(2011) 10 AP CK 0069

In the Andhra Pradesh High Court

Case No : MACMA No. 5433 of 2008

United India Insurance Co. Ltd., Suryapet Town, Nalgonda District — APPELLANT

Vs

Madavarapu Anil and another — RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2012) 4 ALD 482

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : Nisar Ahmed Jeddy SC, for the Appellant; K. Vinaya Kumar for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

G.V. Seethapathy, J.—This appeal is directed against the order, dated 1.9.2008, in OP No. 115 of 2005 on the file of the learned Chairman, Motor Accident Claims Tribunal-cum-II Additional District, Nalgonda, wherein the said claim application filed by the respondents herein u/s 166 of the Motor Vehicles Act, 1988, was allowed in part awarding compensation of Rs. 1,42,000/- with interest @ 7.5% p.a. from the date of the petition. Heard both sides. Perused the record.

2. 1st respondent herein filed the claim application, seeking compensation of Rs. 3,00,000/- for the injuries sustained by him in a motor vehicle accident. According to the claimant, he purchased electric motors at Hyderabad and loaded them in a DCM van bearing No. AP-11-T-1642 to go to Suryapet and at the outskirts of Inamguda Village, on account of the rash and negligent driving of the van by its driver, the vehicle dashed against the lorry resulting in multiple injuries to the claimant, including fracture of both legs and that he underwent treatment in Yashoda Hospital, Hyderabad as inpatient.

3. The owner and insurer of the vehicle filed counters opposing the claim and

denying their liability to pay (he compensation.

4. During enquiry, PW 1 was examined and Exs. Al to A8 were marked on behalf of the claimants and RW 1 was examined and Ex. B1-copy of the policy was marked on behalf of the respondents.

5. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the DCM van by its driver. The said finding is not seriously challenged in this appeal. The Tribunal held that the claimant is entitled for a total compensation of Rs. 1,42,000/- and accordingly award was passed for the said amount with interest @ 7.5% p.a. from the date of the petition. Aggrieved by the same, the insurer filed the present appeal.

6. The main contention of the appellant-insurer is that even according to the claimant he was only a gratuitous passenger in a goods vehicle and the risk in respect of such person is not covered by the policy and therefore, no liability can be fastened on the appellant-insurer.

7. Even as per the averments in the claim application and the evidence of PW 1, the claimant loaded the DCM van along with some electric motors and by that time two passengers were already travelling in the said DCM van. It is not a case where the claimant engaged the DCM van for transportation of goods and that he is accompanying the goods as owner but he was only a midway passenger, who boarded along with electric motors purchased by him and therefore travelling in the said van along with other persons, who already boarded the van. The Tribunal on due appreciation of the evidence available on record, recorded a finding to the effect that the claimant was a gratuitous passenger in a goods vehicle. The said finding has not been challenged by the claimant by filing any cross appeal.

8. Admittedly, Ex. B1-copy of the policy does not cover the risk of any passenger and no additional premium is also paid covering the risk of such person.

9. In a catena of decisions, the apex Court held that the insurance company is not liable to pay compensation in respect of gratuitous or unauthorized passenger in a goods vehicle when the risk of such person is not covered by the policy.

10. In New India Assurance Co. Ltd. Vs. Asha Rani and Others,), the apex Court held as follows:

... Keeping in view the provisions of 1988 Act, it can be said that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in the goods vehicle, the insurer would not be liable therefor.

.... An owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability as provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid.

It was further held as follows:

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.

11. In National Insurance Co. Ltd. v. Bommithi Subbayamma and others, 2005 (2) ACJ 721 (SC), it was held as follows:

Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

12. In New India Assurance Co. Ltd., v. Rattani and others, 1 (2009) ACC 422, it was held as follows:

We, therefore, in the facts and circumstances of the case, have no hesitation to hold that the victims of the accidents were travelling in the truck as gratuitous passengers and in that view of the matter, the appellant herein was not liable to pay the amount of compensation to the claimants.

13. In New India Assurance Co. Ltd., v. Vedwati and others, 2007 (1) DT 387 (SC), the apex Court held as follows:

The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

14. In view of the well settled principle of law laid down in the above decisions and the claimant in the present case being admittedly a gratuitous passenger in a goods vehicle whose risk is not covered by the policy, it is held that no liability can be fastened on the appellant-insurer to pay the compensation. Claimant is however entitled to recover the amount awarded by the Tribunal from the owner of the vehicle. The impugned order is accordingly modified. Appellant-insurer is entitled to have refund of the amount deposited by them into the Court in pursuance of the interim order, dated 29.12.2008, in CRPMP No. 8745 of 2008, if

any, already withdrawn. In the result, appeal is allowed accordingly.

