
(1989) 11 AP CK 0013

In the Andhra Pradesh High Court

Case No : A.A.O. No"s. 518 and 585 of 1988

United India Insurance Co. Ltd.

APPELLANT

Vs

Malla Janaki and Others

RESPONDENT

Date of Decision : 24-11-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 11(1), 96(2)(b)(ii)

Citation : (1990) ACJ 1022 : (1990) 1 AnWR 213

Hon'ble Judges : Radha Krishna Rao, J

Bench : Single Bench

Advocate : M. Ramaiah and M.S.K. Sastry, for the Appellant; Dhananjay, for the Respondent

Final Decision : Allowed

Judgement

Radha Krishna Rao, J.—The lorry No. APS 5000 belonging to the appellant in C.M.A. No. 585 of 1988, owing to the rash and negligent driving of the driver, dashed against another stationary lorry in the early hours at 5 o'clock on 27.10.1985 near Komarathi junction on NH 5. At the time of the accident, the lorry was carrying soda gas cylinders belonging to one Anandarao. The said Anandarao was sitting along with two other persons in the cabin of the lorry at the time of the accident. As a result of the accident, the said Anandarao sustained grievous injuries and succumbed to the injuries. The Motor Accidents Claims Tribunal, Srikakulam, after considering the claims of the widow, the children and mother of the deceased, Anandarao, awarded a total compensation of Rs. 75,000/- fixing the liability on the owner, the driver and the insurance company, which is the appellant in C.M.A. No. 518 of 1988. PW 2 who was travelling in the same lorry was examined. At the time of the accident, the lorry was transporting soda gas cylinders belonging to the deceased who was travelling in the same lorry. Believing the evidence of PW 2 in particular, the Tribunal awarded the compensation as stated above. Aggrieved by the order of the learned Additional District Judge, the insurance company filed C.M.A. No. 518

of 1988 and the owner of the lorry filed C.M.A. No. 585 of 1988. The claimants also filed cross-objections in C.M.A. No. 518 of 1988.

2. The main contention of the learned counsel for the insurance company is that it is not liable to pay the compensation as one of the conditions laid down in the policy has been contravened as the driver was not having a valid driving licence as on 27.10.1985, i.e., the date of accident. In support of his contention he relied on the evidence of RW 3, a clerk of the RT.O's. office to prove that there was no valid licence on the date of accident. The learned Judge awarded the compensation against the insurance company also on the plea that the driver was having a valid licence as on the date of accident though it was renewed at a subsequent date.

3. The contention of the owner of the vehicle in C.M.A. No. 585 of 1988 is that the quantum of compensation that has been granted is on the high side. In the appeal filed by the insurance company, the owner of the vehicle was not a party. But in the appeal filed by the owner of the vehicle, the insurance company is made a party. The liability to pay the compensation was fixed jointly and severally.

4. With regard to the rash and negligent driving of the vehicle, there is ample evidence. The evidence of PW 2, who was travelling in the lorry along with the deceased at the time of the accident, and the other circumstances clearly establish that the accident occurred due to the rash and negligent driving of the driver. The owner of the lorry also has not disputed the fact of the deceased travelling in the lorry as owner of the goods that were being transported in the lorry at that time. Therefore, the liability has to be fixed against the owner of the vehicle.

5. With regard to the quantum of compensation, Mr. M.S.K. Sastry, the learned counsel appearing on behalf of the owner, urged that Rs. 75,000/- is on the high side. The deceased, even according to his widow, PW 1, was doing business and he was also paying income tax but no tax receipts have been filed. Though he was doing business on the licence issued for Mahima Cashewnut Co. in gas cylinders, soaps and oils, she admitted that the cashew-nut business was stopped 8 years earlier to the accident. The income from the business as stated by PW 1 is on the high side and the evidence also shows that the deceased was having a filarial leg and he was a heart patient. Therefore, the life span of the deceased fixed by the court below upto 65 years of age can be accepted. But the income that is being derived from the business appears to be on the high side. There are many other members in the family and he was only doing soda business and so at best he might have been earning Rs. 500/- per month and out of that amount after spending on himself, he would have spared to the dependants an amount of Rs. 250/- only per month. The deceased was aged 45 years at the time of his death. Therefore, for 20 years at Rs. 3,000/- per year it will come to Rs. 60,000/-. Towards loss of consortium, the claimants are entitled to Rs. 5,000/- only. They are entitled to a total compensation of Rs. 65,000/-

only instead of Rs. 75,000/- as awarded by the court below. The claimants are also entitled to interest at 12 per cent per annum. Out of the said amount, the wife is entitled to Rs. 25,000/- and the children, i.e., petitioner Nos. 2 to 5 in the lower court, are entitled to Rs. 9,000/- each and the mother of the deceased, i.e., 6th petitioner in the lower court is entitled to Rs. 4,000/- only. The other conditions imposed by the lower court with regard to the deposit and withdrawal of the amounts are confirmed.

6. Now the question that remains for consideration is whether the insurance company is liable to pay the compensation or not.

7. It is the contention of the owner of the vehicle that the liability that has been fixed on insurance company is correct. On the other hand, the insurance company in its separate appeal C.M.A. No. 518 of 1988 contended that since the offending lorry was not entrusted to a person having a valid licence, it is not liable to pay the compensation as per the terms of the insurance policy. Merely because the owner of the lorry is not a party in the appeal filed by the insurance company, it does not mean that the court is not conferred with the power to pass an order particularly when the owner of the vehicle has filed a separate appeal against the common order of the Tribunal.

8. On behalf of the claimants it is contended that as the driver of the vehicle was at fault and as he was admittedly in the service of the owner, the insurance company is liable to pay the same. In this connection it is necessary to look into the evidence that has been adduced in this case.

9. RW 3, a clerk of RXO's. office, is examined to prove that there was no valid driving licence for the driver of the vehicle at the time of the accident. He deposed that the licence was issued to the driver for light motor vehicle only. On 18.10.1973, the driver was given heavy goods vehicle licence which was renewed upto 18.10.1976. On its expiry it was again renewed upto 18.10.1979. Thereafter, it was renewed upto 20.11.1982. Thereafter the driver has applied for renewal on 20.2.1986 and the same was renewed from 20.10.1986 to 19.2.1989. The accident occurred on 27.10.1985. As there was no valid driving licence as on that date, i.e., 27.10.1985, it is contended that the insurance company is not liable to pay the compensation.

10. On behalf of the claimants it is contended that since there is already a licence and the same is renewed subsequently, it must be taken that the renewal comes into effect from the date it expired previously and, therefore, it must be deemed that the driver was having a valid licence as on the date of the accident.

11. Section 11 (1) of the Motor Vehicles Act, 1939, reads as follows:

Renewal of driving licence --. (1) Any licensing authority may, on application made to it, renew a licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is

made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of renewal;

Provided further that where the application is for the renewal of a licence to drive as a paid employee or to drive a transport vehicle or where in any other case the original licence was issued on production of a medical certificate, the same shall be accompanied by a fresh medical certificate in Form C as set forth in the First Schedule, signed by a registered medical practitioner, and the provisions of Sub-section (5) of Section 7 shall apply to every such case.

Section 3 of the Act also reads as follows:

Necessity for driving licence --. (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to himself authorising him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a transport vehicle unless his driving licence specifically entitles him so to do.

(2) A State Government may prescribe the conditions subject to which Sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle.

(3) Notwithstanding anything contained in Sub-section (1), a person who holds an effective driving licence authorising him to drive a motor car may drive any motor cab hired by him for his own use.

12. A reading of Section 3 of the Act makes it clear that it is mandatory on the part of the driver of the vehicle to have a licence. Section 11 (1) envisages that the licensing authority may renew a licence issued under the provisions of the Act with effect from the date of its expiry or if the application is filed after 30 days it will be effective from the date of renewal.

It is also necessary to read Section 96 (2) (b) (ii) of the Act, which reads as follows:

Duty of insurers to satisfy judgments against persons insured in respect of third party risks.--(1) XXX XXX XXX

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) XXX XXX XXX

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) XXX XXX XXX

(ii) a condition excluding driving by a named person or persons 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; or...

13. In this case, it is contended that the driver of the vehicle was having a valid licence as on the date of the accident. When no evidence was adduced by the insurance company in that behalf, the court can draw an adverse inference and award compensation to the claimants against the company. [Vide: Oriental Fire & Genl. Ins. Co. Ltd. v. Pavan Kumar 1989 (1) ALT 15

14. In Kilari Mammi v. Barium Chemicals Ltd 1979 ACJ 58 (AP), the vehicle was entrusted to the driver who was having a valid licence. But the driver parked the vehicle in a public place, left the ignition key in the jeep and left the jeep leaving B in the jeep and went to the tailor's shop. At that time, B drove the jeep and caused the accident which resulted in grievous injuries to the appellant in that case. It was held in that case that where due to the negligence of the authorised driver, a third person who had no driving licence drove the vehicle resulting in the accident, Section 96 (2) (b) is not a bar to the maintainability of the claim against the insurance company.

15. In this case, the point involved is, whether the driver, to whom offending lorry was entrusted, was having a valid licence on the date of occurrence or not.

16. In Indian Mutual Insurance Co. v. Vijaya Ramulu 1978 ACJ 366 (AP), the insurance company contended that it was not liable because the driver of the lorry did not hold a valid driving licence and the insurer has not taken effective steps to examine the driver. The court found that since the insurance company which seeks to avoid the liability miserably failed to establish that the driver did not possess a valid licence to drive a heavy vehicle on that day, an adverse inference can be drawn.

17. In New India Assurance Co. Ltd. v. Srikanta Ghosh 1972 ACJ 153 (Ori), it was held:

If the insurance company wanted to rely on that fact, steps should have been taken to bring into evidence the licence and the fact that the truck driver was not licensed to drive a heavy vehicle. Difficulty in establishing such a fact by the insurer cannot give rise to a position that an adverse inference can be drawn against the truck owner and the burden that lay on the insurer can be taken to have been discharged.

18. In Ishwar Devi Vs. Reoti Raman and Another, the motor-cyclist involved in an accident held a learner's licence just prior to the accident and obtained learner's licence after the accident and thereafter obtained permanent licence but no licence was held at the time of accident. It was held that the motor-cyclist was not disqualified from holding or obtaining a driving licence and, therefore, the insurance company could not avoid liability by resorting to the term of the policy.

The term of the policy must be in accordance with the statutory provisions. Whether there was a valid licence or not, by construing the condition in the policy and the statutory provision is to be tested. But that judgment has not analysed that aspect. Simply because a licence was obtained prior to that and it was renewed later, it does not mean automatically the renewal takes effect from the date of the expiry particularly when the statute prescribes that the application for renewal has to be filed within 30 days and if it is filed after .30 days of the expiry of the licence it will be effective from the date of the renewal only.

19. I am fortified in my view by the latest judgment of the Supreme Court in Kashiram Yadav and Another Vs. Oriental Fire and General Insurance Co. and Others, that the driver must be having a valid driving licence at the time of the accident. In that case there was breach of specified condition of policy that the vehicle should not be driven by any person disqualified for holding or obtaining driving licence. In that case also the insured let his tractor be driven by a person having no licence causing fatal accident. It was held that the burden is discharged and the insurer is not liable in view of breach of the conditions of the policy and the owner of the vehicle alone is liable to pay the compensation. The Supreme Court repelled the contention that the insurer alone would be liable to pay the award amount even though the vehicle was not driven by a licensed driver. On facts the Supreme Court distinguished the decision reported in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, but affirmed the view expressed in that case on law. The Supreme Court held:

But in the present case, the onus of the insurer has been discharged from the evidence of the insured himself. The insured took a positive defence stating that he was not the owner of the vehicle since he had already sold the same to a third party. This has not been proved. Secondly, he took a defence stating that the vehicle at the relevant time was driven by a licensed driver, Gaya Prasad, PW 2. This was proved to be false. There is no other material even to indicate that the vehicle was entrusted to the licensed driver on the date of the fatal accident. With these distinguishing features in the present case, we do not think that the ratio of the decision in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, could be called to aid the appellants.

20. Applying the above facts, the insurance company contended that the driver was not having a valid licence on the ground that the renewal comes into effect from 20.10.1986 only and not from the date of its expiry and the vehicle was entrusted by the owner to a driver who was not having a valid driving licence in force as on the date of the accident. As the vehicle has been entrusted by the owner to a driver who is not having valid driving licence in force as on the date of the accident, it amounts to breach of the conditions specified in Exh. B-I, the policy. Therefore, the insurance company is not liable to pay the compensation and the liability that has been fixed along with the owner has to be set aside and the owner alone is liable to pay the compensation.

21. The learned counsel for the owner of the vehicle submitted that in the absence of a definite plea, taking of a plea that it was driven by some other person, the insurance company cannot take advantage of the driver not having a valid driving licence. A plea might not have been taken, but on evidence if it has come to light that the driver of the offending vehicle was not having a valid driving licence and that fact shows that there was a breach of the condition of the insurance policy, the insurance company is entitled to take that plea even at the time of the argument as the material was already on record and without prejudice to the other side, the court is competent to consider the same. It is always the duty of the owner of the vehicle to see that there should not be any breach of the conditions and in particular the vehicle should not be entrusted to a person who is not having a valid licence as on the date of the accident. Having entrusted the vehicle to a driver who is not having a valid driving licence, the owner is estopped from pleading that the insurance company is not entitled to take the plea which has come to light during the course of the trial of the claim petition.

22. In the result, the compensation payable to the claimants is reduced to Rs. 65,000/- from Rs. 75,000/- as indicated above and the C.M.A No. 585 of 1988 filed by the owner of the vehicle is partly allowed. No costs.

23. CM.A No. 518 of 1988 is allowed holding that the insurance company is not liable to pay the compensation. No costs. The cross-objections are dismissed. No costs.