
(2004) 06 AP CK 0065

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1914 of 2000

United India Insurance Co. Ltd.,rep. by its Divisional Manager	APPELLANT
Vs	
M. Abdul Khyyum and Others	RESPONDENT

Date of Decision : 30-06-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(3), 151, 170

Citation : (2004) 5 ALD 425

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K.L.N. Rao, for the Appellant; N. Ranga Reddy, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—First respondent filed a claim petition seeking compensation of Rs. 60,000/- from respondents 2 and 3 and the appellant, the owners and insurer of the auto rickshaw bearing No. AP-02-V-1310, alleging that the driver of the auto rickshaw, while driving it in a rash and negligent manner dashed against his motor cycle resulting in injuries to him and examined himself as PW-1 and marked Exs. A1 to A5. Second respondent chose to remain ex-parte. Third respondent filed a counter contending that he is not the owner of the Auto-rickshaw involved in the accident, and examined himself as RW-1 but did not adduce any documentary evidence on his behalf. Appellant filed a counter inter alia, contending that it is not an insurer of the Auto-rickshaw which caused accident but did not adduce evidence either oral or documentary.

2. The Tribunal having held that the accident occurred due to the rash and negligent driving of the Auto-rickshaw bearing No. AP-02-V-1310 passed an award for Rs. 50,000/- in favour of the first respondent against second respondent and the appellant, and exonerated the third respondent from liability. Aggrieved by the award passed against it, the Insurance Company preferred this appeal.

3. The contention of the learned counsel for the appellant is that since the evidence on record does not show that the appellant is the insurer of the Auto-rickshaw bearing No. AP-02-V-1310, the Tribunal was in error in passing an award against the appellant. The contention of the learned counsel for the first respondent is that since the appellant did not obtain permission u/s 170 of the Motor Vehicles Act, 1988, (for short "the Act") this appeal is not maintainable and in any event since particulars of insurance are given in the claim petition, the burden to establish that it is not the insurer of the offending vehicle is on the appellant and since appellant failed to adduce evidence to show that it is not the insurer of the offending vehicle there are no grounds to interfere with the award passed by the Tribunal.

4. I find no force in the contention of the learned counsel for the first respondent that this appeal is not maintainable for want of permission u/s 170 of the Act, because question of obtaining permission u/s 170 of the Act arises only when the insurer wants to question the quantum of compensation awarded or the finding of the Tribunal on the rash and negligent driving of the offending vehicle insured by it. If the insurer wants challenge the award in an appeal on the ground that it should not have been made liable as it is not the insurer of the offending vehicle, there is no need for its obtaining a permission u/s 170 of the Act. So this appeal preferred by the Insurance Company on the ground that it cannot be made liable; for its not being the insurer of the offending vehicle, is maintainable.

5. I also do not find any force in the contention of the learned counsel for the first respondent that the burden of proof to establish that it is not the insurer of the offending vehicle is on the appellant. As per Section 147(3) of the Act unless a certificate is issued by the Insurer in favour of a person by whom the policy is effected, with relevant particulars, the policy will have no effect for the purpose of Chapter XI of the Act (which relates to Insurance of Motor Vehicles against third party risks). Section 151 of the Act mandates the person against whom a claim is made i.e. the owner of the offending vehicle, furnishing the particulars of insurer of the offending vehicle, on demand by the person making the claim. There is nothing in the claim petition to show that first respondent made a demand to respondents 2 and 3 to furnish particulars of insurer of the offending vehicle and that they failed to furnish the particulars to him.

6. Since there is nothing on record to show first respondent issued a notice to respondents 2 and 3, whom he impleaded as owners, to furnish particulars of insurance company with which the offending vehicle was insured, and when 3rd respondent as RW-1 denied ownership of the offending vehicle, the Tribunal was in error in passing an award against the appellant.

7. Hence, the appeal is allowed. The award passed by the Tribunal against the appellant shall stand suspended till the first respondent, or second respondent establishes that the Auto-rickshaw bearing No. AP-02-V-1310 was insured with the appellant by the date of accident i.e. 16.5.1995. When it so established only can the award passed against the second respondent be executed against the

appellant. Parties are directed to bear their own costs in this appeal.