
(2012) 10 MAD CK 0179

In the Madras High Court

Case No : C.M.A. No. 4197 of 2008 and M.P. No. 1 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

S. Sangamithra, Ganeshamoorthy Selvaraj and Rajalakshmi

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(b), 157(b)

Citation : (2013) 1 CTC 391

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : N.B. Surekha, for the Appellant; S. Mukunth, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—This Appeal is filed by the Insurance Company, challenging the award passed in M.A.C.T.O.P. No. 934 of 2005 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Coimbatore. The brief facts which are necessary for the disposal of the above Appeal are as follows:

a. The First Respondent is the Claimant before the Tribunal. Since the First Respondent is the minor, she is represented by her father as Guardian. It is the case of the First Respondent before the Tribunal that on the date of the accident, namely, 14.10.2004, while she was travelling in the Autorickshaw bearing Registration No. TN-37-B-6051 owned by the Third Respondent, since the driver of the Autorickshaw has driven the same in a rash and negligent manner and applied the sudden break, the First Respondent-minor Sangamithra fell down from the Auto and the wheel of the Autorickshaw ran over the left leg and thereby she sustained fracture on her left leg. Thereafter, she was taken to Ganga Hospital, Coimbatore, where she was admitted as inpatient and took treatment from 14.10.2004 to 27.10.2004. Hence, the First Respondent-Claimant represented by her father has filed a Claim Petition before the Tribunal, Sub-Court, Coimbatore, claiming a compensation of Rs. 3,00,000/-.

2. The claim of the First Respondent was resisted by the Insurance Company by filing a Counter stating that on the date of accident the Autorickshaw had carried seven children i.e. more than the permitted number of children and therefore, there is a violation of the terms and conditions of the Insurance Policy. Hence, the Insurance Company is not liable to pay any compensation.

3. That apart, the Insurance Company, by filing an additional Counter Statement had taken a defence that the said vehicle was originally owned by one Selvaraj, who is the husband of the Third Respondent, namely, Rajalakshmi. The said Selvaraj had died on 25.7.2002. After his death, the Registration Certificate was transferred in the name of the Third Respondent, but the same was not informed to the Insurance Company as required by Section 149(2)(b) and Section 157(b) of the Motor Vehicles Act and therefore, the Insurance Policy still stands in the name of the deceased Selvaraj. So, there is no contract between the said Rajalakshmi and the Insurance Company and therefore, the Claim Petition is not maintainable.

4. In order to prove the claim, on the side of the First Respondent-Claimant, the father of the minor was examined as P.W.1 and one Dr. K. Ranganathan was examined as P.W.2 and Exs. P.1 to P.12 have been marked and on the side of the Insurance Company two witnesses have been examined and Exs. R.1 to R.2 have been marked.

5. The Tribunal after analysing the entire evidence passed the award for a sum of Rs. 1,03,000/- with interest at 7.5% p.a. and directed the Insurance Company to pay the compensation amount and permit them to recover the same from the owner of the vehicle since there was a violation of the terms and conditions of the Insurance Policy.

6. Aggrieved by the same, the present Appeal has been filed by the Insurance Company.

7. Heard the learned Counsel on either side.

8. The contention of the learned Counsel for the Appellant is on two limbs:

a. The First Limb of contention is that on the date of the accident, since the insured vehicle was carrying seven children i.e. more than the permitted number of children to be taken in the Autorickshaw in violation of the condition of the Insurance Policy, the Tribunal ought to have come to the conclusion that the Insurance Company is not liable to pay any compensation amount.

b. The Second Limb of contention is that the original owner of the vehicle, namely, Selvaraj, who is the husband of the Third Respondent, died on 25.7.2012. The accident took place on 14.10.2004. But the Third Respondent, who is the wife of the deceased Selvaraj, though transferred the Registration Certificate of the said vehicle in her name, she has not chosen to inform the same to the Insurance Company as per Section 149(2)(b) and Section 157(b) of the Motor Vehicles Act. On the other hand, the Insurance Policy was renewed in

the name of the deceased Selvaraj. Since there is no contract between the Third Respondent, Rajalakshmi and the Insurance Company, the Insurance Company is not liable to pay this compensation amount.

9. Per contra, the learned Counsel for the First Respondent supported the award passed by the Tribunal and sought for the dismissal of the Appeal.

10. I have considered the aforesaid submissions and perused the materials available on record.

11. It is an admitted fact that the said Autorickshaw had been insured with the Appellant-Insurance Company and the Insurance Policy was also in force at the time of the accident and therefore, the Insurance Company cannot escape from its liability. However, since seven children had travelled in the Autorickshaw i.e. more than the permitted number of the seating capacity, the owner of the autorickshaw violated the terms and conditions of the Insurance Policy and therefore, considering all the above aspects, after determining the quantum of compensation, namely, Rs. 1,03,000/- the Tribunal directed the Insurance Company to pay the said compensation first to the Claimant/First Respondent herein and thereafter to recover the same from the owner of the autorickshaw, namely, the Third Respondent. Therefore, I do not find any infirmity in the award passed by the Tribunal.

12. As far as the submission of the learned Counsel for the Appellant that the transfer of the Registration Certificate of the said vehicle has not been informed to the Insurance Company to change the name in the Insurance Policy and therefore, the Insurance Company is not liable to pay any compensation is concerned, such contention cannot be accepted in the light of the decision of the Punjab and Haryana High Court at Chandigarh reported in Om Prakash and another v. Rajbiri and others, 1997 AC J 547. In the said decision, paragraph 8 reads as under:

8. In this case, the Insurance Company continued to renew the Policy in the name of registered owner and had been issuing the Cover Note. I am not inclined to accept the argument of learned Counsel for the Insurance Company that the owner of the Truck had died and the premium was being paid on his behalf by somebody else and as such, the Insurance Company is not liable to pay compensation. The Insurance Companies should not accept the premium with closed eyes. A duty is cast upon the Insurance Company to verify whether the owner of the vehicle is alive or not and also to verify the credentials of the person offering premium.

13. The principle laid down in the above said decision squarely applies to the case on hand. In the light of the above principles, the Second Limb of contention of the learned Counsel for the Appellant cannot be accepted.

14. For the foregoing reasons, I do not find any infirmity in the award passed by the Tribunal and nothing warrants to interfere with the same. However, it is made

clear that the Appellant shall pay the entire award amount to the Claimant/First Respondent herein with accrued interest as awarded by the Tribunal and thereafter, the Appellant can recover the same from the Third Respondent, who is the owner of the said vehicle. Since the entire amount of compensation has been deposited by the Appellant, the Claimant/First Respondent is permitted to withdraw the same.

For the aforesaid reasons, the Appeal fails and the same is dismissed. No costs. Connected M.P. is also dismissed.