New India Assurance Co. Ltd. Vs K. Kiran and Another

Court: Andhra Pradesh High Court

Date of Decision: July 28, 2006

Acts Referred: Employees Compensation Act, 1923 â€" Section 4
Motor Vehicles Act, 1988 â€" Section 147, 149, 167, 170

Citation: (2007) 1 ACC 475

Hon'ble Judges: G. Chandraiah, J

Bench: Single Bench

Judgement

G. Chandraiah, J.
Heard Mrs. Mammu Vani, learned Standing Counsel for the appellant - Insurance Company and Mr. K.L.N. Rao and

Mr. M. Vijay Reddy, Counsel for the respondents.

2. Aggrieved by the judgment and decree dated 17.9.1999 passed by the Chairman, A.P.M.V. Accident Claims Tribunal-cum-I Additional Chief

Judge, City Civil Court, Secunderabad in O.P. No. 140/1998, the Insurance Company filed this appeal.

3. The facts with regard to the occurrence of the accident on 1.6.1998 at 5.00 a.m., while the claimant was proceeding on a lorry bearing No.

AIK 6856 as a cleaner from Siddipet side towards Secunderabad due to rash and negligent driving of the driver of the lorry and the claimant

suffering 75 per cent of disability on account of amputation of both of his legs, are not in dispute and further the quantum of compensation is also

not being disputed by the Insurance Company. The only dispute is with regard to the liability of the Insurance Company.

4. The learned Counsel appearing for the appellant-Insurance Company submitted that the claimant is the son of the owner of the lorry and that he

is not the cleaner and further the cleaner is not covered under the policy, as no additional premium was paid. In support of this contention, the

learned Counsel relied on the judgment of the Apex Court in Ramashray Singh v. New India Assurance Co. Ltd. and Ors. II (2003) ACC 706 :

2003 (1) DT (SC) 632 . She further submitted that if this Court comes to the conclusion that the cleaner is entitled to compensation, the liability of

the Insurance Company is limited u/s 4 of the Workmen"s Compensation Act, 1923. In support of this contention, the learned Counsel for the

appellant relied on the Full Bench judgment of the Apex Court in National Insurance Co. Ltd. Vs. Prembai Patel and Others, , and the judgment of

a learned Single Judge of this Court in Oriental Insurance Co. Ltd., Warangal Vs. Thudi Mallamma and others, . With regard to maintainability, the

learned Counsel submitted that as the quantum of compensation is not being questioned and only the liability, DO permission need be taken u/s

170, of the Motor Vehicles Act, 1988 and the statutory defences u/s 149(2)(a) of the said Act, are always available.

5. On the other hand, the learned Counsel appearing for the claimant Mr. KLN Rao mainly contended that as permission u/s 170 of the Motor

Vehicles Act was not obtained, the appeal itself is not maintainable. In support of this contention, the learned Counsel relied on the judgment of the

Apex Court in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . He contended that there is no bar to employ son of

the owner as cleaner and that no evidence is lead by the Insurance Company. He stated that 1st respondent - owner is not set ex parte. He further

contended that there is no evidence to show that Ex. B-1 policy does not cover the cleaner or that no premium was paid, which is matter of

evidence. He contended that mere marking of the policy is not sufficient. As the claimant is employed under the 1st respondent driver and the lorry

was insured and further as the accident occurred due to rash and negligent driving of the driver of the lorry. He contended that the claimant is

entitled to file claim petition either under Motor Vehicles Act or under Workmen''s Compensation Act. He contended that as the claimant who is

employed as cleaner of the crime lorry filed claim petition under the Motor Vehicles Act, the compensation cannot be restricted u/s 4 of the

Workmen''s Compensation Act. In support of this contention, the learned Counsel relied on the judgment of the Apex Court in Suresh Chandra

Vs. State of U.P. and Another, .

6. In the present case, as already noted and as submitted by the learned Counsel for the appellant, the Insurance Company is not questioning the

quantum of compensation and the dispute is only with regard to liability. Therefore, the Insurance Company has to confine to the statutory defenses

u/s 149(2) of the Motor Vehicles Act. In the judgment relied on by the Counsel for the respondents in Nicolletta Rohtagi''s, case (supra), the Apex

Court while answering the questions raised by the Insurance Company that, whether in the absence of an appeal to the High Court by the insured

against the Accident Claims Tribunal''s award, the insurer could maintain an appeal against such award to challenge the quantum of compensation

as well as the Accident Claims Tribunal''s finding as regards the negligence of the offending vehicle; held that unless permission is taken u/s 170 of

the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a

claim has been made. However, Apex Court held that the exception to such limitation is that in the absence of permission u/s 170 of the Act, the

insurer has to confine the grounds provided for u/s 149(2) of the Act. Hence, the objection of the Counsel for the respondents in this regard is not

sustainable and is accordingly rejected.

7. u/s 167 of the Motor Vehicles Act, the option is left to the claimants to approach either the Workmen''s Compensation Act, 1923 or the Motor

Vehicles Act and they cannot approach both. The Apex Court in the decision reported in Smt. Rita Devi and Others Vs. New India Assurance

Co. Ltd. and Another, , held as under:

The object of both the Acts, viz., the Motor Vehicles Act and the Workmen''s Compensation Act is to provide compensation to the victims of

accidents. The only difference between the two enactments is that so far as the Workmen''s Compensation Act is concerned, it is confined to

workmen as defined under that Act while the relief provided under Chapters X to XII of the Motor Vehicles Act is available to all the victims of

accidents involving a motor vehicle....

8. Therefore, it is clear that the claimant can file claim petition either under the Workmen''s Compensation Act or under the Motor Vehicles Act. In

the present case, the case of the claimant is that he is working as a cleaner on the crime lorry. Therefore in view of Section 167 of the Motor

Vehicles Act, the claimant is entitled to file claim petition under the said Act and there cannot be any dispute with regard to this aspect, as the

claimant has not filed any claim petition under the Workmen''s Compensation Act.

9. The next question is with regard to liability of the Insurance Company. The main grievance of the Insurance Company is that the insured had not

paid any extra premium covering the cleaner and the policy taken is an ''act policy''.

10. In order to consider the above issue, it is necessary to look into Ex. B-1 policy marked by the Insurance Company. The objection of the

learned Counsel for the appellant is that policy cannot be looked into and that mere marking is not sufficient, as no evidence has been lead by the

Insurance Company and that whether the insured had paid any additional premium or not, is a matter of evidence. Though the insurer had not lead

any evidence, it is not the case of the insured that he paid any additional premium. Further the objection with regard to perusal of Ex.B-1 at this

appellate stage, cannot be countenanced for the reason that the claimant is basing his claim on the said policy. In the decision reported in

Ramushray Singh''s case (supra) in similar facts and circumstances when an objection was taken in production of the policy before the Apex Court

while advancing arguments, the Apex Court held that, ""We would have understood and upheld the submission had the appellant not based his

claim on the policy. Indeed, in the absence of the policy, we could not have entertained the appellant''s claim at all See: Dr. T.V. Jose v. Chacko

P.M. alias Thankachan II (2001) ACC 626 : 2001 (8) SCC 748. From the above observation it is clear that this Court is not precluded from

considering the policy for the purpose of adjudicating the liability.

11. From a perusal of the policy it is clear that it is an ""act policy"" and the insured had paid premium of Rs. 1,335. In the decision reported in the

National Insurance Co. Ltd. v. Prembai Patel and Ors. (supra), the Apex Court while considering a claim petition under Motor Vehicles Act,

1988 wherein the deceased died during the course of employment and the policy taken by the insured was an ''act liability'' held that the liability of

the Insurance Company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen''s

Compensation Act. In the said judgment, the Apex Court had restricted the liability of the Insurance Company to that arising under the

Workmen''s Compensation Act and the remaining liability under the award was directed to be satisfied by the owners of the vehicle. The relevant

portion of the judgment is extracted as under:

15...It is thus clear that incase the owner of the vehicle wants the liability of the Insurance Company in respect of death of or bodily injury to any

such employee as is described in Sub-clause (a) or (b) or (c) of Proviso (i) to Section 147(1) should not be restricted to that under the

Workmen''s Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also

contain a clause to that effect. However, where the policy mentions ''a policy for Act Liability'' or ''Act Liability'', the liability of the Insurance

Company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen''s Act.

17...The liability of the appellant Insurance Company to satisfy the award would be restricted to that arising under the Workmen''s Act.

Respondents 1 and 2 (owners of the vehicle) would be liable to satisfy the remaining portion of the award.

12. A learned Single Judge of this Court in Oriental Insurance Co. Ltd. Warangal v. Thudi Mallamma (supra), title considering a claim petition

under the Motor Vehicles Act, 1988 wherein a labourer who was employed for loading and unloading in a tractor died during the course of

employment due to rash and negligent driving of the driver of the tractor, held that the Insurance Company is liable to pay compensation only to the

extent of the amount fixed under the Workmen''s Compensation Act but not under the provisions of the Motor Vehicles Act and the rest of the

compensation, the owner of the vehicle alone can be made liable.

13. Coming to the facts of the present case, it is not in dispute that the claimant was the cleaner of the lorry belonging to 2nd respondent herein and

that on 1.6.1998 at about 5.00 a.m., when the claimant was proceeding from Siddipet side towards Secunderabad side with the load of sand, the

accident occurred due to rash and negligent driving of the driver of the lorry and that both the legs of the claimant were amputated and as per the

evidence of P.W. 2, doctor who treated the claimant, the claimant received 75 per cent disability. The Tribunal also found that as both the legs of

the claimant upto the thigh were amputated, it would be very difficult for him to get employment anywhere and to do any work and further the

claimant throughout his life has to depend on some one else for his movement and he has to forego several pleasures and amenities in his life. The

case of the claimant is that he is earning an amount of Rs. 2,000 per month apart from batta of Rs. 10 per day and accordingly he claimed a total

compensation of Rs. 4,50,000 under all the heads. The Tribunal granted Rs. 1,000 towards transport charges to hospital Rs. 3,000 towards extra

nourishment and for medicines; Rs. 40,500 towards medical expenses; Rs. 15,000 towards pain and suffering; Rs. 3,90,000 towards continuing

permanent disability and loss of pleasures in life and thus in all granted an amount of Rs. 4,49,500 with 12 per cent interest per annum from the

date of the petition till realization.

14. As already noted above, as per the judgment of the Apex Court In National Insurance Co. Ltd. v. Prembai Patel (supra), the Insurance

Company is liable only to the extent of statutory liability u/s 4 of the Workmen''s Compensation Act, as the insured had not paid any extra premium

covering the cleaner. In the present case, as the claimant became permanently disabled due to the injury, Clause (b) of Section 4 of the

Workmen''s Compensation Act, is applicable. As per the said clause, for grant of compensation, sixty per cent of the monthly wages of the injured

has to be taken and the same has to be multiplied with the relevant factors.

15. The case of the claimant which is not in dispute is that he is working as a cleaner in the crime lorry under the employment of the insured and he

is being paid an amount of Rs. 2,000 per month and Rs. 10 per day as batta. This is certified by the insured himself by giving Ex. A-4 certificate. A

learned Single Judge of this Court in New India Assurance Co. v. Kotam Appa Rao 1995 (3) ALD 1108, while considering a claim petition under

the Workmen"s Compensation Act, held that while determining the compensation, even the batta paid per day has to be included in the wages of

the workman, for determining the compensation. Therefore, the income of the claimant per month can be fixed at Rs. 2,300 per month. Out of this

amount, as per Section 4(b) of the Workmen"s Compensation Act, sixty per cent has to be taken, which comes to Rs. 1,380. Further the age of

the injured as per Ex. A-8 transfer certificate, as on the date of the accident is 18 years. Therefore, as per Schedule IV u/s 4 of the Workmen"s

Compensation Act, the compensation that can be arrived at is Rs. 3,12,404.40 (Rs. 1,380 X 226.38), which can be rounded of to Rs. 3,12,404.

16. The quantum of compensation granted is not in dispute and only the liability is under dispute, as the insured had taken an "act policy". As per

the judgments of the Apex Court and the learned Single Judge of this Court in the decisions cited National Insurance Co. Ltd. v. Prembai Patel

and Oriental Insurance Co. Ltd. Warangal v. Thudi Mallamma (supra), the Insurance Company is liable only to the extent of liability u/s 4 of the

Workmen"s Compensation Act, which is Rs. 3,12,404 and remaining amount of compensation of Rs. 1,37,096 (Rs. 4,49,500 -Rs. 3,12,404) has

to be paid by the owner of the vehicle.

17. In view of the Full Bench judgment of the Apex Court in National Insurance Co. Ltd. v. Prembai Patel (supra), the other judgments relied on

by the Counsel for the claimant cannot be made applicable and even the Division Bench judgment of the Apex Court in Ramashray Singh"s case

(supra), relied on by the Counsel for the appellant for the proposition that cleaner is not entitled to compensation on the ground that no extra

premium was paid, cannot be made applicable.

18. For the foregoing reasons, the award passed by the Tribunal is modified to the extent that the Insurance Company is liable to pay only an

amount of Rs. 3,12,404 and the remaining amount of Rs. 1,37,096 has to be paid by the owner of the crime vehicle involved in the accident i.e.,

the 2nd respondent herein. As the interest portion is not disputed, the interest shall be paid as awarded by the Tribunal.

19. The appeal is accordingly allowed to the extent indicated above. No costs.