(2014) 06 MAD CK 0006

In the Madras High Court

Case No : C.M.A.No.639 of 2012

Gopal APPELLANT

Vs

M. Venkatachalam RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Citation : (2014) 2 TNMAC 314

Hon'ble Judges : Mr. S.Manikumar, J.

Bench : Single Bench

Advocate : Mr. E. Kannadasan, Advocate, for the Appellants; Mr. V. Sithanan, Advocate, for the Respondent-1; Mr. J. Chandran, Advocate, for the Respondent-2; Mr. Gurulingam, Advocate, for the Respondent-3

Final Decision : Allowed

Judgement

Mr. S.Manikumar, J.—In the accident, which occurred on 29.09.2004, involving a Bajaj M80 motorcycle bearing registration No.TN-30-E-6996, insured with M/s.United India Insurance Company Limited, a four year old child died. A case in Crime No.375 of 2004 under Sections 279 and 304(A) IPC has been registered against the rider on the file of Vazhapadi Police Station. By impleading first respondent - Venkatachalam, the present owner, second respondent - The Branch Manager, United India Insurance Company Limited, Salem, the insurer of the vehicle, parents have filed MCOP.No.22 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Attur, claiming compensation of Rs.4,00,000/-.

2. The present owner/first respondent/Venkatachalam has filed a counter affidavit denying the manner of accident and the quantum of compensation. He has also disputed the liability.

3. The insurer/United India Insurance Company Limited, Salem, at paragraph 6 of the counter affidavit, has submitted that the motorcycle bearing registration No.TN-30-E-6996 was owned by one Sathique Ali, at the time of the accident and

that the registration certificate and the insurance policy stood in the name of Sathique Ali, son of Haribhahiman, No.36-B, West Street, Kumarasamypatti, Salem-7. According to the Company, Mr.M.Venkatachalam was only a rider of the motorcycle and that, at the time of the accident, he had no valid and effective licence.

4. Material on record discloses that subsequently, Sathique Ali, the erstwhile owner of the vehicle, has been impleaded as the third respondent, in the claim petition. He has filed a counter affidavit contending inter alia that at the time of accident ie., on 29.09.2004, he was not the owner of the vehicle. According to him, on 26.04.2004 itself, he has sold the Bajaj M80 motorcycle to one C.Ranjith Kumar, resident of Door No.26, 2nd Pullikutti Street, Gugai, Salem-6 and he, therefore, submitted that he is not liable to pay compensation for the accident and that M/s.United India Insurance Company Limited, Salem, insurer of the vehicle alone, is liable to pay compensation.

5. On evaluation of pleadings and evidence adduced by the parties therein, the Claims Tribunal held that the accident occurred only due to rash and negligent driving of the rider of the motorcycle Bajaj M80 bearing registration No.TN-30-E-6996. Admittedly, the vehicle was insured with United India Insurance Company Limited. RW.1/Venkatachalam in his evidence has categorically admitted that on the fateful day, he was the rider of the vehicle and was its owner. During the trial, he has candidly admitted that four months prior to the accident, he had purchased the vehicle from ''Raja Ganapathy Auto Consultants''. On evaluation of evidence adduced, the Claims Tribunal has recorded his oral evidence as follows:-

mtUila rhl;rpaj;jpnyna tpgj;J ele;j md;W tz;oia Xl;or; brd;wJk;. mth; jhd; tz;oapd; chpikahsh; vd;gija[k; bjspthf xg;g[f;bfhz;Ls;shh;/ tpgj;J eilbgWtjw;F 4 khjk; Kd;ng me;j tz;oia tpiyf;F th'';fpaija[k; xg;g[f;bfhz;Ls;shh;/ 3tJ vjph; kDjhuiug; bghWj;J tHf;if js;Sgo bra;tjpy; Ml;nrgiz ,y;iy vd;Wk; xg;g[f;bfhz;Ls;shh; (Third respondent sathique Ali is subsequently impleaded as respondent No.3) mtUila rhl;rpaj;jpy; uh$fzgjp Ml;nlh fd;ry;o''; epWtdj;jpypUe;J tz;oia tpiyf;F th'';fpaij xg;g[f;bfhz;Ls;shh; mth; kPJ jhd; tHf;Fk; jhf;fy; bra;ag;gl;Ls;s epiyapy;. 1tJ vjph; kDjhuhpd; m$hf;fpuijapdhy; jhd; rk;gtk; ele;jJ vd;gij cWjpa{l;Lk; tz;znk ,'';F jhf;fy; bra;ag;gl;Ls;s Mtz'';fs; v/k/rh/1 d; rhl;rpaKk; mike;Js;sJ

The translated version of the above evidence is as follows:

" In his evidence itself, he has clearly admitted that on the date of accident, he had driven the vehicle and was the owner of the vehicle. He has also admitted that four months prior to the accident, he had purchased the vehicle. He further admitted that he has no objection for the claim petition being dismissed against the third respondent. (Third respondent Sathique Ali is subsequently impleaded as respondent No.3). In his evidence, he admitted that he has purchased the vehicle from ''Raja Ganapathy Auto Consulting Company''. ..... Even the case being filed against him, the documents filed and the evidence of RW.1 would prove that the accident occurred due to the negligence of the first respondent alone.

(Emphasis by this Court)

6. Perusal of the award further discloses that though RW.1 has contended that the vehicle was sold to one Mr.Ranjith Kumar and Ex.R2 - A Delivery Receipt has been marked. But, he has fairly admitted that the original delivery receipt has not been handed over to him. On evaluation of the evidence and the material on record, the Claims Tribunal came to the conclusion that the offending vehicle Bajaj M80 bearing registration No.TN-30-E-6996, was in possession of RW.1, and that his rash and negligent driving, had caused the death of a four year old child. During his examination, he has also categorically stated that he has no objection for the claim petition being dismissed against Sathique Ali, impleaded, as the third respondent in the claim petition.

7. On the aspect of breach of the policy conditions that the motorcycle was driven without a valid and effective driving licence, the insurance company has examined RW.1, Junior Assistant, from Regional Transport Office, Attur, who has marked a photocopy of Ex.R1 - licence of RW.1 and upon perusal of the same, the Claims Tribunal has recorded that the first respondent/Venkatachalam did not possess a valid and effective driving licence, at the time of the accident.

8. Further M/s.United India Insurance Company Limited has examined one Mr.Sundaramoorthy, Motor Vehicles Inspector Grade-I from the office of the Regional Transport who has stated that a person, who possess LMV (light motor vehicle) licence, cannot said to be a competent person, to ride a motor cycle, for which a separate licence is required. On the analysis of oral and documentary evidence, the Claims Tribunal came to the conclusion that the first respondent/ Venkatachalam did not possess a valid and effective driving licence. Though he has examined himself as RW.2, he has not produced any licence.

9. For the death of a four year old child, the Claims Tribunal determined compensation of Rs.2,85,800/- with interest, at the rate of 7.5% per annum. However, fastening the liability only on first respondent/Mr.M.Venkatachalam. The Claims Tribunal has not passed any order of pay and recover. Being aggrieved by the above said directions, parents have filed this appeal, with a limited challenge contending inter alia that on the date of accident, as the offending vehicle bearing registration No.TN-30-E-6996 was insured with M/s. United India Insurance Company Limited and having found that the first respondent/ Venkatachalam, owner cum rider, did not possess a valid and effective driving licence to ride the motor cycle bearing registration No.TN-30-E-6996, the Claims Tribunal ought to have directed the insurer to pay compensation and thereafter, to recover the said amount from the owner of the vehicle instead of, wholly exonerating the Insurance Company from paying the compensation.

10. In the appeal, first respondent/Venkatachalam has been served and

represented by a learned counsel Mr.V.Sithanan. Mr.J.Chandran, learned counsel represents M/s.United India Insurance Company Limited. M/s.R.Gurulingam has entered appearance for, Sathique Ali, against whom there is no award.

11. The issue as to whether an Insurance Company can seek for exoneration of its obligation to pay compensation to the third party victims is no longer res integra in the light of the decision of the Hon''ble Division Bench of this Court in United India Insurance Company Ltd., v. S.Saravanan reported in 2009 (2) TNMAC 103 (DB), United India Insurance Company Limited, Salem, v. V.Vijayakumar, represented by his mother Kalamani and three others, reported in 2010 (2) TN MAC 388 (DB) and Bajaj Alliance General Insurance Company Ltd., Pune, v. Manimozhi and four others, reported in 2010 (2) TN MAC 542 (DB).

12. The question as to whether, it is open to the insurer to seek for total exoneration for payment of compensation to a third party victim or whether it has only a right of recovery, Section 149 (4) and (5) of the Motor Vehicle''s Act, has been extensively considered in ICICI Lombard General Insurance Company v. Annakkili, reported in 2012 (1) TN MAC 226, wherein this Court following the principles of law laid down by the Apex Court and the Division bench judgments that payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, being statutory and considering the interpretation given by the Supreme Court to Sections 147, 149 (4) and (5) vis-a-vis the defences open to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act and by holding that the very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the third parties, vis-a-vis inter-se disputes between the insured and insurer, held that the insurer cannot avoid its liability to pay compensation to a third party, but such avoidance can be made only, if wilful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who did not possess a valid and effective driving licence, to drive the vehicle and even if such breach is proved, payment of compensation to the third party victim cannot, at any stretch of imagination, be avoided by the Company and that the only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

13. In a recent decision in S.Iyyapan v. United India Insurance Co. Ltd., reported in 2013 (7) SCC 62, the Hon''ble Supreme Court, while dealing with a similar contention and after considering a catena of decisions, at Paragraph 17, held as follows:

"Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

14. The only question that remains to be considered in this appeal is whether the Insurance Company should be directed to pay the compensation amount and given the right of recovery, from first respondent or the recovery should be from Sathique Ali, treating him as owner of the vehicle, when the Registration Certificate is stated to have continued in the name of Sathique Ali, the erstwhile owner. At the risk of repetition, at this juncture, this Court deems it fit to reiterate that during the course of trial, the first respondent/Venkatachalam examined as RW.2, has categorically admitted that on the date of accident, he was riding the motorcycle and that he was also the owner of the said vehicle, that four months prior to the accident, the said vehicle was purchased from Sathique Ali. The first respondent examined as RW.2 has also deposed that he has no objection for the claim petition being dismissed against Sathique Ali. He has also admitted that the offending vehicle was purchased from one ''Raja Ganapathy Auto Consultants''. First Information Report has also been registered against him. When first respondent/Venkatachalam himself has admitted that on the date of the accident, he was the owner of the vehicle and that the accident occurred when he was riding the vehicle, and when he himself has adduced evidence, praying for dismissal of the claim petition against the previous owner Sathique Ali and when the Insurance Company has adduced credible evidence through the Junior Assistant of the Regional Transport Office, Attur and marked Ex.R1 to prove that the rider Venkatachalam did not possess a valid and effective driving licence at the time of accident, the liability arising under Section 147 of the Motor Vehicles Act, 1988, has to be fastened on the insurer to pay compensation to a third party victim and then, permit the company to recover the same from the owner of the vehicle, involved in the accident. Admittedly on 29.09.2004, the vehicle bearing registration No.TN-30-E-6996 was involved in the accident, RW.2 (first respondent/Venkatachalam) alone was the owner of the vehicle, which fact, he himself has admitted. The question as to whether it was subsequently sold to one Mr.Ranjith Kumar, who has not intimated the same to the office of the Regional Transport, is immaterial. There is no valid proof.

15. Yet another aspect to be considered is that though a specific finding of negligence has been recorded against RW.2/first respondent, that he has caused the death of the boy, due to his rash and negligent driving and that he did not possess a valid and effective driving licence, at the time of accident, he has not chosen to file an appeal. In the light of the decisions made in ICICI Lombard General Insurance Company Ltd., v. Annakkili and others reported in 2012 (1) TNMAC 227 and S.Iyyapan v. United India Insurance Co. Ltd., reported in 2013 (7) SCC 62, this Court is of the view that the Company ought not to have been exonerated from the liability to pay compensation to the respondents/claimants. Admittedly, the vehicle was in possession of Mr.Venkatachalam/RW.2 and that he

has caused the accident.

16. Though in the judgment in "Pushpa alias Leela and others v. Shakuntala and others" reported in AIR 2011 SC 682, the Hon''ble Apex Court held that under the Civil Law, the transferor ceases to be its owner after the sale and under the provisions of Motor Vehicles Act, 1988, he would still continue to be the owner of the vehicle, this Court is of the humble view that the said judgment cannot be made applicable to the facts of this case, because, in the case on hand, RW.2/ first respondent/Venkatachalam has not disputed the ownership of the vehicle on the date of the accident. He was the cause of the accident and on the date of the accident, he did not possess a valid and effective driving licence and therefore, this Court is of the view that the Claims Tribunal ought to have made the respondents 1 and 2 jointly and severally to pay compensation to the parents of the deceased, with a right of recovery to the insurer against RW.2. As quantum of compensation is not seriously disputed, there is no need to advert to the same. Therefore, the award dated 21.11.2011 in MCOP.No.22 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Attur, Salem District, is set aside.

17. In the result, the Civil Miscellaneous Appeal is Allowed. Respondents 1 and 2 are jointly and severally liable to pay compensation to the parents, with accrued interest at 7.5% per annum from the date of claim till the date of realisation and costs. The second respondent/Insurance Company is directed to deposit the award amount, with accrued interest and costs, to the credit of MCOP.No.22 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Attur, Salem District, within a period of four weeks from the date of receipt of a copy of this order, and thereafter, initiate proceedings against first respondent/RW.2/ Venkatachalam, owner of Bajaj M80 motorcycle bearing registration No.TN-30-E-6996, as per the decision in ''''Oriental Insurance Co.Ltd., v. Nanjappan and Others'''', reported in 2005 SCC (Cri) 148. It is also open to the Insurance Company to take steps in the same Tribunal, and seek for a direction against first respondent-owner of the said vehicle to offer security. On such deposit being made, the appellants/claimants are permitted to withdraw their share, as apportioned by the Tribunal, with proportionate interest and cost, by making necessary applications before the Tribunal. No costs.

