(1999) 07 AP CK 0020

In the Andhra Pradesh High Court

Case No : AAO No. 79 of 1991

United India Insurance Co. Ltd., Cuddapah — APPELLANT

Vs

Gali Venkataiah and another — RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 92A, 92B

Citation : (2000) 2 ACC 257 : (1999) 5 ALD 616 : (1999) 5 ALT 641 : (1999) 3 APLJ 115

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : Mr. S. Hanumaiah, SC for United India Insurance Co. Ltd, for the Appellant; Mr. T. Rajendra Prasad, for the Respondent

Judgement

1. The United India Insurance Company Limited is the appellant in this Civil Miscellaneous Appeal which is tiled against the judgment and decree in OP No.117 of 1989 dated 19-10-1990 passed by the Motor Accidents Claims Tribunal, Ongole.

2. The main ground raised in this CMA is that the Insurance Company cannot be fastened with the liability even to the extent of Rs.12,000/-, when the insurance policy did not cover the liability of the persons involved in the accident, who were travelling as passengers and not as owners of the goods.

3. Brief facts of the case are that the petitioner in the OP, who is the resident of Neredupalli village in Pedacherlopalli Mandal, is a vessel repairer earning Rs.800/- per month. He and some other went to Pangatigudem on vessels work and were coming to their native place. On 18-3-1989, he and other persons got into the lorry AAD 3645 belonging to the 1st respondent (2nd respondent herein) at 12 noon at Eluru to got to Singarayakonda. It is further stated that the petitioner (1st respondent herein) had paid Rs. 15/- to the driver towards travelling charges. When the said lorry was proceeding near Pellur village after crossing Ongole, the driver of the lorry drove the same in a rash and negligent manner on

the wrong side and dashed against a tree, which is situated on the western side of the G.N.T. Road. In that accident, the 1st respondent herein received multiple injuries all over the body i.e., upper lip, fracture of the left leg resulting in amputation and he spent Rs.3,000/- towards medical expenses. A case was registered in Cr.No.50 of 1989 at Ongole Taluk Police Station. The 1st respondent filed the said OP claiming a sum of Rs.70,000/- as compensation, against the owner of the lorry and the United India Insurance Company Limited. The Tribunal had taken into consideration the evidence on record and heard the arguments of both sides. After following the dicta laid down in Oriental Fire & General Insurance Company Ltd. v. Matta Chandra Rao, 1987 ACJ P: 174, the Tribunal has awarded Rs.32,000/- as compensation and fixed the liability on the United India Insurance Company Limited to the extent of Rs.12,000/-out of the said amount of Rs.32,000/- by way of ''no fault liability''. Against this award, the present CMA is filed.

4. Mr. S. Hanumaiah, the learned Standing Counsel for the appellant-Insurance Company has stated that the policy was issued covering the vehicle invelved in the accident only to carry the goods and the owners of the goods and that the policy does not cover carrying of the passengers. Therefore, the Insurance Company is not liable to pay the compensation of Rs.12,000/-with interest at 12% thereon as awarded by the Tribunal. He also relied upon a judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Jethu Ram and Others, (Civil Appeal Nos.1 1989-11994/99, dated 22-7-1998), wherein it was held:

"On a close scrutiny of the aforesaid provisions, we do not find anything contained therein which would suggest that the liability which accrues under the provisions of Section 92-A has to be borne by the insurer even if it is ultimately held that under the policy of insurance the insurer is not liable to pay the compensation in question. In our considered opinion the Tribunal and the High Court have misread the aforesaid provisions of the Motor Vehicles Act. In the aforesaid promises the impugned judgment of the Tribunal and High Court cannot be sustained so far as it relates to the liability of the insurer arising under Sections 92-A and 92-B of the Act. These appeals are allowed. The insurer having paid the amount under the aforesaid provisions is entitled to get it reimbursed from the owner."

5. Following the above judgment of the Supreme Court, I allow the appeal and hold that the appellant-Insurance Company is not liable to pay Rs.12,000/- by way of compensation to the 1st respondent here in and if any amount is paid by the appellant, the appellant is entitled to reimburse the same from the owner of the vehicle. No order as to costs.

