

(2018) 09 KAR CK 0004

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 22935 of 2012, 25629, 25630 of 2011

**Bajaj Allianz General Insurance Co. Ltd @APPELLANT@Hash Pompapathi
@ Pompanna and Ors**

Date of Decision : 06-09-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 15, 19, 20, 21, 22, 23, 24, 149, 149(2), 170, 173(1)

Citation : (2018) 09 KAR CK 0004

Hon'ble Judges : K. SOMASHEKAR, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Though the appeals are listed for admission but with the consent of counsel appearing for both the parties, these appeals are taken up for final

disposal. All these appeals have been preferred by the appellant-Bajaj Allianz General Insurance Co. Ltd., against the judgment and award passed by

the learned Member, MACT-XII, Bellary (for short "MACT"), in M.V.C. No. 528/2011, 370/2011 and 369/2011. Since these claim petitions

arise out of the same accident they are taken up together for disposal.

2. The factual matrix of these appeals are as under:

On 26.07.2010 at around 5.30 p.m. near Raravi-Hagari bridge C.C. Road when a motorcycle bearing no. AP-21/AC-2611 had been ridden by

Pompapathi @ Pompanna along with his friend Jindasab while coming back from Halekote Mutt after taking Darshanam of Goddess, a Tata Spacio

vehicle bearing Reg. No. AP-21/L-9186 which came from the opposite direction being driven in a rash and negligent manner and hit to their

motorcycle and also to another motorcycle, as a result of which, they fell down and sustained injuries. Respondent No.2 namely K. Srinivas is the

driver of the offending vehicle, whereas the respondent no.3-Subbarayudu is the owner of the offending vehicle. The appellant in all these appeals is

the insurer of the offending vehicle. Before the MACT, the driver and owner of the offending vehicle, i.e., respondents 2 and 3, remained absent and

therefore they were placed *exparte*. The Insurance Company was permitted to defend their case on all the grounds as urged u/S 170 of The Motor

Vehicles Act (for short 'M.V. Act').

3. In M.V.C. No. 528/2011 P.W.1 and P.W.2 have been examined on behalf of the claimants to establish their case for seeking compensation and got

marked exhibits as per Exs.P.1 to P.72. On the part of the respondent-Insurance Company, R.W.1 was examined and got marked copy of the driving

licence and copy of the policy as Ex.R.1 and Ex.R.2 respectively. Upon consideration of the entire evidence on record the MACT has awarded a

compensation in a sum of Rs.4,43,000/- with Court costs and interest at 8% p.a. from the date of petition till deposit.

4. Whereas in M.V.C. No. 369/2011 and 370/2011, P.W.1 to P.W.3 have been examined to establish their case for compensation and documents as

per Exs.P.1 to P.22 were marked. On the part of the respondents, R.W.1 had been examined and got marked Ex.P.1 as the copy of the Insurance

Policy and Ex.P.2 as the copy of the driving licence. The MACT awarded a compensation of Rs.55,297/- with interest at 6% p.a. in M.V.C. No.

369/2011 and awarded a sum of Rs.2,21,377/- with interest at 6% p.a. in M.V.C. No. 370/2011, however, the interest shall be paid on Rs.1,96,377/-

since the amount of Rs.25,000/- was awarded under the head 'Future Medical Expenses'. The same has been challenged by the appellant-

Insurance Company under these appeals respectively by urging various grounds.

5. The Court below in all these claim petitions appreciated the entire evidence on record. Insofar as M.V.C. No. 528/2011 is concerned, P.W.1 being

the injured was examined, who has stated in his evidence which is reiterated in the averments made in the claim petition, whereas P.W.2 is the Doctor

who had given treatment to the injured and issued wound certificate at Ex.P.4, discharge certificate at Ex.P.6. The MACT also had taken into

consideration the salary certificate at Ex.P.8, disability certificate at Ex.P.9, so also the medical bills at Ex.P.26 to Ex.P.51, x-ray films at Ex.P.52 to

Ex.P.58, MRI Scan reports at Ex.P.59 to Ex.P.69. Upon consideration of these

documentary evidence the MACT awarded compensation stated
supra.

6. Whereas in the common judgment in M.V.C. No. 369/2011 and 370/2011 as wherein the Tribunal had appreciated the evidence of P.Ws.1 to 3 and also the document at Ex.P.10-summary report, Ex.P.11 are the bills and prescriptions, Ex.P.12 is the C.T. scan and X-Ray films, Ex.P.13 is the certified copy of the wound certificate of P.W.2, Ex.P.14 and Ex.P.15 are the discharge summary reports, Ex.P.16 are the bills and prescriptions, Ex.P.17 are x-ray films, Ex.P.18 is the disability certificate. On appreciation of the evidence of the claimants relating to the evidence of P.Ws.1 to 3 and so also the aforesaid documents which are placed by the claimants in order to establish their case, the MACT had awarded compensation as stated supra.

7. Whereas in these appeals, learned counsel for the appellant has taken me through the impugned judgment and award passed by the MACT. The primary contention which is made by the learned counsel for the appellant in all these appeals is that, the driving licence held by the driver of the offending vehicle was not a valid one. The driving licence had expired on 24.04.2009 and it was renewed on 30.07.2010. The accident had occurred on 26.07.2010. That means to say, the driver of the offending vehicle did not possess valid driving licence as on the date of the accident. Hence, there is violation of condition of the policy and for the said reason the insurer is not liable to pay compensation.

8. In support of his contention he placed reliance on the judgment reported in 2008 ACJ 2860 (National Insurance Co. Ltd., Vs. Vidhyadhar Mahariwala and others) wherein it is held as under:

“Driving licence of the driver of the offending vehicle had expired prior to date of accident and was got renewed after the accident. Therefore the driving licence was not valid on the date of accident holding that during the period on which the accident had occurred by the offending vehicle said to be by the driver and therefore the insurance company is not liable to pay compensation.”

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9. Relying on the above decision the learned counsel for appellant in all these appeals contended that the aforesaid decision squarely applies to the

present cases on hand and hence sought to allow the appeals and set aside the impugned judgment and award.

10. Countering the arguments advanced by the learned counsel for the appellant, learned counsel for the respondent no. 1 in all the appeals placed

reliance on the judgment of the Honâ??ble Supreme Court in the case of Singh Ram Vs. Nirmala and Ors, decided on 06.03.2018 in Civil Appeal

No. 2103 of 2018 (arising out of SLP (C) No. 22630 of 2015) wherein it is held as under:

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or

tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and

24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be

said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.â??

The following conclusion has been recorded in summation in the judgment:

â??(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of

Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence

or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the

third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise

reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified

to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings

but must also establish â??breachâ?? on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and

circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply the rule of main purpose and the concept of fundamental breach to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

8 In the present case it is necessary to note, as observed by the Tribunal, that the owner did not depose in evidence and stayed away from the witness box. He produced a licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired. The appellant as owner had evidently failed to take reasonable care (proposition (vii) of Swaran Singh) since he could not have been unmindful of facts which were within his knowledge.

9 In the circumstances, the direction by the Tribunal, confirmed by the High Court, to pay and recover cannot be faulted. The appeal is, accordingly, dismissed. There shall be no order as to costs.

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11. Relying on the above judgment of the Honorable Supreme Court, learned counsel for the respondent no.1 contended that this case is squarely applicable to the present cases on hand.

12. The petitioners Pompapathi, Doddavenkatesh and Sannavenkatesh in M.V.C. No. 528/2011 and so also in M.V.C. No. 369/2011 and M.V.C. No.

370/2011 respectively, being the injured, they had sustained injuries due to the actionable negligence of the driver of the offending vehicles, namely,

B.Subbarayudu, being arraigned as respondent. It is the duty cast upon the Tribunal to award just compensation depending upon the age, avocation

and income of the injured-petitioners. The injured sustained injuries and the

same has been reflected in the wound certificates said to be issued by the Doctor and the same has been placed by them in order to establish their case.

13. Whereas the respondent-insurer Bajaj Allianz General Insurance Company Limited, did not examine an official of the company but got marked

Ex.R.1 as copy of the driving licence and Ex.R.2 is the copy of the policy issued by the Insurance Company. The respondent-Insurance Company

have not proved that the driver of the offending vehicle did not possess valid driving licence. Therefore, the respondent-Insurance Company of the

said offending vehicle in question are jointly and severally held liable to pay the compensation as awarded in these claim petitions with interest

accrued. It is based upon the evidence placed by the injured-petitioners the same as observed by the Court below in a petition has been considered

and awarded compensation respectively to these claimants-petitioners in the aforesaid petitions filed by them. The respondent Insurance Company is

liable to pay the compensation to the injured as the said insurance company in this appeal shall be liable to pay and recover the amount from the owner

of the offending vehicle in accordance with law. As this contention which is taken by the learned counsel for the respondent-Insurance Company

respectively in these appeals as the petitioners respectively and seeking for dismissal of the appeals by confirming the judgment and award passed by

the Court below and liability shall be fastened on the Insurance Company to pay the compensation amount and recover the amount paid by them from

the concerned owner of the offending vehicle.

14. In M.V.C. No. 528/2011 the petitioner Pompapathi @ Pompanna have been examined as P.W.1 and also got examined P.W.2 being a Doctor who

provided treatment to him and issued the wound certificate as per Ex.P.4 for which he sustained injuries due to he met with the accident and it caused

by the offending vehicle bearing No. AP-21-L-9186 as that vehicle which was ridden by Sri.B.Subbarayudu.

15. Whereas the claim petitions in M.V.C. No. 369/2011 and 370/2011 that P.W.1-Dodda Venkatesh and P.W.2-Sanna Venkatesh, they being the

injured and they have subjected to examination for to establish their case for seeking compensation, apart from P.W.3-Dr.D.Prabhakar Kumar who

had given treatment to them and that he was also subjected to cross-examination for establishing their case for seeking compensation as per Ex.P.7-

wound certificate of P.W.1-Dodda Venkatesh and Ex.P.13-wound certificate of P.W.2-Sanna venkatesh. These documents have been produced by them in order to establish their case for seeking compensation from the Insurance Company being arraigned as respondent in the petitions respectively. As the Court below had appreciated the evidence of the claimants and awarded compensation which is incorporated in the operative portion of the order in the aforesaid claim petitions.

16. Whereas the learned counsel for the respondents-petitioners on Singh Ramâ??s case stated supra. As per the said reliance, the owner of the offending vehicle its liability to pay compensation as respondent No.2 being the driver of the offending vehicles they had been arraigned but the Court below had awarded compensation jointly and severally to pay the same but the Insurance Company being arraigned as respondent No.3 to avoid its liability towards the injured, the insurer has to prove that the injured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling conditions of the policy regarding use of vehicle by a duly driving licence and the one who was not disqualified to drive at the relevant time.

However, the respondent herein as the Insurer has to pay the compensation awarded to the claimants and recover it from the owner of the offending vehicles. Therefore, these appeals are requires to be intervention keeping in view the ratio of the reliance which is placed by the learned counsel for the appellant as the respondent no.3 in all these appeals, i.e., claim petitions, being the Insurance Company is directed to pay the compensation awarded by the Court below and recover it from the owner of the offending vehicles. The present appeal as preferred by the Insurance Company, the point which has been urged in support of the appeal does not hold any substance to call for any intervention. Therefore, the liability itself fastened on the appellant herein being the Insurance Company by paying compensation awarded by the Court below to the claimants-petitioners and recover the same from the owner of the offending vehicles but the same shall be recovered in accordance with law before the executing Court as where the claim petitions were being allowed and awarded compensation.

17 On perusal of the judgment of the Honâ??ble Supreme Court in Singh Ramâ??s case stated supra, I am satisfied that this judgment is squarely applicable to the facts of this case. Hence, the appeals filed by the appellant-

Insurance Company are dismissed.

Registry to transmit the amount in deposit in all these appeals to the concerned MACT to enable the claimants to withdraw the amount.

Registry to transmit the records to the Tribunal, if they are received by this Court.