(1999) 08 AP CK 0017

Andhra Pradesh High Court

Case No: AAP No. 1552 of 1992

United India Insurance Co., Ltd.		APPELLANT
	Vs	
Adepu Venkateswarlu and another		RESPONDENT

Date of Decision: Aug. 19, 1999

Acts Referred:

- Insurance Act, 1938 - Section 64
- Motor Vehicles Act, 1988 - Section 147(5), 148(1)

Citation: (2001) ACJ 1488 : (1999) 6 ALD 377 : (2000) 1 AnWR 349

Hon'ble Judges: Elipe Dharma Rao, J

Bench: Single Bench

Advocate: Mr. S. Ravindranath, for the Appellant; Mr. N. Krishna Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The United India Insurance Company Limited is the appellant in this appeal which was filed against the judgment and decree in OP No.52 of 1989 on the file of Motor Accidents Claims Tribunal, Warangal dated 20-7-1992 wherein the Tribunal awarded an amount of Rs. 15,200/- towards compensation and directed the respondents 1 and 2 that is the owner of the vehicle and the Insurance Company to pay compensation jointly and severally. Aggrieved thereby this appeal was filed alleging that the vehicle was not covered by the Insurance policy as the insured has not paid the premium of the Insurance Policy. Therefore, the company is not liable to pay the compensation. It is the owner of the vehicle that is liable to pay the compensation.

2. To appreciate the contentions of the Counsel for the appellant it is better to have few facts of the case. They are as follows:

The petitioner was going on motorcycle Hero Honda bearing No.ATO 8488 towards Thorrur on the extreme left side of the road on 11-11-1989 at about 9-45 a.m. they

observed a lorry bearing No ADT 6069 coming in opposite direction from Thorrur to Khammam in rash and negligent manner with high speed and dashed the motorcycle as a result of which both of them fell down and sustained injuries. Therefore they have filed a claim petition claiming compensation of Rs.50,000/- for the injuries sustained by them.

3. The Tribunal has examined PWs.1 to 5 and RW 1 on behalf of the respondent No.2 and marked Exs.Al, Exs.BI to B5 and Ex.XI and after evaluating both oral and documentary evidence it held that the accident has occurred due to the rash and negligence of the lorry driver and directed the respondents 1 and 2 to pay the compensation.

4. The company has examined RW1 and he stated that on receipt of the cheque towards premium they issued cover note in respect of the lorry bearing No.ADT 6059 with effect from 27-12-1987 to 26-12-1988 and when the premium is received through cheque there will be a condition that subject to realisation of the cheque the policy will be issued, it is printed on the receipt itself and that when they presented cheque bearing No.296041 dated 26th December, 1987 on Syndicate Bank, Warangal the same was bounced by the bankers endorsement dated 30-12-1987 and immediately they had informed to insurer that the policy stands cancelled from inception and as such they have no liability to pay the compensation.

5. In similar circumstances, the Supreme Court considered in Oriental Insurance Company Limited, Appellant v. Inderjit Kour and others Respondents, AIR 1998 SC 588, Section 64-VB of the Insurance Act and Sections 147(5) and 149(1) of the Motor Vehicles Act and held in para 7 as follows:

"We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any option) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured."

The Supreme Court further held in Para 8-

"The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured."

6. The case before the Supreme Court was that a bus met with an accident. Its policy of Insurance was issued by the appellant on 30-11-1989. The premium for the policy

was paid by cheque. The cheque was dishonoured. A letter stating that it bad been dishonoured was sent by the appellant to the insured on 23rd January, 1990. The letter claimed that as the cheque had not been encashed the premium on the policy had not been received and that, therefore, the appellant was not at risk. The premium was paid in cash on 2nd May, 1990. In the meantime, on 19th April, 1990, the accident took place; the bus collided with a truck, whose driver died. The truck driver''s widow and minor sons filed the claim petition. The appellant denied the claim asserting that under the terms of Section 64-VB of the Insurance Act, 1938 no risk was assumed by an insurer unless the premium thereon had been received in advance, The Motor Accident Claims Tribunal rejected the appellants contention and awarded compensation.

7. Basing on the facts of the said case, the Supreme Court rendered the above judgment. In the present case also the accident was occurred on 11-11-1988 but the Insurance cover note was issued on 27-12-1987 cheque was issued on 26-12-1987. When it was presented in the Syndicate Bank, Warangal it was returned on 30-12-1987. The company has cancelled the policy on 7-1-1988. But the owner of the vehicle has not paid the premium till the date of occurrence of the accident. But it is an admitted fact that the company has issued the Insurance cover note covering period from 27-12-1987 to 26-12-1988. The Officer of the company who was examined as R1 stated that immediately after receipt of the cheque, policy will be prepared and it is not despatched and the memo of cancellation of the policy was sent by registered post acknowledgment due and he stated that he cannot say whether the acknowledgment is received or not. Therefore, it shows that the owner of the vehicle is not aware of the cancellation of the policy and the dishonour of the cheque issued by him. Therefore, as per the Supreme Court judgment when the policy was issued and if the premium is not received from the owner of the vehicle the Insurance Company is liable to pay the compensation and the Insurance Company is entitled to recover the same from the owner of the vehicle as per the law.

8. Accordingly, I dismiss the appeal. In the circumstances without costs.