(2017) 01 KAR CK 0230

In the Karnataka High Court

Case No : 5565 of 2011

B.SUBRAMANYAM & Anr. APPELLANT

Vs

B.M.CHANDRA GOWDA & Anr. RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Citation : (2017) 01 KAR CK 0230

Hon'ble Judges : B.Manohar

Bench : SINGLE BENCH

Advocate : A.N.KRISHNASWAMY, N.GOPALKRISHNA, ADV.

Judgement

1. Appellants being the claimants have filed this appeal challenging the judgment and award dated 04-01-2011 made in MVC No.7615/09 passed by the Motor Accident Claims Tribunal, Bengaluru, (hereinafter referred to as "the Tribunal" for short) fastening liability on the owner of the vehicle to compensate the claimants and exonerating the insurance company from their liability to compensate the claimants.

2. The appellants are the father and mother of deceased Master Muniraja, they filed the claim petition contending that, on 11-12-2008, deceased Master B Muniraja along with his mother was proceeding towards Gobbilla Kotur village on the left side of the road, at that time, a Tipper Lorry bearing Registration No.AP-26/U-6421 driven by its driver in a rash and negligent manner, lost control over the vehicle and dashed against the minor child. Due to that, the minor child sustained grievous injuries and died on the spot. At the time of death, deceased was aged about 5 years. The parents of the deceased filed the claim petition contending that they lost the love and affection of the deceased. Due to rash and negligent driving of the Tipper Lorry accident occurred and sought for compensation of Rs.4,00,000/-.

3. In response to the notice issued by the Tribunal, though the owner of the Tipper Lorry was served with notice, he remained unrepresented. The second

respondent entered appearance and filed written statement admitting that as on

the date of accident, the insurance policy covers the risk of the tipper lorry. However, the liability, if any, is subject to fulfillment of the terms and conditions of the policy and also limitation of the policy. The accident occurred due to the negligence on the part of the deceased. Further, the driver of the offending lorry was not having valid and effective driving license as on the date of the accident. Hence, Insurance Company is not liable to compensate the claimants and sought for dismissal of the appeal.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. In order to prove their case, the 2nd claimant got examined herself as PW-1 and got marked the documents as Exs.P-1 to P-6. On behalf of the respondent-Insurance Company, the Senior Legal Executive was examined as RW-1 and got marked 3 documents as Exs.R-1 to R-3.

6. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration the IMV report, copy of the complaint and charge sheet held that due to the rash and negligent driving of the tipper lorry, the accident occurred and the claimants are entitled for compensation. With regard to quantum of compensation is concerned, the deceased was aged about 5 years as on the date of accident and was a non-earning member. Hence, the Tribunal awarded global compensation of Rs.1,80,000/- with interest at the rate of 6% p.a. With regard to the liability is concerned, the Insurance Company examined one of the Senior Legal Officer as RW-1 and produced the DL extract. The records produced by the insurance company clearly disclose that the driving license issued by the competent authority has been expired on 21-10-2008. The accident occurred on 11-12-2008. As on the date of accident, the driver of the tipper lorry was not having driving license to drive the vehicle. The Tribunal relying upon the judgment of the Hon''ble Supreme Court

reported in 2008 AIR SCW 6512 in the case of RAMBABU TIWARI v/s UNITED INDIA INSURANCE COMPANY LIMITED AND OTHERS held that as on the date of the accident, the driver of the tipper lorry was not having driving license and hence, the Insurance Company is not liable to compensate the claimants and fastened the liability on the 1st respondent i.e., the owner of the vehicle to compensate the claimants. Being aggrieved by the judgment and award passed by the Tribunal, fastening liability to compensate the claimants on the 1st respondent-owner of the vehicle, the claimants have preferred this appeal.

7. Sri. N Gopalakrishna, learned advocate appearing for the appellants contended that the judgment and award passed by the Tribunal is contrary to law. Even though, the driving license was expired on 21-10-2008 and the accident occurred on 11-12-2008, the driver was not disqualified from holding driving license. The subsequent renewal of license inure to his benefit. The Hon''ble Supreme Court in judgment

reported in 2004 ACJ Page 1 in the case of NATIONAL INSURANCE CO. LTD., v/s SWARAN SINGH has clearly held that the Insurance Company cannot disown their liability on the ground that the driver of the offending vehicle was not holding the driving license as on the date of accident and the Insurance Company has to compensate the claimants and recover from the owner of the offending vehicle. In the instant case also, the Tribunal ought to have directed the insurance company to pay the compensation and recover the same from the owner of the vehicle. Hence the judgment and award passed by the Tribunal is contrary to law and sought for setting aside the same by allowing this appeal.

8. On the other hand, Sri. A N Krishnaswamy, learned advocate appearing for 2nd respondent argued in support of the judgment and award passed by the Tribunal and contended that as per the conditions of the insurance policy, the owner of the vehicle has to entrust the vehicle to the person having valid and effective driving license. In the

instant case, as on the date of accident, the driving license was already expired on 21-10-2008. As per the provisions of the Motor Vehicles Act, the driving license continued to be effective for a period of 30 days from such expiry, the driver had 30 days time to get it renewed. In the instant case, the driver of the offending vehicle did not make any application for renewal of the license within the period of 30 days. Hence, Insurance Company is not liable to compensate the claimants. In support of his contention, he relied upon the judgment passed by the Hon''ble Supreme Court reported in (2008) 12 SCC 701 in the case of NATIONAL INSURANCE COMPANY LIMITED v/s VIDHYADHAR MAHARIWALA AND OTHERS and also relied upon the judgment of the Hon''ble Supreme Court, in the case of Rambabu Tiwari (supra) and sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel appearing for both the parties,

perused the judgment and award passed by the Tribunal and oral and documentary evidence.

10. The only issue to be considered in this appeal is whether the judgment and award passed by the Tribunal fastening the liability on the owner of the offending vehicle to compensate the claimants is in accordance with law?

11. The records clearly disclose that the accident occurred on 11-12-2008. As on the date of accident, the driving license of the driver of the offending tipper lorry was expired on 21-10-2008. No application has been made for renewal of license within 30 days as provided under Section 14 of the Motor Vehicle Act. The proviso to section 14 of the Act contemplates that every driving license shall, notwithstanding its expiry under this sub-section continued to be effective for a period of 30 days from such expiry. Further, the proviso of section 15 contemplates that in any case where the application for renewal of a license is made more than 30 days after the date of its expiry, the driving

license shall be renewed with effect from the date of its renewal. Hence, it is clear that as on the date of accident, the driving license has been expired and the driver has not made an application for renewal of driving license within 30 days from the date of its expiry. Even though, he made an application in the subsequent days, renewal comes into effect only from the date of its renewal and it will not reverse back to the date of its expiry. I find that there is no infirmity or irregularity in the order passed by the Tribunal exonerating the insurance company of its liability to compensate the claimants and fastening the liability on the owner of the vehicle. The Hon''ble Supreme Court in Rambabu Tiwari case in paragraph No. 18 has held as under:- "It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period of 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, driver may be held to be possessing a valid licence. The proviso appended

to sub-section (1) of section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.

The second proviso appended to sub-section (4) of section 15 is of no assistance to the appellant. It merely enables the licensing authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of sub-section (3) of section 9. It does not say that renewal would be automatic. It is, therefore, a case where a breach of the contract of insurance is established. This aspect of the matter has been considered by this court in National Insurance Co. Ltd. v. Kusum Rai, 2006 ACJ 1336 (SC), holding:

" (9) It has not been disputed before us that the vehicle was being used as a taxi. It was,

therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of the condition of the contract of insurance. The appellant, therefore, could raise the said offence.?

12. Further, the Hon''ble Supreme Court in National Insurance Co. Ltd., V/s Vidhyadhar Mahariwala and others case at paragraph No. 11 held as under:- "In Ishwar Chandra''s case, 2007 ACJ 1067 (SC), the three decisions referred to by the High Court were considered and it was held that the insurance company would have no liability in the case of this nature. We are in agreement with the

view. The appeal deserves to be allowed which we direct. The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from respondent No.2."

13. In view of the authoritative pronouncement of law by the Hon''ble Supreme Court, as on the date of accident, the driver of the tipper lorry was not having valid and effective driving license. Hence, the Insurance Company is not liable to compensate the claimants. The Tribunal has rightly fastened the liability on the owner of the tipper lorry to compensate the claimants. The appellants have not made out a case to interfere with the judgment and award passed by the Tribunal. Accordingly, the appeal is dismissed.

