

(2008) 07 AP CK 0001

Andhra Pradesh High Court

Case No: C.M.P. No. 23021 of 2000 and C.M.A. No. 3371 of 2000

United India Insurance Co. Ltd.

APPELLANT

Vs

Md. Rahmatullah and Others

RESPONDENT

Date of Decision: July 24, 2008

Citation: (2008) ACJ 224

Hon'ble Judges: G. Bhavani Prasad, J

Bench: Single Bench

Advocate: Naresh Byrapaneni, for the Appellant;

Final Decision: Allowed

Judgement

G. Bhavani Prasad, J.

United India Insurance Co. Ltd., arrayed as respondent No. 2 in O.P. No. 983 of 1994 on the file of Additional Special Judge for SPE and ACB Cases-cum-Fifth Additional Chief Judge, Hyderabad filed this appeal against the award dated 5.1.1998 and also the petition in C.M.P. No. 23021 of 2000 to receive the office copy of the cover note No. 48826 as additional evidence.

2. The factual background is that in an accident involving Ambassador car owned by respondent No. 1 in O.P. No. 983 of 1994, the son of claimant Nos. 1 and 2, who is the elder brother of claimant Nos. 3 and 4 in the said claim petition, died and the claimants claiming to be the dependants, filed the petition for a compensation of Rs. 2,00,000 against the owner of the car and also United India Insurance Co. Ltd., claiming the car to have been insured with the same.

3. The insurance company denied the allegations of the claimants and put them to strict proof, while specifically claiming that the policy number given by the claimants was not tallying.

4. Tribunal framed three issues relating to rashness and negligence and entitlement of the claimants to compensation, but not about liability of the insurer specifically and examined three witnesses on behalf of the claimants during the course of

inquiry, while marking Exhs. A1 to A7.

5. In the impugned order the Tribunal concluded the accident to have happened due to rash and negligent driving of Ambassador car of respondent No. 1, based on the eyewitness examined as PW 2, corroborated by first information report, Exh. A1; inquest report, Exh. A2 and charge-sheet against the car driver, Exh. A6, to contradict to which no evidence was adduced by the respondents. Then it assessed the entitlement of the claimants to compensation with reference to approximate age and income of the deceased, as disclosed by the evidence on record and awarded a total compensation of Rs. 2,00,000 only as against its assessment of entitlement to Rs. 2,43,000, in view of the claim of the claimants being in respect of Rs. 2,00,000 only. Tribunal gave appropriate directions regarding the apportionment and disbursement of such compensation.

6. It noted in the award in question that the alleged insurer did not suggest to PW 1 that the vehicle was not insured with it, did not file the insurance policy and did not examine any witness, due to which the Tribunal considered both the respondents jointly and severally liable.

7. The insurance company filed C.M.P. No. 23021 of 2000 requesting to receive the office copy of the cover note No. 48826 valid from 3.10.1994 to 2.10.1995 as additional evidence.

8. Mr. Naresh Byrapaneni, the learned Counsel for the appellant-petitioner, while requesting to receive the cover note as additional evidence, pointed out that there is absolutely no reason to suspect its bona fides and it is evident from the said cover note that by the time of the accident on the intervening night of 1/2.10.1994, there was no coverage of insurance by the appellant for the car in question; hence, no liability could have been fastened.

9. Though notice of the appeal was served on the respondent Nos. 1 to 4, the claimants, through the respondent No. 3 daughter of the respondent No. 1, they did not enter appearance in this appeal, while the owner of the car, respondent No. 5, represented by a counsel, is unrepresented during the hearing of the appeal.

10. The point for consideration is:

Whether the cover note is to be received as additional evidence and whether the insurance company is liable to pay any compensation?

11. Even in the counter to the claim petition, the insurance company has specifically stated that the number of insurance policy claimed to be covering Ambassador car in question did not tally at all. That it did not so tally due to absence of any such policy in respect of Ambassador car of respondent No. 1 in the claim petition in question is now clear from the cover note now produced before this Court. The Tribunal found fault with the insurance company for not suggesting to PW 1 that the vehicle was not insured with it. But in the absence of any clarity concerning the

presence of any insurance policy covering the car, no specific suggestion probably could have been made to PW 1 in this regard and the insurer could not have filed the insurance policy for which the Tribunal found fault with it when no such insurance policy was in existence nor could it have examined any witness in this regard at that stage.

12. It is seen from the cover note that the cover note seeking to cover any liability from 3.10.1994 to 2.10.1995 was issued at 2:30 p.m. on 3.10.1994, much later to the accident, which probably was the reason for the failure of the insurance company to come up with a positive defence and positive evidence before the Tribunal itself and interests of justice can be better served only by permitting the insurance company to produce the cover note as additional evidence before this Court.

13. Therefore, the said cover note be received as additional evidence and be marked as Exh. B1 and C.M.P. No. 23021 of 2000 is allowed accordingly.

14. In the light of cover note, Exh. B1, the authenticity and genuineness of which need not be in doubt, it is clear that the vehicle in question was not covered by any insurance policy concerning the risk involved in the claim petition by the date of the accident. Therefore, the insurance company cannot be made liable for the claim. Consequently, the claim petition has to be dismissed insofar as the insurance company is concerned.

15. In the result, O.P. No. 983 of 1994 on the file of Additional Special Judge for SPE and ACB Cases-cum-Fifth Additional Chief Judge, Hyderabad is dismissed without costs against respondent No. 2 therein and the award dated 5.1.1998 in the said petition is accordingly set aside against respondent No. 2 therein and the appeal is allowed accordingly without costs.