
(2008) 11 AP CK 0004
In the Andhra Pradesh High Court
Case No : C.M.A. No. 2097 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Muda Prabhakar and Another

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 156

Citation : (2010) ACJ 1056 : (2009) 2 ALD 595 : (2009) 3 ALT 459 : (2009) 1 APLJ 208

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : E. Venugopal Reddy, for the Appellant; V. Satyam Reddy, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—Aggrieved over the quantum of compensation awarded by the learned Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, at Nizamabad in O.P. No. 748 of 1998 on 19th April, 2002, this appeal has been filed by the appellant-Insurance Company.

2. The appellant herein is the Insurance Company and respondents 1 and 2 herein are the claimant and the owner of the tractor trailer respectively before the tribunal. The status of the parties will hereinafter be referred to as arrayed before the Tribunal for the sake of convenience.

3. The claimant is the injured who has filed a claim petition before the tribunal seeking a compensation of Rs. 1,50,000/-.

4. The brief facts of the case are as follows:

On 13-2-1998, while the claimant was proceeding towards Kamareddy from Machareddy on his TVS Champ Moped bearing No. AP-23-A-1889 and when he reached the outskirts of Laxmi Ravulapally village on Sircilla - Kamareddy B.T.

Road at about 4.15 p.m., one tractor bearing No. AP-15-T-461 being driven by its driver in a rash and negligent manner with high speed, came and dashed against the vehicle of the claimant, as result of which, the claimant fell down from his moped and sustained fracture on his left leg i.e., left upper tibia and fracture of left fibula, injuries on the chin, upper lips, nose, head and other parts of the body. The claimant was shifted to the Govt. Civil Hospital, Kamareddy and he incurred Rs. 50,000/-towards medicines and for extra nourishment. At the time of the accident, the claimant was doing kirana business and he was aged only 28 years. Because of the accident, he has lost his earning capacity.

5. The 1st respondent-owner of the tractortrailer has filed a counter denying all the averments made in the claim petition. The crime vehicle is insured with the Insurance Company vide cover note/Policy No. 17114, by paying the premium of Rs. 3,818/- vide receipt No. 320200 on 13.2.1998 in the morning hours and the insurance policy was accepted by the Insurance Company after verifying the vehicle and the same was in force on the date of accident. As such, the Insurance Company is liable to pay the compensation. The claim of the claimant under different heads is excessive and abnormal and apart from that, the owner denied the income of the claimant at Rs. 6,000/- per month.

6. The Insurance Company filed a counter denying all the averments made in the claim petition and the petitioner is put to strict proof of the same. The Insurance company did not admit the age of the injured and also his earning of Rs. 6,000/- per month by doing kirana business and also the accident occurred on 13-2-1998. It is further contended that the 1st respondent obtained Miscellaneous vehicle "B" policy No. 17114/97 for his tractor No. AP-15-T-461 and Trailer No. AP-15-T-462, commencing from 14-2-1998 and expiring on 13-2-1999 from this Insurance company and evidently, the risk is not covered under the said policy since the accident occurred on 13-2-1998. As such, this respondent is not liable to pay any claim or compensation for the alleged accident. The claim of the claimant under various heads is highly excessive and arbitrary. Hence, the Insurance Company prays to dismiss the claim petition.

7. Based on the above pleadings, the following points were framed for trial before the tribunal:

1. Whether the accident was due to rash and negligent driving of the Tractor bearing No. AP-15-T-461 by its driver?

2. Whether the petitioner is entitled for compensation, If so to what amount and against which of the respondents?

3. To what relief?

8. Before the Tribunal, on behalf of the claimant, P.Ws.1 and 2 were examined and Exs.A.1 to A.25 were marked and on behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B.1 to B.3 were marked.

9. On a consideration of the oral and documentary evidence, the Tribunal having

come to a conclusion that since the owner of the vehicle paid the premium on 13.2.1998, there is coverage of Insurance policy for the offending vehicle tractor and therefore, the Insurance company is liable to pay the compensation, awarded a quantum of compensation of Rs. 1,20,000/-payable with interest at 9% p.a., from the date of the petition, till the date of realization under various heads.

10. Aggrieved over the award passed by the Tribunal, the Insurance company has filed this appeal.

11. The main thrust of the argument of Sri E. Venugopal Reddy, the learned standing Counsel appearing for the Insurance company is that the policy under Ex.B.1 contains a particular Clause according to which the risk is covered only from 3.30 p.m., on 14.2.1998 to the mid night of 13.2.1999 i.e., for one year and therefore, it is a contract between the owner of the vehicle and the Insurance company carrying risk of third parties from 3.30 p.m., on 14.2.1998 to the mid night of 13.2.1999 i.e., for one year and thereby, it comes under the purview of the provisions of Section 156 of the Motor Vehicles Act which deals with contract between the insurer and the insured. Therefore, the policy does (sic. does not) cover the risk of the vehicle in question as on the date of the accident and therefore, the tribunal is not justified in fastening the liability against the Insurance company.

12. Per contra, the learned Counsel appearing for the claimant would contend that the risk of Insurance policy is covered from the time of payment of the premium and in the instant case, the insurance premium was paid on 13.2.1998 and therefore, the risk is covered from the date of the payment of the premium and as such, the tribunal is justified in fastening the liability to pay the compensation against the Insurance company. Thereby, the appeal filed by the Insurance company is liable to be dismissed.

13. Before going into the merits of the case, it is to be noted that admittedly, the owner of the vehicle has not insured the vehicle in question prior to 13.2.1998 and apart from that, this is not a case of renewal of the policy already taken. Even the evidence of R.W.2, the owner of the vehicle does not disclose that the vehicle in question was insured prior to 13.2.1998.

14. At this stage, it is highly desirable to go through the contents of Ex.B1 policy.

15. A cursory look at the recitals of Ex.B.1 policy, goes to show that under the column "effective date of commencement of Insurance for the purpose of the Act", it is mentioned as 3.30 p.m., by 14.2.1998 and against the column, "the date of expiry of the insurance" it is mentioned as mid night of 13.2.1999-one year.

16. In this regard, it is necessary to go through the provisions of Section 156 of Motor Vehicles Act, which reads as follows:

When an insurer has issued a certificate of insurance in respect of a contract of

insurance between the insurer and the insured person, then.-

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) If the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

17. Thus the above provisions make it clear that the policy, shall be deemed to be accepted in terms conforming in all respects with the particulars stated in the policy in question. Now, coming to the facts of the case on hand, as already stated, it is obvious from the terms of the policy that the policy under Ex.B1 policy, commenced from 3.30 p.m. of 14.2.1998 ending with mid night of 13.2.1999 and thereby, the policy makes it clear that the risk of the vehicle in question will be covered only from 3.30 p.m., on 14.2.1998 to the mid night 13.2.1999. In this back ground of the matter coupled with the terms and conditions as stipulated under Ex.B1 policy, I am of the opinion that the

contention of the owner of the vehicle that since the premium was paid on 13.2.1998, the risk covers from that day onwards and therefore, the Insurance company is liable to pay the compensation, cannot be sustained.

18. However, in support of his contention that the policy obtained on the date of the accident becomes operative from the mid night of the previous date of insurance, the Learned Counsel appearing for the claimant relied upon a judgment of the Honourable Apex Court reported in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, wherein it is held as follows:

Whether the policy obtained on the date of accident becomes operative from the previous midnight of the date of insurance and the insurance company liable.

19. But, in the instant case, except a bald statement that premium was paid on 13.2.1998, no proof is adduced to that effect. In the presence of the particulars as to the commencement of the policy under Ex.B1, there is no other go except to accept the commencement of the policy as mentioned in Ex.B1 policy. With due respect to the principles laid down by the Apex Court in the above decision (citation-1 supra), I feel that the above facts of the decision, cannot be made applicable to the case on hand in view of the mentioning of clear time and date as to the commencement of the policy under Ex.B1.

20. On the other hand, in support of his contention that the policy will come into

play as per the terms and conditions mentioned therein, but not by way of presumptions, the learned Standing Counsel for the Insurance Company has relied on a decision reported in National Insurance Co. Ltd. Vs. Smt. Sobina Iakai and Others, wherein the Apex Court has held as follows:

M.V. Act, 1988 Section 147 - Insurance Policy - Commencement of, - Policy when becomes operative - Policy becomes operative from the midnight of the day when no specific time is mentioned in the Policy - However, in view of special contract, effectiveness of the Policy would start from the time and date indicated in the Policy - Court is obliged to look into the contract of insurance to discern whether any particular time, for commencement or expiry, is specified in the Policy - To curb the mischief of obtaining insurance policies after accidents, effectiveness of the Policy must be held to start from the time and date specifically incorporated in the Policy - Accident taking place prior in point of time of coming into force of the Policy on the same day, Tribunal and High Court seriously erred in deciding the case on the ground of non-production of cashier and development officer of the insurer into witness box, which led to serious miscarriage of justice. Award liable to be set aside.

21. In a decision reported in J. Kalaivani v. K. Sivashankar (2007) 7 SCC 792 : 2002 (1) TAC 8939 wherein the Apex Court held as follows:

M.V. Act, 1988, Section 147 -Insurance Policy - Expiry & Renewal - Liability of Insurer - Policy expiring by midnight of a particular date and renewal effected next day stating the time of commencement at 10 a.m., - Accident occurring at 0430 in the morning, in the interregnum between expiry and renewal of Policy - Insurer not liable.

22. In a decision reported in New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors, wherein the Apex Court held as follows:

M.V. Act, 1988, Section 147 - Insurance Policy - When effective - Policy issued at 2100 hrs. on 16-04-1987 and accident occurring at 10.00 hrs. on the same day, i.e., on 16-04-1987 - Policy having become operative after the accident - Insurer not liable.

23. In a decision reported in Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, wherein it was held as follows:

M.V. Act, 1988, Sections 147, 149 - Insurance Policy - Liability of Insurer - Policy commencing from a time subsequent to the occurrence of the motor accident- Insurer is not liable - Liability of insurer arises only when liability of insured is upheld.

24. Thus, the principles laid down by the Apex Court in the above decisions, make it clear that in the absence of any specific time being mentioned in the policy, then only it can be held that policy becomes operative from the previous mid night of the day on which premium is paid and on the other hand, in the presence of specific time and date for commencement of the policy, the same

terms and conditions as stipulated in the policy, shall be taken into consideration in order to curb the mischief that the policies may be taken even after the accident.

25. Now, coming to the facts of the case on hand, the accident occurred at 4.15 p.m., on 13.2.1998. According to the owner of the vehicle, the premium has been paid on 13.2.1998. But, the policy Ex.B.1 was issued by covering the period from 3.30 p.m., on 14.2.1998 till the mid night on 13.2.1999 i.e., for a period of one year. In view of the terms and conditions mentioning the specific time and date for commencement of the policy, there is no other go except to hold that the accident has occurred even much prior to the period covered under Ex.B.1 policy.

26. In this view of the matter and in the facts and circumstances of the case, coupled with the principles laid down by the Apex Court in the above decisions and the provisions of Section 156 of the M.V. Act, I have no hesitation to hold that the accident occurred much earlier to the subsistence of Ex.B1 policy and thereby, the liability to pay the compensation cannot be fastened against the Insurance company. But, the tribunal has failed to consider all these aspects in a proper perspective and as such, the tribunal is not justified in fastening the liability against the Insurance company, to pay the compensation.

27. Accordingly, this appeal is allowed setting aside the order of the tribunal in so far as the fastening of liability against the Insurance company to pay the compensation, is concerned.

28. It is needless to observe that the other findings of the tribunal, shall remain undisturbed.

29. At this stage, it is submitted by the learned Standing Counsel for the Insurance company that half of the awarded amount and costs have been deposited into the Court as per the order passed by this Court in C.M.P. No. 11362 of 2003 on 6.5.2003. In view of the deposit of the said amount in the year 2003 as well as the liberty given to the claimant to withdraw the same, the same might have been withdrawn by the claimant. If that being the case, the Insurance company is at liberty to proceed against the owner of the vehicle in so far as the amount deposited by it into the Court is concerned and at the same time, the claimant is at liberty to recover the remaining half of the awarded amount from the owner of the vehicle, for which purpose, they need not resort to file any separate suit or petition.

30. It is needless to observe that in case, the amount deposited by the Insurance company has not been withdrawn by the claimant and the same is lying in the deposit of the Court, the Insurance Company is at liberty to withdraw the same.