courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 05/01/2026

(2006) 10 AP CK 0029

Andhra Pradesh High Court

Case No: CM. A. No. 3281 of 2000

Oriental Insurance Co. Ltd.		APPELLANT
	Vs	
Dr. M. Mallesappa (Died) per L.Rs. and Another		RESPONDENT

Date of Decision: Oct. 24, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147(1), 147(3), 149, 149(1), 163A

Citation: (2007) ACJ 2386 : (2007) 3 ALD 68 : (2007) 1 ALT 428

Hon'ble Judges: G. Yethirajulu, J

Bench: Single Bench

Advocate: K. Ashok Rama Rao, for the Appellant; B.S. Venkat Ramesh, for the Respondent

Final Decision: Allowed

Judgement

G. Yethirajulu, J.
This Civil Miscellaneous Appeal has been preferred by the Oriental Insurance Company against the order of the Motor Accidents Claims Tribunal, Anantapur in OP. No. 248 of 1994, dated 4-7-2000.

2. The O.P. was filed by the first claimant u/s 166 of the Motor Vehicles Act, 1988 (for short ''the Act'') claiming compensation on account of injuries received by him and after death of the first claimant, the legal representatives came on record and claimed compensation on account of death of the deceased.

3. Before the Tribunal, the second respondent, who is the Insurance Company, took a plea that the petition is bad for nonjoinder of the necessary party i.e., the owner of the vehicle. The second respondent is only subject to the terms and conditions of the insurance policy and when the owner of the vehicle is not a party and when he is not made liable, in the absence of owner of the vehicle the Insurance Company cannot be made liable. The Tribunal observed that it is true that the owner of the vehicle cannot be said to be not a necessary party and the injured or the deceased

are to be indemnified by the insurer for the use of the vehicle and whether the presence of the owner of the vehicle is essential in the petition. The Insurance Company''s liability is co-existence with the owner''s liability and therefore, unless the owner''s liability is established, the Insurance Company will not come into picture to indemnify the owner''s liability. This is a general rule. While making the above observation, the Tribunal further observed that the presence of owner of the vehicle is only of an academic interest and the claim, if it is otherwise maintainable, cannot be dismissed on mere technicality of not impleading the owner of the vehicle as the very legislation and the Tribunal should see that the spirit of the Act, but not the technical lapses, especially when this technical lapse causes hardship to the persons who are really entitled for compensation. Though the claimants examined owner of the vehicle as a witness, they did not choose to implead him as the respondent.

4. The learned Standing Counsel appearing on behalf of the Insurance Company/appellant submitted that in the absence of owner of the vehicle, there cannot be any liability of the Insurance Company and in support of his contention, he relied on a decision in Oriental Insurance Company v. Sunitha and Ors. AIR 1998 SC 257 wherein the Supreme Court while considering the scope of Section 149 of the Act, held that as per Section 149, the liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance.

5. Section 149(1) of the Act reads as follows:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks: (1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

6. In the light of the above legal position, the observation of the Tribunal cannot be appreciated and it is not based on any legal principle or statutory provision in this respect. In view of the above discussion, I find tat the order of the Tribunal cannot be sustained against the Insurance Company and therefore, it is liable to be set aside.

7. The learned Counsel for the respondents/claimants submitted that on account of mistake of the advocate, the party cannot be made to suffer, therefore, he requested to remand the matter to the Tribunal to enable the claimants to implead the owner of the vehicle as a party to the proceedings.

8. The accident occurred on 14-11 -1993. After lapse of 13 years, it is not desirable to direct the matter to be remanded to the Tribunal to give an opportunity to the claimants to implead the owner of the vehicle as a party to the proceedings. I am, therefore, not inclined to accede the request of the learned Counsel for the respondents.

9. In the result, the Civil Miscellaneous Appeal is allowed by setting aside the decree and order of the Tribunal against the appellant who is the second respondent in the motor accident O.P. No order as to costs. If any amount is paid by the Insurance Company by way of interim direction, and it is already withdrawn by the claimants, it is not liable to be refunded. If any amount is lying in the Tribunal, the appellant is at liberty to withdraw the same.