

(2000) 12 MAD CK 0102
In the Madras High Court
Case No : C.M.A. No. 200 of 2000

K. Venkatanarayanan

APPELLANT

Vs

Balaji and Others

RESPONDENT

Date of Decision : 12-12-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2001) 2 ACC 259 : (2002) ACJ 1063 : (2001) 3 LW 77

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; M.S. Krishnan, for Sarvabhauman Associates and S. Udayakumar, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—This appeal is directed against the award of the Motor Accidents Claims Tribunal, Salem, in M.C.O.P. No. 27 of 1997. The claimant is the appellant in the above appeal.

2. According to the claimant-appellant on 24.9.1996 at about 8.45 p.m. when he along with his wife, was returning home in his Hero Punch moped, bearing registration No. TN 27-9721 from Kalki Temple located near Ramakrishna Road junction, the rider of the scooter bearing registration No. TN. 27-A 6041, came in a rash and negligent manner. He dashed against the claimant's moped. As a result of which, he and his wife fell down from the moped. He sustained fracture on his left leg and also injuries on his left eyebrow, left shoulder, left index finger, fracture of the maxillary bone and fracture of zygoma. The moped which he was driving was also damaged. He took treatment in a private hospital by spending huge amount and after discharge from the hospital, he was using crutches for walking. The accident had resulted in permanent disability and he was not able to continue to work as he was doing previously. A sum of Rs. 2,00,000 was claimed as compensation.

3. In the counter filed by the respondent No. 2, it was contended that the accident was not due to rashness or negligence on the part of the respondent No.

1. The accident had resulted only on account of the careless driving of the claimant while crossing the four roads junction. The amount of compensation claimed was also excessive. The claimant was not entitled to any compensation. The rider of the scooter did not have any valid licence to ride the scooter.

4. The Tribunal after considering the above said pleadings and the evidence held that the rider of the vehicle G. Palanivel had no valid licence and hence, the insurance company was not liable to pay the damages. A total sum of Rs. 35,000 was awarded as total compensation. Hence, the present appeal by the claimant seeking enhanced compensation.

5. Learned counsel for the appellant-claimant contends that the order of the Tribunal exonerating the insurance company was not sustainable. He also submitted that the nature of the injuries sustained by the claimant would show that the amount awarded as compensation was very much on the lower side and required to be enhanced.

6. On the question of exonerating the insurance company, the facts which are relevant for the decision, are that the vehicle was being driven by one Palanivel who did not have a valid licence to drive the two-wheeler. He had only licence to drive heavy and light vehicles and he had no valid licence to drive the two-wheeler. While the owner of the vehicle chose to remain absent, on behalf of the respondent, RW 1, a staff of the Regional Transport Office, Salem, was examined in evidence to the effect that the rider of the scooter belonging to the respondent No. 1 was not possessed of any valid licence to drive the two-wheeler. Exh. P-I, licence was also produced which discloses that the said Palanivel had licence only to drive the light motor vehicles.

7. In this background, learned Counsel for the claimant submits that the burden of proof on the insurance company had not been properly established and learned Counsel for the claimant also submits that the rider of the two-wheeler could have obtained licence from some other place and not necessarily before the Regional Transport Office, Salem. Therefore, according to him, the insurance company had not properly discharged its burden.

8. On this issue I am unable to appreciate the submissions of learned Counsel for the claimant. The insurance company has done what is best in the circumstances by examining the staff from the local Regional Transport Office and also by filing Exh. P-1 licence, which does not contain any endorsement for driving two-wheeler. To require the insurance company to obtain the evidence from all the transport offices, throughout the State or the country is impracticable and unreasonable. Therefore, I am inclined to hold that the insurance company had established that the rider of the vehicle which is insured with the respondent No. 2, did not have a valid licence.

9. Learned counsel for the claimant further contends that notwithstanding the fact that the rider had no valid licence, the insurance company cannot be absolved of its liability. For this purpose, learned Counsel relies on the judgment

of P. Sathasivam, J. in National Insurance Co. Ltd. Vs. N. Devadas and Others, . Learned counsel relies on the expression of the learned Judge that since there was no evidence whether the owner of the vehicle in question was aware of the fact that the rider had no licence to drive the two-wheeler, the insurance company cannot be absolved of its liability.

10. Per contra, learned Counsel for the respondents relies on the judgment of the Apex Court in United India Insurance Co. Ltd. Vs. Gian Chand and others, .

11. It is true that P. Sathasivam, J. in his judgment in National Insurance Co. Ltd. Vs. N. Devadas and Others, , has made a reference to the judgment of the Supreme Court mentioned above. In that judgment, the Apex Court held that when an insured had handed over the vehicle to be driven by an unlicensed driver, the insurance company would get exonerated from its liability to meet the claims of the third party who might have suffered on account of the accident caused by the unlicensed driver. After referring to the said judgment, P. Sathasivam, J. held that on the facts of the case before him, there was no evidence to the effect that the owner was aware of the fact that the rider had no valid licence.

12. In this context, it is pertinent to note that in the present case, the owner had chosen to remain ex parte. The burden of proving that the owner was not aware of the fact that the rider had no licence is very much on the claimant. Or at least, the owner, if he wants to avoid his liability, should get into the box and establish that he was not aware of the said fact. In fact, the Supreme Court, in the judgment cited above dealt with this position specifically. In that case also, the owner remained ex parte and did not get into the box. In such circumstances, the Apex Court held that an adverse inference has to be necessarily drawn against the owner. The following passage is relevant in the said context:

It was not the case of respondent No. 9, the insured, that he did not know that respondent No. 1 to whom the vehicle was being handed over, was not having a valid licence. In fact, once he did not step in the witness-box to prove his case, an adverse inference had necessarily to be drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver, respondent No. 1. That finding reached by the Tribunal as well as by the High Court must result in exonerating the insurance company of its obligation as the statutory defence became available to it.

13. Therefore, where the owner does not choose to adduce evidence that he was not aware of the fact that the person to whom the vehicle was entrusted did not have a valid licence, the burden is on the owner if he wants to avoid any liability. Otherwise, if the claimant wants to fasten liability on the insurance company, it is for him to prove the said fact.

14. Therefore, in the present case, the owner having chosen to keep himself out of the witness-box and the claimant not having produced satisfactory evidence in the said context, the order of the Tribunal exonerating the insurance company is

perfectly valid.

15. It is, however, pointed out that applying the principles u/s 149(4) of the Motor Vehicles Act, 1988, the amount of compensation already recovered by the claimant cannot be recovered by the insurance company from the claimant and that the insurance company was entitled to recover the said amount from the owner of the vehicle. I am inclined to agree with the contentions of learned Counsel for the appellant only to the extent that with reference to the amount already received by the claimant, he may retain the said amount and he would be entitled to proceed as against the owner as regards the balance of the amount. As far as the insurance company is concerned, it is open to the insurance company to recover the amount received by the claimant by taking appropriate proceedings against the owner of the vehicle.

16. As regards the quantum of compensation, learned Counsel for the appellant submits that the nature of the injuries sustained by the claimant would indicate that he had suffered serious injuries and that quantification of disability at 20 per cent was very much on the lesser side and that the amount of Rs. 5,000 fixed towards pain and suffering was also on the lesser side.

17. I have considered the submissions of both sides in the context of the quantum of compensation payable to the claimant. It is not disputed that the claimant had suffered compound fracture on his left leg and also a lacerated injury. He has also produced various bills showing the medical expenses incurred by him, namely, Exhs. P-6 to P-10. It is also in evidence from the testimony of PW 2, the doctor that the petitioner may not be in a position to grasp any object with the help of his left hand and he was also not in a position to squat properly on the floor. He was also disabled from walking a long distance. Therefore, I am inclined to hold that the claimant is entitled to at least Rs. 30,000 towards disability. I am inclined to hold that the following calculations would reflect just and fair compensation payable to the claimant:

(i) Towards disability	Rs. 30,000	(ii) Towards pain and suffering	Rs. 15,000	(iii)
Towards medical expenses	Rs. 10,000	(iv) Towards extra nutrition	Rs. 5,000	
-----	Total Rs. 60,000	-----		

18. Therefore, I am inclined to hold that the claimant would be entitled to a total sum of Rs. 60,000 with interest at the rate of 12 per cent from the date of the claim petition. As stated earlier, apart from the amount already recovered by the claimant from the insurance company, for the balance of the amount the claimant would be entitled to proceed against the owner of the vehicle. The appeal is allowed subject to the above terms. No costs.