
(2010) 11 MAD CK 0353

In the Madras High Court

Case No : C.M.A. No. 2633 of 2005 and C.M.P. No. 13703 of 2005

New India Assurance Company Ltd.

APPELLANT

Vs

Rukkumani and Others

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 147(3), 149, 149(1)

Citation : (2011) 256 MLJ 1236 : (2011) 6 RCR(Civil) 2485

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : G. Munirathinam, for the Appellant; S.S. Swaminathan and R. Singaravelan, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—Being aggrieved by the finding, fastening liability on the Appellant-Insurance Company to pay compensation to the first Respondent/claimant, New India Assurance Company has preferred this appeal.

2. According to the first Respondent/claimant, that on 31.10.1999, about 18.30 Hours, when her father was walking on the East West Sakthi to Gobi Road, near Elango Nagar Branch road, a motorcycle bearing Registration No. TN 36 C 2463, driven in a rash and negligent manner, by its driver, dashed against him and her father sustained grievous injuries. Though the injured was provided with intensive care treatment in Gobi, he died. At the time of accident, he was aged 50 years and through agricultural work, earned ` 3,000/-per month. Before the Claims Tribunal, Mr. Ramasamy, owner of the vehicle, third Respondent herein; New India Assurance Company Ltd., Gobi, Appellant herein; and son of the deceased, Mr. Kaliappan, Rukmani, were imp leaded as Respondents 1 to 3 in the claim petition. The first Respondent in this appeal/claimant claimed compensation of ` 5 Lakhs under various heads.

3. The third Respondent herein, owner of the vehicle bearing Registration No. TN

36 C 2463 and the third Respondent, son of the deceased, remained *exparte* before the Tribunal. With the leave of the Court u/s 170 of the Motor Vehicles Act, the Appellant-Insurance Company defended the claim petition.

4. Before the Tribunal, the first Respondent/claimant examined herself as P.W.1 and reiterated the manner of accident. She also deposed regarding avocation and income of her deceased father. P.W.2 is the eye-witness to the accident. Exhibit P-1-FIR, dated 31.10.1999, Exhibit P-2-Post Mortem Certificate and Exhibit P-3-Legal Heir Certificate were marked on the side of the first Respondent/claimant.

5. Though the Appellant-Insurance Company raised a defence that the rider of the motorcycle did not possess a valid and effective driving licence on the date of accident, the Tribunal, based on the decision of the Supreme Court in *Punam Devi and Another Vs. Divisional Manager, New India Assurance Co. Ltd. and Others*, , rejected the same. Though the Appellant-Insurance Company, marked Exhibit R-1-Policy of the two wheeler and *inter alia* contended that there was no subsisting policy for the offending vehicle, bearing Registration No. TN 36 C 2463, on the date of accident and therefore, the Company is not liable to indemnify the owner of the vehicle, the Tribunal rejected the said defence on the ground that the Appellant-Insurance Company had already obtained permission u/s 170 of the Motor Vehicles Act, 1988 and therefore, the Appellant-Insurance Company and the owner of the motorcycle are jointly and severally liable to pay compensation, to the first Respondent/claimant, which was quantified at ` 1,43,000/0- with interest at the rate of 9% per annum. As stated *supra*, the said finding of the Tribunal, fastening liability on the Appellant-Insurance Company to pay compensation is challenged in this Civil Miscellaneous Appeal.

6. Inviting the attention of this Court to the period of coverage mentioned in Exhibit R-1-Policy issued by the Appellant-Insurance Company, Mr. Munirathinam, learned Counsel for the Appellant-Insurance Company submitted that the validity of the policy for the offending vehicle was between 27.5.1998 and 26.5.1999 and on the date of accident, i.e., 31.10.1999, the policy was not in existence and in such circumstances, the Insurance Company cannot be fastened with the liability to pay compensation. He further submitted that the Tribunal has grossly erred in rejecting the defence raised by the Appellant-Insurance Company, on an erroneous premise that once permission u/s 170 of the Motor Vehicles Act, is obtained, their liability to pay compensation is automatic.

7. *Per contra*, Mr. S. Swaminathan, learned Counsel for the 1st Respondent/claimant submitted that the Tribunal has considered the liability of the Appellant-Insurance Company to pay compensation and therefore, there is no illegality in the finding, warranting interference.

Heard the learned Counsel for the parties and perused the materials available on record.

8. Section 170 of the Motor Vehicles Act deals with imp leading insurer in certain cases and it reads as follows:

170. Imp leading insurer in certain cases. -Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the persons against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be imp leaded as a party to the proceeding and the insurer so imp leaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

9. As rightly contended by the learned Counsel for the Appellant-Insurance Company, obtaining leave u/s 170 of the Motor Vehicles Act, 1988, does not bar the insurer to raise a plea that they are not liable to indemnify the owner of the vehicle, where there is no subsisting policy, on the date of accident. In the case on hand, as per Exhibit R-1 -Policy for the two wheeler, the validity was between 27.5.1998 and 26.5.1999. Admittedly, there was no policy of insurance on 31.5.1999, the date on which the accident occurred. Therefore, as rightly contended by the learned Counsel for the Appellant-Insurance Company, the Tribunal has grossly erred in fastening the liability on the Appellant-Insurance Company on an erroneous premise, that once leave is obtained u/s 170 of the Motor Vehicles Act, the insurer is not entitled to take a defence of non-coverage of policy on the date of accident. In this context, it is useful to refer a decision of this Court in Oriental Insurance Company v. S. Mariyal 1991 (1) LW 578 (Mad.) where, this Court has allowed the appeal filed by the Insurance Company against the award of Motor Accident Claims Tribunal, on the grounds that the vehicle was not covered by the policy on the date of accident. In the reported judgment, this Court has considered a decision of the Supreme Court in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, and the Division Bench of this Court in United India Insurance Company Limited Vs. Veerammal and Others, .

10. In the Manager, United India Insurance Co. Ltd., v. Tmt. Pappathi and Ors. 2009 (1) TNMAC 228, the vehicle was insured on 21.1.2000 for a period from 21.1.2000 to 20.1.2001. The accident took place on 16.1.2000. A claim for compensation was made before the Commissioner for Workmen. The Insurance Company produced two motor registers for the years 1999-2000 and 2000-2001 respectively, to show that there was no policy in force, for the vehicle, on the date of accident. They did not produce registers for the years 1997-98 and 1998-99. The Commissioner presumed that the vehicle must have been insured from the date of registration, since it was purchased after obtaining financial assistance from a Bank. The Commissioner also presumed that since there was no mention stating that this was the first policy, the vehicle must have been insured with the company earlier. On the above basis, the Commissioner fastened the liability on the Insurance Company to indemnify the employer.

Seeking reversal of the finding, an appeal was filed before this Court, contending inter alia that on the date of accident, i.e., 16.1.2000, since there was no insurance cover, the Company was not liable to pay compensation. Finding that nothing was produced on behalf of the claimant to show that on the date of accident, there was insurance coverage to the vehicle involved in the accident, a learned single Judge of this Court has allowed the civil miscellaneous appeal, holding that the Insurance Company cannot be mulcted with the liability to pay compensation and indemnify the owner of the vehicle.

11. Reading of Section 149(1) of the Motor Vehicles Act makes it abundantly clear that only after a certificate of Insurance is issued u/s (3) of Section 147, in favour of a person, by whom a policy has been effected, judgment or award in respect of any such liability, would be covered by the policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A is obtained against any person insured by the policy.

12. As per Section 149(1) of the Motor Vehicles Act, there should be a subsisting certificate of Insurance, on the date of accident, by which, liability can be fastened by the terms of policy on the insurer to indemnify the owner of the Motor Vehicle involved in the accident. In the absence of any contract, setting out the obligations, inter se, between the parties covered by the terms of the policy, the insurer cannot be mulcted with the liability to pay compensation to the accident victim, solely on the ground that leave has been obtained by the insurer to take up the defences that are available to the owner of the vehicle against whom, the claim is made, but has failed to contest the claim, when there is a collusion between the person making the claim or person against whom, the claim is made or failure on the part of the owner to contest the claim.

13. Clauses (a) and (b) of Section 170 of the Motor Vehicles Act, 1988 being disjunctive and in the alternative, if the owner of the vehicle has failed to contest the claim, on the question that the offending vehicle being driven rashly and negligently and for the matter, regarding the involvement of the vehicle in the accident, the defences available to the owner of the vehicle, can betaken by the Insurance Company. But, if the vehicle is not insured with the Insurance Company, then certainly, the owner of the vehicle would tend to abstain himself from contesting the claim and he cannot take any defence that the vehicle was not insured and in such an event, the insurer would necessarily contest the claim petition, after obtaining permission u/s 170 of the Motor Vehicles Act to raise all the defences that are open to the owner of the vehicle and the defence u/s 149(1) of the Motor Vehicles Act that the vehicle was not covered by any insurance, on the date of accident. Therefore, the approach of the Tribunal that the Appellant-Insurance Company has already obtained leave u/s 170 of the Motor Vehicles Act to defend the claim petition and therefore, they are automatically liable to indemnify the owner of any Motor Vehicle involved in the accident, is erroneous and untenable.

14. In view of the above, the finding of the Tribunal, fastening liability on the Appellant-Insurance Company to pay compensation is set aside. It is open to the first Respondent/claimant to proceed against the owner of the offending vehicle bearing Registration No. TN 36 C 2463, in the manner known to law.

15. In the result, the civil miscellaneous appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.