
(2013) 08 AP CK 0061
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 9 of 2012

United India Insurance Co. Ltd.

APPELLANT

Vs

Katikala Indira and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2014) 2 ACC 613 : (2014) ACJ 1720 : (2013) 6 ALD 89 : (2013) 2 AnWR 928

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : V. Sambasiva Rao, for the Appellant; Ramesh Yadav Ayelaboyena for Respondent Nos. 1 to 4, for the Respondent

Judgement

P. Naveen Rao, J.—In this Appeal, United India Insurance Company challenges the Award dated 08.08.2011, passed in O.P. No. 573 of 2002 by the Motor Accidents Claims Tribunal-cum-Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad. Respondent Nos. 1 to 5 herein are the petitioners and Respondent No. 6 is the owner of the vehicle. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the Motor Accidents Claims Tribunal.

2. Facts giving rise to institution of O.P. No. 573 of 2002 are as under: On 11.02.2002, the deceased Katikala Jangaiah boarded Tata Sumo motor vehicle bearing registration No. AP-28-K- 5258 at Hyderabad and was proceeding towards Shamshabad. In the mid night at about 12.00 hours, when the Tata Sumo vehicle reached near Budvel Railway Station on National High Way No. 7, the vehicle met with an accident as it hit against the stationed lorry bearing registration No. AP-11-T-310 from its back side. Due to which, the deceased Jangaiah and other inmates of the Tata Sumo vehicle sustained bleeding injuries and the deceased Jangaiah succumbed to the injuries on the spot. Crime No. 66 of 2002 was registered by the Rajendranagar Police Station, Hyderabad. As no compensation was paid to the dependents of the deceased, wife, three minor

daughters and mother of the deceased instituted O.P. No. 573 of 2002 claiming compensation of Rs. 6,00,000/- together with interest and costs. The owner of the vehicle and United India Insurance Company Limited are arrayed as respondent Nos. 1 and 2 before the Tribunal.

3. In support of their claim for compensation, petitioners contended that the deceased was aged about 31 years and was earning Rs. 3,000/-p.m. as an employee in the cloth show-room and he died due to the rash and negligent driving of the driver of the Tata Sumo vehicle. In support of their claim for compensation, they contended that they were solely dependent on the deceased and due to his sudden demise, the entire future of the family has been adversely effected and children were unable to pursue their studies and further they lost their source of income and love and affection and therefore claimed compensation of Rs. 6,00,000/-. Initially, O.P. No. 573 of 2002 was initiated u/s 166 of the M.V. Act; subsequently petitioners by filing I.A. No. 2238 of 2010 sought leave of the Tribunal to amend their claim u/s 163A of the M.V. Act and the same was ordered on 15.04.2011.

4. Respondent No. 1 did not oppose the claim whereas, Respondent No. 2, Insurance Company opposed the claim and took the usual defences i.e. the crime vehicle was driven in violation of the terms and conditions of the insurance policy; that the vehicle driver did not possess valid driving license and that the claim made by the petitioners is excessive and disproportionate. The Insurance Company filed additional counter-affidavit taking the stand that the policy executed by the owner of the vehicle is an Act policy and therefore the deceased is not covered by the policy and that the Tata Sumo vehicle was a private car and therefore the insurance company is not liable to pay the compensation.

5. The Claims Tribunal framed the following three issues for consideration:

1. Whether the pleaded accident is occurred on account of rash and negligence on the part of the driver of the crime vehicle-Tata Sumo bearing No. AP 28K 5258?

2. Whether the petitioners are entitled to any compensation, if so, to what amount and from which respondent?

3. To what relief?

6. On behalf of the petitioners, PWs. 1 and 2 were examined and Exs. A-1 to A-10 were marked. On behalf of second respondent, RW. 1 was examined and Ex. B-1 was marked. The Insurance Company sought leave of the Tribunal to contest on all issues agitated by the petitioners, which are normally to be contested by the owner of the vehicle, since the first respondent has not filed counter affidavit. I.A. No. 2268 of 2011 filed to this extent u/s 170 of the Motor Vehicles Act, 1988 was allowed by an order of the Claims Tribunal on 15.07.2011.

7. On consideration of the arguments advanced on behalf of the learned counsel for the petitioners and second respondent and precedents cited in support of

their respective contentions, the Claims Tribunal held on issue No. 1, that the deceased answered the description of a third party and that the Insurance policy covers the risk of the persons such as the deceased. The Tribunal rejected the contention of the Insurance Company that the policy issued does not cover the risk of the persons travelling in the crime vehicle.

8. Having held so, the Tribunal considered the quantum of compensation and determined the compensation payable as Rs. 4,32,000/- towards loss of earnings and in addition, awarded Rs. 10,000/- towards loss of consortium to the first petitioner and awarded a sum of Rs. 18,000/- to all the petitioners towards loss of estate, love and affection, transportation charges and funeral expenses. Thus, in all, total amount of compensation determined is Rs. 4,60,000/- holding that no material violations are pointed out to absolve the liability of the insurance company, the Claims Tribunal held that both the respondents are jointly and severally liable to pay the compensation. The Claims Tribunal awarded interest at the rate of 7.5% p.a. from the date of petition till its deposit.

9. The impugned Award of the Claims Tribunal is challenged by the Insurance Company on several grounds. It is contended that the policy executed between the owner of the vehicle and the insurance company is an Act policy of a private car category and Insurance Company did not receive premium covering the risk of the deceased, who was an inmate of Tata Sumo vehicle, and thus the insurance company is not liable to pay the compensation determined by the Claims Tribunal. It is further stated that since it is an Act policy, the Tribunal erred in fixing the liability on the Insurance Company also. It is also contended that the Tribunal erred in awarding interest on the ground that though the O.P. was dismissed for default on many occasions earlier and therefore the Tribunal could not have awarded interest from the date of institution of the claim petition.

10. Heard the arguments of the learned counsel for the 2nd respondent/appellant and the petitioners/respondent Nos. 1 to 5. Learned counsel for the 2nd respondent/appellant, taking through the pleadings before the Claims Tribunal and the documents marked in the Claims Tribunal, more particularly, the Insurance policy marked as Ex. B-1, contends that it was an Act Policy with limited liability and the policy was given as a private car liability policy whereas, the vehicle was used as passenger car and the deceased was a passenger, since no additional premium is paid and the policy was only an Act policy, the Insurance Company is not liable to pay compensation on account of the death of the deceased Jangamaiah, who was travelling in the crime vehicle.

11. In support of his contentions, learned counsel relied on the decision of the Hon'ble Supreme Court in the case of United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , and also relied on the Division Bench decision of this Court in the case of Branch Manager, The Branch Manager, United India Insurance Co. Ltd. Vs. Kondakotla Saroja, Relying on the above two decisions, learned counsel submits that the statutory policy under the Motor Vehicles Act, 1988 is intended to cover the risk to life or damage to properties of third parties,

would not cover risk of death or injury to gratuitous passenger carried in a private vehicle. Thus, the Tribunal erred in holding that the deceased was a third party and therefore the Insurance Company is entitled to pay the compensation. Relying on the Kondakotla Saroja's case, learned counsel contended that when it is an Act policy and when no extra premium is paid to cover the passengers who are travelling in the vehicle, the Insurance Company cannot be held liable to pay the compensation for death of the passengers and that only the owner of the vehicle is liable to satisfy the award and pay the compensation.

12. Acceptance of the said contention would mean that the liability entirely shifts to the owner of the vehicle, who was impleaded as 6th respondent in this Appeal. Though, notices are served on 6th respondent, no appearance is filed.

13. Opposing the claim of the appellant learned counsel for the petitioners/respondent Nos. 1 to 5 submit that the claim instituted by the petitioners is u/s 163A of the Motor Vehicles Act, 1988 and in view of the special provision contained in Section 163A of the Act, once an accident occurs arising out of the motor vehicle, if the said vehicle is covered by an insurance policy, the insurance company is liable to pay compensation and it is not necessary for the petitioners to prove as to whether the accident was the result of rash and negligent driving by the driver of the crime vehicle.

14. In support of his contention, learned counsel for the petitioners/respondent Nos. 1 to 5 relied on the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Rukhshanaben Salimbhai Vora and Another,); the decision of Hon'ble Madhya Pradesh High Court, Indore Bench in the case of Rai Singh Vs. Anil and Another, ; and decision of the High Court of Gujarat at Ahmedabad, in the case of National Insurance Company Limited Vs. Rukhshanaben Salimbhai Vora which was upheld by the Hon'ble Supreme Court in Special Leave to Appeal (Civil) Nos. 89242 of 2007.

15. Section 163A is inserted by amendment Act 54 of 1994. Section 163A is the special provisions as to payment of compensation to the victim of a motor accident. Sub-section 1 reads as under:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

16. In substance, this provision is a special provision and is applicable in complete exclusion of any other provision contained in the Act or any other law for the time being in force and enables dependents of deceased to claim compensation from the owner of the Motor Vehicle or the authorized insurer, if the death occurs due to the accident arising out of the use of motor vehicle. This section imposes a mandate on the owner or the authorized insurer to pay

compensation on such claim. If a claim is made u/s 163A, it is not necessary to prove that the death is caused due to any negligence or any other means; it is sufficient if death is caused out of the use of a motor vehicle.

17. In terms thereof once it is established that the Tata Sumo vehicle in which the deceased was travelling met with an accident causing grievous injuries and resulting in the instantaneous death of the deceased, the claim made by the dependents is valid and the appellant being the insurer of the crime vehicle, the obligations of the appellant flow out of such insurance policy. In the instant case, the facts on record disclose that the death is caused out of the use of Tata Sumo motor vehicle insured by the appellant.

18. In Rukhshanaben Salimbhai Vora's case similar issue has fallen for consideration by the Gujarat High Court. Award of the Motor Accidents Claims Tribunal was challenged by the Insurance Company contending that the deceased was a pillion rider of a motor vehicle and her death caused on account of thread of a kite slitting the neck of the minor girl. It was contended that the accident has not occurred on account of the involvement of motorcycle and that action ought to have been initiated against the person who was flying the kite and that the deceased being a pillion rider, risk was not covered by the Insurance Company. Hon'ble Gujarat High Court relying on the decision of the Hon'ble Supreme Court in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , rejected the contention of the insurance Company. It is held that motor vehicle is being driven by the father of the deceased and during the use of the motor vehicle on the road the kite thread has slit the neck of the minor girl and therefore it was held that the minor girl's death was caused by an accident arising out of the use of the motor cycle. Reliance also placed on the judgment of the Hon'ble Supreme Court in the decision of Tilak Singh's case on behalf of the Insurance Company. The said decision was distinguished holding that the said decision arose u/s 166 of the M.V. Act and that Section 163A was inserted by way of an amendment introduced in the year 1994, whereas the accident took place on 31.10.1989 and the claim was made u/s 166 of the Act. The Gujarat High Court held that in view of the provision contained u/s 163A(1) the liability of the Insurance Company to satisfy the award is not dependent upon any other provision of the Act and therefore the question whether the passenger on the motor cycle was a gratuitous passenger or whether he can said to be a third party or not is not relevant.

19. Aggrieved by the said judgment of the Gujarat High Court, the Insurance Company carried the matter in Appeal to the Hon'ble Supreme Court by filing Special Leave to Appeal (Civil) No. 89242 of 2007. Hon'ble Supreme Court by order dated 11.09.2008 rejected the contention of the Insurance Company and affirmed the decision of the Gujarat High Court. Hon'ble Supreme Court considered as to whether the defences which may be raised by the insurer in terms of Sub-section 2 of Section 149 of the Motor vehicle Act are available by contesting an application claiming damages u/s 163A of the Act. Contending that

the Insurance Company is not liable to pay compensation in view of the violation of the policy conditions, reliance was also placed on the decision of the Hon''ble Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. and Others, . Rejecting the said contention, the Hon''ble Supreme Court held as under:

The Parliament, while inserting the said provision, made a fair distinction between a claim petition filed in terms thereof and the one u/s 166 of the Act. Whereas in the former only use of motor vehicle leading to an accident may give rise to a cause of action for filing an application for compensation; in the latter any negligence on the part of the driver/owner of the vehicle is required to be established.

An owner of a vehicle in terms of the said provision is made liable irrespective of any negligence in using the vehicle on his part or on the part of the driver.

An owner of a motor vehicle is held to be statutorily liable in terms of the said provision, there cannot be any doubt that he being the authorized insurer shall also be liable therefore. Thus, any defence of the kind as contented would not be available to the insurer.

For the reasons aforementioned, the SLP is dismissed.

20. Similar issue has fallen for consideration before the High Court of Madhya Pradesh in Raisingh''s case. In the said case, Motor Accidents claims Tribunal dismissed three claim petitions instituted u/s 163A of the Act claiming compensation for the injuries sustained by them. The claimants filed Appeals before the Hon''ble High Court. When three claimants were proceeding on a scooter, Eicher Truck came with speed and hit the scooter. All the three fell down. Meharban Singh, who was driving the scooter died and the remaining two suffered injuries. In the Claim Petition, owner of the scooter and insurer of the scooter were arrayed as respondents. The Insurance Company resisted the claim on the ground that the accident occurred due to the rash and negligent driving of Eicher Truck and therefore Insurer of scooter is not liable to pay the compensation. It was also contended that the driver of the scooter did not have driving license and that two persons were going on as pillion riders and therefore policy conditions are violated. In support of the Appeal, reliance was placed on the provisions of Section 163A of the Act. Reliance was also placed on the judgment of the Gujarat High Court referred to above. The High Court held that once the claim is instituted u/s 163A of the Act, whether the driver of the vehicle in question or that of Eicher Truck was negligent in driving was entirely insignificant; it was not required to be gone into. Accordingly, the decision of the claims Tribunal was reversed and considered the claim of the Claimants.

21. The decision relied on by the learned counsel for the appellant in Tilak Singh''s case, has no application to the facts of this case. Tilak Singh''s case was instituted u/s 166 of the Motor Vehicles Act and the accident occurred prior to introduction of Section 163A of the Act. The decision of Tilak Singh was

considered by the Hon''ble Gujarat High Court and held that in view of the subsequent introduction of Section 163A of the Act, Tilak Singh's case has no application. The said decision of Gujarat High Court was upheld by the Hon''ble Supreme Court rejecting the contention of the appellant in the case of Rukhsahanaben Salimbhai in Special Leave to Appeal (Civil No. 9242 of 2007).

22. In the instant, case facts on record disclose that the deceased died in a motor accident involving Tata Sumo vehicle insured by the appellant/respondent No. 2 and the claim is made u/s 163A of the Act. Once it is proved that the accident occurred on account of the use of motor vehicle, the claimants are entitled to claim compensation and the usual defences available to Insurance Company u/s 149(2) of the Motor Vehicles Act are not available. In view of the same, I do not see any error in the decision arrived at by the Claims Tribunal in holding the Insurance Company (appellant) also liable to pay compensation determined by the Claims Tribunal.

23. Section 171 of the Act confers discretion on the Claims Tribunal to award appropriate interest on the claim amount quantified. Awarding of interest varies from 6% to 12% p.a. depending on the facts of the case. In this case the Tribunal awarded 7.5% interest p.a. Once a petition is restored and considered on merits, determination of interest does not depend on earlier dismissal of M.V.O.P. In the facts of this case, it cannot be said in awarding interest of 7.5% p.a. discretion vested in the Tribunal was not validly exercised. It cannot also be said that interest of 7.5% p.a. is excessive. Thus, the order of the Claims Tribunal determining the interest payable from the date of institution of claim cannot be said as illegal or in excess of the power and jurisdiction. In view of the above findings, I see no error in the decision of the claims Tribunal. The Appeal is devoid of merit and is accordingly dismissed. In consequence, the Miscellaneous Petitions, if any, pending in this Appeal shall stand dismissed. No order as to costs.