



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3311]

Thursday, the Sixth Day of November
Two Thousand and Twenty Five

Present

The Honourable Ms. Justice B.S.Bhanumathi

Motor Accident Civil Miscellaneous Appeal No: 3223 of 2005

Between:

United India Insurance Company Limited

...Appellant

and

Allu Narayamma and others

...Respondents

Counsel for the Appellant:

1.N.Rama Krishna

Counsel for the Respondents:

1.K.S.Mallikarjuna Rao

2.K.Subrahmanyam

The Court made the following:

JUDGMENT:

This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 26.02.2004 in M.O.P.No.614 of 1999 on the file of the Motor Accidents Claims Tribunal (District Court), Vizianagaram.

2. The respondents Nos.1 to 6 are the claimants, the respondent No.7 is the respondent No.1, the respondent No.8 is the respondent No.2, appellant is the respondent No.3 and the respondent No.9 is the respondent No.4 before the Tribunal. For the purpose of convenience, the parties are arrayed as before the Tribunal.

3. The claim was made against Bantupalli Ramu, the driver of lorry bearing No.OIG 1965 / respondent No.1; V. Adinarayana, the owner of the said lorry / respondent No.2; United India Insurance Company Ltd., insurer of the lorry / respondent No.3 and G.Sudarsana Rao, previous owner-cum-insured of the same lorry / respondent No.4. Initially, the claim was made against the respondents Nos.1 to 3 and later, vide order dated 08.10.2003 in I.A.No.879 of 2003, the respondent No.4 was added. As per the case of the claimants, on 27.05.1998, Allu Appala Naidu met with an accident as the lorry bearing No.OIG 1965 caused him fatal injuries. The claimants stated that the lorry was got insured by the respondent No.4 with the respondent No.3 vide policy No.034103/31/21/0089/97 valid from 22.09.1997 to 21.09.1998. The respondent No.3 disowned its liability on the ground that such policy had not been issued by it. To prove the case of the claimants, they filed a photostat copy of the alleged policy of insurance as Ex.A5, whereas the insurance company examined its officer as R.W.1 and marked a copy of the policy as Ex.B1. After hearing the parties, the Tribunal without making any observations as to why Ex.B1 cannot be relied on,

placing reliance on Ex.A5 describing it as policy, held the insurance company as liable to indemnify the insured of the lorry. The Tribunal awarded an amount of Rs.1,11,500/- together interest @9% p.a. payable by the respondents Nos.1 to 4 with joint and several liability.

4. Aggrieved by the award and decree, this appeal was filed by the respondent No.3 reiterating its contentions that it had not issued the policy in favour of the respondent No.4 to the subject lorry.

5. The learned counsel for the appellant submitted that Ex.A5 is a mere Photostat copy and was objected at the time of its marking and further it is not at all a policy nor is it a cover note, but it is a mere notice of renewal and was not at all issued to the respondent No.4. He further submitted that Ex.B1 is the copy of the true policy bearing the same number of policy as in Ex.A5, but issued to the insured by name Smt. Saraswati Jena W/o. Sri Dibakar Jena, Goutam Nagar, Po/Dist. Koraput for the period valid from 15.04.1997 to 14.04.1998 and therefore, the appellant is not at all liable and the Tribunal erroneously appreciated the evidence ignoring the evidence under Ex.B1.

6. Though the respondents Nos.1 to 6 / claimants and the respondent No.8 are engaged separate counsels, there is no representation for them. Though notices were served on the respondents Nos.7 and 9 herein, there has been no appearance.

7. Perused the original record of the Tribunal.

8. The accident occurred on 27.05.1998. Ex.A5, the policy said to be issued in respect of the subject lorry is No.034103/31/21/0089/97 and valid from 22.09.1997 to 21.09.1998. A perusal of Ex.A5 shows that it is not at all a policy. It is not known how the Tribunal treated it as a policy. The title it carries reads as "Renewal of Motor Insurance Policy"

and addressed to the insured. It is relevant to extract the relevant part here below:

“We shall thank you for your instructions for the renewal of the undernoted policy on its expiry.

The renewal premium payable is shown below.

In accordance with the provision of the Insurances Act governing all Insurance Companies, the renewal premium should be received prior to the due date before we can renew the policy. The renewal premium quoted herein is provisional and subject to adjustment in accordance with Tariff rates in force at commencement of the renewal period.

WE SHOULD ALSO BE INFORMED OF ANY ALTERATION THAT MAY BE REQUIRED FROM THE RENEWAL DATE. YOU SHOULD REVISE THE INSURED VALUE OF THE VEHICLE WITH DUE REGARD TO MARKET VALUE. OVERVALUATION DOES NOT BENEFIT YOU. UNDERVALUATION WILL BE TO YOUR DISADVANTAGE.

Only the printed official receipt of the company is valid evidence of payment of the premium”

9. The next part of the document mentioned the details of the policy number expiry date of the policy as 21.09.1998, vehicle number etc., and also the total premium payable as Rs.1,533/-. Immediately below these particulars, there is a dotted line across the document running from left to right indicating that the document is to be detached at the dotted line to separate the part below the line for the purpose of sending the below part to the insurance company for the purpose of renewal. In fact, such indication appears immediately below the dotted line. The

indication reads as- "(please detach and return duly signed with cheque / cash)". Thereafter, the document reads as below:

IMPORTANT

Effective from 1st June 1985 our premium structure has undergone certain changes. Please reply the following queries:

1. Do you wish that Cover against risk of Riot & Strike be excluded?.... Yes/No
2. Do you wish that Cover against risk of Flood etc. Be excluded?....Yes/No
3. Do you wish that Cover against risk of Earthquake etc. Be excluded?....Yes/No

If excluded a discount of 0.15%, 0.15% and 0.10% on I E V is allowed off the premium for items 1, 2 & 3 respectively.

To

United Insurance Co. Ltd.

Branch Office, Main Road, Jeypore (K) 764001

MOTOR INSURANCE POLICY No.

Dear Sirs,

Expiring on 21.09.1998 Insured Value Rs.

Please renew for a further period of one year. I / We enclose cheque/cash/M.O. receipt for the premium of Rs.1533/-. The revised value of the vehicle is Rs.

Yours faithfully,

Date:22.09.1997, 4.30 P.M.

Signature.....

Address.....

10. Thereafter, an important indication was given asking the insured to make a choice between yes and no against three questions and further stating about discount depending on the answers. Immediately

below such indication, there is address of the insurance company to which the contents thereafter are to be addressed and the other details such as motor insurance policy number which is to be filled and the date of expiry and the insured value to be filled. Immediately thereto, there is a request to renew for a further period of one year and also indicating enclosure of a cheque / cash / M.O. for the premium of Rs.1,533/-. Thereafter, the revised value of the vehicle is to be filled. All these contents mentioned in the lower part of the document are to be filled and signed by the insured with address. Thus, this part of the document has to be detached from the rest of the top portion of the document and to be sent to the insurer by duly filling it up and signed, along with premium in any of the forms mentioned therein. Therefore, it is obvious that it is a printed proforma of the renewal notice along with proforma of renewal request to be sent by the insured to the insurer. As such, merely because certain details were filled and signature of some person appears at the place indicated for the signature of the insured in the proforma for renewal request, it cannot be treated as policy issued by the insurance company. It is also pertinent to mention that the writing in the columns filled all through the document both in respect of the renewal notice and the renewal request is one and the same. A signature with the name K.Venu Gopal appears on the renewal notice. In the renewal request form, it is supposed to be signed by the insured / owner of the vehicle, but it appears that the very same person K.Venu Gopal signed using initials as the style of writing letters is similar. If it is signed by G.Sudarsana Rao, the signature cannot start with initial 'K'. Moreover, the letter 'K' in the full signature and the signature with initials is quite similar. Ex.A5 is a single document. Moreover, it is only a photostat copy. In spite of objection, the Tribunal ignored to deal with the objection. No effort was made by the claimants to examine the respondent No.4 to prove Ex.A5. There is also no evidence that the

vehicle was transferred by the respondent No.4 to the respondent No.2 after 22.09.1997 and before 27.05.1998.

11. As against this document, it is necessary to examine Ex.B1 which is a certified copy of the policy with the same number issued by the respondent No.3 / appellant. The details already noted above stands for a different period and in favour of a different person and in respect of a different vehicle. If this policy was issued with liability from 15.04.1997, there is no possibility of issuing another policy with the same number effective from 22.09.1997 which date falls during the period of subsistence of the policy already issued with effect from 15.04.1997 valid till 14.04.1998. The evidence on record does not suggest that Ex.B1 is a created document.

12. Under these circumstances, it is clear that the Tribunal has not properly appreciated the evidence on record and committed a serious error in treating Ex.A5 as a policy and fastening liability on the insurance company. Therefore, the appeal shall be allowed.

13. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed and the award and decree dated 26.02.2004 in M.O.P.No.614 of 1999 on the file of the Motor Accidents Claims Tribunal (District Court), Vizianagaram, are set aside to the extent of fastening liability against the respondent No.3 before the Tribunal. Consequently, the claim petition against the respondent No.3 is dismissed. The rest of the award remains as it is. No costs.

14. The amount already deposited by the appellant / respondent No.3 and withdrawn by the respondents / claimants can be recovered by the appellant from the co-respondents before the Tribunal by filing an execution petition without filing a suit.

Interim orders granted earlier, if any, shall stand vacated.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE B.S. BHANUMATHI

Date: 06.11.2025

NSM

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Date: 06.11.2025
NSM