
(2010) 08 MAD CK 0505

In the Madras High Court

Case No : C.M.A. No"s. 1372 and 1373 of 2010 and M.P. No"s. 1 and 1 of 2010

New India Assurance Co. Ltd.

APPELLANT

Vs

Kavitha and Others

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 3

Citation : (2011) 1 MLJ 1128 : (2011) 3 RCR(Civil) 490 : (2011) 3 RCR(Civil) 490

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : M.B. Raghavan, for the Appellant; P. Valliappan, for the Respondent

Judgement

Chitra Venkataraman, J.—The insurance company is on appeal challenging the award of the Tribunal, particularly, its liability to pay the compensation to the compensation to the claimants in both the cases.

2. This is a case of fatal accident. The facts of the case are as follows:

On 5.8.2008, when the first Respondent in C.M.A. No. 1372 of 2010 and the deceased Ayyanar concerned in C.M.A No. 1373 of 2010 were traveling in a two wheeler from Ayyarpalayam towards Vijayapuram, the vehicle belonging to the second Respondent school coming in the opposite direction dashed against the motor cycle, thereby caused severe injuries to the victims. The driver of the vehicle was prosecuted in Crime No. 233 of 2008 on the file of Arumpavoor police station. Consequent on the injuries suffered, the injured claimant contended that she is not able to carry on her business in the provisional stores, through which she was earning ` 5,000/ per month. It is to be noted that the driver of the motor bike succumbed to the injuries. A claim petition was also made by the deceased dependants. The second Respondent in the claim petition, the Appellant herein, contended that the accident had occurred on account of the negligent driving of the motor cyclist and consequently, the liability cannot be

fastened on the insurance company. That apart, the driver of the offending vehicle does not have the necessary licence to drive the vehicle like a school bus. Hence, the liability was sought to be disowned by the insurance company.

3. The Tribunal, considered the submissions made, particularly that of the compensation claimed by the claimant taking note of the nature of injuries suffered as well as the manner of accident and Exhibit P-5, the wound certificate. The Tribunal considered the evidence of P.W.1 and P.W.2 and Exhibit P-1, the first Information Report and came to the conclusion that the driver of the school van is responsible for causing the accident.

4. The Tribunal, however, pointed out that the F.I.R. was lodged by one Dharman, who was present in the scene of occurrence. On behalf of the Respondents therein, R.W.1 appeared and deposed that the driver's license was filed before the Court and marked as Exhibit R-2, which showed that the person had the license to drive a two wheeler with gear and he did not have any endorsement to drive the vehicle including the goods vehicle. R.W.2 deposing on behalf of the insurance company reiterated the said fact and pointed out that the report of the Motor Vehicle Inspector, which is marked as Exhibit R-4, clearly showed the admission by the owner of the vehicle and the absence of endorsement in the license to drive a heavy vehicle. In the circumstances, there being a policy violation, the insurance company is not liable to pay compensation.

5. The Tribunal, however, rejected the plea of the insurance company and held that the weight of the vehicle was 3400 kgs. and in the circumstances, the Tribunal treated it as a light motor vehicle. However, since it was used for transporting children, the insurance company insisted that unless there is an endorsement in the license of the driver, the question of fastening the liability as though the driver, has the valid license to drive the said vehicle does not arise. Before the Tribunal, the Respondents/claimants placed reliance on the decisions in *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.* 1999 S.T.P.L. (L.B.) 26665 SC, *National Insurance Co. Ltd. v. Annappa Irappa Nesaria and Ors.* (2008) 3 MLJ 502: 2008 (1) T.N.M.A.C. 200 SC. The Tribunal considered the propositions and ultimately held that the vehicle was driven by one Kumar and the accident had occurred on account of the negligent driving of the said Kumar. Coming to the decision in *National Insurance Co. Ltd. v. Annappa Irappa Nesaria and Ors.* (supra), the mere absence of endorsement by itself would not make a person driving that vehicle as one without a license. In the circumstances, applying the law laid down in the said decision, the Tribunal came to the conclusion that the claimants are entitled to fasten the liability on the insurance Company. Aggrieved by the same, the Insurance company is before this Court.

6. As far as the negligent aspect and the compensation payable to the claimants are concerned, since no serious dispute is raised thereon, the same stand confirmed.

7. As already pointed out, the only question raised herein is the breach of policy

conditions. As far as the registration is concerned, the learned Counsel appearing for the Respondents pointed out that considering the decision of this Court in B.M. New India Assurance Co. Ltd. v. Muralikrishnan (2010)) 3 MLJ 271 which followed the decision of this Apex Court in and National Insurance Co. Ltd. Vs. Swaran Singh and Others, the concept of pay and recover still holds good and no exception could be taken to the decision of the Tribunal holding that the insurance company is responsible to make payment. That even in the case of policy violation, this Court in the decision in Manager, United India Insurance Company Limited v. Tmt. P. Muthamani 2010 (1) TNMAC 486 referring to the decision of the Apex Court in National Insurance Co. Ltd. v. Swaran Singh (supra), pointed out that the mere absence of an endorsement per se, would not dilute the liability of the insurance company. In the circumstances, the compensation has to be made by the insurance company at the first instance and thereafter, they have to recover the same from the owner of the vehicle. The said line of reason envisages the fact that in the Motor Vehicles Act, being a beneficial provision, the aim and purpose of the same cannot be defeated by the insurance company by raising a technical plea. Even in the case of violation to the policy condition, the victim of the accident being an innocent person, it is necessary to see that the innocent persons do not suffer an injury or a loss by reason of mere policy violation. The injured person or the relatives of the person killed in the accident should not be allowed to go with the mind that the decree obtained by them is merely a paper decree and that on a technical plea, the owner or the insurance company would not escape from the liability.

8. It is also relevant to point out the decision in Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, relied on by the learned Counsel for the claimants referring to the distinction between light motor vehicle and transport vehicle, wherein the Apex Court directed the insurance company to pay the compensation to the claimant with a right to recover the amount from the owner or the driver of the vehicle. The facts in this reported case shows that it was a case of fatal accident. The contention raised therein was that the driver of the vehicle did not possess a valid and effective driving license. The Apex Court pointed out to the definition of light motor vehicle and Section 3 as regards the necessity to hold driving license and also pointed out that the driver did not hold valid and effective driving license for driving a goods vehicle and breach of conditions of the insurance is, therefore, apparent on the face of the records. The Apex Court, however, directed the insurance company, in exercise of jurisdiction under Article 142 of the Constitution of India, to deposit the balance amount payable to the claimants with liberty to the claimants to withdraw the same and also at the same time, the insurance company to proceed against the owner and the driver of the vehicle.

9. Learned Counsel for the Appellant, however, pointed out that the above said decision has been referred to a larger Bench and in the circumstances, the question of pay and recover concept does not arise. It may be pointed out this Court has, subsequent to the said decision, consistently followed the decisions of

the Apex Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, as well as the decision of the Full Bench of this Court in Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal, Unnamalai and V.B. Krishnan, , and held that doctrine of pay and recover would have relevance in the case whenever the insurance company was not, as a matter of fact denying the possession of the valid license but order the absence of endorsement to drive the vehicle. Hence, the concept of pay and recover would still nevertheless be applied in the case to grant the relief to the claimants.

10. In the circumstances, while dismissing the appeals, by following the decision of the Full Bench of this Court in Branch Manager, United India Insurance Co. Ltd. v. Nagammal (supra), I hold that the insurance company is hereby directed to meet their liability awarded by the Court below with liberty to proceed against the owner of the vehicle for getting them reimbursed. It is represented by the learned Counsel for the Appellant that the insurance company had already deposited the amount as per the order of this Court dated. 22.6.2010. Having regard to the order passed confirming the relief granted by the Court below, the Respondents/claimants in both the appeals are at liberty to withdraw the said amount. No costs. Consequently, connected M Ps. are closed.