

(1990) 09 MAD CK 0060

In the Madras High Court

Case No : A.A.O. No"s. 559 of 1984 and 671 of 1985

New India Assurance Co. Ltd.

APPELLANT

Vs

Letchumi Kunchamma and Others

RESPONDENT

Date of Decision : 21-09-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 31, 96(2)

Citation : (1991) ACJ 472

Hon'ble Judges : K. Venkataswami, J;J. Kanakaraj, J

Bench : Division Bench

Advocate : Padmanabhan, for Kurian, Arumugham and Joseph and T.R. Rajaraman, for the Appellant; K. Ramaswami, for the Respondent

Final Decision : Dismissed

Judgement

J. Kanakaraj, J.—On the evening of 24.8.1980, the deceased Kesavan Nair was driving his motor cycle MDI 1472 from west to east along the Trivandrum-Nagercoil National Highway. When he was near Padanthalumudu, the taxi belonging to the appellant in AAO. No. 671 of 1985 was coming in the opposite direction from east to west and dashed against the motor cycle. The deceased sustained fatal injuries and died. The taxi car TNK 1271 was insured with the appellant in AAO. No. 559 of 1984. One Ramakrishnan was the driver of the said vehicle. The parents, sisters, widow and the minor son of the deceased filed a claim petition M.C.O.P. No. 38 of 1982 on the file of the Motor Accidents Claims Tribunal, Nagercoil, claiming a total sum of Rs. 1,00,000/- as compensation. The claim petition was filed against the owner of the taxi car (appellant in AAO. No. 671 of 1985), the driver Ramakrishnan and the insurance company (appellant in AAO. No. 559 of 1984).

2. In answer to the above claim petition, the owner of the taxi car came forward with a plea that he no doubt owned the said car, but he had sold the same on 5.10.1977 to one Vincent, s/o Innasimuthu and therefore he is not liable for any claim arising out of the accident on 24.8.1980. In any event, it was pleaded that

the claim was excessive. The insurance company (appellant in AAO. No. 559 of 1984) filed a counter statement which has to be set out in some detail. It is stated that the insurance company called upon the owner of the vehicle to submit a claim form by a registered notice dated 26.3.1981. There was no reply to the said notice. The counter statement proceeds: "it means that the vehicle had no subsisting policy with the third respondent, the New India Assurance Co. Ltd. It follows that in the absence of a valid and subsisting policy with the third respondent by the first respondent who is allegedly the owner of the vehicle, this respondent is not liable. Hence, the petitioners are not entitled to any relief against the third respondent". The insurance company also contended that the claimants should strictly prove that the driver Ramakrishnan had a valid licence to drive a taxi car. The rash and negligent driving on the part of the driver was also disputed. The quantum of compensation was also disputed as being excessive.

3. On these pleadings, the Tribunal framed four issues:

- (1) Whether the taxi TNK 1271 belonged to the appellant in AAO. No. 671 of 1985 and whether he was liable to pay compensation?
- (2) Is it true to say that the deceased died only on account of the rash and negligent driving of the driver Ramakrishnan?
- (3) Whether the insurance company (appellant in AAO. No. 559 of 1984) had issued a policy for the said vehicle and whether it was subsisting on the date of the accident?
- (4) Whether compensation was payable to the claimants and if so the amount of compensation?

4. On the first question, the owner (appellant in AAO. No. 671 of 1985) relied on Exh. B-I, an alleged letter written by the alleged purchaser of the car stating that on 5.10.1977 the taxi had been purchased by the said Vincent. The Tribunal did not give any importance to this letter because under Exh. A-3, the Regional Transport Officer, Kanyakumari at Nagercoil, had made an endorsement on the letter written by the advocate for the claimants that the vehicle TNK 1271 did belong to K. Ramakrishna Nadar (appellant in AAO. No. 671 of 1985) on the date of the accident, namely, 24.8.1980. The Tribunal also refers to the non-examination of the alleged purchaser Vincent. Accordingly, the Tribunal rendered a finding that the appellant in AAO. No. 671 of 1985 was the owner of the vehicle on the date of the accident.

5. On the second issue relating to the question of negligence, the pillion rider who was travelling along with the deceased was examined as PW 2. According to his evidence, even while the deceased was trying to park the motor cycle on the left hand side of the road, seeing the oncoming taxi car in a terrific speed, the said taxi dashed against the motor cycle. The witness was also seriously injured and was an in-patient for nearly two months in the hospital. The cross-

examination of this witness did not elicit any useful information in favour of the owner of the vehicle. The driver of the taxi car was also not examined. The F.I.R. was marked as Exh. A-2. On such cogent and clear evidence, the Tribunal came to the conclusion that the accident was due to the rash and negligent driving by the driver of the taxi car. So far as the question of the insurance company (appellant in AAO. No. 559 of 1984) is concerned, the Tribunal held against the insurance company only on the ground that the insurance company did not file any document in support of their case.

6. On the question of compensation, it was noticed that the deceased was aged about 32 years and was having a car mechanic shop. The plea of the claimants that the deceased was earning a sum of Rs. 1,000/- per month from the car mechanic shop business was not totally accepted by the Tribunal. But the Tribunal held that the deceased would have at least earned a sum of Rs. 500/- per month from the said business and would have contributed only Rs. 200/- per month to the family. Holding that the father had become old, the Tribunal held that the mother Letchumi Kunchamma, the wife Bhagawathi Kunju and the minor son Prakash alone are entitled to compensation which was fixed at Rs. 50,000/- after deducting for the lump sum payment. It is as against this award that the insurance company has filed AAO. No. 559 of 1984 and the owner of the vehicle has filed A.A.O. No. 671 of 1985. It goes without saying that if the owner of the vehicle is liable, then the insurance company also becomes automatically liable on account of the insurance policy.

7. In the Memorandum of Appeal, the insurance company has raised several grounds. The second ground is as follows:

The lower court went wrong in holding that the appellant was liable. The lower court failed to see that the owner of the vehicle has clearly stated in his counter and evidence that he had insured the vehicle in question only upto 5.10.1977.

It was also contended that the burden of proving that the vehicle was insured with the appellant had not been discharged by the claimants. It is also stated that the insurer cannot produce any document to prove that the vehicle was not insured with him since a negative statement cannot be proved. Even assuming that there was an insurance policy, it is contended that such policy was not valid at the time of the accident because the owner had no insurable interest over the vehicle, he having sold the same on 5.10.1977 itself. The appellant in AAO. No. 671 of 1985 reiterated his contention that he had sold the vehicle on 5.10.1977 and contended that the document Exh. B-1 ought to have been relied upon by the Tribunal. The owner also contended that the decree can be only against the insurance company.

8. When the appeals were taken up for hearing, Mr. Padmanabhan relied on the counter statement filed by the owner and submitted that the finding of the Tribunal making the insurance company liable is bereft of any reasoning and merely on the ipse dixit of the claimants. He reiterated the plea before the

Tribunal that the insurance company is not liable inasmuch as no policy was produced and the owner had categorically stated that he had sold the vehicle on 5.10.1977 itself. However, learned counsel appearing for the appellant in AAO. No. 671 of 1985 was able to furnish certain particulars relating to the policy. Accordingly, we granted time to the counsel for the insurance company to verify the correct facts. It is only thereafter that the insurance company has now admitted that policy No. 4225401080 covers the vehicle on the date of the accident, namely, 24.8.1980. A copy of the policy has also been produced by the insurance company. We direct that the copy shall be marked in the case as a court exhibit and given the No. Exh. C-1. This policy has been issued on 18.4.1980 and the name of the insured is Ramakrishna Nadar, the appellant in AAO. No. 671 of 1985. This covers the period from 18.4.1980 till 17.4.1981 and is in respect of Ambassador taxi TNK 1271. In spite of this policy, it is argued before us that the insurance company is not liable because the owner had sold the vehicle on 5.10.1977 itself. A series of decisions are cited before us for the proposition that registration was not a condition precedent for transfer of ownership. In *South India Insurance Co. Ltd. v. Lakshmi* 1971 ACJ 122 (Mad) Ramanujam, J. held that a policy of insurance comes to an end when a vehicle was physically transferred by the owner. Change of registration u/s 31 of the Act was not a condition precedent for the transfer of ownership of the vehicle. To the same effect is the judgment of the Division Bench of this court in *Hema Ramaswami v. KM. Valarence Panjani* 1981 ACJ 288 (Mad). In *Dharman v. N.C. Srinivasan* 1990 ACJ 27 (Mad) a Division Bench of this court has taken the view that the defence plea that on sale of the vehicle during the period of cover the insurance policy had lapsed is not available to the insurer u/s 96 (2) of the Act as against third party claims. In *Anand Sarup Sharma v. P.P. Khurana* 1989 ACJ 577 (Delhi) a Full Bench of the Delhi High Court has also taken the view that a third party liability of the insurance company comes to an end on the transfer of the vehicle by the insured and that the company cannot be compelled to indemnify a person with whom it had no contract. We do not think that it is necessary to multiply the number of decisions because the general proposition of law as adumbrated in the Full Bench decision of the Delhi High Court and the Division Bench judgment of this court in *Hema Ramaswami v. KM. Valarence Panjani* 1981 ACJ 288 (Mad) can be taken as laying down the correct principles of law. But the question is whether on the facts of the present case, the ingredients necessary to absolve the insurance company are available to the appellant in AAO. No. 559 of 1984. The first and foremost difficulty which the appellant has to get over is the finding of the Tribunal that there was no sale of the vehicle as contended by the owner of the vehicle (appellant in AAO. No. 671 of 1985). The only evidence in support of the sale of the vehicle is Exh. B-I. We will do well to extract the said document:

From Vincent, s/o Innasimuthu, Mylode, Mylode P.O., Kanyakumari District.

To

Thiru K. Ramakrishna Nadar, Ramakrishna Vilasam, Ananthamangalam, Painkulam P.O., Via Puthukadai, Kanyakumari District.

Sir,

I have purchased your taxi TNK 1271 on 5.10.1977 and got delivery of the vehicle along with the registration certificate, insurance certificate, Part A and B permits and also all the necessary forms duly signed by you for the transfer of vehicle and permits from your name to my name. I undertake to apply for the transfer of the vehicle and permits within a week from 5.10.1977 and I will be responsible for all cases, taxes, insurance claims etc., regarding the vehicle from 5.10.1977.

Apart from the fact that the writer of the said letter had not been examined, no explanation is forthcoming as to why the undertaking to apply for transfer of the vehicle and to have the registration certificate appropriately changed had not been complied with right from 5.10.1977. What is more surprising is, the letter does not indicate the sale price at all. We do not think that there can be a sale of a vehicle without mentioning the sale price. We are clearly of the opinion that the said letter cannot be believed and does not operate as a sale by the appellant in AAO. No. 671 of 1985 to and in favour of the alleged Vincent. Our finding as above gets support from the fact that as late as on 18.4.1980, the insurance company (appellant in AAO. No. 559 of 1984) has issued a policy cover to and in favour of the appellant in AAO. No. 671 of 1985. One more document which demolishes the case of the appellant is Exh. A-3 which contains the endorsement of the Regional Transport Officer, stating that on the date of the accident, it was only the appellant in AAO. No. " 671 of 1985 who was the registered owner of the vehicle. We have, therefore, no hesitation in rejecting the contention of the insurance company that it is not liable to pay compensation for the accident.

9. Before parting with this case, we have to comment about the conduct of the appellant insurance company. Every litigant is expected to be fair and honest in his pleadings. In these days of mounting litigation, cantankerousness should be avoided. In the field of motor accident claims, the parts played by the insurance companies are sacrosanct. Motor vehicle owners resort to insurance not of their own volition but because of the statutory compulsion as provided for by Section 94 of the Motor Vehicles Act, 1939 (Section 146 of 1988 Act). The said provisions of law have been enacted not with a view to promote the business of the insurers engaged in the business of automobile insurance, but with a view to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the users of motor vehicles on the roads. It is therefore all the more necessary that the insurance companies should take pains to ascertain the correct facts and help the court in arriving at a quick and proper decision. The insurance company is not like a private litigant whose aim is to defeat the claims of the opposite party. They can be compared to commissioners appointed by the court to help the court in arriving at a proper decision. It is their duty to place correct facts before the court.

10. In this case, the conduct of the insurance company, appellant in AAO. No. 559 of 1984, leaves much to be desired. From the beginning, its attitude has been to adopt evasive defence to defeat the just claims of the claimants. It is only to bring out this appalling conduct of the insurance company that we have extracted its counter statement as well as the grounds of appeal. Also only after the appellant in AAO. No. 671 of 1985 gave certain particulars that the insurance company came out with the policy of insurance dated 18.4.1980 which we have marked as Exh. C-I. The quantum of compensation was not disputed by either of the appellants.

11. We, therefore, dismiss both the appeals and hold that the appellant in AAO. No. 559 of 1984 is liable to pay the compensation as awarded by the Tribunal. The appellant in AAO. No. 559 of 1984 shall also pay costs of this appeal to respondent Nos. 1 to 4/claimants. Counsel's fee is fixed at Rs. 3,000/-.

Court Exh. C- 1/18.4.1980. The policy of the insurance company.

12. It has been brought to our notice that in C.M.P.No. 15701 of 1987, pending disposal of the appeal AAO. No. 559 of 1984, this court had permitted the third petitioner therein, namely, Bhagawathi Kunju to draw interest accrued from the sum of Rs. 50,000/- deposited in the Bank of Tamil Nadu, Besant Nagar Branch, Madras and also to draw the interest that may accrue subsequently till the disposal of the appeal. Now we have disposed of the main appeal itself. It would be open to the major claimants to withdraw their respective share amounts. So far as the share of the minor is concerned, that will continue to be in deposit in the same bank until the minor files a petition for declaration that he has attained majority and seeks for appropriate orders to withdraw the amount.