
(2008) 08 AP CK 0019
In the Andhra Pradesh High Court
Case No : A.A.O. No. 60 of 2000

United India Insurance Co. Ltd.

APPELLANT

Vs

V. Madhukar Rao

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2008) ACJ 232

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : Naresh Byrapaneni, for the Appellant; Ch. Janardhan Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Bhavani Prasad, J.—The insurer/sole respondent in O.P. No. 897 of 1994 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Nizamabad filed this appeal against the award dated 31.8.1999.

2. The factual background for the appeal is that the respondent-claimant was travelling in Maruti van No. AP 25-T 3233 on 1.8.1993 along with another passenger and driver and the vehicle met with an accident due to rash and negligent driving of Maruti van driver. Claimant sustained fractures and other injuries and van was damaged to a tune of Rs. 50,000. The claimant was treated at Government Hospitals, Kamareddy and Nizamabad and has claimed a compensation of Rs. 1,50,000 towards his permanent disability, expenses towards medicines and extra nourishment and for damage to Maruti van from the insurer.

3. The insurer while denying the allegations of the claimant, sought for dismissal of the claim.

4. Tribunal framed appropriate issues regarding the manner of the accident and entitlement of claimant to compensation. It examined PWs 1 and 2 and RW 1

and marked Exhs. A1 to A6 during the enquiry.

5. The Tribunal rendered the impugned award, firstly, noting that the claimant himself was the owner of the vehicle and insured the vehicle under insurance policy, Exh. A3, as stated by RW 1. It also noted the contention of RW 1 that no premium was paid to cover the risk of the owner. While accepting that the accident occurred due to rash and negligent driving of the van driver himself, the Tribunal referred to the decisions in *The New India Assurance Company Ltd., Vijayawada Vs. Doredla Satyanarayana and others*, and *United India Insurance Co. Ltd. Vs. Odeti Mallu Bai and Others*, . The Tribunal noted that Exh. A3 covered risk of three passengers apart from damage to the vehicle and though the claimant is the owner, he can also be treated as a passenger on the analogy of the principle laid down by this Court in the case of *Doredla Satyanarayana (supra)*. Therefore, it awarded compensation of Rs. 35,000 along with interest at 12 per cent per annum and proportionate costs against the insurer.

6. The insurer challenges the award in this appeal contending that the claimant being the owner of the vehicle and not a third party or a passenger, is not entitled to any compensation.

7. Mr. Naresh Byrapaneni, the learned Counsel for the appellant referred to *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, and contended that in the absence of payment of any premium for the injury to the person of the owner, the insurer is not liable.

8. Mr. Ch. Janardhan Reddy, learned Counsel for the claimant has defended the interpretation of the policy by the Tribunal construing the owner to be a covered passenger under the policy.

9. The point for consideration is whether the insurer can be made liable for any compensation to the insured under the circumstances?

10. It is true that in *The New India Assurance Company Ltd., Vijayawada Vs. Doredla Satyanarayana and others*, , a Division Bench of this Court with reference to the owner of the vehicle travelling in the vehicle as the owner of the goods construed that insurance policy covers the risk of the deceased travelling in the lorry as the owner of the goods though he also happened to be the owner of the vehicle. However, it has to be noted that a specific plea was taken throughout in that case that the owner of the vehicle travelling in the vehicle was travelling as the owner of the goods being carried in the vehicle, which was not denied in the counter or the evidence by the insurer, due to which such a conclusion was drawn. It may also have to be noted that a statutory policy of insurance is bound u/s 147 of the Motor Vehicles Act, 1988 to cover any liability incurred by the insured in respect of death of or any bodily injury to the owner of the goods or his authorised representative carried in the vehicle and such a statutory liability cannot be considered to be fastened to any person beyond the passenger for whom a premium is specifically paid in respect of a public service vehicle. Maruti van in question is a taxicab and premium was paid under Exh. A3

policy only in respect of three passengers in respect of the vehicle with a capacity of four including the driver. Premium was also separately paid for the paid driver. But Exh. A3 does not disclose any premium to have been paid separately to cover the owner's risk. While in respect of the goods vehicle, the owner of the goods is specifically covered by the statute, in respect of a public service vehicle, there is no possibility of interpreting any provision of Motor Vehicles Act, 1988, as indicating the passenger as owner of the vehicle also.

11. In any view, it has to be first noted that the judgment of the Division Bench in *The New India Assurance Company Ltd., Vijayawada Vs. Doredla Satyanarayana and others*, , was reversed by the Supreme Court though not specifically with reference to the interpretation of the capacity of the owner of the vehicle to travel in the same vehicle as the owner of the goods. Even otherwise, by virtue of the decision of the Apex Court in *Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others*, , in which it was clearly held that the owner of the vehicle as a person cannot be both, a claimant as also a recipient, such an interpretation may not probably be permissible.

12. If so, as held in *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, , the owner of a vehicle can only claim, provided a personal accident insurance has been taken out. In fact, the question was considered in depth by a Division Bench of this Court, to which I was a party, in *Jayavarapu Rajamma and Others Vs. Jayavarapu Laxminarayana and Others*, , wherein it was reiterated that the owner of the vehicle/insured driving or travelling in the vehicle in case of injuries can make a claim only if the policy by its terms covers such risk. Payment of premium for the purpose was held a pre-condition for such a coverage of such risk by an insurance policy and, therefore, in the absence of any such insurance as seen from Exh. A3, the claimant is not entitled to claim any compensation from the insurer on the admitted facts. The claims of PW 1 about the damage to the vehicle and expenses for repairs were not proved by any corroborating oral or documentary evidence.

13. The principle laid down in *United India Insurance Co. Ltd. Vs. Odeti Mallu Bai and Others*, , cited before the Tribunal ought to have been applied and consequently, the award of the Tribunal is liable to be set aside.

14. In the result, the appeal is allowed without costs and the award in O.P. No. 897 of 1994 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Nizamabad dated 31.8.1999 is set aside and the said O.P. No. 897 of 1994 is dismissed without costs.