The Oriental Insurance Co. Ltd. Vs Bhimala Pavan Kumar (being Minor rep. by his Mother-B. Anantha Lakshmi, Mattaparthi Rajababu and S. Lakshmi Narasimha Rao

Court: Andhra Pradesh High Court

Date of Decision: Nov. 16, 2006

Acts Referred: Andhra Pradesh Motor Vehicles Rules, 1989 â€" Rule 445
Constitution of India, 1950 â€" Article 136
Motor Vehicles Act, 1988 â€" Section 166

Citation: (2007) 3 ALD 138

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

Bench: Single Bench

Advocate: M. Srinivasa Rao, for the Appellant; N. Siva Reddy, for the Respondent

Judgement

C.Y. Somayajulu, J.
On behalf of the minor-first respondent, her mother filed a claim petition u/s 166 of the Motor Vehicles Act, 1988

(for short ""the Act"") seeking compensation of Rs. 75,000/- alleging that the minor-first respondent suffered grievous injuries due to the rash and

negligent driving of the second respondent while driving the bus belonging to the third respondent, which is insured with the appellant.

2. The second respondent chose to remain exparte. Third respondent filed a counter putting the first respondent to proof of the averments of the

petition and contended that inasmuch as the second respondent was having a valid and subsisting driving licence at the time of the accident, the

compensation is payable by the appellant. The appellant filed its counter putting the first respondent to proof of the averments in the petition and

the third respondent to proof of the fact that the second respondent was having a valid and subsisting driving licence at the time of the accident.

3. In support of the case of the first respondent, three witnesses were examined as P.Ws.1 to 3 and Exs.A1 and A2, X1 to X3 were marked. In

support of the case of the third respondent, no evidence either oral or documentary was adduced. On behalf of the appellant, two witnesses were

examined as R.Ws 1 and 2 and Exs.B1 to B4 were marked.

4. The Tribunal held that the first respondent is entitled to Rs. 75,000/- and while observing that inasmuch as the second respondent was not

having a valid driving licence at the time of the accident, the appellant cannot be made liable to pay the compensation, but in view of the fact that

the first respondent received a crush injury and underwent four operations and sustained a permanent disability at tender age, the appellant can be

directed to deposit the amount in the first instance and get reimbursement from the third respondent and passed an award accordingly. Aggrieved

by the said observation of the Tribunal, the appellant, insurer preferred this appeal.

5. The point for consideration is: Whether the appellant is liable to pay the compensation payable to the first respondent?

POINT:

6. The contention of the learned Counsel for the appellant is that in view of the ratio in National Insurance Co.Ltd. v. Kusum Rai 2006 (2) ACC

19 SC, the appellant ought not to have been held liable to pay the compensation payable to the first respondent.

7. There is no representation on behalf of the first respondent though served.

8. The contention of the learned Counsel for the third respondent is that inasmuch as the apex Court in Kusum Rai case 2006 (2) ACC 19 SC

(supra) relied upon by the learned Counsel for the appellant, declined to interfere with the award passed by the Tribunal and directed the Insurer to

recover the amount from the owner of the vehicle, as done in Oriental Insurance Co. Ltd. v. Nanjappan and Ors. 2005 SCC 148, and since the

Tribunal gave reasons for its conclusion that the appellant should be made liable, there are no grounds to interfere with the award of the Tribunal. It

is pertinent to note that Kusum Rai case 2006 (2) ACC 19 SC (supra) relied upon by the learned Counsel for the appellant, the owner of the

vehicle chose to remain exparte.

9. The apex Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , considered the liability of the insurer in cases where the driver

of the offending vehicle did not possess a licence or valid driving licence and held as follows:- ""the Tribunal should in each case take a decision

whether the fact that the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory

cause of accident. If one facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical

failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its

liability merely for technical breach of conditions concerning driving licence. Minor breaches of licence conditions, such as want of medical fitness

certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor

breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions

would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

So it has to be seen whether the evidence led before the Tribunal reveals about the second respondent not possessing a licence to drive transport

vehicles, could be the result of the accident or if the accident was due to some mechanical defect or other trivial reason.

10. Ex.A.1-First Information Report issued in connection with the accident shows that the father of the first respondent gave a report alleging that

when he, his wife and first respondent were proceeding on the road, after performing vratam at Annavaram, the driver of the vehicle bearing No.

AP 5U 2228 while taking the vehicle in reverse direction in a rash and negligent manner dashed against the first respondent and ran over his right

leg. The specific plea, taken by the third respondent in the counter, is that his driver i.e., the second respondent, was having a valid and effective

driving licence to drive the vehicle in question, and as that vehicle was duly insured with the appellant, the insurer i.e., appellant, but not he, is liable

to pay compensation. So from the averments in the counter of the third respondent, it can be inferred that it is his contention that he appointed the

second respondent as the driver of the offending vehicle only after being satisfied that he has a valid licence to drive the vehicle that caused the

accident. He did not adduce any evidence to show that apart from Ex. B4 driving licence produced by the appellant, the second respondent has

any other driving licence. As stated earlier, the accident occurred when the second respondent was taking a transport vehicle in the reverse. It is

well known that the skill of taking a heavy or a transport vehicle in reverse direction has to be acquired by practice, and unless the licencing

authority is satisfied that the driver has that skill he would not issue a driving licence for driving such vehicles. So it is easy to see that second

respondent not possessing a valid driving licence to drive transport vehicle could be the cause of the accident. Rule 445 of the Andhra Pradesh

Motor Vehicles Rules, 1989, lays down no driver of a motor vehicle shall cause the vehicle to travel backwards without first satisfying himself that

he will not thereby cause anger or undue inconvenience to any person. That precaution also seems to have not taken in this case. In Kusum Rai

case 2006 (2) ACC 19 SC (supra) the apex Court, in fact, did not agree with the contention that the insurer could be made liable, but in the

peculiar facts and circumstances of that case, on the ground that the owner chose to remain exparte, did not interfere with the order of the High

Court and held as follows in para 16 of its judgment.

Although, thus, we are of the opinion that the Appellant was not liable to pay the claimed amount, as the driver was not possessing a valid licence

and the High Court was in error in holding otherwise, we decline to interfere with the impugned award, in the peculiar facts and circumstances of

the case, in exercise of our jurisdiction under Article 136 of the Constitution of India but we direct that the Appellant may recover the amount from

the owner in the same manner as was directed in Nanjappan (supra).

11. In this case, the owner appeared and contested the case and took up a plea that his driver (second respondent) has a valid licence, but failed

to adduce any evidence in support of that plea though the appellant established that the second respondent is not having a valid driving licence and

the accident occurred only due to his fault. In view thereof the appellant cannot be made liable for payment of the compensation payable to the first

respondent. The point is answered accordingly.

12. In the result, the appeal is allowed and the claim against the appellant stands dismissed. Parties are directed to bear their own costs in the

appeal.