
(2003) 08 AP CK 0074
In the Andhra Pradesh High Court
Case No : CMA No. 1977 of 1988

Vundi Manikyam

APPELLANT

Vs

Ayodhyala Balagangadhar Chandra Sekhar and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 166

Citation : (2003) 6 ALD 158 : (2003) 3 APLJ 378

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : N. Siva reddy, for the Appellant; V. Ajaya Kumar, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This appeal is preferred by the claimants in O.P. No. 493 of 1993 on the file of the Motor Accident Claims Tribunal-cum-IV Additional District Judge, East Godavari at Kakinada ("the Tribunal" for brevity).

2. The claimant, a lady aged about 45 years, met with a scooter accident on 9-3-1993 and sustained injuries on the left leg, left foot and other parts of the body. She made an application u/s 166 of the Motor Vehicles Act, 1988 ("the Act" for brevity) claiming compensation of Rs. 75,000/- under various heads. The Tribunal held that the accident occurred due to the rashness and negligence of the first respondent in driving the scooter. It further held that since the first respondent was not having driving licence to drive the two wheeler, it amounts to violation of the conditions of insurance policy, therefore, the Insurance Company is not liable to indemnify the owner. Accordingly the Tribunal awarded Rs. 41,000/- with interest and costs making the driver and owner of the scooter, who are respondents 1 and 2, jointly and severally liable to pay the amount and dismissed the claim against the 3rd respondent-Insurance Company.

3. The claimant being aggrieved by the order of the Tribunal dated 10-2-1998 preferred this appeal challenging its validity and legality by contending that the

Tribunal failed to make the Insurance Company liable to pay the compensation amount.

4. The 3rd respondent contended that the first respondent caused the accident without a licence for driving the two-wheeler, therefore, it amounts to violation of the conditions of the policy. Hence it is not liable to pay the compensation amount.

5. The point for consideration is whether there was no valid driving licence to the first respondent to drive the two wheeler at the time of accident and whether the 3rd respondent is not liable to pay the compensation with joint and several liability with the owner?

Point:

6. Ex.X3 is the Xerox copy of the driving licence. It is a licence given in favour of the first respondent to drive the light motor vehicle. At the time of accident he was driving a two wheeler. He is required to have a licence for driving a two wheeler and he is not supposed to drive the same without the said licence. The learned Counsel for the third respondent contended that the first respondent was having licence to drive the light motor vehicle only and as per Section 11 of the Act the first respondent was required to seek appropriate orders from the licensing authority for addition of other class or description of motor vehicles to drive and, as there is no such endorsement in Ex.X.3-driving licence, the Insurance Company is not liable to indemnify.

7. As per Ex.B.1-policy of insurance, any person including the insurer is entitled to drive the vehicle provided that such person holds effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. The term "light motor vehicle" is defined u/s 2(21) and "motor cycle" was defined u/s 2(27) of the Act. According to Section 3 of the Act, no person is entitled to drive a motor vehicle in a public place unless he holds effective driving licence issued to him or authorizing him to drive the vehicle. u/s 11 of the Act, a person holding a driving licence to drive any class or description of motor vehicles who is not disqualified for holding or obtaining a driving licence has to apply to the licensing authority for addition of other class of motor vehicles. Unless other class of vehicles are included in the licence, a person holding light motor vehicle licence is not entitled to drive the motor cycle or scooter.

8. In United India Insurance Co. Ltd. Vs. Gian Chand and others, , while answering a question whether in cases where the vehicles are driven by unlicensed drivers can be exonerated under the policy the Supreme Court held as follows:

The first line of cases consists of fact situations wherein the insured are alleged to have committed breach of the condition of insurance policy, which required them not to permit the vehicle to be driven by an unlicensed driver United India Insurance Co. Ltd. Vs. Gian Chand and others, . Such a breach is held to be a

valid defence for the Insurance Company to get exonerated from meeting the claims of third parties who suffer on account of vehicular accidents which may injure them personally or which may deprive them of their breadwinner on account of such accidents caused by the insured vehicles. The other line of cases deals with the insured owners of offending motor vehicles that cause such accidents wherein the insured owners of offending motor vehicles do not themselves commit breach of any such condition and handover the vehicles for driving to licensed drivers who on their own and without permission, express or implied, of the insured, hand over vehicles or act in such a way that the vehicles get available to unlicensed drivers for being driven by the latter and which get involved in vehicular accidents by the driving of such unlicensed drivers. In such cases the Insurance Company cannot get benefit of the exclusionary clause and will remain liable to meet the claims of third parties for accidental injuries, whether fatal or otherwise.

9. My learned Brother Justice V.V.S. Rao while considering this aspect in Divisional Manager, Oriental Insurance Co. Ltd. Vs. Koduri Venkata Chary and Others, , held that the Insurance Company can seek exoneration from meeting the claims of third parties who suffered by reason of the accident caused by a person while driving the two wheeler by possessing a driving licence of only a light motor vehicle.

10. In New India Assurance Co., Shimla v. Kamla, 2001 AIR SCW 1340, the Supreme Court held that when there was breach of conditions of insurance policy on account of the accident vehicle being driven by the driver without valid driving licence, the Insurance Company is statutorily liable to pay compensation to the third parties and recover the same from the insured. The Supreme Court further held that the insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid licence. If the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default, the insurer shall be allowed to recover that amount from the insured person.

11. My learned Brother Justice C.Y. Somayajulu in Manager, National Insurance Co. Ltd. Vs. Smt. Koya Ratnam and Others, , while following the judgment of the Supreme Court in Kamla (supra) held that since the insurance of the vehicle involved in the accident with the appellant is admitted, and since the claim arose in connection with the death of the third party, appellant is bound to satisfy the claim of the claimants. After establishing that the driver was not having valid driving licence at the time of accident, appellant can recover the amount paid by it to the claimants from, the owner, but it cannot avoid liability to the claimants.

12. The Supreme Court in its latest judgment in *United India Insurance Company Ltd. v. Lehu* 2003 (3) ALD 20 (SC) : 2003 (4) ALT 38 (SC), held that in order to avoid liability u/s 149(2)(i) of the Act it must be shown that there is a "breach" committed by the insured. It is not sufficient to show that the person driving at the time of accident was duly licensed, it must also be established that the "breach" was on the part of the insured. If it ultimately turns out that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the insurer was aware or had noticed that the licence was fake and still permitted that person to drive. Even in such cases also the Insurance Company would be made liable to innocent third party. When the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(ii). The Insurance Company would not then be absolved of its liability and if it ultimately turns out that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the insured was aware or had noticed that the licence was fake. The Supreme Court while expressing its full agreement with the law laid down by it in *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravan and Others*, , and *Sohan Lal Passi Vs. P. Sesh Reddy and others*, , held that the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.

13. Though Justice V.V.S. Rao rightly held that the driver was having licence to drive a motor vehicle and there was no mention in the licence that it is an authorization to drive two other class of motor vehicles also, I would like to adopt the principle laid down by the Supreme Court in the cases cited above and make the Insurance Company liable to pay the compensation.

14. In the case on hand, there was licence to the first respondent to drive the light motor vehicle, there is a subtle distinction between the contents of the licence for driving light motor vehicle and the contents of the licence for two wheeler. It will be very difficult for the owner of the scooter to find the distinction. There is an impression among the public that a person who has licence to drive the light motor vehicle is authorized to drive the scooter also, therefore, the owner will be under the bonafide impression that since the driver of the scooter was having light motor vehicle driving licence, he can be permitted to drive the scooter in public places. Unless and until it is established by the Insurance Company that knowing fully well that the first respondent do not have a licence to drive the two wheeler the owner of the scooter permitted him to drive the scooter, it cannot escape its liability to indemnify the owner. But, the Insurance Company has a right to recover the amount paid to the claimants from the owner of the vehicle i.e., the second respondent.

15. In the light of the above observations I hold that the third respondent-Insurance Company is liable to pay the compensation amount with joint and several liability along with the owner of the scooter.

16. In the result, the appeal is allowed making the third respondent-Insurance

Company liable to pay the compensation amount with joint and several liability with the owner. No costs.