(2006) 09 AP CK 0031

Andhra Pradesh High Court

Case No: M.A.C.M.A. No. 1200 of 2005

The United India Insurance Company Ltd.		APPELLANT
	Vs	
Tuniki alias Mudam Lachavva alias Laxmi and Another		RESPONDENT

Date of Decision: Sept. 19, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 147(4)

Citation: (2007) 2 ACC 810 : (2007) 2 ALD 65

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: E. Venugopal Reddy, for the Appellant; I. Aga Reddy, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.
The order dated 17-12-2004 passed by the Motor Accident Claims Tribunal- cum-I Additional District Judge, Karimnagar, in O.P. No. 594 of 2003 is assailed in this appeal.

2. First respondent filed the O.P. claiming a sum of Rs. 1,50,000/- for the injuries sustained by her in an accident that occurred on 21-3-2003. She pleaded that the petitioner was travelling as a pillion rider on a motor cycle driven by one Erukla Kishan; with a view to go to Vemulawada and when they reached Nampally Bus stage, a vehicle bearing No. AP 15V 5656 (Toyota Qualis) owned by the second respondent and insured with the appellant came in a rash and negligent manner and hit the motor cycle from behind. The first respondent is said to have fallen down and sustained head injury. She was treated in a private hospital and it was pleaded that she incurred a sum of Rs. 50,000/- towards the treatment. Under different heads, she claimed a sum of Rs. 1,50,000/- as compensation.

3. The owner of the vehicle remained exparte. The O.P. was contested by the appellant herein. It was pleaded that there was no negligence on the part of the driver of the Toyota Qualis and that the accident occurred on account of the rash and negligent driving of the driver of the motor cycle. It was further alleged that there did not exist any insurance coverage for the vehicle as on the date of the accident. The Tribunal held that the accident occurred on account of the rashness and negligence of driver of the vehicle, insured with the appellant, and awarded a sum of Rs. 42,000/- as compensation with interest at 9% per annum. It was held that the appellant and the second respondent are jointly and severally liable to pay the compensation.

4. Sri E.Venugopal Reddy, learned Counsel for the appellant, submits that though the insurance coverage was taken for the vehicle in question on 9-1-2003, the cheque issued by the second respondent towards payment of the insurance premium was dishonoured and accordingly the insurance cover was cancelled on 21- 1-2003. The learned Counsel further points out that the second respondent took out a fresh policy on 22-3-2003, whereas the accident occurred on 21-3-2003. Placing reliance upon certain precedents, he contends that the Tribunal ought not to have held the appellant liable, to pay the compensation.

5. Sri I.Aga Reddy, learned Counsel for the first respondent, on the other hand, submits that though it was pleaded by the appellant that the cheque issued by the second respondent for payment of the insurance premium was dishonoured, there is nothing on record to show that they have notified the cancellation of the policy to the registering authority as required under Sub-section (4) of Section 147 of the Motor Vehicles Act, 1988 (for brevity ''the Act'') and in that view of the matter, the appellant cannot escape from its liability to pay the compensation. He submits that the Tribunal had examined the matter in the light of settled principles and that the same does not warrant any interference.

6. First respondent pleaded that when she was proceeding to Vemulawada, on a motor cycle as a pillion rider, the vehicle owned by the second respondent came from behind and dashed against the motor cycle and she sustained injuries. The second respondent remained exparte. It was the appellant that pleaded the absence of any negligence on the part of the driver of the vehicle owned by the second respondent. On her behalf, the petitioner deposed to these facts as PW.1. She has also filed an attested copy of the F.I.R. in Crime No. 36 of 2003, marked as Ex.A.1 and the certified copy of the charge sheet, marked as Ex.A.3. These two documents, together with the Medical Certificate issued to the petitioner, marked as Ex.A.2, clearly disclosed that the liability for the accident was exclusively with the driver of the Tayota Qualis. The Tribunal examined the rival contentions and ultimately held that the accident occurred on account of the rash and negligence on the part of the driver of the vehicle owned by the second respondent. This Court is not inclined to disturb the finding recorded by the Tribunal, on this aspect.

7. The appellant does not seriously dispute the quantum of compensation. Its effort is only to extricate itself from the liability to pay the compensation on the ground that there did not exist any valid coverage, or policy, as on the date of the accident.

8. It is not in dispute that a policy was taken on 9-1-2003 for the vehicle and that the premium was paid through a cheque on the same day. The accident occurred on 21-3-2003. The appellant states that the cheque issued by the second respondent was dishonoured and, therefore, she was called upon to make necessary arrangements. It is stated that when proper response did not emanate from the second respondent, the policy was cancelled, through a letter dated 21- 1-2003. It is also pleaded that the information as to the cancellation was sent to the Regional Transport Authority on the same day, under Certificate of Posting. On these facts, it is urged that there did not exist any valid policy as on the date of the accident.

9. Section 147 of the Act requires that every motor vehicle must be covered by an insurance policy. The extent of coverage and other details are provided, in that section. There exist the facility, for issuance of cover note at the initial stages, and thereafter, the Insurance Policy, within a stipulated time. The object appears to be, to ensure that the necessary formalities are complied with within the time gap, so provided. In some cases, the policy itself may be issued straight away, depending on the nature of payment of the premium and other circumstances.

10. The liability of an insurer commences with the issuance of cover note or insurance policy itself, if it is issued straight away. The Parliament had visualized the contingency of the insurance coverage not materializing into insurance policy, on account of any factors, which may include dishonour of the cheque issued for payment of premium. Sub-section (4) of Section 147 of the Act describes the steps that are required to be taken by the insurer in such a case. It reads as under.

Section 147(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

11. From this it is clear that in case a situation emerges for cancellation of cover note, the insurer must notify the cancellation thereof, to the registering authority i.e., the Regional Transport Officer, within seven days from the date of expiry of the same. It is from the date of such notification, that the liability of the insurer ceases to exist.

12. The term ''notify'', has its own significance. In the Webster Dictionary, the meaning of this word is "to inform, to make known, to give notice, to inform by words or writings, or by any other signs, which are understood". In certain enactments, the term was interpreted as meaning "publication of notification". Since

such a clause does not exist in the Act, nor the insurer is empowered to issue such notification, the meaning that can be given to the said term is that, the communication as to the cancellation of the cover note, must reach the registering authority. Whatever be the means employed, the obligation of the insurer, comes to an end, only when the factum of cancellation of the cover note had reached the registering authority. In the instant case, the only exercise undertaken by the appellant was that it sent a notice to the Registering Authority, through Certificate of Posting. It was neither pleaded nor proved that the registering authority was notified the factum of cancellation of the cover note before the accident had occurred. Consequently, it must be held that the cover note or the policy, as the case may be, issued by the appellant was in force as on the date of the accident.

13. The contract of insurance is between the appellant and the second respondent, and the first respondent is not a party to it. If it were to be a contract in the ordinary parlance, the first respondent could not have enforced it, once, the plea of the appellant, that it cancelled the contract of insurance is not disputed by the second respondent. The contract assumes a different character, inasmuch as, it came to be executed as a compliance with the requirement under a statute. Section 147 of the Act, is a social security measure, taken by the Parliament. The victims of the accident are beneficiaries under it; on par with the insured, if not on a higher pedestal. Therefore, the absence of any denial by the second respondent as to the cancellation of the policy does not affect the rights of the first respondent. The judgment rendered by a Division Bench of this Court in M. Nageswara Rao Vs. New India Assurance Company Limited and Others, supports this view.

14. The judgment of the Hon''ble Supreme Court in United India Insurance Company Ltd. v. Ayeb Mohammed 1991 ACJ 650 relied upon by the learned Counsel for the appellant is distinguishable in facts. In the case before the Hon''ble Supreme Court, the insurer had taken all the steps, as required under law, in the matter of cancellation of the policy. It was clearly held that the insurer had notified the registering authority about the cancellation of the policy.

15. Further, the judgment rendered in National Insurance Co. Ltd. Vs. Seema Malhotra and Others, on did not come into force, as on the date of accident. The Tribunal had discussed the matter in a correct perspective and this Court does not find any basis to interfere with the same.

16. The Civil Miscellaneous Appeal is accordingly dismissed. There shall be no order as to costs.