
(2014) 12 KAR CK 0193

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 2535 and 2536/2008 (MV)

Bajaj Allianz General Insurance Co. Ltd.

APPELLANT

Vs

S. Ramali Nayak

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Evidence Act, 1872 — Section 58

Motor Vehicles Act, 1988 — Section 149(2)(a)(ii), 181, 3, 4, 75

Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2014) 12 KAR CK 0193

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : P.H. Pawar, Advocate for the Appellant; Y. Lakshmikant Reddy, Advocate for the Respondent

Judgement

K.N. Phaneendra, J.—The appellant in these two appeals--M/s. Bajaj Allianz General Insurance Co. Ltd., who is the respondent No. 2 before the trial Court, has challenged the judgment and award passed by the Addl. Civil Judge (Sr. Dn.) at Hospet in MVC Nos. 1166/2006 and 1165/2006 respectively in fastening the liability on the Insurance Company instead of fastening the liability exclusively on the owner of the offended vehicle.

2. The brief factual matrix that emanate from the records are that, the claimant in MVC No. 1165/2006 Subhan Sab and the claimant in MVC No. 1166/2006 Ramali Nayak have filed the claim petitions on facts that, on 07.10.2006 at about 4.30 pm, both the claimants were travelling on their motor bike bearing Registration No. KA 36/L 5054 from Hospet to Venkatagiri Thanda; when they came near Army office at Sandur road at Hospet, respondent No. 1-driver-cum-owner of the Bajaj CT 100 Auto Rikshaw bearing registration No. KA 16/A-3062 came there and dashed against the motorcycle from the opposite direction. Due to the rash and negligent driving of the driver of said Auto Rickshaw, the accident occurred, due to which the claimants had suffered several injuries.

It is also the case of the claimants that, a criminal case has been registered against the 1st respondent before the trial Court (respondent No. 2 herein) in Crime No. 348/2006 for the offences punishable under Sections 279, 337 and 338 of the IPC R/w. Section 181 of the Indian Motor Vehicles Act. For the sake of convenience, the rankings of the parties as per the trial Court is retained.

The claim petition was contested by the Insurance Company i.e., the appellant herein and also the respondent No. 1 before the trial Court the owner of the vehicle has also entered his appearance. However it appears, he has not seriously contested the case. The trial Court has framed certain issues, particularly issue No. 2 framed putting the burden on the respondent No. 2 to prove that the driver of the offending vehicle was not having valid and effective driving license. The Court after due contest of the proceedings, held that the Insurance Company has not proved the second issue, held the said issue in the negative, finally awarded compensation of Rs. 1,50,000/- in favour of the claimant in MVC No. 1165/2006 and a sum of Rs. 20,000/- in favour of the claimant in MVC No. 1166/2006, fastening the liability on the respondents No. 1 and 2 jointly and severely to pay the compensation.

3. Sri. P.H. Pawar, learned Counsel appearing for the appellant--Insurance Company strenuously contended that, though he has proved the issue No. 2 before the trial Court that the owner-cum-driver of the Auto Rickshaw, which is the offending vehicle in this particular case had no driving license as on the date of the accident, but the trial Court being persuaded by the other extraneous materials, came to the conclusion that the said issue has not been proved. In this regard, he has drawn my attention to the fact that the respondent No. 1 being the owner and driver of the offending vehicle, though appeared before the trial Court, has not made any efforts to produce his driving licence before the Court to show that he had a valid and effective driving license as on the date of the accident. He also contended that the respondent No. 1 was prosecuted by the police by filing a challan against him in C.C. No. 4142/2006, wherein he has pleaded guilty even for the offences punishable under Section 181 of the Motor Vehicles Act. Added to that, the learned Counsel also submitted that he has issued notice to respondent No. 1 as per Ex. R1 to produce the information regarding the driving license of the 1st respondent before the trial Court. But the respondent No. 1 has not even cared to produce any document before the Court in order to prove that he has got any valid and effective driving license on the date of the accident. The trial Court in fact, only on the ground that the respondent No. 2 has not examined the Regional Transport Officer or produced any document from the office of the RTO to prove that the respondent No. 1 was not having a valid and effective driving license, fastened the responsibility on the Insurance Company.

4. Per contra, the learned Counsel Sri. Lakshmikant Reddy, appearing for the respondent owner strenuously contended that, the best evidence available to the 2nd respondent before the trial Court was by way of examination of the RTO and

production of the document from the RTO office to show that the respondent No. 1 had no valid and effective driving license. But such exercise has not been done by the respondent No. 1. He also contended that, merely because a notice has been issued to the owner-cum-driver of the offending vehicle i.e., respondent No. 1, will also does not absolve the Insurance Company from proving issue No. 2 by producing cogent and convincing evidence before the Court, in order to prove that the respondent No. 1 had no effective driving license as on the date of the accident.

5. Having heard on the arguments on both the sides, this Court has to see whether the order passed by the trial Court fastening the responsibility on the Insurance Company is valid and in accordance with law.

6. The records disclose that the respondent No. 1 (owner) has appeared before the trial Court, but he has not led any evidence. ""On the other hand, the respondent No. 2 has produced Ex. R1 before the trial Court, which is the notice issued to the respondent No. 1 to produce the information regarding the R.C. book, T.C. book and also the driving license. But in spite of receiving the said notice, the respondent No. 1 has not produced any such documents. Though this Court cannot draw an adverse inference on respondent No. 1 merely because he has not produced such documents in spite of notice issued by the respondent No. 2, but the Court has to look into the surrounding circumstances that, whether on that ground alone, the respondent No. 1 can be held that he had no valid driving license as on the date of the accident. Respondent No. 2 has not only given such notice, but also relied upon the document at Ex. P32 got marked by the claimant himself before the trial Court, which is the certified copy of the judgment passed in C.C. No. 4142/2006. This document clearly establishes that the PSI of Traffic Police, Hospet has submitted the charge sheet against the accused--1st respondent for the offences punishable under Sections 279, 337 and 338 of the IPC and under Section 3 r/w. Section 181 of the Motor Vehicles Act, 1988 (M.V. Act" for short). The order sheet discloses that the accused appeared before the Court and pleaded guilty for the above said offences and the Court found him guilty for the above said offences and sentenced him to pay a fine of Rs. 2,000/- and in default of payment of fine, to undergo Simple imprisonment for a period of 120 days. The conviction is not on the basis of the judgment. It is the order passed on the basis of the plea of guilt by the owner cum driver of the vehicle. Therefore, the judgment of the trial Court is a clear judicial admission on the part of the owner/driver that he had absolutely no driving license as on the date of the accident.

7. Section 181 of the M.V. Act deals with the contravention of Section 3 or 4 of the Act, which says that;

"whoever drives the motor vehicle in contravention of Sections 3 and 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

Section 3 of the M.V. Act deals with the licence, which says that"

no person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to him authorising him to drive the vehicle and no person shall so drive a transport vehicle (other than a motor cab hired for his own use or rented under any scheme made under sub-Section(2) of Section 75) unless his driving licence specifically entitles him so to do.

8. Therefore, there is clear contravention of Section 3 of the M.V. Act, which ensues the conviction of the 1st respondent by the Criminal Court imposing fine on pleading of the guilt.

9. The learned Counsel Sri. Lakshmikant Reddy drawn my attention to two decisions of the Apex Court in order to canvas before this Court that, mere filing of the appeal against the accused is not sufficient to hold that the Insurance Company has discharged its burden of proving that the driver had no valid licence as on the date of the accident.

The learned Counsel relied upon the decision reported in Oriental Insurance Company Ltd. Vs. Smt Kamlesh and Others, , wherein the High Court "at Delhi has laid down certain principles that,

"driving licence liability of the Insurance Company under Section 149(2)(a)(ii) of the M.V. Act-Insurance company seeks to avoid its liability on the ground that driver of offending vehicle did not have valid and effective driving licence-Insurance Company has not taken any specific plea in its written statement regarding driving licence-owner of the vehicle stated that she does not know if driver was having driving licence or not and she has never enquired from the driver about his licence nor she has ever seen it-not enquiring by owner about driving licence from driver does not mean that he was not having a valid driving licence-Challan filed against driver for non-possessing of driving license but no evidence thereafter-Tribunal held that merely filing of challan does not mean that it is proved that driver was not holding a valid driving licence. Therefore, the responsibility was fastened on the Insurance Company."

10. The above said ruling on facts and law, in my opinion, not exactly in a straight jacket manner applicable to the present case on hand. In this particular case, the Insurance Company has specifically pleaded that the driver had no effective driving license as on the date of the accident. In this particular case, the driver and owner are the same. It cannot be pleaded by the 1st respondent that he does not know whether the driver was having any driving licence or not, because as on the date of the accident, he was actually driving the vehicle. Though mere filing of the challan is not sufficient to prove the non-possessing of the driving licence by the owner, but in this case, not only the challan is filed before the criminal Court, but the respondent No. 1, who is the driver-cum-owner appeared before the criminal Court and admitted his guilt under Section 181 of the M.V. Act and such admission that he had no specific valid driving licence as on the date of the accident, the criminal court has convicted him by

imposing fine. No material is placed before the Court that the criminal Court's judgment has been challenged by the owner before any Court of law.

11. Therefore, it goes without saying that judicial admission of the party i.e., the 1st respondent is the best evidence, which is available to the Insurance Company, has been placed before the trial Court. Therefore, the ruling pressed into service by the learned Counsel for the respondent No. 2 does not hold any water insofar as this case is concerned.

12. The learned Counsel Sri. Lakshmikant Reddy also relied upon another ruling reported in *Rukmani and Others Vs. New India Assurance Co. and Others*, wherein the Apex Court has laid certain principles under Section 96(2)(b)(ii) (Section 149(2)(a)(ii) of the M.V. Act. The Apex Court held that;

"defences available to the Insurance Company and burden of proof-Insurance Company relied upon the evidence of Investigating Officer who stated that driver of the offending vehicle did not submit the licence since he was not having it- Investigating Officer did not inform the Motor Vehicles Inspector about it who was required to check whether the driver was holding a driving licence-Insurance Company did not summon the driver and no record from the Regional Transport Authority was produced-Whether the Insurance Company had discharged its burden of establishing that the driver had no licence so as to exonerate it from its liability. The Apex Court held that the Insurance Company is liable."

13. The above said guidelines are also, in my opinion, are not applicable to the facts and circumstances of this case. Though the Apex Court has guided that the document from the Regional Transport Authority is necessary document to be produced before the Court and mere examination of the Investigating Officer who investigated the criminal case is not sufficient, the Court has to see whether the materials placed before the trial Court are sufficient to come to the conclusion that the Insurance Company has successfully discharged its burden. Of course the document from the Regional Transport Authority is an unequivocal document which can clearly establish the non-possession of the driving licence by the driver, but if the surrounding circumstances and materials available on record amply establish beyond any doubt that the driver of the vehicle had no driving licence, wherein the Court can draw an adverse inference against the owner of the vehicle in order to fasten the liability on the owner.

14. Coming back to the facts of this case in comparison with the above said facts involved in the Supreme Court's decisions, in this particular case, as I have already narrated, the respondent No. 1, who is the driver-cum-owner did not make any efforts to establish before the trial Court that he had valid driving licence. The Insurance Company, on the other hand, had issued notice to the owner to produce the driving licence before the Court. Much more than that, the respondent No. 1 had admitted his guilt before the criminal Court and so admitted the fact that he had no driving licence as on the date of the accident, which in my opinion, could not be once again proved by means of any materials

on record.

15. Section 58 of the Indian Evidence Act says the facts which need not be proved before the Court of law. The Section starts with the words, facts admitted need not be proved. The Section 58 reads as under:

"No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings"

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

16. In the case on hand, the owner of the vehicle has not specifically stated whether he had an effective driving licence as on the date of accident except pleading his guilt which amount to judicial admission. On the other hand, in spite of issuance of notice to the owner, he had not produced any document before the Court. If at all he had got effective driving licence, he would have produced that before the Court. When he has not produced the same before the Court, such adverse inference can be drawn against the owner.

17. Looking to the above said circumstances, though the act of the respondent No. 2 in merely issuing the notice to the owner is not sufficient to prove the issue No. 2, culminate effect of the entire materials on record, facts and circumstances, prevailing admission of guilt, issuance of notice to the owner, non-production of " documents by the owner before the Court, not leading evidence before the trial Court, the Court has to come to the conclusion that the respondent No. 2 - Insurance Company has discharged its burden in proving issue No. 2.

18. Therefore, looking to the above said facts and circumstances, in my opinion, the trial Court has not properly appreciated the evidence on record. On the other hand, it erred in giving a finding that the respondent No. 2 has not successfully established issue No. 2. I hold that the respondent No. 2 has discharged its burden insofar as issue No. 2 is concerned, successfully. Consequently, issue No. 2 ought to have been answered in the affirmative by the trial Court. Hence for these reasons, I am of the opinion, fastening the liability on the Insurance Company is bad in law and the same is liable to be reversed. Hence the following order:

The above said appeals are hereby allowed. Consequently, fastening of the responsibility on the Insurance Company by the trial Court in MVC No. 1665/2006 and 1666/2006 is hereby set aside. Further, the judgment and award passed by the trial Court imposing the responsibility on the owner is not disturbed.

The amount in deposit is ordered to be refunded to the appellant-Insurance Company.