
(2007) 07 AP CK 0103

In the Andhra Pradesh High Court

Case No : C.M.A. No. 237 of 2003 and Batch and Cross-objections (SR) No. 91079 of 2003 and Batch

United India Insurance Co. Ltd.

APPELLANT

Vs

N. Rukkamma and Others

RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1)

Citation : (2009) ACJ 1211 : (2008) 1 ALD 215 : (2008) 1 ALT 42

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : A. Malathi, for the Appellant; P. Radhive Reddy, for 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—Despite service of notice, none appears for respondents 2 and 3-Andhra Pradesh State Road Transport Corporation (for brevity "the Corporation") in C.M.A. Nos. 237, 260, 276, 529 and 573 of 2003, who are respondents 4 and 5 in CM.A. No. 408 of 2003; and respondent No. 5-owner of car bearing Registration No. AP 25B-2277 in C.M.A. Nos. 237, 260, 276, 529 and 573 of 2003, who is respondent No. 7 in CM.A. No. 408 of 2003; and there is no representation on their behalf.

2. Heard Smt. A. Malathi, learned Standing Counsel for the appellant-The United India Insurance Company Limited and Sri P. Radhive Reddy, learned Counsel appearing for respondent No. 1 -claimants in C.M.A. Nos. 237, 260, 276, 529 and 573 of 2003 and respondent Nos. 1 to 3-claimants in CM.A. No. 408 of 2003 only, since respondent No. 4-transferor of the offending car in C.M.A. Nos. 237, 260, 276, 529 and 573 of 2003, who is respondent No. 6 in CM.A. No. 408 of 2003 was shown as "not necessary" vide cause titles.

3. Since all these civil miscellaneous appeals and cross-objections do arise out of

one and the same accident and the issue involved in all these matters being common, they are heard together and being disposed of by this common judgment.

4. Aggrieved by the judgments and decrees, dated 31-01-2002, in O.P. Nos. 704, 703, 702, 701, 706 and 705 of 1995, passed by the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for brevity "the Tribunal") in awarding Rs. 1,25,000/-, Rs. 1,00,000/-, Rs. 10,000/-, Rs. 70,000/- and Rs. 70,000/- as against the claims of Rs. 2,00,000/-, Rs. 1,50,000/-, Rs. 2,00,000/-, Rs. 1,50,000/- and Rs. 1,50,000/-, respectively, towards compensation to the claimants in O.P. Nos. 704, 703, 702, 706 and 705 of 1995, respectively, for the injuries sustained by them; and a sum of Rs. 1,17,500/- as against the claim of Rs. 2,00,000/- towards compensation to the claimants in O.P. No. 701 of 1995 for the death of their mother by name one N. Yellamma, in a motor accident that occurred on 12-5-1995, insurer has preferred C.M.A. Nos. 237, 260, 276, 529, 573 and 408 of 2003, respectively, seeking to exonerate it from the liability of paying compensation awarded by the Tribunal to the claimants.

5. Whereas, the claimants have filed Cross-Objections (S.R) Nos. 91079, 91071, 28212, 91080, 91074 and 28211 of 203 in C.M.A. Nos. 237, 260, 276, 408, 529 and 573 of 2003, respectively, seeking enhancement.

6. The facts, which are not in dispute, in brief, are that on 12-5-1995, the offending car, in which the claimants in C.M.A. Nos. 237, 260, 276, 529 and 573 of 2003 and the mother of claimants in CM.A. No. 408 of 2003 were traveling, hit the stationed bus bearing registration No. AP9Z-7064 belonging to the Corporation, as a result of which two persons died including the husband of the owner of the vehicle and the rest were injured.

7. There was a serious dispute before the Tribunal as regards the rash and negligent driving of the vehicles involved in the accident.

8. It is the case of the claimants, who were travelling in the offending car, that because of the rashness and negligence on the part of the driver of bus belonging to the Corporation, the accident took place and that since the driver of the bus did not take appropriate steps by lighting the lamps (indicators) indicating that it was stationed, the car in which the claimants were traveling hit against the stationed bus, causing death of two persons and bodily injuries to the inmates.

9. The Tribunal, having considered the entire material, including the evidence, both oral and documentary, available on record, recorded a finding that the driver of the bus belonging to the Corporation was not at fault and attributed the rashness and negligence totally to the driver of car in which the claimants were traveling, and awarded compensation to them on the ground that the policy of the car (Ex.B-1) was in subsistence as on the date of accident making the insurer thereby responsible to pay the compensation.

10. It is the contention of the learned Standing Counsel for the insurer that the policy is "Act policy", which does not cover the risk of the inmates of vehicles, who are no other than the injured claimants and the deceased.

11. To substantiate the said contention, the learned Standing Counsel for the insurer relied on a judgment of the apex Court in *Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others*, whereby their Lordships, following the judgment of the apex Court in *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, , held thus:

The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(1)(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case.

13. The Apex Court in *New India Assurance Co. Ltd. v. Meera Bai* 2007 ACJ 821 (SC), again following the judgment of the apex Court in *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, , held that the policy of insurance did not cover the risk of the owner of the vehicle, who was the insured, inasmuch as, in the absence of coverage in respect of the owner, the claim could not be sustained.

14. Their Lordships of the apex Court in *Meera Bai's* case (3 supra) further found that from the schedule of policy, the owner, who himself was driving the vehicle, was not covered under the policy and hence, the insurance company was not liable to pay compensation.

15. In both the cases viz., *Jhuma Saha's* case and *Meera Bai's* case (1 and 3 supra), since the view of the apex Court in *Dhanraj's* case (2 supra) had been taken note of, it is apposite to re-extract the observations made-by the apex Court in *Dhanraj's* case (2 supra), which are thus:

Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

...

In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance.

16. From the above, it is abundantly clear that Section 147 of the Motor Vehicles Act, 1988 (for brevity "the Act") does not contemplate coverage of any risk of bodily injury or death to the owner of the vehicle unless such risk is covered by the policy.

17. In the case on hand, the policy of the offending car is stated to be "Act policy" of a private car and the same shall be used for the purposes mentioned therein i.e., for the purpose of social, domestic and pleasure purposes and for the insured's own business. But, that does not specifically cover the third parties.

18. The expression "third party" in common parlance should be treated as a person not travelling in the vehicle including the owner unless separate premium covering such other persons travelling in the vehicle including the owner is paid covering any risk to such persons. Therefore, basically it is only conditions of the policy that would and should govern both the parties so far as their respective obligations, particularly that of the insurer.

19. That apart, despite a specific contention being raised that the driver of the bus belonging to the Corporation was also negligent in causing the accident, no adequate evidence was adduced on behalf of the claimants in order to establish the said contention. Consequently, the Tribunal, having considered the entire material available on record, categorically recorded a finding that the driver of the offending car in which the victims were travelling alone was negligent, which resulted in the accident.

20.1 am further fortified by the view taken by a learned single Judge of this Court in United India Insurance Co. Ltd. Vs. Muppala Anasuryanvathi and Others, which is thus:

...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....

21. Therefore, from the judgment of this Court in Muppala Anasuryanvathi's case (4 supra), it is obvious that whether it is a "Comprehensive policy" or "an Act policy", the insurer is not liable where the policy does not cover the risk of either the owner or the other inmates of the vehicle treating them as third parties, unless it is specifically agreed to and separate premium is paid covering the risk of third parties.

22. Again, coming back to the case on hand, a perusal of schedule of policy of the offending car reveals that no such conditions are mentioned therein and

accordingly, the inmates of the car involved in the accident including its owner shall not be covered by the policy, inasmuch as, they are not covered by the conditions of the policy.

In other words, there is no contractual liability as envisaged in Sub-clause (ii) of proviso to Sub-section (1) of Section 147 of the Act.

23. Further, there was a bleak attempt made by the learned Counsel appearing for claimants that the Corporation is also liable to pay compensation awarded by the Tribunal to the claimants, inasmuch as, there was negligence on the part of the driver of the bus belonging to the Corporation.

24. But, there is no evidence, either oral or documentary, on record, in this aspect and with the little evidence on record, the Tribunal, as already noticed, had recorded a finding that the entire rashness and negligence was on the part of the driver of the offending car in which the victims/ claimants were travelling, but not of the driver of the bus belonging to the Corporation nor there is any specific ground taken by the learned Counsel appearing for claimants, who filed cross-objections seeking enhancement of compensation awarded by the Tribunal.

For the foregoing, all these appeals C.M.A. Nos. 237,260,276, 408, 529 and 573 of 2003 are liable to be allowed.

25. At this juncture, it has been brought to the notice of this Court that by virtue of the interim orders passed by this Court in all these appeals, the insurer was directed to deposit certain amounts and the claimants were permitted to withdraw the same.

26. In this context, I am of the view that at this length of time, particularly in a case where two persons were killed and others were seriously injured, I do not feel it appropriate to direct the claimants to repay the amounts, which were deposited by the insurer and already withdrawn by the claimants as per the interim directions of this Court, to the insurer applying the principle of "equity". However, this judgment shall not be treated as a precedent in any other case.

27. In the result, the appeals C.M.A. Nos. 237, 260, 276, 408, 529 and 573 of 2003 are allowed and the Cross-Objections (SR) Nos. 91079, 91071, 28212, 91080, 91074 and 28211 of 2003 in C.M.A. Nos. 237, 260, 276, 408, 529 and 573 of 2003, respectively, are dismissed, with the above observations and directions. There shall be no order as to costs.