(2008) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : C.M.A. No. 278 of 2001

United India Insurance Co. Ltd. APPELLANT

Vs

A. Sarada and Others RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2010) ACJ 1753

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : V. Srinivasa Rao, for the Appellant; G. Bhaskar, R. Radha Krishna Reddy and M. Vijay, for the Respondent

Final Decision : Allowed

Judgement

K.C. Bhanu, J.—The respondent No. 3-insurance company in O.P. No. 242 of 1994 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Madanapalle, filed the civil miscellaneous appeal, challenging the award dated 6.8.1999 passed in the original petition (for short, ''O.P.'').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P.

3. The claimants filed the O.P. claiming compensation of Rs. 15,00,000 for the death of one Chandrasekhara Reddy, who is husband of claimant No. 1 and father of claimant Nos. 2 to 4, in a road accident that occurred on 6.3.1993. It is their case that on that day, the deceased and others were travelling in a jeep bearing registration No. CNK 7777 and when the jeep reached Kanugamanumitta near Dommanabhavi on Ananthapur-Madanapalle Road, bus bearing No. ABC 3281 came in high speed in a rash and negligent manner in opposite direction and dashed against the jeep, as a result of which, the deceased sustained severe bodily injuries and later died in the hospital. Respondent No. 1 in the O.P. is the owner and respondent No. 2 in the O.P. is the insurer of the offending bus

bearing No. ABC 3281 and the respondent No. 3 is the insurer of the jeep. Hence, the petition claiming compensation.

4. Before the Tribunal, PWs 1 to 5 were examined and Exhs. A1 to A30 were marked, on behalf of the claimants. On behalf of respondents, no oral evidence was adduced, but Exhs. B1 to B3 were marked. Exh. D1 and some portion in Exh. A5 was also marked.

5. The Claims Tribunal, considering the evidence on record, granted compensation of Rs. 1,63,615 with proportionate costs and interest at the rate of 12 per cent per annum from the date of petition till the date of realization. The compensation was ordered to be paid equally by respondent Nos. 1 and 2 on one side and respondent No. 3 on the other. Aggrieved by the said order, respondent No. 3-insurance company filed the present appeal.

6. The only contention raised by the learned Counsel for the appellant herein is that since there was negligence on the part of driver-cum-owner of the jeep, who is none other than the deceased, the legal heirs of such deceased person cannot gain advantage of the same and, therefore, the appellant who is insurer, is not liable to pay any compensation. In support of his contention, he relied on a decision in Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. and Others, .

7. The learned Counsel for the appellant herein, insurer of jeep, contended that the Tribunal''s finding insofar as payment of apportionment is concerned, has not been challenged and, therefore, this respondent is not liable to pay over and above 50 per cent of the compensation awarded.

8. In spite of giving sufficient opportunity, none appears for the claimants-respondent Nos. 1 to 4.

9. The Tribunal, basing on the evidence available on record, directed respondent Nos. 1 and 2 before the Tribunal, on one hand and the respondent No. 3, on the other hand, to pay compensation amount equally, i.e., 50 per cent of the compensation has to be paid by the respondent Nos. 1 and 2 before the Tribunal and the remaining 50 per cent has to be paid by the respondent No. 3 before the Tribunal. Admittedly, the finding of the Tribunal is that the accident was caused due to negligence of the drivers of both the vehicles. The jeep bearing No. CNK 7777 was insured with the appellant. Deceased Chandrasekhara Reddy was the owner of the jeep. When there is finding of the Tribunal that there was contributory negligence on the part of the driver-cum-owner of the jeep, who is none other than the deceased, question of payment of compensation to the legal representatives of the deceased by the insurer of the jeep does not arise.

10. In the decision in Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. and Others, , relied on by the learned Counsel by the appellant, it is held thus (para 8):

In terms of Section 147 of the Act only in regard to reimbursement of the claim to a third party, a contract of insurance must be taken by the owners of the vehicle. It is imperative in nature. When, however, an owner of a vehicle intends to cover himself from other risks; it is permissible to enter into a contract of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof.

Admittedly the deceased is not third party to the contract of insurance. He is no other than the insured. Risk of the owner, i.e., the deceased Chandrasekhara Reddy was not covered under Exh. B1, policy. Furthermore, the legal representatives cannot derive any advantage or benefit arising out of the negligence on the part of the deceased person. Therefore, following the aforesaid decision, the appellant insurance company is not liable to pay any compensation, much less than 50 per cent of the compensation awarded by the Tribunal.

11. The civil miscellaneous appeal is, accordingly, allowed. No costs.