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In the Andhra Pradesh High Court

Case No : CMA No''s. 1685 of 1998 and 3050 of 2000

United India Insurance Co. Ltd. — APPELLANT

Vs

Muppala Anasuryanvathi and Others — RESPONDENT

Date of Decision : 14-08-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 124, 124A, 149, 168, 170

Citation : (2008) ACJ 1427 : (2007) 1 ALD 798 : (2007) 6 ALT 466

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : R. Briz Mohan Singh, in CMA No. 1685 of 1998 and Y.V. Ravi Prasad, in CMA No. 3050 of 2000, for the Appellant; R. Briz Mohan Singh, in CMA No. 3050 of 2000 and Y.V. Ravi Prasad, for Respondent Nos. 1 to 5 in CMA No. 1685 of 1998, for the Respondent

Judgement

C.Y. Somayajulu, J.—Since both the appeals arise out of the same award, they are being disposed of by a common order. For the sake of convenience, parties to the appeals would hereinafter be referred to as they are arrayed in the claim petition.

2. Claimants, who are the widow, children and parents of Nageswara Rao (the deceased) filed the claim petition alleging that when the deceased was proceeding as a pillion rider on the Scooter ABW 5015 belonging to the second respondent, being driven by the first respondent and insured with the third respondent, it dashed against the bullock-cart belonging to the 5th respondent being driven by the 4th respondent in a rash and negligent manner, resulting in the deceased falling down from the scooter and receiving injuries and later succumbing to those injuries. Since the deceased was aged about 38 years and was earning Rs. 2,000/- per month from various sources, they are entitled to Rs. 9,00,000/- as compensation from the respondents.

3. The case of the second respondent, who is the owner of the scooter bearing No. ABW 5015, as disclosed from his counter, which was adopted by the first

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respondent, is that as his scooter was insured with the third respondent from 25.6.1992 to 24.6.1993, and since first respondent was having a valid and subsisting driving licence by the date of accident, and since the accident did not occur due to the rash and negligent driving of the scooter by the first respondent he need not pay any compensation.

4. Third respondent filed its counter putting the appellants to proof of the averments in the petition.

5. 4th respondent filed a counter, which was adopted by the 5th respondent, denying the allegation that he was driving the bullock-cart in a rash and negligent manner and contending that he is not a necessary or proper party to the petition.

6. In support of their case, claimants examined the wife of the deceased i.e. first claimant as P.W.1 and the first respondent as P.W.2 and marked Exs.A.1 to A.9. No oral or documentary evidence was adduced on behalf of respondents 1, 2, 4 and 5. Third respondent examined one witness as R.W.1. Ex.B.1 was marked by consent. The Tribunal, holding that the accident occurred due to the rash and negligent driving of the scooter by the first respondent, awarded Rs. 3,09,000/- as compensation to the claimants. Aggrieved by the award passed against it, third respondent preferred C.M.A. No. 1685 of 1998; and dissatisfied by the compensation awarded to them, claimants C.M.A. No. 3050 of 2000.

7. The point for consideration is to what compensation are the appellants entitled to and from whom?

Point:

8. The contention of the learned Counsel for the claimants is that the Tribunal was in error in not keeping in view the fact that the deceased was a partner in a business concern and was also running poultry farm, while arriving at the compensation payable to the claimants, and contended that in the facts and circumstances of the case the compensation claimed by the claimants is just and reasonable.

9. In my considered opinion, the appeal of the claimants has no merit. In fact, they should have felt happy that for the Tribunal recorded a finding that they are entitled to compensation under fault liability, though the evidence on record does not establish the negligence on the part of the first respondent while driving the scooter of the second respondent with the deceased as his pillion rider. Since P.W.1 was not a witness to the accident her evidence is not relevant for deciding this point. The evidence of P.W.2, the first respondent, who was driving the scooter with the deceased as his pillion rider at the time of accident, is that the accident occurred only due to the negligence of the 4th respondent but not due to his negligence. In the claim petition it is alleged that the accident occurred due to the rash and negligent driving of a Bullock-Cart by the 4th respondent. Since ''Bullock-Cart'' is not a ''motor vehicle'' it is not governed by the provisions

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of the Motor Vehicles Act, 1988 (the Act). So, even if the accident occurred due to the negligence of the 4th respondent while driving the bullock cart of the 5th respondent, claim against respondents 4 and 5 is not maintainable under the Act because ''Bullock cart'' is not a ''motor vehicle'' as defined in the Act. As stated above since P.W.1 not being a witness to the accident, she cannot say as to how the accident actually occurred. The evidence of P.W.2 is that the accident did not occur due to his negligence while he was driving the Scooter ABW 5015. Thus, there is no iota of evidence on record to show that the accident took place due to the rash and negligent driving of the scooter by the first respondent. Yet, the Tribunal held that the accident occurred due to the rash and negligent driving of the first respondent. Since first and second respondents, who are the driver and owner of the scooter did not question the said finding of the Tribunal and did not even choose to appear in the appeals, and since the third respondent did not choose to question the said finding by obtaining permission from the Tribunal u/s 170 of the Act, I do not wish to interfere with the said finding of the Tribunal.

10. Coming to the quantum of compensation, except the interested testimony of the first respondent, there is no other evidence on record with regard to the income of the deceased. First respondent, as P.W.2, supported the case of petitioners, which prima facie shows the collusion between the claimants and respondents 1 and 2. The evidence of P.W.2 that the deceased was being paid salary cannot be believed or accepted because the account books of the firm are not produced. Since no documentary evidence regarding the income of the claimants subsequent to the death of the deceased is produced, the contention that the poultry farm business was stopped after his death cannot be believed or accepted. In view of their closeness only the deceased must have proceeded on the scooter belonging to the 2nd respondent being driven by the first respondent. Probably on the basis that it is the insurer i.e. 3rd respondent, that will have to pay the compensation payable to the claimants but not them, respondents 1 and 2 must have tried to support the claim of the claimants. In the facts and circumstances of the case, I am of the considered opinion that the compensation arrived at by the Tribunal can be said to be just and reasonable and so claimants are not entitled to higher compensation than that was awarded by the Tribunal.

11. The learned Counsel for third respondent relying on Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, , Oriental Fire and General Insurance Co. Ltd. Vs. M. Bhanumathi and others, , Sada Nirmala and Others Vs. Indrapaul Singh and Another, , National Insurance Co. Ltd Vs. V. Vasantha and Others, and George Oakes Co. Vs. V.S. Govindarajan (dead) represented by Legal Representatives and Others, , contended that since Ex.A.4 (which is the same asEx.B.1) does not cover the risk of the pillion rider, the Tribunal was in error in making the third respondent also liable for payment of compensation payable to the claimants.

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12. Recently the apex Court in United India Insurance Co. Ltd. v. Tilak Singh 2006 (3) ALD 75 (SC), held that the ''Act Policy'' does not cover the risk of pillion rider.

13. The learned Counsel for appellants relying on New India Assurance Co. Ltd. Vs. R.R. Usharani and Others, , contended that a pillion rider also is covered by Ex.A.4 and contended that since there is a difference in the language in the Motor Vehicles Act, 1939 (1939 Act), and the Act, both subsequent and prior to Act 54 of 1994 amendment which came into force with effect from 14.11.1994, and since the apex Court in Tilak Singh''s case (supra), did not take into consideration some of the earlier judgments of the apex Court, the said decision has no application to the facts of this case. Relying on Rathi Menon Vs. Union of India, , he contended that it is the date of passing of the award by the Tribunal but not the date of accident that is relevant for finding out whether the insurer is liable or not and in any event in view of the ratio in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the insurer is bound to pay compensation in the first instance and if ultimately it were to be held that the insurer is not liable, it can be directed to recover the amount paid by it from the owner of the offending vehicle.

14. Rathi Menon''s case (supra), relied on by the learned Counsel for appellants is a case under Railways Act, 1989 (1989 Act), the provisions of which are entirely different from the provisions of the Act. The compensation payable under the 1989 Act, in view of Sections 124, 124A read with Section 2(30) of the Act, depends on the rules framed by the Government from time to time. Section 168 of the Act contemplates the Tribunal passing an award granting ''just'' compensation. In any event question whether compensation has to be paid as per the rules in force on the date of accident or the date of award is wholly irrelevant for disposal of these appeals, and so the said decision has no application to the facts of this case.

15. Swaran Singh''s case (supra), relates to interpretation of Section 149(2XaXii) vis-a-vis the provisos to Section 149 of the Act relating to the liability of the insurer when the driver of the offending vehicle does not possess a valid driving licence. Since this is not a case relating to the driver not having a licence, the said decision has no application to the facts of this case.

16. The contention of the learned Counsel for claimants that third respondent should first be directed to pay the compensation awarded to the claimants and then it should be directed to recover the said amount from respondents 1 and 2 later, if at all shows the anxiety of the claimants to somehow recover the amount awarded by the Tribunal from the third respondent. In a way it also confirms my opinion that there is a collusion between the claimants and respondents 1 and 2 to make the third respondent liable for the compensation payable. When the question is whether the insurer is liable to pay compensation for death or injury to a pillion rider of a scooter, in case its owner taken only an Act policy, question of the insurer being directed to pay compensation in the first instance and

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directing it to recover from the owner, that too when it is to be held that there is no liability to the insurer does not arise. If it is held liable to pay the compensation, it cannot avoid its liability. So question of a direction being given to the insurer to pay the compensation to the claimants in the first instance and then recover the amount from respondents 1 and 2 does not arise.

17. In Tilak Singh''s case (supra), the apex Court, after considering the provisions of both 1939 Act and the Act before and after the 1994 amendment, held that in respect of an Act policy the insurer is not liable to pay compensation for the death of a pillion rider. In Paragraph-2 of the said judgment it is held that inasmuch as the 5th respondent in that case i.e. the owner of the scooter involved in the accident, insured the scooter for the period 7.3.1989 to 6.3.1990 under the Act policy and since an endorsement IMT 70 to cover the risk of unnamed hirer/driver/pillion passenger, which is required for covering its liability to pillion passengers on payment of additional premium is not found in the insurance policy, the policy does not cover the risk of the pillion rider. In this case also, Ex.A.4 (which is the same as Ex.B.1) does not contain the endorsement IMT 70. Third respondent cannot be made liable to pay the compensation payable to the claimant.

18. In view of the latest decision of the apex Court, I am not referring to the other decisions on the subject relied on by the learned Counsel for both sides as the decision of the High Court which took a contra view should be deemed to have been overruled by that decision.

19. The learned Counsel for the claimants on the ground that in Ex.B.1, under the column ''capacity of passengers including driver'' the figure ''2'' is mentioned, contended that the policy covers the risk of the driver and the pillion rider also. I am unable to agree with the said contention. Since Ex.B.1 is but an Act policy it covers the risk of only third parties. It does not even cover the risk of the driver of the scooter. What is mentioned in Ex.B.1 is the description of the vehicle insured. It contains all the details like Registered Mark and Number; Engine Number and Chassis Number; Make, Year of Manufacture, Type of Body; C.C.; Capacity and Premium to be paid. Since the scooter involved in the accident admittedly has the capacity to carry two persons, in the column relating to capacity ''2'' is mentioned. Merely because the scooter has capacity to carry two persons it does not mean that an Act policy taken by its owner covers the risk of two persons travelling on it. ''Third party'' in the insurance parlance is a person who is not travelling in or on the vehicle, which is insured. So, persons not travelling in or on the vehicle insured only would be covered by third party risk. Persons travelling in or on a vehicle would not be covered by that policy because they are not ''third parties''. Since no extra premium is paid for covering the risk of the driver and pillion rider, I hold that the third respondent is not liable to pay the compensation payable to the claimants. So, Respondents 1 and 2 only are liable to pay the compensation awarded by the Tribunal to them.

20. In the result, the C.M.A. No. 3050 of 2000 is dismissed and C.M.A. No. 1685

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of 1998 is allowed and the claim against third respondent insurer is dismissed. Parties are directed to bear their own costs in both the appeals.

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