
(2004) 04 AP CK 0019
In the Andhra Pradesh High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

S. Rama Krishna Reddy and Others

RESPONDENT

Date of Decision : 07-04-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 165, 166, 167

Citation : (2005) 3 ACC 524

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Judgement

L. Narasimha Reddy, J.—This C.R.P. is filed against the orders of the First Additional District Judge, Nalgonda, dated 18.10.2002 in E.A. No. 2 of 2002 in E.P. No. 24 of 2002 in O.P. No. 602 of 1991, impleading the petitioner herein as one of the respondents.

2. Respondent Nos. 2 and 3 filed O.P. No. 602 of 1991 in the Motor Accident Claims Tribunal-cum-1st Additional District Judge, Nalgonda, alleging that their minor daughter by name Alivelu Manga, died in an accident on 11.5.1991, involving the tractor and trailer of the respondent No. 1. They claimed compensation of Rs 70,000/-. Through the judgment dated 1.10.1991 the Tribunal awarded a compensation of Rs. 70,000/- together with interest and costs. The decree became final. Since the respondent No. 1 did not satisfy the decree, respondent Nos. 2 and 3 filed E.P. No. 24 of 2002 for recovery of the decretal amount, which became Rs. 1,72,660/- by that time. On receipt of notice in the E.P., respondent No. 1 filed E.A. No. 2 of 2002, requesting the Tribunal to implead the petitioner herein as one of the respondents/judgment-debtors to the E.P. petitioner resisted the application contending that it was not a party to the O.P. and as such cannot be impleaded in the execution proceedings. The Executing Court rejected the plea and directed the petitioner herein to be impleaded as judgment-debtor No. 3.

3. Mrs. M. Seetha Devi, the learned Counsel for the petitioner submits that the petitioner was not a party to the O.P. and as such cannot be treated as a

judgment-debtor. She contends that the execution proceedings can be initiated and maintained only against those, who are parties to the original proceedings and not against strangers. She contends that if respondent No. 1, the owner of the vehicle, was of the view that the vehicle was insured with the petitioner herein, he ought to have taken steps to get the petitioner impleaded in the O.P. itself.

4. The learned Counsel for the respondent No. 1 submits that his client purchased the tractor and trailer by obtaining loans from the Bhongir Branch of Andhra Bank and the Bankers alone were aware of the existence or otherwise of the insurance. He contends that the respondent No. 1 approached the bank only when he received the notice in the E.P. and on verification of the records it emerged that there existed a valid insurance cover for the vehicle, by the petitioner. Placing reliance on the provisions of the Motor Vehicles Act, learned Counsel submits that even if the insurer is not a party, it can be made to comply with the decree, on the basis of the policy. The respondent Nos. 2 and 3 did not contest the E.A.

5. O.P. No. 602 of 1991 was filed by respondent Nos. 2 and 3, claiming compensation on account of the death of their minor daughter in an accident involving the vehicle belonging to the respondent No. 1. The Insurance Company, the petitioner herein, was not made a party. The Tribunal passed an ex parte decree dated 10.1.1992 awarding a sum of Rs. 70,000/- together with interest against respondent No. 1. The respondent No. 1 in turn, took steps to get the ex parte decree set aside. He was not successful before the Tribunal. Then he filed C.R.P. No. 533 of 1999. The C.R.P. was dismissed on 28.8.2000. It is thereafter that the respondent Nos. 2 and 3 filed E.P. No. 24 of 2002 for executing the decree. On receipt of notice, the respondent No. 1 filed E.A. No. 2 of 2002 to get the petitioner herein impleaded. It is his case that he was not aware of the fact that the bank, which financed the purchase of the tractor had taken out an insurance policy and it was only on verification at a later stage, that he became aware of it.

6. Ordinarily, a decree cannot be executed against persons or agencies, who are not parties to the proceedings in which the decree is passed. The reason is that no liability can be fastened on a person or agency unless they were given an opportunity to defend themselves. The proceedings initiated under the Motor Vehicles Act, (for short "the Act") for recovery of damages on account of death or bodily injuries involving motor vehicles, however, stand on a different footing.

7. Taking note of the frequency of accidents involving Motor Vehicles Act and devastating effects of death or injuries to the victims and the persons dependent on them, Parliament has stepped in, to make necessary provisions in the Motor Vehicles Act, 1939. Insurance of vehicles to cover the liabilities arising out of accidents was made compulsory and adjudication of disputes by Special Tribunals was provided for u/s 110-A onwards. 1939 Act has been replaced by Act 59 of 1988. Based on the past experience and pronouncements of the Courts on the

subject, necessary improvements were made. The procedure for adjudication of claims arising out of accidents involving motor vehicles is now provided for under Chapter XII of the Act, comprising Sections 165 - 176. Chapter XI stipulates the nature and extent of insurance coverage and the obligations of the insurers to meet the liabilities. Section 149 makes it obligatory on the part of the insurers to satisfy the judgments and awards against persons insured, in respect of third party risks. Section 149 is very elaborate. For the purpose of this case, it is sufficient to extract Sub-sections (1), (2) and (7) of Section 149 thereof:

Section 149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risk.-

(1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer and notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings 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) that there has been breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without sidecar being attached where the vehicle is a motor cycle; or

(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

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(7) No insurer to whom the notice referred to in Sub-section (2) or Sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in Sub-section (1) or in such judgment as is referred to in Sub-section (3) otherwise than in the manner provided for in Sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

8. A reading of the provisions referred to above discloses that an insurer is liable to satisfy the liability arising out of a judgment or award, if there exists a certificate of insurance. It is immaterial whether the Insurance Company was made a party to the proceedings giving rise to decree or not. Neither in Chapter XI nor Chapter XII it is made obligatory to implead an insurer in the petitions. Section 149 does not indicate that it is necessary to implead the insurer, before the liability is fastened to it. On the other hand, the use of the expressions "notwithstanding that the insurers may be entitled to avoid or cancel or may have avoided or cancelled the policy" and "as if he were the judgment-debtor" presupposes the circumstance that the insurer is not a party to the proceedings, giving rise to the judgment or award. That being the case, objection of the petitioner herein that unless it was a party to the O.P., it could not have been impleaded in the E.P. cannot be sustained.

9. It is not as if petitioner is deprived of any defence and is made liable to pay the amount under the award without being heard. Parliament had provided for certain circumstances under which an insurer can avoid the liability and permitted the insurer to put forward such claims even, in execution proceedings. Sub-section (2) of Section 149 provides for as many as four defences for an insurer to avoid the liability and makes it obligatory for it to be provided with such an opportunity in the execution proceedings. Sub-section (7) disentitles the insurer to take any other defences, except those provided for under Sub-section (2). Hence, it cannot be said that petitioner had suffered any prejudice on account of its being impleaded in the execution proceedings. The question as to whether there existed any policy at all, or whether petitioner can avoid the liability on the ground specified in Sub-section (2), can be urged before the Executing Court. If the petitioner is not impleaded on the ground that it was not a party to the proceedings to the O.P., it would defeat the very object of Chapters XI and XII of the Act.

10. Hence, the C.R.P. is dismissed. Since the Tribunal passed award way back in 1992, the Executing Court is directed to conclude the proceedings in E.P. No. 24 of 2002, within two months from the date of receipt of a copy of this order. There shall be no order as to costs.