(1984) 09 MAD CK 0026

In the Madras High Court

Case No : A.A.O. No. 118 of 1983

Maimoon Bi APPELLANT

Vs

United India Insurance Co. Ltd., Madras and Others RESPONDENT

Date of Decision : 05-09-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 96

Citation : (1985) 1 ACC 73 : AIR 1985 Mad 270 : (1984) 97 LW 553

Hon'ble Judges : V. Ramaswami, J;David Annoussamy, J

Bench : Division Bench

Advocate : N. Ganapathi, Aru Sellambayiram and Devanathan, for the Respondent

Judgement

V. Ramaswami, J.—This is an appeal by the claimant in a motor accident case. The appellant is the wife of one Mohamed Ismail who met

with an accident on 7-3-1981, and died as a result of the same at the spot. It is stated that he was standing in lorry T.M.S. 9097 and due to the

negligent driving of the lorry by the driver he was overthrown from the lorry and then ran over by the same lorry. The first respondent is the

Insurance Company. The third respondent is the registered owner. The vehicle was insured with the first respondent and the policy for the same

stood in the name of the third respondent. The Tribunal found that the accident happened due to rash and negligent driving of the vehicle by the

driver and that therefore, the claimant is entitled to compensation. The Tribunal also fixed the compensation at Rs. 36,000. The correctness of the

quantum is now not in dispute However, the Tribunal directed the second respondent alone to be liable and dismissed the claim as against

respondents I and 3. This was on the ground that the lorry had been transferred by the third respondent to the second respondent and that the

policy stood in the name of the third respondent and it had not been transferred to the second respondent.

2. We are at a loss how this conclusion could have been reached by the Court below at all. None of the parties produced the registration

certificate in order to show in whose name the vehicle was standing on the date when the accident occurred. The Tribunal purported to rely on the

evidence of P.W. 1, the wife of the deceased who was the claimant and P.W.2, who was a co-employee travelling in the lorry, in support of its

finding that the second respondent was the owner of the vehicle on the day when the accident happened. The evidence extracted in the order does

not in any way show that there was any valid transfer of the vehicle to the second respondent on the day when the accident took place. The only

sentence which has any bearing at all on this question is the one found in cross-examination of P.W. 1, which reads as follows --

My husband was working in the lorry, for about 8 months prior to the accident and for the 8 months the second respondent was the owner of the

lorry.

This was an inference by the claimant. She would not be a proper witness to speak to the fact as to who was the owner of the vehicle. The proper

persons are respondents 2 and 3 or even the first respondent. They have not gone into the witness box to say as to who was the owner of the

vehicle when the accident took place. P.W. 2, who is stated to be the person who was travelling with the deceased at the time of the accident

could not also be stated to know the transfer. Even if he had stated in cross-examination that the second respondent purchased the lorry which is

involved in the accident three months prior to the date of the accident, that would not be legal evidence at all in this matter as he is not a person

who had any personal knowledge of the ownership or the transfer. Nor is there any evidence to show that he was aware of the transfer of any

particular reason. On the other hand, we have R.W. 1, the Administrative Officer of the Insurance Company who would not give any direct

evidence as to whether there was a transfer or not. He had simply stated that it appears that the second respondent had purchased the vehicle. As

to when he has purchased and whether it was prior to the accident are not found in the evidence of R.W. 1. On the materials, therefore, there is

nothing on record to show that there was any transfer from the third respondent to the second - respondent before the date of the accident. In the

circumstances, therefore, we have to proceed on the basis that the third respondent was the owner and continues to be the owner.

3. The learned counsel for the Insurance Company was at pains to show that in the case of a motor vehicle, it is not necessary that there should be

a transfer of the registration certificate in order to effectuate a valid transfer and that transfer may be effected immediately by sale and purchase by

delivery of possession. In support of this contention, he has relied on the decisions reported in M. Bhoopathy (Died) and Others Vs. M.S.

Vijayalakshmi and Another, , The South India Insurance Co., Bombay Vs. Lakshmi and Others, , and Hema Ramaswami Vs. K.M. Valarance

Panjani and Others, . All these cases are irrelevant. In each and every one of these cases it was found that there was a transfer by sale and

purchase and passing of consideration. The only point taken was that the sale was not complete till there was an endorsement in the registration

certificate. It was held that the transfer does not wait till the endorsement is made on the registration certificate and that when the sale and purchase

is effected and the consideration passed, the sale is complete. That is not the case here. There is no evidence to show when it was sold and

whether the second respondent purchased it at all from the third respondent. In the circumstances, we are unable to say that there was any transfer

at all which will stand in the way of the claimant. The net result is that the third respondent will be liable for the claim and the first respondent

insurance company will be vicariously liable. As the second respondent has not questioned his liability and filed any appeal, the decree granted by

the Tribunal as against the second respondent also could not be varied. The no result is that all the respondents are jointly and severally liable to

pay the money to the claimant appellant. We may also point out that the second and third respondents, remained exparte and they did not deny

liability. The claimant who is not aware as to who is the owner of the vehicle has impleaded both the second and third respondents as parties to the

claim petition. If the Insurance Company wanted to extricate itself from liability on a special plea that the policy is not in the name of the owner, it should have pleaded and proved by showing that the third respondent had transferred the vehicle when the accident took place and that having not

been done it is not open for the Insurance Company to deny its liability. The burden is certainly on the. Insurance Company to prove that the third

respondent was not the owner on the date of the accident and that the Insurance Company having failed to do so they have to suffer the liability.

The request of the learned counsel for the Insurance Company to give a second chance by way of a remand to the Tribunal below in order to

prove whether there was a transfer or not on the date when, the accident occurred, ''to say the least, is unreasonable and unjustified and could not

be entertained at this stage.

4. In the result the appeal is allowed. The judgment and decree of the Tribunal is modified and there will be a decree against the three respondents

jointly and severally for a sum of Rs. 36,000. The appellant will be entitled to her costs. Since respondents 2 and 3 remained exparte and did not

contest the appeal, the costs would be paid by the Insurance Company, the first respondent.

5. Appeal allowed.

