
(2007) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : CMA No's. 1901, 1902, 2695, 2993 and 3180 of 2001

United India Insurance Co. Ltd. and Another

APPELLANT

Vs

Parvathi Ramachandram and Another

RESPONDENT

Date of Decision : 02-01-2007

Acts Referred:

Contract Act, 1872 — Section 4, 5, 51, 52, 54

Evidence Act, 1872 — Section 114

Motor Vehicles Act, 1988 — Section 166

Citation : (2008) ACJ 2495 : (2007) 5 ALD 234

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

Bench : Single Bench

Advocate : A.V.K.S. Prasad, for the Appellant; M. Pradeep Singh and D. Sudershan Reddy, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Since the point involved in all these appeals is one and the same and since all the appeals arise out of a common award passed by the Tribunal, all these appeals are being disposed of by a common order.

2. In all these cases claimants filed claim petitions against the owner of the bus and the appellant who is said to be insurer of the bus involved in the accident u/s 166 of the Motor Vehicles Act, 1988 (the Act) seeking compensation for the deaths of and injuries to the victims in an accident due to the rash and negligent driving of the driver of the bus. Owner of the bus involved in the accident chose to remain ex parte both before the Tribunal and in this Court. Appellant contested the claim petitions alleging that it is not liable to pay any compensation to the claimants as it cancelled the cover note issued to the owner of the bus long prior to the date of accident, as the cheque issued by him to it towards premium was dishonoured.

3. The Tribunal, having held that the accident occurred due to the rash and negligent driving of the driver of the bus belonging to the second respondent,

relying on *New India Assurance Co. Ltd. Vs. Rula and Others*, , for negating the contention of the appellant that it is not liable to pay the compensation payable to the claimants, passed awards in favour of the claimants against the owner of the bus and the appellant also. Hence these appeals by the insurer of the bus involved in the accident.

4. The point for consideration is whether the appellant is not liable to pay the compensation payable to the claimants.

Point:

5. The contention of the learned Counsel for the appellant is that since the accident took place on 21-4-1997 and since the cheque dated 12-8-1996 issued by the owner of the bus towards the premium payable to the appellant, when presented to the bank for payment, was dishonoured, as disclosed from Exs.B2 to B4 and since the appellant had on 30-8-1996 informed the second respondent that the cover note issued by it to him stood cancelled from the inception in view of the dishonour of the cheque issued by him, the Tribunal was in error in making the appellant also liable to pay the compensation in view of *National Insurance Co. Ltd. v. Seema Malhotra and Ors.* 2001 (2) ALD 68 (SC) : 2001 (2) Su 92, where *Rula's* case (*supra*) relied on by the Tribunal is distinguished.

6. The contention of the learned Counsel for the claimants is that since the Tribunal gave cogent reasons for its conclusion and since there is nothing on record to show that letter of cancellation of the policy of insurance was communicated to the owner of the bus by the appellant and since the victims in the accident have no role to play in the transaction between the appellant and the owner of the bus, if the appellant feels that it is not liable to pay the compensation payable to the claimants, it has to pay the amount covered by the awards to the claimants in the first instance and recover the said amount from the insured, and relied on *United India Insurance Co. Ltd. Vs. Boya Siva Kumar and Another*, , in support of his said contention.

7. The onus to establish that it is not liable to pay the compensation payable to the claimants is on the appellant. In support of its case the appellant examined R.W1, the Assistant Divisional Manager and produced Exs. B1 to B9. Ex. B4 is a Xerox copy of the communication received from the Bank of Maharashtra intimating the appellant about the dishonour of the cheque issued by the owner of the bus to the appellant towards the premium. Ex.B5 is a copy of the communication sent by the Branch Manager of the appellant to the In charge of the Police Station Vijapur, intimating that it ceased to be the insurer of the bus involved in the accident (in which the victims in these cases are involved) as the cover note No. 128333 dated 12-8-1996 issued by the appellant to the owner of the bus was cancelled, after dishonour of the cheque issued by him on 19-8-1996, and as he did not take fresh insurance even after he was informed about the cancellation of the cover note. Ex.B8, extract from the dispatch register maintained by the office of the appellant, is produced to show that a

communication was sent to the owner of the bus about the cancellation of the cover note issued to him. Since Ex.B8 is in Marathi, I requested the learned Counsel for the appellant to furnish its English translation. Learned Standing Counsel for the appellant furnished English translation of Ex. B8, after serving a copy thereof to the learned Counsel for the claimants. Item No. 4 in Ex.B8 shows that a letter dated 30-8-1996 enclosing endorsement No. 51/21/65/8-16 was posted to one Gajanan Patil of Shegaon (the owner of the bus involved in the accident) through ordinary post, by affixing a one rupee stamp. As seen from Ex. B1, which is dated 30-8-1996 endorsement No. 51/21/65/8-96 relates to cancellation of the cover note issued in favour of the owner of the bus due to dishonour of Cheque No. 089755 drawn on BDCC Shegaon for Rs. 14,279/- where it is stated:

In view of the non-payment, please note that our cover note stands cancelled from inception and consequently our Receipt No. 2755 issued to you for the payment as also our Acceptance advice stand cancelled.

In case you desire us to cover the risk afresh, please arrange to remit us either in cash or by a Bank Draft?.

8. In view of the evidence of R.W.1 and Ex.B8, a presumption can be drawn that a communication under the original of Ex. B1 was in fact sent to the owner of the bus involved in the accident on 30-8-1996 through ordinary post by affixing one rupee stamp intimating him about the cancellation of the cover note issued to him, in view of the dishonour of the cheque issued by him to the appellant towards the premium.

9. The evidence of R.W.1 and the documents produced by the appellant show that the appellant issued only a "cover note" to the second respondent. In insurance parlance, "cover note" does not have the status of a policy of insurance. The insurer can revoke the cover note in case the cheque issued by the insured towards the premium payable is dishonoured. Insurance companies usually issue policies of insurance only after the cheque issued towards premium is encashed. Since letter of revocation under the original of Ex. B1, addressed to the owner of the bus, was posted on 30-8-1996 as disclosed from Ex. B8, in view of Section 114 of the Evidence Act, read with Sections 4 and 5 of the Contract Act, presumption that the addressee received the communication, sent to him by ordinary post, can be raised. The owner of the bus, for the reasons best known to him, chose to remain ex parte, and did not contend that the cheque issued by him was not dishonoured or allege that he paid the premium afresh and renewed the policy. So the evidence of R.W.1, which prima facie establishes the cover note issued by the appellant stood cancelled from its inception due to dishonour of the cheque issued by the owner, and that that fact was intimated to him, stands un rebutted.

10. In Rula's case (supra), the truck involved in the accident was insured on 8-11-1991 after taking the premium payable through a cheque. The accident, in

which three occupants died, took place on the same day i.e., 8-11-1991 at mid night. The cheque issued by the insured in that case was dishonoured on 16-11-1991 i.e., about eight days after the accident in that case. So it is clear that by the date of accident the policy was in force as it was not cancelled by the insurer by that date i.e., the date of accident. The apex Court relying on *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, , held that subsequent cancellation of the insurance policy on the ground of the cheque, through which premium was intended to be paid, being dishonoured would not affect the rights of the third party. In this case the accident took place on 21-4-1997, long subsequent to the cancellation of the cover note issued by the appellant on 30-8-1996. So it is clear that the facts in that case are different from the facts in this case.

11. The facts in *Seema Malhotra's* case (supra), are similar to the facts in this case. In that case the apex Court observing that the Three-Judge Bench in *Inderjit Kaur's* case (supra), refrained from expressing any opinion on the question of insurer's entitlement to avoid or cancel the policy as against the insured, when the cheque issued for payment of the premium was dishonoured, and that the subsequent Bench in *Rula's* case (supra), was only considering the question of insurer's right to repudiate the claim as against the insurer, held that in view of Sections 51, 52 and 54 of the Indian Contract Act and the Law relating to Contract of Insurance, if an insurer gives a cheque towards payment of premium or part of the premium, it is akin to a reciprocal promise and so if the cheque issued towards premium is returned dishonoured by the bank concerned, the insurer need not perform its part of the promise and consequently upheld the contention of the insurer that it is not liable to pay compensation payable to the claimants, because the cheque issued by the insured towards premium was dishonoured.

12. In *Boya Siva Kumar's* case (supra), the learned Judge without considering the ratio in *Seema Malhotra's* case (supra), had on the basis that the ratio in *Rula's* case (supra), and *Seema Malhotra's* case (supra), is the same and on the ground that the insurer in that case did not place any communication emanating from the bankers of the insured, or any other agency, throwing light upon the dishonour of the cheque issued by the insured, held that insurer also is liable to pay the compensation to the claimants. In this case the communication received from the bank addressed to the appellant and the communication sent by the appellant to the owner of the bus are placed on record by the appellant and are proved by R.W1. Yet the Tribunal held that it is not inclined to accept the contention of the appellant that inasmuch as the cover note issued on 19-8-1996 was cancelled on account of the dishonour of the cheque it is not liable to pay any compensation and so it ceased to be the insurer of the bus involved in the accident by the date of accident, only in view of *Rula's* case (supra), the facts in which are entirely different from the facts of this case.

13. As stated above, in this case, the appellant, in fact, did not issue a policy of

insurance to the owner of the bus but gave only cover note to him and cancelled that cover note on 30-8-1996. The accident took place on 21-4-1997 nearly eight months after the cancellation of the cover note by the appellant. So it is clear that appellant was not the insurer of the bus involved in the accident by 21-4-1997, the date of the accident. So the appellant cannot be made liable to pay compensation payable to the claimants. The point is answered accordingly.

14. In the result, the appeals are allowed and the claim of the claimants against the appellant are dismissed. Parties are directed to bear their own costs in these appeals.

15. At this stage, the learned Counsel for the appellant stated that in pursuance of the order of a learned Judge, on the stay petitions filed by the appellant, the claimants had withdrawn half of the amounts covered by the awards under appeals deposited by the appellant before the Tribunal and so appropriate order may be passed in that regard. In the circumstances of the case, instead of directing the claimants to refund the amount withdrawn by them, appellant can be permitted to recover the amount withdrawn by the claimants from the second respondent as in *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, . For the remaining amount the claimants have to proceed only against the second respondent.