
(2007) 08 AP CK 0075
In the Andhra Pradesh High Court
Case No : CMA No. 3243 of 2000

United India Insurance Co. Ltd.

APPELLANT

Vs

K. Sukada Bai and Others

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 2(30)

Citation : (2009) ACJ 726 : (2008) 1 ALD 156

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : K. Venkata Rao, for the Appellant; V. Tulasi Reddy, for the Respondent

Final Decision : Allowed

Judgement

G.V. Seethapathy, J.—This appeal is directed against the order dated 13.10.1999 in O.P. No. 433 of 1999, on the file of the Motor Accidents Claims Tribunal (District Judge) (for short "the Tribunal"), Nizamabad, wherein the claim of respondents 1 and 2 herein was allowed awarding compensation of Rs. 3 lakhs with interest at 12% per annum from the date of petition.

2. Respondents 1 and 2 herein filed claim application before the Tribunal claiming compensation of Rs. 3 lakhs on account of the death of the deceased K. Laxmikanth Rao, who died in a motor vehicle accident that occurred on 17.10.1995. The first claimant is the mother and the second claimant is the wife of the deceased. According to them, on that day while the deceased was travelling in a jeep bearing No. AP 25B 6765 from Gandhari to Kamareddy, due to the rash and negligent driving by its driver, the jeep overturned, resulting in multiple injuries including head injuries to which the deceased succumbed while undergoing treatment in Government Hospital, Kamareddy. A case in Cr. No. 92 of 1995 was registered against the driver of the jeep by Sadashivnagar Police. It is further pleaded that the deceased was aged 27 years and was working as Principal in Vivekanand Public School and was running T.V. Cable besides doing

cultivation, earning Rs. 12,000/- to Rs. 15,000/- per month and both claimants were dependent on the income of the deceased.

3. The first respondent-owner of the jeep remained ex parte before the Tribunal. The second respondent-insurer filed a counter before the Tribunal opposing the claim and denying their liability to pay the compensation and further contending that the driver was not having valid and effective driving licence and the transfer of the vehicle was also not intimated to the insurer and the policy was not in force on the date of the accident.

4. On the strength of the above pleadings, the Tribunal framed the following issues for trial:

(a) Whether the accident was due to rash and negligent driving of the vehicle by its driver?

(b) Whether the petitioners are entitled to compensation, if so that what amount and from whom?

(c) To what relief ?

5. P.Ws.1 and 2 were examined and Exs. A-1 to A-8 were marked on behalf of the claimants. No oral evidence was adduced, but Exs. B-1 to B-3 were marked on behalf of the respondent before the Tribunal.

6. On a consideration of the evidence on record, the Tribunal gave finding on issue No. 1 that the accident occurred due to the rash and negligent driving of the jeep by its driver. On issue No. 2, the Tribunal held that the claimants are entitled for a total compensation of Rs. 3 lakhs. Accordingly, an award was passed for the said amount with interest at 12% per annum from the date of petition.

7. Aggrieved by the said award, the appellant-insurer preferred the present appeal.

Arguments of the learned Counsel for the appellant and the respondents are heard. Records are perused.

8. The learned Counsel for the appellant contended that the deceased himself was the owner of the jeep on the date of the accident and that the claimants have falsely impleaded the previous owner as first respondent and obtained the award by misrepresentation before the Tribunal, as can be seen from Ex. B-2.

9. The learned Counsel for the respondents, on the other hand, contended that Exs. B-1 to B-3 are only xerox copies and none connected with those documents were examined before the Tribunal and, therefore, the contents thereof cannot be looked into.

10. In view of the rival contentions of the parties, the question, which arises for consideration in this appeal is whether the award dated 13.10.1999 passed by the Tribunal in O.P. No. 433 of 1996, granting compensation of Rs. 3 lakhs is

liable to be set aside.

11. The first claimant is mother and the second claimant is wife of the deceased, who died in a motor vehicle accident that occurred on 17.10.1995. The deceased was travelling in the jeep bearing No. AP 25B 6765 and on account of rash and negligent driving by its driver, the vehicle overturned. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the jeep by its driver, is not seriously challenged in this appeal. Even otherwise, the evidence on record coupled with the contents of F.I.R-Ex. A-1 and charge-sheet-Ex. A-4 go to show that the driver of the jeep was at fault.

The point for consideration in this appeal is - whether the appellant-insurer is liable to pay the compensation.

12. The claimants filed claim application before the Tribunal seeking compensation as if the deceased was a third party. They impleaded the third respondent herein showing him as the owner of the jeep at the time of the accident. In the claim application, they stated that the third respondent herein (first respondent before the Tribunal) was the owner of the jeep as on the date of the accident. In the written statement filed before the Tribunal, the appellant herein has specifically pleaded that as on the date of the accident i.e., 17.10.1995, the third respondent herein ceased to be the owner of the vehicle, as the same was sold to the deceased and the transfer was duly carried out in the relevant RC book also. It is further pleaded that even if the deceased was one of the occupants of the jeep, his capacity was not that of any passenger, but as owner and as such the claimants are not entitled for compensation as the owner's risk is not covered by the insurance policy, which was issued in favour of the third respondent herein for the period from 15.11.1994 to 14.11.1995. In cross-examination, P.W.I stated that she does not know whether the deceased was the owner of the vehicle and his name was recorded as such in the R.C. book. She denied the suggestion that fearing that she may not get compensation because the deceased himself was the owner of the vehicle, filed the case falsely impleading the first respondent (third respondent herein) as party. Ex. B-2-copy of the R.C. book shows that the vehicle was transferred in favour of K. Laxmikanth Rao, the deceased, w.e.f., 5.6.1995. Ex. B-3 copy of the M.V.I's report also shows the name of the deceased as the owner of the vehicle. The accident occurred on 17.10.1995 i.e., about four months after the transfer of the vehicle in favour of the deceased. Thus, by the date of the accident the deceased himself was owner of the vehicle, which was involved in the accident. Ex. B-1-copy of the policy does not cover the risk of the owner in case of personal accident. The contention of the learned Counsel for the respondents that Exs. B-1 to B-3 being only xerox copies and so they cannot be looked into this untenable for the simple reason that Exs. B-1 to B-3 were marked by consent, as can be seen from the docket sheet proceedings of the Tribunal. The respondents, not having objected for marking of Exs. B-1 to B-3 at the time of their introduction in evidence and on the other hand, having consented for their

admission in evidence, cannot now contend that they are inadmissible in evidence. It is clearly established from the evidence on record that the claimants have falsely impleaded the third respondent herein, projecting him as the owner of the vehicle, though the vehicle was already transferred by him in favour of the deceased long prior to the accident and the said transfer was also effected in the R.C. Book.

13. Section 2(30) of the Motor Vehicles Act defines the expression "owner" as under:

"Owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

As the vehicle stood registered in the name of the deceased as on the date of the accident, the deceased alone answers the description of owner as defined above, but not the third respondent herein. As the risk of the owner of the vehicle is not covered by the policy-Ex. B-1, the appellant is not liable to pay the compensation.

14. In *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, the Apex Court held thus:

Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

15. In the present case also, Ex. B-1 does not show that the risk in respect of death or bodily injury to the owner is covered by the policy. The premium of Rs. 2,650/- shown as "OD" (own damage) in Ex. B-1 is only towards damage to the vehicle. Ex. B-1 does not disclose that the personal risk of the owner is covered by the policy. Ex. B-1 no doubt covers the risk of passengers numbering upto 10, but the deceased cannot be treated as passenger for the purpose of enforcing the claim against the insurer and he remains the owner of the vehicle only while travelling in the jeep at the time of the accident. The finding of the Tribunal that because the deceased was travelling in the jeep as one of its inmates, the respondents before it are liable to pay compensation, is unsustainable. As the deceased was owner of the jeep as on the date of the accident and his risk is not covered by the policy-Ex. B-1, the appellant-insurer is not liable to pay the compensation. As the third respondent was found to be not owner of the jeep as on the date of the accident, no liability can be fastened on him as well.

16. In the circumstances and for the reasons stated above, the award dated 13.10.1999 passed by the Tribunal in O.P. No. 433 of 1996 is held not

sustainable and the same is accordingly set aside.

In the result, the appeal is allowed. No order as to costs.