
(1989) 12 AP CK 0019
In the Andhra Pradesh High Court
Case No : A.A.O. No. 540 of 1988

United India Insurance Co. Ltd.

APPELLANT

Vs

Alapati Venkata Subba Rao and Another

RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b)(i)

Citation : (1991) ACJ 206

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : S. Hanumaiah, for the Appellant; M.V. Ramana Reddy and S.S. Ahmed, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishna Rao, J.—The Motor Accidents Claims Tribunal, Ongole, after considering the claim of the injured person aged about 21 years, awarded a sum of Rs. 2,55,000/- as damages fixing the liability on the owner of the offending vehicle as well as the insurance company, against the estimated claim of Rs. 4,24,000/- which was, however, restricted by the claimant to Rs. 3,00,000/-. Aggrieved against the said order, the insurance company, i.e., the 2nd respondent in the lower court, filed the present appeal. The owner of the vehicle has not filed any appeal.

2. In this appeal it is contended by the insurance company that the fixing of the liability on the insurance company over and above Rs. 50,000/- since the vehicle is a passenger bus, is not correct. The insurance policy is marked as Exh. B-I. The lower court relying upon a judgment of the Madras High Court in Basheer Ahmed Vs. Sumathi and Another, , observed as follows:

It is contended that the liability of the 2nd respondent is limited to only Rs. 50,000/- as per the insurance policy which is marked as Exh. B-I. On behalf of the petitioner, reliance is placed on the decision reported in Basheer Ahmed Vs.

Sumathi and Another, and contended that the liability is unlimited. This is a third party liability. The liability fixed in the insurance policy is towards the value of the bus etc. The limit fixed in the policy cannot be accepted. The liability is governed by the provisions of the Motor Vehicles Act. Following that decision, I hold that the liability of the insurance company is unlimited. This contention cannot be accepted. The vehicle involved is a transport bus. I, therefore, hold that both the respondents are liable to pay the compensation amount with interest at 12 per cent per annum thereon, i.e., on Rs. 2,55,000/- from the date of the petition till date of realisation. Two months' time is given for payment of the compensation amount together with interest and costs.

3. Mr. S. Hanumaiah, the learned counsel for the appellant, i.e., the insurance company raised a contention that the fixing of the liability over and above Rs. 50,000/- by the lower court is bad and it is contrary to the terms of the policy, Exh. B-I.

4. The liability of the third party risk according to the appellant is Rs. 50,000/- both under the provisions of the Act as well as under the terms and conditions of the policy.

5. It is relevant to notice the limits of liability and the liability to public risk as incorporated in the policy, Exh. B-I:

Limits of Liability:

(1) Limit of the amount of the company's liability u/s II-I (i) in respect of any one accident: such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

(ii) Limit of the amount of the company's liability u/s II-I (ii) in respect of any one claim or series of claims arising out of one event: Rs. 50,000/-.

Liability to Public Risk:

Basic premium:

Add: for L.L. passengers as per endorsement IMT 13 Rs. 240/- Limit per passenger Rs. 528/- Limit per accident Rs. ... as per Motor Vehicles Act, 1939.
Add for L.L. to paid driver and/or cleaner as per endorsement IMT 16 Rs. 16/-
Add for increased T.P. limit Section II-I (i) Unlimited Section II-I (ii) Rs. ... Add:
for Less: 10% special discount Comprehensive premium (A + B) (Rounded off to the nearest rupee) _____ Rs. 784/- _____

6. As seen from the above policy, no amount has been paid towards third party risk. Only Rs. 16/- was paid for the liability in the event of the death of the driver and cleaner. No extra amount has been paid to cover the risk over and above Rs. 50,000/-.

7. The relevant provisions of the Motor Vehicles Act, 1939, with which we are now concerned may be read usefully:

95. Requirements of policies and limits of liability.-(I) XXX XXX XXX

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely-

(a) XXX XXX XXX (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

XXX XXX XXX

96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.-(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.

XXX XXX XXX (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.

8. Basing on these provisions in the enactment, it is contended by Mr. M.V. Ramana Reddy, the learned counsel for the injured, that in the case of third parties it is an unlimited liability and the contention of the insurance company that its liability is limited upto Rs. 50,000/- is not correct.

9. From a plain reading of Section 95(2)(b)(i) which has been extracted above, it is clear that the limit of Rs. 50,000/- payable in the event of the death is in respect of persons other than the passengers carried for hire or reward. Any person other than a passenger carried for hire or reward is entitled for compensation but the liability of the insurance company as per the statute is only Rs. 50,000/- and over and above that amount the owner is liable to pay that amount. The extent of the liability is prescribed in Sub-section (2) (c) irrespective of the user of the vehicle. Since no extra amount has been paid, the question of the insurance company paying over and above the statutory limit

does not arise. The condition contained in the policy and the condition prescribed in the statute is only the same, i.e., Rs. 50,000/-.

10. In *Basheer Ahmed Vs. Sumathi and Another*, , an accident was caused by a scooterist resulting in injuries to a third party and to the question whether the liability of insurance company for third party claim against scooterist is unlimited, the Madras High Court answered in the affirmative holding that the value of vehicle mentioned in the policy can be criterion only in respect of claims with reference to damage to the vehicle and it has no relevance in a third party claim. While considering the scope of Section 95 (2)(c) of the Act, the learned Judge came to the conclusion that the insurance company is liable to indemnify the scooterist who caused the accident in respect of the entire amount of compensation awarded to the injured.

11. In *Pandit Ram Saroop and Another Vs. Balbir Singh and Others*, , the passenger of a bus died while alighting from the bus at a place beyond his destination as the bus did not stop at his destination stop. The question that arose in that case is whether the liability of the insurance company is limited to Rs. 5,000/- as per Section 95 (2) (b) (ii) (4) of the Act. The Delhi High Court negated the contention of the insurance company holding that the insurance company is liable on the principle of a third party liability and its liability is unlimited in that case and the insurance company cannot claim limited liability u/s 95 (2) (b) (ii) (4) of the Act. The above decision is not applicable to the facts of the present case as the accident occurred after the amendment of the Act.

12. The decision of the Supreme Court in *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, is a direct authority to the facts of the present case. In that case also the liability under the policy was the same as the statutory liability contemplated by clause (b) of Sub-section (2) of Section 95 of the Act, namely, Rs. 20,000/-. The Supreme Court was of the opinion that an award against the appellant insurance company could not, therefore, have been made in excess of the said statutory liability. The relevant provisions as they stood at the relevant time and as extracted by the Supreme Court in that judgment, are as follows:

95 (2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely,

(a) XXX XXX XXX (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six

passengers excluding the driver.

(c) XXX XXX XXX

13. In *Guru Govekar Vs. Miss Filomena F. Lobo and Others*, , the vehicle had been entrusted to a repairer. The car dashed against the respondent No. 1 in that case, who was returning home along with her friend, causing injuries to her. The question is whether the insurance company is liable to pay the compensation to the injured or not. The Supreme Court overruled the decision of the Madras High Court in *D. Rajapathi Vs. The University of Madurai and Others*, and held that the insurer is liable to pay compensation found to be due to the claimant. The Supreme Court also referred to an earlier decision in *New Asiatic Insurance Co. Ltd v. Pessumal Dhanamal Aswani* 1958 ACJ 559 , which has also been relied upon by the learned counsel for the claimant, wherein the owner of a motor car had insured it with the insurance company under a comprehensive policy. But in this case with which we are now concerned, the question is whether the liability that has been fixed on the insurance company is limited one or not. So taking into account the view expressed by the Supreme Court in *New Asiatic Insurance Co. Ltd.* 's case (supra) and *Guru Govekar*'s case (supra) and a reading of the provisions of Section 95 (2) (b) (i) of the Act coupled with the recitals in the policy, I am clearly of the opinion that the insurance company is liable to pay only Rs. 50,000/- and not the entire liability that has been fixed by the court below.

14. The contention that a third party is in no way concerned with the conditions of the policy between the owner and the insurance company cannot gain any strength in view of the fact that the liability has to be fixed on the basis of the insurance policy. If the owner has not obtained any policy, the question of any decree against the insurance company does not arise. If there is an insurance policy, the court has to take note of the conditions mentioned in that policy. When the parties to an insurance policy agree for particular conditions and when the insured has not paid any amount other than for specific items, a third party cannot gain any strength simply on the ground that the insurance company is liable to pay the entire liability and if it so desires it should get reimbursement from the owner of the vehicle. It has to be seen here that the owner of the vehicle remained ex parte and in this court the owner appeared through a counsel and has not filed any appeal against the compensation awarded by the court below but simply he supported the contention with regard to the liability that has been fixed on the insurance company.

15. In this case the appellant is not seeking to avoid its liability but wants a determination of the extent of its liability. As seen from the terms of the policy, the appellant did not undertake in the policy any liability in excess of the statutory liability; the award against it could be only in accordance with the said statutory liability. In this view of the matter, the submission made by the learned counsel for the injured person that the appellant had undertaken an unlimited liability does not obviously have any substance.

16. In the result, the appeal is allowed and the liability of the insurance company is limited to only Rs. 50,000/- with interest at 12 per cent per annum thereon from the date of the petition till the date of realisation. No costs.