
(2005) 04 MAD CK 0084

In the Madras High Court

Case No : C.M.A. (NPD) No. 1243 and 1244 of 2005 and C.M.P. No's. 6910 and 6911 of 2005

National Insurance Company Limited

APPELLANT

Vs

Subramani @ Mani and Others

RESPONDENT

Date of Decision : 18-04-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2005) 3 ACC 530 : (2005) 3 LW 393

Hon'ble Judges : S. Sardar Zackria Hussain, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : K.S. Narasimhan, for the Appellant;

Judgement

P.D. Dinakaran, J.—The above appeals are directed against the judgment and decree dated 26.03.2003 made in MACTOP Nos. 983 and

1170 of 2000 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes) at Chennai, whereby the Tribunal has allowed

the claim petitions and awarded compensation of Rs.3,00,000/- and 3,34,000/- with 9% interest from the date of the claim petition for the death

of the deceased Dillibabu and Purushottaman respectively.

2. According to the claimants in the respective claim petitions, who are parents of the deceased Dilli Babu and Purushottaman respectively, on

7.5.1999 at about 1 a.m. when the deceased in the respective claim petitions were travelling in a motor cycle bearing Registration No.TN-04-Y-

7762 from North to South on Tiruvattiyur High Road, the lorry belonging to the third respondent bearing Registration No.TSA-220 0, which was

being driven in a rash and negligent manner by its driver dashed against them, as a result, both of them sustained grievous injuries and died. Hence,

the claim petitions by the respective claimants seeking compensation of a sum of Rs.3,00,000/- each for the death of the deceased Dillibabu and Purushottaman.

3. The owner of the vehicle as well as the insurance company were the respondents before the Tribunal. The Tribunal after inquiry, concluded that the vehicle bearing Registration No.TSA 2200 involved in this case was driven in a rash and negligent manner, which caused the accident resulting the death of the deceased.

4. The insurance company contested the case by examining the witness from the Regional Transport Office that the insurance company is not liable to pay any amount in view of the fact that the driver of the lorry was not possessing a valid and effective driving licence to drive tanker lorry carrying hazardous goods. However, rejecting the said contention, the Tribunal imposed the liability on the insurance company directing it to pay the award amount to the claimants. This order is the subject matter of challenge before this Court in these appeals.

5. Learned counsel for the appellant would mainly contend that despite the fact that the insurance company, the appellant examined the officials from the Regional Transport Office to prove their defence that the driver of the vehicle did not possess a valid driving licence to drive the tanker lorry carrying hazardous goods, the claims tribunal held that the insurance company is liable to pay the award amount, even though the driver was charged for the offence of having driven the motor vehicle without a valid and effective licence to drive the tanker lorry carrying hazardous goods.

6. In view of a recent decision rendered by the Apex Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , we need not go into the question as to whether the insurance company has properly proved before the Tribunal that the driver of the lorry was possessing valid licence or not. The dictum laid down by the Supreme Court in the said decision is as follows:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third

parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.

7. That apart, the law on the point is now well settled in the decision of the Apex Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others,

, where in it is held as follows:

...21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the

decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair

and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court

had proceeded in terms of the decisions of this Court in Satpal Sing. The said decision has been overruled only in Asha Rani. We, therefore, are of

the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if

not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the

insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the

subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the

aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only

entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or

severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can

be resolved by the tribunal in such a proceeding.

8. The impugned award of the Tribunal when put on the touchstone of the law as laid down by the Apex Court as referred above, the award of

compensation to the claimants is to be paid in the first instance by insurer, and later to be recovered from the insured.

9. In the result, for the aforesaid view of the matter, the impugned judgment and award dated 26.03.2003 made in MACTOP Nos.983 and 1170

of 2000 shall be deemed to be modified as follows:

i) There will be an award against the driver and owner of the vehicle bearing Registration No. TAS-2200 and the insurer of the vehicle in

M.C.O.P.Nos.983 and 1170 of 2000 on the file of Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai, directing payment

of the compensation of Rs.3,00,000/- and 3,34,000/- to the claimants in M.C.O.P.Nos.983 and 1170 of 2000 respectively with interest at 9%

from the date of filing of the claim petition, till the award amount is paid;

ii) the insurer on its paying and satisfying the award shall be entitled to reimbursement of the entire sum from the owner of the vehicle and the

insurer shall in the event of non-payment shall enforce the recovery against the owner of the vehicle by way of Execution of the award in

M.C.O.P.Nos.983 and 1170 of 2000 on the file of Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai;

iii) the claimants are entitled to the cost of one set in the original petition;

iv) the parties shall bear their respective costs in this appeal;

v) consequently, C.M.P.Nos.6910 and 6911 of 2005 are closed.