(2011) 11 MAD CK 0181

In the Madras High Court

Case No : C.M.A. No. 3537 of 2010 and Cross Objection No. 8 of 2011

M/s. United India Insurance Co Ltd. — APPELLANT

Vs

Thangamuthu and Jayalakshmi
Thangamuthu Vs M/s. United India Insurance Co Ltd. Third Party Motor Claims Office Co-operative Building No. 38, Anna Salai Chennai - 600002 and Jayalakshmi — RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (2011) 11 MAD CK 0181

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : K.S. Narasimhan in C.M.A. No. 3577 of 2010 and Mr. F. Terry in Cross. Obj. No. 8 of 2011, for the Appellant; F. Terry in C.M.A. No. 3577 of 2010 and Mr. K.S. Narasimhan for R1 in Cross.Obj. No. 8 of 2011, for the Respondent

Judgement

Honourable Mr. Justice B. Rajendran

1. The insurance company has come forward with the appeal questioning the correctness of the Judgment and Decree dated 26.08.2008 made in

M.C.O.P. No. 41 of 2006 on the file of Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.IV), Ponneri. The claimant Thangamuthu has filed the Cross-Objection seeking enhancement of the compensation awarded by the Court below.

2. The facts which led to the filing of the Claim Petition is that on 22.12.2005 at about 8.00 hours when the Claimant Thangamuthu was walking on the left side of the road, Opp. To Arunachalam Apartments, Gandhi Road, Velacherry, the TVS Motor Cycle bearing Registration No. TN 07 AF 4992 was driven by its driver in a rash and negligent manner and dashed against the claimant. In the impact, he sustained grievous fracture injuries and admitted in the hospital for about a week. At the time of accident, the claimant was aged 50, doing business in the

name and style of Suguna Chicken Centre and earning Rs.5,000/-per month. Therefore, for the injuries sustained in the accident, he claimed compensation of Rs.2,00,000/-. The Court below, awarded a sum of Rs.85,000/-as compensation and directed the insurance company to pay the amount to the claimant.

3. The learned counsel appearing for the appellant would contend that the insurance company has filed the appeal on the ground that the vehicle involved in the accident was driven by a person without licence. In this connection, the learned counsel for the appellant/insurance company heavily relied on Ex.P5, report of the Motor Vehicles Inspector and Ex.A6 copy of the policy. Relying on Ex.P5, the learned counsel for the appellant would contend that the driver of the vehicle was not having a valid licence at the time of accident and therefore, they cannot be fastened with the liability to pay the compensation. Relying on ExA6, insurance policy, the learned counsel for the appellant would specifically contend that no person without licence should be allowed to drive the vehicle. When that be so, when there is a violation of the policy condition, the insurance company cannot be fastened with the liability to pay the compensation. Therefore, the learned counsel for the appellant would contend that the owner of the vehicle alone is liable to pay the compensation and they need not be directed to pay the compensation amount.

4. The learned counsel appearing for the appellant/insurance company would vehemently contend that since the appeal is filed by the insurance company questioning the liability to pay the compensation, the Cross Objection filed by the claimant for enhancement of the compensation, especially against the owner of the vehicle/second respondent is not maintainable since in this appeal, the insurance company is not questioning the negligence or finding regarding quantum. If at all, the claimant/Cross Objector ought to have filed an independent appeal for enhancement and the cross objection is not maintainable. In this context, the learned counself or the appellant would rely on the decision of the Division Bench of this Court reported in United India Insurance Co. Ltd. Vs. Rajammal and Others, for the proposition that a Memorandum of Cross objection, which is directed solely against the co-respondents and not the appellants, is not maintainable under Order 41 Rule 22 of CPC. Relying on this decision, the learned counsel for the appellant would contend that it is well settled that as a general rule, a respondent can file a cross-objection only against an appellant and not against a co-respondent.

5. The learned counsel for the claimant/Cross Objector would contend that it is no longer res integra for the claimant/Cross Objector to file the claim petition against the Insurance Company even if the driver did not possess the valid driving licence. This Court has time and again held that in such circumstances, it is for the insurance company to pay the compensation amount and to recover it later from the owner of the vehicle. Therefore, the learned counsel for the claimant would pray for dismissal of the appeal.

6. I heard the counsel for both sides. In this case, the insurance company

questions their liability to pay the compensation amount on the ground that the driver did not possess a valid driving licence at the time of accident. In this context, the learned counsel for the insurance company relied on Ex.P5, report of the motor vehicles inspector and the insurance policy, Ex.P6 to show that there is a violation of the policy condition inasmuch as the driver of the two wheeler did not possess a valid licence at the time of accident. Even in the counter filed before the Court below, the insurance company has raised such a plea that the driver did not possess a valid driving licence. When such a stand was taken by the insurance company, it is the duty of the owner of the vehicle to prove that there was a valid licence in possession of the driver of the vehicle at the time of accident. Before the Court below, the owner of the two wheeler was represented by a counsel, but there was no oral or documentary evidence let in on behalf of the owner to show that the driver was in possession of a valid driving licence at the time of accident. Under those circumstance, the defence set up by the insurance company is well found. The insurance company also discharge their onus by producing Ex.P5 and P6 and also proved that there was a violation of the policy condition. Therefore, the only question now remains for consideration in this appeal is whether the insurance company is not liable to pay the compensation amountor they may be directed to pay the compensation and then recover it from the owner of the vehicle.

7. In the decision rendered in National Insurance Co. Ltd. Vs. Swaran Singh and Others, he Honourable Supreme Court held that even if there is any policy violation, the insurance company cannot be absolved from their liability to pay the compensation amount. Therefore, at best, the insurance company can pay the compensation amount as determined by the court below to the claimant and recover it from the owner of the vehicle.

8. As regards maintainability of cross-objection is concerned, the learned counsel for the Cross Objector would contend that inasmuch as sought for enhancement of compensation amount against the owner of the vehicle as well as the insurance company, the cross objection is maintainable. in the decision renderd by the Full Bench of this Court reported in Vadlamudi Venkateswarlu and Another Vs. Ravipati Ramamma and Another, it was held as follows:-

One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent. The cross-objection must be an objection by a respondent against the appellant.

9. In the decision rendered by the Honourable Supreme Court in Pannalal Vs. State Bombay and Others, the decision rendered by the Full Bench of this Court mentioned supra was referred to and the Honourable Supreme Court also approved the decision of the Full Bench of this Court by holding that "We think, with respect, that these observations put the matter clearly and correctly."

10. Therefore, in the light of the decision of the Full Bench of this Court as well

as the Honourable Supreme Court, I hold that the cross-objection filed by the Cross Objector is not maintainable and accordingly, the Cross Objection is dismissed.

11. In this appeal, the insurance company has not disputed the quantum of compensation awarded by the Court below as well as negligence on the part of the driver of the vehicle, which are defences available to the owner of the vehicle. Therefore, following the decision of the Honourable Supreme Court reported in National Insurance Co. Ltd. Vs. Swaran Singh and Others, hold that the Insurance Company is liable to pay the compensation amount and then recover it from the owner of the vehicle. Accordingly, the appeal filed by the insurance company is dismissed giving liberty to the insurance company to pay the compensation amount to the claimant and to recover it from the owner of the vehicle. No costs.

12. It is represented that the insurance company has deposited the entire compensation amount as determined by the court below and as per the directions of this Court, the claimant/Cross Objector also withdrew certain amount. If still there is any balance payable by the insurance company, the same shall be deposited with accrued interest within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the compensation amount, if any, he is entitled to with accrued interest.

