
(2006) 10 AP CK 0070
In the Andhra Pradesh High Court
Case No : CMA No. 1043 of 1999

United India Insurance Co. Ltd.

APPELLANT

Vs

Kalali Raju and Others

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 149(2)

Citation : (2007) 2 ALD 814

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S.A.V. Ratnam, for the Appellant; V. Subrahmanyam, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—One Sri K. Rajam, resident of Dubbagudem Village, was walking on the left side of the main road in the village, on 11-7-1995, at 7.30 p.m. An auto-rikshaw bearing No. AP 13T 6186, owned by the 9th respondent and insured with the appellant, came from his backside in a rash and negligent manner and dashed him. He sustained grievous injuries and became unconscious and was shifted to Government Hospital, at Mancherial. Crime No. 93 of 1995 was registered by P.S. Kasipet. While undergoing treatment at the hospital, Rajam died, on the same day. His wife, the 1st respondent, and children, respondents 2 to 8, filed O.P. No. 346 of 1997 before the Motor Accident Claims Tribunal-cum-Additional District Judge, Adilabad, claiming a sum of Rs. 2,50,000/-, as compensation. They pleaded that the deceased was aged about 45 years at the time of accident and that he was a vegetable vendor.

2. The claim was resisted, mainly by the appellant herein. It filed a counter-affidavit disputing the very occurrence of the accident. A plea was raised to the effect that unless it is proved that the driver of the vehicle possessed valid driving licence, the appellant cannot be held liable to pay the compensation. Other ancillary pleas were also raised. The 9th respondent adopted the counter-

affidavit filed by the appellant herein.

3. Through its order, dated 11-1-1999, the Tribunal awarded a sum of Rs. 2,25,000/-, as compensation and apportioned the same among respondents 1 to 8. The same is challenged in this C.M.A.

4. Sri N.V. Jagannath, learned Counsel for the appellant, submits that it was proved to the satisfaction of the Tribunal that the driver of the vehicle did not possess driving licence and in fact, the said driver was convicted in a criminal case for driving the vehicle without licence. He contends that there is violation of policy condition, and in that view of the matter, the Tribunal ought not to have held the appellant, liable to pay the compensation. He places reliance upon the judgment of the Supreme Court in United India Insurance Co. Ltd. Vs. Gian Chand and others, .

5. Sri V. Subramanyam, learned Counsel for respondents 1 to 8, on the other hand, submits that no plea was raised in the counter-affidavit filed by the appellant, to the effect that the driver of the vehicle did not possess driving licence and at any rate, no evidence was adduced on its behalf, to prove that there was any violation of policy condition. He contends that even where it is established that the driver of a vehicle did not possess licence, it does not absolve the insurer from its liability and it must be further proved that the owner of the vehicle had permitted such a driver, to drive the vehicle.

6. In its counter-affidavit, the appellant disputed the very occurrence of accident. However, from a perusal of Ex. A. 1, First Information Report in Crime No. 93 of 1995, inquest and post-mortem reports, marked as Exs. A. 2 and A. 3, it is clearly evident that not only the accident had occurred, but also, the deceased died in it.

7. In the instant case, the questions, as to whether the accident occurred, on account of any rashness on the part of the driver; and whether the appellant can be absolved from its liability, on account of the fact that the driver did not possess licence; are mixed with each other.

8. PW. 2, an eye-witness to the accident, narrated the manner in which the accident took place. He clearly stated that he had seen the auto-rickshaw hitting the deceased when he was going by walk. Nothing was elicited from this witness, to discredit his version. Apart from that, the First Information Report and other related documents, clearly spoke about the rashness and negligence, on the part of the driver. The very fact that a pedestrian had been hit by a motor vehicle, is sufficient to establish the negligence on the part of the driver.

9. The principal contention urged on behalf of the appellant is that it is not liable to pay the compensation, on account of the fact that the driver did not hold licence. Basically, this is a pure question of fact, which must be specifically pleaded and proved through evidence. It may be true that the proceedings under the motor vehicles cannot be compared with suits, and strict rules of pleadings

and evidence cannot be applied to them. Notwithstanding this, as a plea, it must have been specifically stated that the driver of the vehicle did not possess driving licence. It is only then, that the claimants would have the necessity or to undertake any steps to sustain their claim. The plea taken by the respondent in his counter-affidavit is as under:

That, unless it is proved that the deceased was involved in accident caused by the vehicle and the said vehicle was insured with this respondent company and the person who drove the vehicle at the material time of accident was having valid and subsisting driving licence, this respondent company is not liable to pay any compensation to the petitioners even under No Fault Liability (under Section 140 of the M.V. Act). However, the petitioners are put to strict proof of the same.

10. It was not pleaded that the driver did not hold the licence. Even if the averments in the counter-affidavit are to be construed as such a plea, it was required to be proved, by examining a witness, at least to repeat the contents thereof. The record discloses that no witness has been examined on behalf of the appellant. The consequences of this lapse, are natural. It is true that an observation was made in the report of the Motor Vehicles Inspector, marked as Ex. B. 3, that the driver of the vehicle did not possess a licence. The said document was a Xerox, and none connected therewith was examined.

11. Be that as it may, let it be proceeded as though, there is no dispute that the driver of the vehicle did not possess licence. Then, it needs to be verified as to whether the said fact by itself, would absolve the appellant, of its liability.

12. Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988, contains a list of defences, that can be put forward by an insurer, in a claim, under the Act. Ground (d) of Sub-section (2) of Section 149 reads as under:

(d)(i) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification;

13. In Gian Chand's case (supra), the Supreme Court had an occasion to interpret an identical provision and the corresponding liability of the insurer, where the driver of an accident vehicle was found to be without licence. A dichotomy was maintained in such cases. The first is, where the owner of the vehicle had permitted his vehicle to be driven by a driver, who did not possess licence. In such cases, it was held that the insurer cannot be held liable to pay the compensation. The second category of cases is, where the owner of the vehicle by himself did not commit any breach of any condition but the vehicle came to be driven by an unlicensed driver without the express or implied permission of the owner. It was held that in this category of cases, the liability of the insurer would subsist. Reference was made to several decided cases.

14. Therefore, apart from proving the fact that the driver of the accident vehicle

did not hold licence, it must be pleaded and established by the insurer that the owner of the vehicle gave his express or implied consent, for an unlicensed driver, to drive the vehicle. This is a pure question of fact and must be specifically pleaded and thereafter established through cogent evidence.

15. In the instant case, it was not even pleaded that the driver of the vehicle did not hold licence. Secondly, no witnesses were examined on behalf of the appellant, nor did it summon the owner to elicit information from him about the circumstances under which the vehicle came to be driven by the unlicensed driver. Under these circumstances, the plea raised by the appellant cannot be countenanced.

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