(2011) 11 MAD CK 0191

In the Madras High Court

Case No : C.M.A. No. 1700 of 2009

M.T. Balasubramaniyam — APPELLANT

Vs

S.D. Saravanan and Bajaj Allianz General Insurance Co Ltd Annapurna Buildings, Third Floor Arts College Road Coimbatore — RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2011) 11 MAD CK 0191

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : V. Soundararajan for M/s. V.S. Rajan Associates, for the Appellant; Arumugam for R1 Mr. M.B. Gopalan for R2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice B. Rajendran

1. The claimant is the appellant. The claimant is aggrieved by the dismissal of his claim petition by the Court below as against the Insurance Company and directing the owner of the vehicle namely the first respondent to pay the compensation amount of Rs.1,76,820/-.

2. In the claim petition, the claimant would contend that on 23.10.2006, one Mr. Raja was riding the motor cycle bearing Registration No. TN 37 AD AP 3903 in which the claimant was travelling as pillion rider. When the vehicle was proceeding near Idayarpalayam diverge, on Coimbatore-Palghat main Road, due to the rash and negligent driving of the driver of the motor cycle, it hit against an oncoming cyclist. In the impact, the claimant sustained severe injuries including fracture injuries. The claimant was admitted in Ganga Hospital, Coimbatore for 13 days and discharged on 06.11.2006. At the time of accident, the claimant was aged 23 years and working as Grade-II Police Constable in Coimbatore earning Rs.4,500/- per month. Therefore, for the injuries sustained in the accident, the

claimant filed the claim petition claiming compensation of Rs.6,00,000/-.

3. The insurance company resisted the claim petition by filing a counter before the court below. According to the insurance company, the Driver of the vehicle was not holding a valid driving licence at the time of accident and therefore, they cannot be fastened with any liability to pay compensation amount to the claimant. The policy in force was a package policy and it covers only two kinds of risks namely (i) own damage and (ii) liability to third party. According to the insurance company, Section 147 of the Motor Vehicle Act does not cover the risk of the pillion rider in the motor cycle and no additional premium has been collected under any heads to cover the risk of pillion rider in anymanner. Under those circumstances, the insurance company prayed for dismissal of the claim petition.

4. The court below, on appreciation of the oral and documentary evidence, found that the insurance coverage is not available to the claimant, being a pillion rider and therefore directed the first respondent/owner of the vehicle to pay the sum of 1,76,800/- as compensation amount to the claimant and exonerated the insurance company. Aggrieved by the direction to the owner of the vehicle to pay the compensation amount, the present appeal is filed by the claimant.

5. The learned counsel appearing for the claimant/appellant would vehemently contend that as per the latest decision of the Division Bench of this Court reported in (Royal Sundaram Alliance Insurance Co Ltd., Coimbatore vs. A. Meenakshi and others) (2009) 1 TNMAC 249 (DB), the insurance company is liable to pay the compensation amount even to a gratuitous pillion rider and therefore, the learned counsel for the claimant/appellant would contend that the award passed by the Court below is unsustainable in view of the decision rendered by the Division Bench of this Court.

6. The learned counsel appearing for the second respondent/ insurance company would contend that the insurance company has taken the defence before the Court below that the driver of the two wheeler did not possess a valid licence at the time of accident. Inasmuch as there is a violation of policy condition, the insurance company cannot be fastened with any liability.

7. Heard the counsel for both sides and perused the materials on record. The insurance company admits the date, time and manner in which the accident occurred but disputes their liability to pay the compensation amount on the ground that there is a violation of the conditions of policy.

8. As rightly pointed out by the learned counsel for the appellant, in the decision rendered by the Division Bench of this Court reported in (Royal Sundaram Alliance Insurance Co Ltd., Coimbatore vs. A. Meenakshi and others) (2009) 1 TNMAC 249 (DB), the Division Bench of this Court held that even a gratuitous passenger, travelling as a pillion rider, is entitled to get coverage under comprehensive package policy and the insurance company cannot disown their liability to pay the compensation amount. In Para No.29 of the judgment of the

Division Bench, it was held as follows:

29. Therefore, it is clear from the Act itself, the words of the policy and the decision in Amirtlal Sood''s case (supra) that a Comprehensive policy covers the risk of a gratuitous passenger to the extent of the liability incurred. We may imagine what will happen in a case where the owner is driving his car covered by a comprehensive policy. He is accompanied by his wife and children. There is an accident as in this case. The wife and children are permanently disabled by the injuries. If we agree with the appellant Insurance Company, those pathetic claimants will not get any compensation. The law never intended this to happen. That is why the TAC explicitly came out with the clarification Circular in 1978. We cannot forget the words used are "third party" and "comprehensive", so we cannot deny this relief to the third party occupant in a car covered by a comprehensive policy.

9. Therefore, in the light of the decision of the Division Bench mentioned supra, the impugned award passed by the Court below is not sustainable in so far as it directs the owner of the vehicle to pay the compensation amount to the claimant by exonerating the insurance company. Consequently, I hold that the insurance company is held liable to pay the compensation amount to the claimant.

10. As far as the plea of the insurance company regarding violation of the policy condition namely non-possession of the driving licence by the driver of the vehicle at the time of accident, the insurance company had sent a notice to the owner of the vehicle, calling upon him to produce the driving licence and the owner of the vehicle also received the same, but he has not chosen to produce the driving licence. Under those circumstances, following the decision reported in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , at best, the insurance company can pay the compensation amount to the claimant and to recover the same from the owner of the vehicle.

11. In the result, the appeal filed by the claimant/appellant is allowed and the Judgment and Decree dated 19.02.2008 made in M.A.C.T.O.P. No. 344 of 2007 on the file of Motor Accidents Claim Tribunal, 1st Additional Subordinate Judge at Coimbatore is set aside to the extent it directs the owner of the vehicle alone to pay the compensation amount to the claimant by exonerating the second respondent/Insurance company to pay the compensation amount. The insurance company is directed to deposit the compensation amount, with accrued interest, within a period of eight weeks from the date of receipt of a copy of this judgment with liberty to recover it from the owner of the vehicle. On such deposit, the claimant/appellant is permitted to withdraw the compensation amount with accrued interest. No costs.

