
(1999) 06 MAD CK 0066
In the Madras High Court
Case No : C.M.A. No. 888 of 1994

New India Assurance Co. Ltd.

APPELLANT

Vs

S. Sulochana and Others

RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

Citation : (2000) 1 ACC 113 : (2001) ACJ 1788 : (1999) 3 LW 652

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : N.B. Surekha, for R. Vedantham, for the Appellant; N.E.A. Dinesh, R. Subbiah and C. Deivasigamani, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—New India Assurance Co. Ltd., Dharapuram is the appellant herein.

2. Challenging the award and decree of the Motor Accidents Claims Tribunal, Coimbatore made in MACT. O.P. No. 485 of 1990, the appellant has preferred this appeal.

3. In this appeal, the appellant has not challenged the finding of the Tribunal to the effect that the accident was caused by rash and negligent driving of the driver of the vehicle involved in the accident and also the quantum of the compensation awarded.

4. The only contention that has been urged by the appellant insurance company is that it is not liable to pay the compensation, as on the relevant date and time of the accident, the vehicle was not covered by the policy issued by the appellant insurance company.

5. In the present case, the accident took place on 22.6.90 at about 10.30 a.m. The deceased, Sundaram, met with the accident when Tempo No. TTY 6648, which was insured with the appellant insurance company, dashed against him.

With serious injuries, he was taken to hospital where he died on 2.7.90, despite the treatment given. The claimants are his widow and two sons respectively.

6. In the claim petition, Srirangam Pillai was shown as respondent No. 2 and appellant New India Assurance Co. Ltd. was made as respondent No. 3.

7. In the counter filed by the respondent No. 3 on 10.12.1990, it is stated that the respondent No. 2 has nothing to do with the vehicle involved in the accident since the said vehicle was insured with the company by one Uma Magesh. On the basis of this counter, an application was filed for impleading the said Uma Magesh as respondent No. 4. Accordingly, he was permitted to be impleaded as respondent No. 4. Thereupon, the respondent No. 4 has filed a counter-affidavit, stating that since the vehicle was insured with the respondent No. 3, company, the compensation shall be liable to be paid by the insurance company. Thereafter, the witnesses on behalf of the claimants, PWs 1 and 2 were examined. Even though counter was filed by the respondent No. 4, Uma Magesh, subsequently, he remained ex parte.

8. After the evidence on the side of the claimants was over, the appellant, respondent No. 3 in the claim petition, filed an additional counter on 2.12.1993 stating that the policy issued by the company to the said Uma Magesh was only for the period from 10.6.89 to 9.6.1990 and, subsequently, it was not renewed and since the accident took place on 22.6.1990, on which date the policy was not in force, the insurance company was not liable to pay the amount of compensation. In order to prove the same, RW 1, the Assistant, working in the insurance company was examined and Exh. RI, the copy of the policy, was also marked.

9. The Tribunal, after enquiry, while observing that the said Tempo was driven rashly and negligently by its driver, held that appellant insurance company is liable to pay the compensation of Rs. 49,200 as against the claim of total compensation of Rs. 2,00,000 on behalf of the owner of the vehicle.

10. The only question that has been raised in this appeal is with regard to the liability of the insurer of the vehicle. The vehicle in question is owned by Uma Magesh, the respondent No. 6 herein, who insured the vehicle with the appellant company, as seen from Exh. RI, for the period from 10.6.1989 to 9.6.1990. Admittedly, the accident took place on 22.6.1990.

11. Heard the counsel for both sides and perused the records.

12. On the basis of the available materials, it is contended by learned counsel for the appellant that once it is proved by the insurance company that the period of the policy covers only from 10.6.1989 to 9.6.1990, then the appellant insurance company has to be exonerated from its liability to make the payment of compensation on behalf of the owner of the vehicle.

13. On the other hand, the learned counsel for respondents would contend resisting the said submission that the finding of the Tribunal in regard to the

liability of the insurance company is correct inasmuch as the insurance company has failed to prove that the policy was not renewed subsequently.

14. In support of the submission, the learned counsel for the appellant cited two authorities, viz., *Oriental Insurance Co. Ltd. v. S. Mariyal* (1999) 1 LW 578 and *Oriental Insurance Co. Ltd. Vs. Jalaja and Others*, .

15. There is no dispute in the proposition of law as laid down by the Supreme Court in the decision *Narcinva V. Kamat v. Alfredo Antonio Doe Martins* 1985 ACJ 397 , that the entire onus is on the insurance company to prove that it is not liable to pay compensation. Since it is the plea of the insurance company which complains that there was no policy existing as on the relevant date, the burden to prove the same is squarely on the company. But, the learned counsel for the appellant would strenuously contend that in this case the insurance company has discharged its burden by producing Exh. R1 policy, which clearly reveals that the policy has covered the period only between 10.6.1989 and 9.6.1990 and the fact that the policy had been renewed subsequently has to be established only by the owner of the policy and not by the insurance company.

16. In this context, it is relevant to note that in the first counter filed by the insurance company on 10.12.1990, it is stated that the insurance policy was insured only by Uma Magesh and not by Srirangam Pillai. In the said counter, it was not stated that the period of the policy had already been expired. This new plea has been placed before the Tribunal, through the additional counter, only after the closure of the evidence on behalf of the claimants, stating that the policy was not in force on the relevant date of accident. This would make it clear that the defence theory to escape from the liability was pleaded by the insurance company belatedly. Though the material was produced through Exh. RI, marked through RW 1, belatedly, the said material if otherwise acceptable, cannot be rejected, more particularly, when such a material would establish that the insurance company is not liable to make the payment of compensation.

17. In the instant case, as indicated earlier, it cannot be debated that the immunity from the liability has to be established only by the insurance company and the company alone. The case of the company is, though belated one, that the policy was in force only up to 9.6.1990 and there was no renewal of the policy subsequent to that date and as such, the company is not liable to pay any amount of compensation since the accident took place on 22.6.1990. In the light of the said legal situation, it is not sufficient for the insurance company to establish the initial period of the policy alone, but, it has to further establish that there was no renewal at all in the subsequent period. The non-renewal of the policy should also have been proved, by producing the relevant documents, by the insurance company.

18. The contention of the counsel for the appellant that the burden shifts on the owner of the vehicle for proving the fact of renewal for subsequent period, lacks substance, as it is against the accepted principles of law or as it is against the

well laid principles of law with reference to the burden cast on the insurance company to prove its immunity from the liability.

19. In the decision cited by the counsel for the appellant, i.e. (1999) 1 LW 578 , of course it is held that since the policy was not in force on the date of accident, the insurance company is not liable to make the payment. That decision would not help the appellant in view of the fact that in the said case, Exhs. R1 and R2 were marked and Exh. R1, insurance policy was for the period between 28.11.91 and 27.11.1992 and Exh. R2 insurance policy was for the period from 1.12.1992 to 30.11.1993 and the date of the accident in that case is 30.11.1992. Therefore, it was held by this court that on the date of accident, viz., 30.11.92, the policy was not in force. But, in the instant case, the insurance company has marked only Exh. R1 which shows the period from 10.6.1989 to 9.6.1990. There is no further document to show either it was renewed before the accident or it was renewed subsequent to the date of the accident, viz., 22.6.1990. Therefore, the contention of the counsel for appellant on the strength of the above decision has to fail.

20. Yet another decision cited by the counsel for the appellant is Oriental Insurance Co. Ltd. Vs. Jalaja and Others, . In that decision, the Division Bench of this court, while holding that the insurance company is not liable to pay more than the limited amount, held that it need not produce the original policy and it is enough to produce the copy of the policy in order to prove that the policy was only for the limited period. The question which is raised in this case is not the issue raised there.

21. Under these circumstances, I am of the view that the insurance company, having failed to discharge its burden to prove the fact that on the date of the accident there was no renewal of the policy, cannot escape from the liability. Consequently, the finding arrived at by the Tribunal is to be sustained and, accordingly, the appeal is dismissed. No costs.