
(2007) 06 MAD CK 0174
In the Madras High Court
Case No : C.M.A. No. 1720 of 2000

New India Assurance Co. Ltd.

APPELLANT

Vs

P. Chelladurai and Others

RESPONDENT

Date of Decision : 08-06-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 181, 3
Penal Code, 1860 (IPC) — Section 304A

Citation : (2008) ACJ 2394

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : S. Ramachandran, for the Appellant;

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—This appeal is by the insurance company challenging its liability to pay the compensation awarded by the Tribunal on the sole ground that there is a clear policy violation in this case. The driver of the vehicle was a 15 years old boy. Exh. P9 is the judgment of the Magistrate Court's proceedings as regards the offence charged u/s 304-A, Indian Penal Code and Section 3 read with Section 181 of the Motor Vehicles Act. It is seen that the accused admitted his guilt and paid a fine of Rs. 2,100. On the face of this particular document and the finding of the Tribunal that the driver was a minor at the time of the accident, learned Counsel for the appellant submits that this is a clear case of policy violation; in the circumstances, the appellant stated that it could not be mulcted with the liability.

2. A perusal of the order of the Tribunal shows that the investigating officer had clearly found the age of the driver at 15. However, the Tribunal rejected this fact disbelieving the information furnished by the investigating officer on the view that there were no evidence to support this fact. To quote the view of the Tribunal it stated "there must be supporting evidence to prove that the age of the driver was only 15 on the date of accident we cannot solely depend upon the

opinion furnished by the investigating officer...". It is a matter of fact that the driver was charge-sheeted and he had admitted his guilt. Nothing had been elicited by way of evidence to show that the findings of the investigating officer could not be acted upon. Hence, in the context of this particular evidence, Exh. P9, the Tribunal committed an error in rejecting the investigating officer's report as regards the age of the driver.

3. The Tribunal relied on the decision reported in V. Mepherson Vs. Shiv Charan Singh, and held that for the policy violation the insurance company, the appellant herein, had to show that the owner had consciously violated the terms of policy. In the absence of the same, the insurance company could not be exonerated from its liability. In the circumstances, unless the insurance company proves that the driver did not have a valid licence and had driven the vehicle with the consent of the owner, the question of the insurance company getting out of its liability does not arise.

4. As rightly contended by the learned Counsel for the appellant, it is a matter of record that the driver of the vehicle was a minor and the question of his having a valid driving licence did not arise. It would have been totally a different state of affairs if the driver had been a major, in which event, the question of the insurance company proving that the owner of the vehicle had consciously violated the terms of the policy conditions would arise. In the face of the fact that the driver was aged 15 years only, the question does not arise for the insurance company to establish the said fact. Consequently, distinguishing the reported judgment relied on by the Tribunal, the evidence produced in this case clearly proving the violations of the policy in permitting a minor, the appellant could not be made to suffer the liability. In the light of the violation thus seen, I reverse the view of the Tribunal, thereby exonerate the insurance company from its liability to meet the liability. The ratio decidendi in the reported case has to be understood in the background of a case where there existed no violation of legal requirements of a person competent to hold a licence to drive and the insured committed a policy violation. In the peculiar circumstances of the case, I accept the plea of the insurance company.

5. It is seen that during the pendency of the appeal, as per the order dated 3.7.2002 in C.M.P. No. 16364 of 2000, the appellant had deposited the entire compensation amount and the respondent was permitted to withdraw 50 per cent of the compensation. Considering the order now passed exonerating the appellant, it is open to the claimant herein to recover the balance of amount from the insured. The appellant herein is permitted to recover the amount drawn by the claimants from the insured apart from withdrawing the balance of the amount deposited by them during the pendency of the appeal before this Court with the interest accrued thereon.

6. The appeal is allowed. There will, however, be no order as to costs.