

(2008) 11 AP CK 0009

Andhra Pradesh High Court

Case No: M.A.C.M.A. No. 974 of 2008

The United India Insurance
Company Limited

APPELLANT

Vs

Adari Mahalakshmi and Md.
Mahamood

RESPONDENT

Date of Decision: Nov. 25, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304A, 337, 338

Citation: (2009) 4 ALD 357

Hon'ble Judges: S. Ashok Kumar, J

Bench: Single Bench

Advocate: A. Ramakrishna Reddy, for the Appellant; Jayanti S.C. Sekhar, for the Respondent

Judgement

S. Ashok Kumar, J.

Inasmuch these appeals arise out of the one and the same accident, they are heard together and disposed of by this common judgment.

2. Aggrieved over the awards dated 10-5-2006 passed in OP. Nos. 556, 558 and 557 of 2004 by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-VIII Additional District & Sessions Judge (Fast Track Court) Visakhapatnam in fastening the liability on the Insurance Company, these appeals are filed.

3. It was averred in the aforesaid claim petitions that on 5-8-2002 at about 11 PM the injured claimants and deceased travelled in van bearing No. AP 24 T 1314 from Hyderabad to Visakhapatnam for cinema shooting work. On 6-8-2002 at about 12 noon when they reached Siddantham Bridge, Penugonda village, the driver of the van drove the same in rash and negligent manner, at high speed, and lost control over the van and dashed against a lorry bearing registration No. KA 09A 8699, as a result of which, the driver of the van died on the spot and others received injuries.

Ramana Appalanaidu (deceased in OP. No. 556 of 2004) died on the spot and Adari Krishna (claimant in OP. No. 558 of 2004) and Surisetty Venkata Krishna (claimant in OP. No. 557 of 2004) received injuries in the said accident. A case in Crime No. 69 of 2002 under Sections 304A, 338 and 337 IPC was registered against the driver of the van on the file of the Police Station, Penugonda. The wife of the deceased-Ramana Appalanaidu and injured claimants filed the aforesaid claim petitions claiming compensation.

4. Before the Tribunal, in all the OPs, the owner of the van remained ex parte. The Insurance Company filed the counter denying the averments in the claim petitions in general. It was further averred that due to the rash and negligent driving of the van by driver only the accident took place and the said DCM van was not insured with the respondent-Insurance Company. It was pleaded that the owner and insurer of the lorry involved in the accident are also necessary parties to the claim petitions and as they were not impleaded, the claim petitions are liable to be dismissed for non-joinder of necessary parties. The Insurance Company stated that the claimants should prove that the driver of the van was having valid driving licence at the relevant point of time. They also filed additional counter stating that the cover note furnished by the claimants reveals that the insurance policy was issued to the vehicle bearing No. AP 28T 1314, whereas it was alleged in the petitions that the Matador Van bearing Registration No. AP 24T 1314 was insured with the Divisional Office-II of the United India Insurance Company Limited, at Malakpet, Hyderabad (2nd respondents in OPs) vide cover note No. 566157 valid from 23-7-2002 to 22-7-2003. It was further stated that the records in the Divisional Office at Hyderabad should reveal that Maruthi Gypsy bearing No. AP 28T 1314 in favour of the owner (second respondent herein) was insured, but not the Matador van bearing No. AP 24 T. 1314 and therefore policy was not issued covering the risk of the accident vehicle bearing No. AP 24 T.1314 as on the date of the accident and hence the Insurance Company is not liable to pay any compensation.

5. The claimants also filed rejoinder alleging that the officials of the Insurance Company wrongly mentioned the registration number of the vehicle as AP 28 T 1314 instead of AP 24 T 1314. It was further stated that the accident vehicle was the matador van, but not the Maruthi Gypsy and it was only a mistake on the part of the insurance officials.

6. Based on the above pleadings, the Tribunal framed the following common issues in all three claim petitions.

1. Whether the first respondent's driver is rash and negligent in driving the accident vehicle bearing No. AP 24 T 1314 and caused injuries to the petitioner and death of Adari Ramana Appala Naidu?

2. Whether the petitioners are entitled to compensation, if so, to what amount and from whom ?

3. To what relief.

In order to prove the claim, on behalf of the claimant, in OP. No. 556 of 2004, P.Ws. 1 and 2 were examined and Exs.A.1 to A6 were marked. On behalf of the Respondents, R.W. 1 was examined and Exs. B.1 to B3 were marked.

7. In OP. No. 558 of 2004, on behalf of the claimant, P.W.I was examined and Exs. A.1 to A4 were marked. On behalf of the respondents, R.W.1 was examined and Exs.B1 to B2 were marked.

8. In OP. No. 557 of 2004, on behalf of the claimant, P.W. 1 was examined and Exs.A1 to A4 were marked. On behalf of the respondents, R.W.I was examined and Exs. B.1 and B2 were marked.

9. On a consideration of the oral and documentary evidence, the Tribunal passed separate orders in the aforesaid OPs recording a common finding that the accident occurred due to rash and negligent driving of the van bearing No. AP 24 T 1314 by its driver. The Tribunal further recorded that there was a mistake committed by the Insurance Officials while issuing Ex. B.1 policy by wrongly noting the vehicle number as AP 28 T 1314 instead of AP 24 T 1314. Then proceeding to assess the compensation, the Tribunal awarded compensation of Rs. 2,05,000/- in OP. No. 556 of 2004, and Rs. 19,000/- each in OP. No. 557 and 558 of 2004.

10. Aggrieved over the fastening of liability on the insurance company, these appeals are preferred.

11. In all these appeals, it is contended by the learned Standing Counsel appearing for the Insurance Company that the Tribunal grossly erred in coming to conclusion that there is a mistake on the part of the Insurance Officials in issuing policy cover note for the vehicle AP 24 T 1314, by wrongly noting as AP 28 T 1314, because the owner of the vehicles referred to above is one and the same.

12. Per contra, the learned Counsel for the claimants would submit that the reasons and conclusions arrived at by the Tribunal are just and proper and because of mistake committed by the officials of the Insurance Company, the findings of the Tribunal should not be disturbed on account of compensation payable by the Insurance Company. It is further argued that the chassis and engine number of the vehicle are not mentioned in the Ex.B.1-Policy note.

13. The accident occurred on 6-8-2002 is not in dispute. The deceased by name Ramana Appalanaidu died due to grievous injuries sustained in the accident and further the claimants by name Adari Krishna and S. Venkata Krishna received injuries in the accident is also not in dispute. What is the dispute involved in these cases is with regard to the vehicle involved in the accident, according to the claimants, it is Matador van bearing No. AP 24 T 1314. The contention of the learned Standing Counsel for the Insurance Company is that the vehicle involved in the accident was Maruthi Gypsy bearing AP 28 T 1314. Thus there is difference between

the contentions of the learned Counsel appearing on either side with regard to type of vehicle and district of registration. A perusal of Ex.B. 1 would show that it is a cover note bearing No. 566157, valid from 23-7-2002 to 23-7-2003 issued to one Mohd. Mahmood covering the risk for the vehicle bearing No. AP 28 T 1314 which was a Maruthi Gypsy. However, a perusal of Ex.A.6 would show that it was a policy note covering the vehicle bearing no AP 28 T 1314 and insured is one Mohd. Mahmood. There is no dispute with regard to the address of the insured. But, there is no evidence to show that whether the same Mohd. Mahmood is the owner of Matador van vehicle bearing No. AP 24T1314 and also another vehicle, Maruthi Gypsy bearing no AP 28 T 1314. The contention of the claimants is that the vehicle involved in the accident was Matador van i.e. AP 24 T 1314. Ex.B.1 policy note was issued covering the risk of the vehicle-Maruthi Gypsy bearing No. AP 28 T 1314, whereas Ex.A.6 was with regard to vehicle bearing No. AP 28 T 1314. In absence of RC book for the vehicle bearing No. AP 24 T1314 to know as to who was its owner and with whom it was insured, unfortunately, the Tribunal came to conclusion that a mistake had been committed by the officials of the Insurance Company while preparing Ex.B.1 policy note and typed the vehicle No. AP 28 T 1314 instead of AP 24 T 1314, because insured is one and the same.

14. I am at a loss to understanding as to how the Tribunal came to conclusion that Mohd. Mahmood is the owner of both the vehicle bearing No. AP 28 T 1314 and AP 24 T 1314. "RC book of AP 24 T 1314 was not produced before the Tribunal by either party. The Insurance Company had issued a registered lawyer notice to the said Mohd. Mahmood to produce RC book of the vehicle bearing No. AP 24 T 1314 and also driving licence of the driver by name Anapareddy Kameswara Rao, but the said notice returned un-served. Burden is on the claimants to prove which vehicle was involved in the accident and who was its owner and with whom it was insured. But, for the said purpose, no witness was examined on behalf of the claimants. On the other hand, the respondents had examined R.W.I, who deposed about insuring of Maruthi Gypsy alone vide its registration No. AP 28 T 1314, and issuing of policy, which was marked at Ex.B.1. AP 24 is allotted to the Regional Transport Authority of Nalgonda District, whereas AP 28 is allotted to Regional Transport Authority of Ranga Reddy District. Therefore, there is no basis for the Tribunal to come to conclusion that since the owner of the vehicles is one and the same, mistake had been committed by the Insurance Company while issuing police note Ex.B.1 by wrongly typing the vehicle number as AP 28 T 1314 instead of AP 24 T 1314. Ex.B.1 policy could have been issued by the Divisional Office XI, at Malakpet, Hyderabad, whereas the insurance policy was issued for the vehicle bearing No. AP 24T 1314 by the Divisional Office of Nalgonda District. It is true that in Ex.B.1 police note, the chassis and engine numbers were not mentioned. On this aspect, the learned Counsel for the appellant-Insurance Company submits that the chassis and engine numbers will be mentioned when new vehicle is registered for issuing insurance policy and subsequently, when renewal of policy, normally they do not mention the

engine and chassis numbers in the policies as much as the engine and chassis numbers mentioned at the first instance will remain in the records. Mere absence of chassis and engine numbers in Ex.B.1 policy does not lead to any contradiction because there is no dispute with regard to the risk covered by the vehicle, which is AP 28T 1314. The vehicle involved in the accident, according to the claimants is Matador van bearing No. AP 24T 1314 , but, its registration of district is different and type of vehicle is also different when compared to the details in Form-24 issued by Registering Authority, Nalgonda. When such is the case, the Tribunal came to wrong conclusion that a mistake had been committed by the officials of the Insurance Company while preparing Ex.B.1 policy. During the course of arguments, the learned Counsel for the appellant produced Form 24 of B-Register of Motor Vehicle issued by the Registering Authority, Nalgonda, wherein it was mentioned the registration number as AP 24 T 1314, date of registration as 20-10-1990 and the name of the owner as Shyam Sunder Ina, S/o Yadagiri, R/o Nalgonda. It was also mentioned therein that the class of vehicle is "Mail Carrier-LMV, colour of body is Green, class of vehicle as TEMPO 3-W HANSEAT and the said vehicle was insured with Oriental Insurance Company Limited. But, this copy of the certificate was not produced before the Tribunal when OPs were being tried. No witness was cross examined on this aspect. However, the fact is that the vehicle involved in the accident was matador van bearing No. AP 24 T 1314 cannot be disputed, because, the same is mentioned in Ex.A.1-FIR, Ex.A.2- Report of the Motor Vehicles Inspector. But, however, from the documents available on record, it can be safely concluded that the Matador van bearing No. AP 24T 1314 is different from Maruthi Gypsy bearing No. AP 28 T 1314 and therefore, conclusion reached by the Tribunal on this aspect that there is mistake committed by the Insurance company in preparing the policy is totally wrong. In the above circumstances, the order of the Tribunal fastening liability on the owner and Insurance Company is not sustainable on the ground that the vehicle involved in the accident and the vehicle based on which claim is made are totally different. Further, as per the material available on record, the owners of the vehicle and insurers are different.

15. For the foregoing reasons, the impugned Award of the Tribunal fastening liability on the owner and insurance company is set aside. The Insurance Company is at liberty to withdraw the amount deposited by it. However, it is open to the claimants to file fresh claim petitions by mentioning true and correct vehicle number and its owner and insurer, if they are so advised. No order as to costs.