Oriental Insurance Co., Ltd., Hyd. Vs Mohd. Abdul Quadir and another

Court: Andhra Pradesh High Court

Date of Decision: July 14, 1999

Acts Referred: Motor Vehicles Act, 1988 â€" Section 149

Citation: (2000) 1 ACC 608 : (2000) ACJ 1517 : (2000) 3 ALD 41 : (1999) 5 ALT 652

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

Bench: Single Bench

Advocate: Mr. K.L.N. Rao, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. This appeal by the Insurance Company arises out of the order dated 13-8-1992 in OP No.84l of 1989 on the file of the Motor Vehicles

Accidents Claims Tribunal-cum-Additional Chief Judge, City Civil Court, Hyderabad (Temp.).

2. The second respondent herein filed the OP seeking compensation for the injuries received by her in an accident that occurred on 12-5-1989 at

about 8.15 p.m., caused due to the rash and negligent driving of the driver of the Scooter Bearing No. ADU 9578 belonging to the first respondent

herein, and allegedly-insured with the appellant. The first respondent remained exparte. The appellant-Insurance Company filed its counter denying

insurance of the offending vehicle with it and putting the injured-2nd respondent to proof of the allegations in the petition.

3. In support of the case of the second respondent, two witnesses were examined and the FIR and the discharge and follow up card relating to the

second respondent were marked as Exs.P1 and P2. The Tribunal passed an award for Rs.23,000/-in favour of the 2nd respondent against the

appellant and the 1st respondent. Aggrieved by the award passed against it, the appellant-Insurance Company preferred this appeal.

4. The only contention raised by the learned Counsel for the appellant is that when there is no evidence on record to establish that the offending

vehicle was insured with the appellant at the time of the accident, the Tribunal was in error in passing an award against the appellant.

5. Except the bald statement in column No. 17 of the petition relating to name and address of the insurer of the vehicle) that M/s. Oriental

Insurance Company Limited, Suryalok Complex, Gunfoundry, Hyderabad, is the insurer of the vehicle that caused the accident, without furnishing

any insurance particulars, there is no other material on record to show that the appellant is the insurer of the vehicle that caused the accident.

Though the appellant specifically denied insurance of the offending vehicle with it, no evidence is adduced on behalf of the claimant (2nd

respondent) to show that the offending vehicle was insured with the appellant at the time of the accident. PW1, the next friend of the injured-

second respondent, has not stated anything about the offending vehicle being insured with the appellant, nor the particulars relating to the insurance

were given by him. PW2, also has not stated anything about the insurance of the offending vehicle with the appellant by the date of the accident.

Ex. P1 (FIR) does not show that the offending vehicle was insured with the appellant at the time of the accident. Ex.P2 is the discharge and follow

up card of the injured-2nd respondent, which is of no help to decide the question of insurance. Thus, there is on evidence on record to show that

the offending vehicle was insured with the appellant at the time of the accident.

6. The order under appeal does not disclose as to how the appellant was held to be liable to pay the compensation. Except baldly stating while

dealing with issue No.3 as under:-

The respondents are directed to pay Rs.23,000/- to the petitioner by way of compensation with interest at the rate of 12% per annum from the

date of the petition i.e., 16-10-1989 till the date of payment.

There is no discussion or reasoning in the order under appeal as to how the appellant is said to be the insurer of the offending vehicle, when the

appellant has specifically denied insurance. Hence, I hold that the Tribunal erred in passing the award against the appellant also without there being

evidence on record to show that it was the insurer of the vehicle involved in the accident.

7. In the result, the appeal is allowed. The award against the appellant is set aside. It is made clear that in the event of either of the respondents,

i.e., owner of the vehicle Bearing No. ADU 9578 or the injured-second respondent, establishing that the two wheeler ADU 9578 was insured

with the appellant at the time of the accident i.e., on 12-5-1989, after giving notice to the appellant and after giving an opportunity of being heard

regarding its liability, the award can be executed against the appellant, if other conditions relating to the liability of the appellant are satisfied.

8. It is stated by the learned Counsel for the appellant that the appellant deposited half of the award amount in the Tribunal and so the appellant

may be permitted to withdraw the same since the appeal is allowed and claim against the appellant is dismissed. If the amount deposited by the

appellant is still lying in deposit, the appellant is at liberty to withdraw the same from the Tribunal.

9. The appeal is ordered accordingly. No costs.