(2009) 02 AP CK 0035

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2118 of 1999

United India Insurance Company Limited — APPELLANT

Vs

Puligunda Vani Krishna @ P. Vani and Another — RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 145, 146, 147, 148, 149

Citation : (2009) 5 ALT 824 : (2011) 1 TAC 505

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : T. Mahender Rao, for the Appellant; P. Govind Reddy, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—United India Insurance Company Limited filed instant appeal aggrieved by the award, dated 29.04.1999 in O.P. No. 238 of 1998 of the Motor Accident Claims Tribunal-cum-V Additional District Judge, Tirupathi. In the impugned award, learned Tribunal awarded a sum of Rs. 5,69,068/- for the death of Muralikrishna Naidu in motor accident involving lorry bearing No. KA 03/A5. The award is challenged mainly on the ground that deceased was owner of lorry and therefore, he is not covered by third party insurance policy given by the appellant and that the Motor Accident Claims Tribunal constituted u/s 165 of the Motor Vehicles Act, 1988 (the Act, for brevity) has no jurisdiction to entertain a petition for award of compensation. In opposing the appeal, respondents 1 and 2 (claimants before the Tribunal) would urge that Muralikrishna Naidu though owner of the lorry, was driving in the lorry as owner of the goods, who was transporting sand to his Tiles Factory and therefore, he falls within the category of insurance covered third parties as per Section 147(1)(b)(i) of the Act.

2. As the factual aspect of the matter with regard to the accidents is not disputed, it is not necessary to give the details. However, there is a dispute as to whether the deceased was travelling as owner of the goods or the owner of the

lorry. Except a statement made by P.W.1 (wife of the deceased) that her husband was travelling in the lorry as owner of the goods, there is no other corroboration. Assuming that the deceased was also owner of goods being carried by the goods vehicle, whether the owner of the goods vehicle (lorry) when carries his own goods, and dies in an accident is entitled to compensation. It is this interesting question that falls for consideration in this appeal. Chapter XI of the Act (Sections 145 - 164) deals with insurance of motor vehicles against third party risk. Section 145(8) of the Act defines third party as including the Government. Section 146 of the Act mandates that no person shall use a motor vehicle in a public place unless there is in force a third party insurance policy complying with the requirements of Chapter XI. Section 147 of the Act enumerates requirements of parties of insurance (referred to in Section 146) and the limits of liability. Sub-sections (1) and (5) of Section 147 of the Act are relevant and read as under.

147. Requirements of policies and limits of liability:

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorized insurer; or

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2),-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen''s Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee,-

(a) engaged in driving the vehicle, or

(b) if it is a public service engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability. Explanation:- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

3. As per the above provision there are three categories of persons or third parties who are covered by a policy of insurance. These are third parties in the sense that they are neither owners nor the insurers. Secondly, owners of the goods or their representatives carried in the vehicle and thirdly, employees of insured engaged in driving or conducting the vehicle. In addition to this, goods carried in the vehicle are also covered. However, liability of the insured is to the extent specified in Sub-section (2) of Section 147 of the Act, namely, the amount of liability incurred in case of persons and an amount not exceeding Rs. 6,000/- in case of damage to property of the third party.

4. A plain reading of Sections 145, 146 and 147 of the Act would show that the policy of insurance referred to in Section 146 of the Act is not required to cover the owner of the lorry or vehicle or to say the insured. This is further made clear by Section 147(5) of the Act. Commencing with a non-obstante clause. It postulates that the insurer shall be liable to indemnify the insured in respect of any liability, which party purports to cover in the case of that person or those classes of persons. Owner of the vehicle or insured is not one of the categories of persons in respect of which a policy of insurance is to cover. The question posed is no more res integra.

5. In Dhanraj Vs. New India Assurance Co. Ltd. and Another, relying on Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, Supreme Court laid down that, "an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person carried in the vehicle and that insurance company is not required to assume risk for death or bodily injury to the owner of the vehicle insured". Dhanraj (supra) dicta was followed in Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, and it was held that Section 147(1)(b) of the Act covers risk of third party only and not the owner. In the said case, the owner of a Maruthi Van and his dependents were successful before the Claims Tribunal as well as High Court in getting compensation. The Supreme Court noticed that as the deceased was the owner of the vehicle, the policy is not required to cover the risk of the owner of the vehicle.

6. In Jayavarapu Rajamma and Others Vs. Jayavarapu Laxminarayana and Others, answering a reference involving the question as to whether insurance company can be made liable for compensation in respect of the claims made by

the owner or legal representative of the deceased as third party claims, the Division Bench relying on Dhanraj (supra) and Jhuma Saha (supra) and other Judgments answered the reference in the following terms.

1. A statutory insurance policy in terms of Section 147 of the Act covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle.

2. Section 147 of the Act does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

3. An insurer can enter into a contract of insurance with the insured covering a risk wider than the minimum requirement of the statute whereby the risk to the owner of the vehicle/insured or gratuitous passengers or such other risks not covered by the statute can also be covered, for which premium is paid.

4. The owner of the vehicle/insured driving or travelling in the vehicle in case of injuries or his legal representatives in case of his death in the accident can make a claim only if the policy by its terms covers such risk.

5. The kith and kin of the insured for injuries and their legal representatives in the event of their death in the accident can sustain claims for compensation as third party claims, provided the relevant policy of insurance covers such a risk.

6. The terms of the insurance policy determine the liability of the insurer in each case.

7. Mere nomenclature of the policy as a comprehensive policy or otherwise is not the guide, but the specific terms and conditions of the policy govern the existence and extent of the liability of the insurer.

7. In The Branch Manager, United India Insurance Co. Ltd. Vs. Kondakotla Saroja, , this Court again reiterated the view that Section 147 of the Act does not contemplate coverage of any risk or bodily injury or death of owner of the vehicle unless such risk is covered by the policy. Learned counsel for respondents 1 and 2 placed reliance on the Division Bench Judgment of this Court in New India Assurance Co. Limited v. Doredla Satyanarayana 1997 (5) ALD 219 , wherein it was held that where the compensation claimed in respect of death or bodily injury caused to the owner of the goods travelling in goods vehicle along with his vehicle injurer is liable to pay the compensation. This is not a binding authority in view of the fact that the civil appeal filed by New India Assurance Company was allowed by Supreme Court by order, dated 08.12.1998 in civil appeal Nos. 8598-8599 of 1997 reversing Division Bench.

8. In this case, Ex.B.1, Policy, does not cover the owner of the vehicle in respect of which policy of insurance was taken, and therefore, learned Tribunal was clearly in error in passing the award in favour of respondents 1 and 2. The appeal

has to be allowed.

9. The Civil Miscellaneous Appeal is accordingly allowed, but in the circumstances of the case, there shall be no order as to costs.

