
(2006) 09 AP CK 0150
In the Andhra Pradesh High Court
Case No : M.A. C.M.A. No. 1200 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Tuniki and Another

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(4)

Citation : (2008) ACJ 596

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : E. Venugopal Reddy, for the Appellant; I. Aga Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The order dated 17.12.2004 passed by the Motor Accidents Claims Tribunal-cum-First Additional District Judge, Karimnagar, A.P. in O.P. No. 594 of 2003 is assailed in this appeal.

2. The respondent No. 1 filed the O.P. claiming a sum of Rs. 1,50,000 for the injuries sustained by her in an accident that occurred on 21.3.2003. She pleaded that the petitioner was travelling as a pillion rider on a motor cycle driven by one Erukla Kishan; with a view to go to Vemulawada and when they reached Nampally Bus Stage, a vehicle bearing No. AP 15-V 5656 (Toyota Qualis) owned by respondent No. 2 and insured with the appellant came in a rash and negligent manner and hit the motor cycle from behind. Respondent No. 1 is said to have fallen down and sustained head injury. She was treated in a private hospital and it was pleaded that she incurred a sum of Rs. 50,000 towards the treatment. Under different heads, she claimed a sum of Rs. 1,50,000 as compensation.

3. The owner of the vehicle remained ex parte. The O.P. was contested by the appellant herein. It was pleaded that there was no negligence on the part of the driver of Toyota Qualis and that the accident had occurred on account of rash and

negligent driving of the driver of the motor cycle. It was further alleged that there did not exist any insurance coverage for the vehicle as on the date of the accident. The Tribunal held that the accident occurred on account of rashness and negligence of driver of the vehicle, insured with the appellant and awarded a sum of Rs. 42,000 as compensation with interest at 9 per cent per annum. It was held that appellant and respondent No. 2 are jointly and severally liable to pay the compensation.

4. Mr. E. Venugopal Reddy, learned Counsel for appellant, submits that though the insurance coverage was taken for the vehicle in question on 9.1.2003, the cheque issued by the respondent No. 2 towards payment of the insurance premium was dishonoured and accordingly the insurance cover was cancelled on 21.1.2003. The learned Counsel further points out that respondent No. 2 took out a fresh policy on 22.3.2003, whereas the accident occurred on 21.3.2003. Placing reliance upon certain precedents, he contends that the Tribunal ought not to have held the appellant liable, to pay the compensation.

5. Mr. I. Aga Reddy, learned Counsel for respondent No. 1, on the other hand, submits that though it was pleaded by the appellant that the cheque issued by the respondent No. 2 for payment of the insurance premium was dishonoured, there is nothing on record to show that they have notified the cancellation of the policy to the registering authority as required under Sub-section (4) of Section 147 of the Motor Vehicles Act, 1988 (for brevity "the Act") and in that view of the matter, the appellant cannot escape from its liability to pay the compensation. He submits that the Tribunal had examined the matter in the light of settled principles and that the same does not warrant any interference.

6. Respondent No. 1 pleaded that when she was proceeding to Vemulawada, on a motor cycle as a pillion rider, the vehicle owned by respondent No. 2 came from behind and dashed against the motor cycle and she sustained injuries. Respondent No. 2 remained ex parte. It was the appellant that pleaded the absence of any negligence on the part of the driver of the vehicle owned by respondent No. 2. On her behalf, the petitioner deposed to these facts as PW 1. She has also filed an attested copy of the F.I.R. in Crime No. 36 of 2003, marked as Exh. A1 and the certified copy of the charge-sheet, marked as Exh. A3. These two documents, together with the medical certificate issued to the petitioner, marked as Exh. A2, clearly disclosed that the liability for the accident was exclusively with the driver of Toyota Qualis. Claims Tribunal examined the rival contentions and ultimately held that the accident occurred on account of rashness and negligence on the part of the driver of the vehicle owned by the respondent No. 2. This Court is not inclined to disturb the finding recorded by the Tribunal on this aspect.

7. Appellant does not seriously dispute the quantum of compensation. Its effort is only to extricate itself from the liability to pay the compensation on the ground that there did not exist any valid coverage, or policy, as on the date of the accident.

8. It is not in dispute that a policy was taken on 9.1.2003 for the vehicle and that the premium was paid through a cheque on the same day. The accident occurred on 21.3.2003. Appellant states that the cheque issued by respondent No. 2 was dishonoured and, therefore, she was called upon to make necessary arrangements. It is stated that when proper response did not emanate from respondent No. 2, the policy was cancelled, through a letter dated 21.1.2003. It is also pleaded that the information as to the cancellation was sent to the Regional Transport Authority on the same day under certificate of posting. On these facts, it is urged that there did not exist any valid policy as on the date of the accident.

9. Section 147 of the Act requires that every motor vehicle must be covered by an insurance policy. The extent of coverage and other details are provided in that section. There exist the facility, for issuance of cover note at the initial stage and, thereafter, the insurance policy within a stipulated time. The object appears to be, to ensure that the necessary formalities are complied with within the time gap, so provided. In some cases, the policy itself may be issued straightaway, depending on the nature of payment of the premium and other circumstances.

10. The liability of an insurer commences with the issuance of cover note or insurance policy itself, if it is issued straightaway. Parliament has visualised the contingency of the insurance coverage not materialising into insurance policy, on account of any factors, which may include dishonour of the cheque issued for payment of premium. Sub-section (4) of Section 147 of the Act describes the steps that are required to be taken by the insurer in such a case. It reads as under:

Section 147(4). Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

11. From this, it is clear that in case a situation emerges for cancellation of cover note, the insurer must notify the cancellation thereof, to the registering authority, i.e., the Regional Transport Officer, within 7 days from the date of expiry of the same. It is from the date of such notification that the liability of the insurer ceases to exist.

12. The term "notify" has its own significance. In the Webster Dictionary, the meaning of this word is "to inform, to make known, to give notice, to inform by words or writings, or by any other signs, which are understood". In certain enactments, the term was interpreted as meaning "publication of notification". Since such a clause does not exist in the Act, nor the insurer is empowered to issue such notification, the meaning that can be given to the said term is that the

communication as to the cancellation of the cover note must reach the registering authority. Whatever be the means employed, the obligation of the insurer, comes to an end, only when the factum of cancellation of the cover note had reached the registering authority. In the instant case, the only exercise undertaken by the appellant was that it sent a notice to the registering authority through certificate of posting. It was neither pleaded nor proved that the registering authority was notified the factum of cancellation of the cover note before the accident had occurred. Consequently, it must be held that the cover note or the policy, as the case may be, issued by the appellant was in force as on the date of the accident.

13. The contract of insurance is between the appellant and respondent No. 2 and respondent No. 1 is not a party to it. If it were to be a contract in the ordinary parlance, respondent No. 1 could not have enforced it, once, the plea of the appellant, that it cancelled the contract of insurance is not disputed by the respondent No. 2. The contract assumes a different character, inasmuch as, it came to be executed as a compliance with the requirement under a statute. Section 147 of the Act, is a social security measure taken by Parliament. The victims of the accident are beneficiaries under it; on par with the insured, if not on a higher pedestal. Therefore, the absence of any denial by respondent No. 2 as to the cancellation of the policy does not affect the rights of respondent No. 1. The judgment rendered by a Division Bench of this Court in *M. Nageswara Rao Vs. New India Assurance Company Limited and Others*, , supports this view.

14. The judgment of the Hon"ble Apex Court in *United India Insurance Co. Ltd. v. Ayeb Mohammed* 1991 ACJ 650 , relied upon by the learned Counsel for the appellant is distinguishable in facts. In the case before the Hon"ble Apex Court, the insurer had taken all the steps, as required under law, in the matter of cancellation of the policy. It was clearly held that the insurer had notified the registering authority about the cancellation of the policy.

15. Further, the judgment rendered in the case of *National Insurance Co. Ltd. Vs. Seema Malhotra and Others*, , is also inapplicable to the facts of this case, since the so-called cancellation did not come into force, as on the date of accident. The Tribunal had discussed the matter in a correct perspective and this Court does not find any basis to interfere with the same.

The civil miscellaneous appeal is accordingly dismissed. There shall be no order as to costs.