent herein and one J. Madhukar were proceeding in auto No. AP 23T 1360, while another auto No. AET 6950 came in opposite direction and dashed against their auto near Laxmi Rice Mill in the outskirts of Kulabgur village. The 1st Respondent herein and Madhukar sustained grievous injuries and were shifted to Government hospital, Sangareddy where Madhukar died. Later the 1st Respondent herein was shifted to Gandhi hospital, Secunderabad and was treated there. Sangareddy police registered Crime No. 83 of 1996 and investigated into the same and as the rash and negligent driving of auto No. AET 6950 caused the accident resulting in fracture of right femur of the 1st Respondent herein and consequential permanent disability, he claimed a compensation of Rs. 1,00,000/- with interest and costs. He claimed to have

incurred Rs. 15,000/- towards medical expenses.

3. The 1st Respondent, owner of auto No. AET 6950, put the claimant to strict proof about his travel in the other auto and denied any rashness or negligence on the part of the driver of the auto in causing the accident. The compensation was also stated to be excessive and hence, the 1st Respondent desired the claim to be negated.

The owner of the other auto impleaded as 3rd Respondent remained ex parte before the Tribunal.

4. The United India Insurance Company, which is the insurer for both the vehicles and sued as Respondents 2 and 4, opposed the claim contending that the manner of the accident is not admitted and the claims of the 1st Respondent herein about his occupation, income, injuries and their consequences are also not admitted. The insurer claimed that no information of the accident was given to it by either owner and it denied the vehicles being insured with it or the drivers of both the autos having valid effective driving licences or the driving of auto AET 6950 rashly and negligently. The insurer contended that the 1st Respondent herein himself jumped from the auto in confusion while the auto was in movement and contributed to the accident by his own negligence. The insurer also contended the compensation to be excessive and desired the claim to be negated.

The Tribunal framed issues on the responsibility for the accident, entitlement of the 1st Respondent herein to compensation and the liability of the Respondents to pay the same.

5. During enquiry, P.W.1 and R. Ws.1 and 2 were examined and Exs.A.1 to A.6, B.1 to B.9 were marked by the Tribunal.

6. In the impugned award, the Tribunal noted that the evidence of R. Ws.1 and 2 is no contradiction to the evidence of P.W.1, the injured, about the manner of the accident and the Tribunal relied on the claims of P.W.1 as sufficient to conclude that the accident occurred due to rash and negligent driving of auto No. AET 6950 by its driver. The Tribunal referred to the contention that the driver of auto No. AET 6950 was a minor, aged 15 years, without any valid licence making the insurer exempt from any liability to pay the compensation. The Tribunal referred to the precedents cited before it in this regard and noted that the 1st Respondent did not make any reference to any valid driving licence, while the insurer did not place any material before it that the owner was aware of the absence of any valid licence for the driver or the age of the driver. Therefore, the Tribunal refused to draw an adverse inference against the owner stating that nothing was pleaded in the written statement of Respondents 2 and 4 (insurer) about the knowledge of the owner with regard to the licence of the driver. The insurer was, hence, held liable to pay the compensation, and then the Tribunal proceeded to assess the quantum of compensation payable which was arrived at a sum of Rs. 41,500/- directed to be paid by the Respondents jointly and severally with interest at 12

per cent per annum from the date of the petition till the date of realization and proportionate costs.

7. The insurer is before this Court with this appeal being aggrieved by the said award and it was contended that when the driver was a minor, aged about 15 years, and driving the offending vehicle, the insurer could not have been made liable, when such driving by the minor at any public place was prohibited by the Motor Vehicles Act. The judgments of the Apex Court and this Court cited before the Tribunal were not properly appreciated and the insurer further contended that in spite of examining R. Ws.1 and 2 and marking Exs.B.1 to B.9 to prove that the driver had no valid driving licence at the time of the accident, the Tribunal did not appreciate the same. Therefore, the insurer desired the impugned award to be reversed.

8. Sri P. Gopal Das, learned standing counsel for the Appellants and Sri Ch. Janardhan Reddy, learned Counsel for the 1st Respondent are heard. The point for consideration is whether the insurer could have been made liable to pay the compensation to the 1st Respondent herein ?

Point:

9. In so far as the finding of the Tribunal about the responsibility of the driver of auto No. AET 6950 for causing the accident is concerned, none of the parties have challenged the same and hence, it has to be considered as having become final. The ownership of both the vehicles with Respondents 1 and 3 to the claim respectively was not disputed before the Tribunal and the vehicles being insured with Respondents 2 and 4 (Appellants herein) was also not improbably before the Tribunal by any positive pleading or evidence. The quantum of compensation assessed by the Tribunal also was not challenged by the 1st Respondent herein, though only Rs. 41,500/- was awarded as against the claim of Rs. 1,00,000/- towards compensation. As such, none of these aspects can have any consideration in this appeal, the only question left being the liability of the insurer to pay just and adequate compensation to the 1st Respondent herein for the consequences of the injuries suffered during the accident.

10. In so far as the liability of the insurer as the insurer of the vehicle owned by the 3rd Respondent is concerned, the driver of the said auto AP 23T 1360 was neither alleged by the 1st Respondent herein nor found by the Tribunal to be responsible for the accident in any manner due to any defects in his driving. The positive finding of the Tribunal was about the driver of auto No. AET 6950 being responsible for the accident and the said finding having become final, the insurer could not have been made liable for payment of compensation by virtue of the insurance of auto No. AP 23T 1360. It should also be incidentally noted that the 3rd Respondent, who is the owner of the said auto and was also jointly and severally made liable for the compensation awarded, did not challenge the award against him, in any manner and therefore, no expression of opinion is being made in so far as the award passed against him.

11. As the insurer of auto No. AET 6950 owned by the 1st Respondent to the claim, the Appellants herein, would have been liable to pay just and adequate compensation to the 1st Respondent herein for the consequences of the injuries suffered by the 1st Respondent herein during the accident, if the primary defence of the insurer about the minor driver of the auto having no valid subsisting driving licence were to be negated.

12. In this regard, it should be first noted that a specific plea was taken in the counter filed by the insurer before the Tribunal, apart from the general denials of the allegations of the claim Petitioner, that drivers of both the autos had no valid effective driving licences to drive such vehicles at the relevant time, while it is true that there was no plea about the minority of the driver of auto No. AET 6950.

13. The 1st Respondent herein deposed as P.W.1 before the Tribunal and there was no reference to the offending auto driver at all in his chief-examination or cross-examination and it was only the evidence of R. Ws.1 and 2 that throws light on this aspect. The evidence of R.W.1, an assistant in the legal department of the insurer, is about both the autos being insured with them and the investigator appointed by them finding the offending driver to be having no valid driving licence. He had, of course, no personal knowledge of these things and deposed with reference to the report of the case investigator. The investigator himself was examined as R.W.2 and he produced Ex.B.5 report submitted by him apart from Exs.B.6 to B.9 relating to the crime registered on the accident. He claimed that his investigation revealed that the drivers of both the autos had no valid licences to drive the autos. The investigator, while admitting that it was not mentioned in the charge-sheet itself about both the drivers not having valid driving licences, had claimed to have relied on the police record for submitting his report and though he also had no personal knowledge about the age of the offending driver, there was nothing to suggest any falsity in his investigation on the basis of the records in Crime No. 83 of 1996 of Sangareddy Rural Police. The fact that the police registered such a crime immediately after the accident was the case of the 1st Respondent himself and it is seen from Ex.B.9 final report u/s 173 of the Code of Criminal Procedure that the statutory investigating agency after independent and comprehensive investigation found that the offending driver of auto No. AET 6950 was aged about 15 years without valid driving licence at the relevant time. The said driver was accordingly charge-sheeted before the criminal Court for the relevant offences including one u/s 3 read with Section 181 of the Motor Vehicles Act, 1988, which offence relates to driving motor vehicles in contravention of Sections 3 and 4 of the said Act prescribing the necessity for a driving licence and the prescribed age for driving a motor vehicle respectively. Even the Tribunal in the impugned award did not give any positive finding against any such conclusion and on the basis of broad human probabilities arising out of the evidence on record, it has to be concluded that the offending driver was a minor without a valid driving licence at the relevant time.

14. In appreciating the consequences of such a factual situation, Sri Gopal Das,

learned standing counsel for the Appellants referred to United India Insurance Co. Ltd. v. Rakesh Kumar Arora and others IV (2008) ACC 709 (SC) , wherein the Apex Court was referring to the statutory responsibility imposed on the owners of the motor vehicles not to cause or permit any person, who does not satisfy the provisions of Section 3 or Section 4 of the Motor Vehicles Act, 1988, to drive the vehicles and also referred to the earlier precedents on this aspect for concluding that the insurer is entitled to recover the compensation, which is already paid, from the owner of the vehicle. The Apex Court referred to the earlier decision in National Insurance Co. Ltd. v. Swaran Singh and others I (2004) ACC 1 (SC) , wherein it was held that minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties. The decision in Oriental Insurance Co. Ltd. v. Prithvi Raj 2008 CPJ 33 (SC) was also referred to, wherein the insurance company was held not liable where no driving licence was issued at all to the offending driver. The decision in National Insurance Co. Ltd. v. Kaushalaya Devi and others IV (2008) ACC 796 (SC) to the same effect was also referred to and thus, it is clear that the total absence of a driving licence for the offending driver was absolving the insurance company of the liability to pay compensation, while any minor or inconsequential deviations may not be sufficient to deny such liability.

15. Sri Gopal Das, learned standing counsel for the Appellant also relied on National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, in which also the earlier precedents on this aspect were considered by the Apex Court and it was held that the insurance company would have no liability in cases where the driver had no appropriate licence to drive the vehicle. The Apex court extracted its own observations in the earlier decisions to the effect that it was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle.

16. In answer, Sri Ch. Janardhan Reddy, learned Counsel for the 1st Respondent relied on United India Insurance Co. Ltd., Kurnool Vs. Lakshmaiah and others, wherein also the driver was contended to be possessing no licence and the learned Judge opined that in the light of the decision in Divisional Manager, New India Assurance Company Ltd., Ongole Vs. Tumu Gurava Reddy and others, that breach of conditions of the policy must be established by the insurer as a fact, the insurer is liable to prove that the owner, having full knowledge that the driver had no driving licence, entrusted the vehicle and if such a burden is not discharged by the insurer, it cannot avoid the liability of payment of compensation. The allegation of mere omission per se was not considered to be a breach by itself and in that case, the insurance company had not pleaded that the owner deliberately and intentionally handed over the vehicle to the driver despite having full knowledge about the absence of any driving licence for him.

17. It is true that in the present case also, the insurance company did not make any specific plea about the owner entrusting the vehicle with full knowledge of

absence of any licence for the driver, but in the light of the subsequent pronouncements by the Apex Court, relied on by the learned Counsel for the Appellants, the very fact that there was no licence for the driver itself has to be construed as violation of the statutory responsibility of the owner u/s 5 of the Motor Vehicles Act, 1988 not to permit any person not satisfying the provisions of Section 3 or Section 4 to drive the vehicle, making the insurer not liable to reimburse the owner in respect of the claim of a third party. The total absence of driving licence for the driver cannot be considered to be a minor or inconsequential deviation with regard to licensing conditions and the legal obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle, cannot altogether be obliterated from consideration in assessing the liability of the insurer and reconciling the views expressed in *United India Insurance Co. Ltd., Kurnool v. Lakshmaiah and Ors.* (6 supra), it may have to be understood that non-compliance with the legal obligations imposed on the owner by the Statute must lead to attributing the required knowledge in this regard to the owner and the same being obviously in breach of the terms and conditions of the insurance policy, the insurer cannot be made liable to pay any compensation.

18. The Tribunal solely proceeded on the basis of want of proof of knowledge for the owner about the absence of any driving licence and the same being not in tune with the law declared by the Supreme Court cannot be upheld. As the insurer has specifically pleaded about absence of any valid driving licence for the driver in its written statement and has proved the same through its evidence, the insurer has to be absolved of the liability in respect of auto No. AET 6950 also.

19. While the award in respect of other Respondents to the claim should remain uninterfered with in view of absence of any challenge by them to the said award, the award against Respondents 2 and 4 to the claim has to be reversed and the claim has to fail against them.

20. However, the insurer had deposited Rs. 25,000/- to the credit of the matter before the Tribunal as per the statutory requirements before filing this appeal and this Court directed on 23-03-2001 that the insurer should deposit half of the amount awarded within eight weeks, which the 1st Respondent herein is entitled to withdraw without furnishing any security. Like in the decisions of the Apex Court in similar situations, the Appellants can be given liberty to recover the same from the 1st Respondent to the claim petition without the necessity of having to file a separate suit for the purpose, without burdening the 1st Respondent herein with any responsibility for repayment of such amount, as he was already suffering with the consequences of the injuries sustained during the accident.

21. Therefore, the award, dated 31-07-2000 in O.P. No. 1248 of 1996 on the file of the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad is set aside against Respondents 2 and 4 and the said O.P. No. 1248 of 1996 is dismissed without costs against Respondents 2 and 4. However,

any amounts already deposited to the credit of the matter or paid to the claim Petitioner in O.P. No. 1248 of 1996 by Respondents 2 and 4 therein shall be recovered only from the 1st Respondent of the said petition. The appeal is allowed accordingly without costs.