
(2006) 04 AP CK 0087
In the Andhra Pradesh High Court
Case No : CMA No. 3149 of 2005

United India Insurance Co. Ltd.	Vs	APPELLANT
Boya Siva Kumar and Another		RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Citation : (2006) 3 ACC 724 : (2007) ACJ 1315 : (2006) 4 ALD 273 : (2006) 4 ALT 650

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : E. Venugopal Reddy, for the Appellant; A. Jaya Sankara Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The 1st respondent filed M.V.O.P. No. 931 of 2002 before the IV Additional District Judge-cum-Motor Accident Claims Tribunal, Kumool, claiming a sum of Rs. 50,000/- as compensation, for the injuries sustained by him, in a road accident. It was pleaded that on 8-5-2002 at 10:00 am, the 1st respondent and his cousin were returning from their house from the fields, at Valkur Village, and a vehicle bearing No. TN-02-F-4736 came in a rash and negligent manner from Mantralayam side and dashed against him. The vehicle is owned by the 2nd respondent and insured with the appellant. The 1st respondent narrated the nature of injuries as well as treatment received by him. The owner of the vehicle, the 2nd respondent, remained ex parte. The appellant pleaded that though a policy was taken for the vehicle in question, it became inoperative, because of the reason that the cheque, issued by the 2nd respondent for payment of the premium, was dishonoured. It was further alleged that there was no rashness or negligence on the part of the driver of the vehicle.

2. On a consideration of the material before it, the Tribunal awarded a sum of Rs. 19,000/-, as compensation, with interest at 9% per annum. The same is challenged in this appeal.

3. Learned Counsel for the appellant contends that his client pleaded and proved that the 2nd respondent did not pay the premium, and in that view of the matter, the Tribunal ought not to have held the appellant, as jointly and severally, liable to pay the compensation. He places reliance upon the judgments of the Supreme Court in *New India Assurance Co. Ltd. Vs. Rula and Others*, and *National Insurance Co. Ltd. Vs. Seema Malhotra and Others*, .

4. Learned Counsel for the 1st respondent, on the other hand, submits that, except pleading that the cheque issued for payment of the premium was dishonoured, the appellant did not adduce any evidence, in support of its contention, and in that view of the matter, no exception can be taken to the order under appeal.

5. The only question urged on behalf of the appellant is that the insurance policy taken by the 2nd respondent, to cover the liability under the Motor Vehicles Act became inoperative, on account of the fact that the cheque issued by the 2nd respondent for payment of the premium was dishonoured. Ex.B-1 is the attested copy of the policy, through RW-1, the Senior Assistant of the appellant. A letter dated 10-5-2002, addressed by the appellant to the 2nd respondent herein was marked as Ex.B-2. A copy of the same was sent to the R.T.A., Chennai, and it was marked as Ex.B-3.

6. In view of the judgments of the Supreme Court, referred to above, it is beyond any pale of controversy that, in case, the cheque, issued for payment of premium for a policy, is dishonoured, the insurer cannot be held liable. However, the question, as to whether the cheque was dishonoured at all, is a matter of fact, which must be proved to the satisfaction of the Tribunal. The issuance of a cheque and dishonour thereof, are the matters between the insurer and the insured. The victim of an accident would hardly have any role in this regard. Prima facie, Ex.B-1 covers the liability, arising out of the accident. In case, the appellant wanted to avoid its liability, on the ground that the cheque issued for payment of premium was dishonoured, it was under obligation to examine the person, who issued the cheque, or to make an attempt to procure him before the Court, at least as witness, notwithstanding the fact that the 2nd respondent remained ex pane. Mere filing of letters, Exs.B-2 and B-3, does not constitute the proof of the factum of dishonour of cheque. Further, the appellant did not place any communication, emanating from the Bankers of the 2nd respondent, or any other agency, throwing light upon the dishonour of the cheque; issued by the 2nd respondent. In the absence of such correspondence, it is difficult to hold that the appellant is not liable to pay the compensation. At the most, it can recover the sum, from the 2nd respondent, in the same proceedings, by filing an Execution Petition.

7. For the foregoing reasons, the C.M.A., is dismissed. There shall be no order as to costs.