

(2013) 10 KL CK 0050
In the High Court Of Kerala
Case No : M.A.C.A. No. 734 of 2007

Oriental Insurance Company Ltd.

APPELLANT

Vs

Sivan

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) 1 ACC 606 : (2014) 1 KLJ 340 : (2014) 1 KLT 1

Hon'ble Judges : S. Siri Jagan, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : Mathews Jacob and Jacob Mathew, for the Appellant; T.C. Suresh Menon, for the Respondent

Final Decision : Disposed Off

Judgement

S. Siri Jagan, J.—A question, which disturbs our judicial conscience, arises in these two appeals. The question is as to whether, the fact that the driver whose negligence in driving the vehicle caused accident in a motor accident claim, had only a fake driving licence, which was not known to the owner of the vehicle, would result in a situation where neither the driver nor the owner would not be liable to reimburse to the insurance company, the amount paid by the insurance company to the claimants, on account of the violation of the policy condition that the driver driving the insured vehicle should possess a valid driving licence. The question arises in the following fact situation:

The appellant is the insurance company in O.P. (M.V). Nos. 8 and 9 of 1997 before the Motor Accidents Claims Tribunal, Palakkad, both of which arose from the same accident. The same were filed by the dependants of deceased Devaki and Beepathumma, who died in a motor accident caused by the negligent driving of the vehicle by the 1st respondent herein, which was owned by the 2nd respondent. The Tribunal, after finding negligence on the part of the driver of the vehicle, awarded compensation of Rs. 3,03,800/- and Rs. 3,18,200/- respectively to the claimants in the two O.Ps. The appellant-insurance company was directed to indemnify the driver and owner of the vehicle for the amounts of

compensation since the vehicle was insured with the appellant. In the common award, which is impugned in these appeals, the Tribunal entered a finding that the driving licence possessed by the 1st respondent-driver was a fake one and was not issued by an authority competent to issue such licences under the Motor Vehicles Act. Despite the same, no right was given to the insurance company to recover the compensation amounts either from the driver or from the owner of the vehicle. The appellant challenges that part of the award, whereby the appellant was not given the right to recover the compensation paid by them from either the driver or the owner, on account of violation of policy conditions, insofar as admittedly, the driver did not have a valid driving licence, which was a condition of the policy issued by the appellant to the 2nd respondent in respect of the vehicle involved in the accident.

2. The contention of the appellant is that once it is proved that the driver of the vehicle did not have a valid driving licence to drive a vehicle, then the insurance company is not liable to indemnify the owner of the vehicle, since the policy specifically stipulated that vehicle shall be driven only by a person, who possesses a valid driving licence to drive the kind of vehicle covered by the policy. The appellant relies on the decision of the Supreme Court in III (2013) ACC 918 (SC)

3. On the other hand, the learned counsel for the 2nd respondent-owner of the vehicle submits that the mere absence of licence is not sufficient to make the owner liable to reimburse the amount paid by the insurance company to the claimants to the insurance company. For the same, there must be a further finding that the owner had permitted the driver to drive the vehicle with the knowledge that the driver did not have a valid driving licence. It is submitted that in this case, the forgery of the licence was so perfect that even the police could not detect that the same was a forged one. It was only after ascertaining from the concerned R.T.O. that it was confirmed that such a licence was never issued to the 1st respondent-driver from the office of the R.T.O. That being so, the owner cannot be faulted for the 1st respondent driving the vehicle without a valid licence is the contention. In such circumstances, the owner cannot be saddled with the liability to reimburse the amount paid by the insurance company to the claimants is the submission of the 2nd respondent-owner of the vehicle. The advocate for the second respondent relies on the decision of the Supreme Court in Pepsu Road Transport Corporation Vs. National Insurance Company, He further points out that insofar as Pepsu Road Transport Corporation's case (supra) was later in point of time, the same having been pronounced on 26.8.2013, the same should be followed, instead of the decision in Sujata Arora's case (supra), which was decided on 10.1.2012, both decisions having been rendered by two Judge benches.

4. The 1st respondent-driver did not choose to enter appearance to contest the appeal despite accepting notice.

5. We have considered the rival contentions in detail.

6. We have stated at the beginning of the judgment that the issue disturbs our judicial conscience because of the fact that despite a criminal act having been committed by the 1st respondent-driver, he got away without any punishment in the criminal case and without any liability to pay compensation for his negligent act, despite the fact that he played a fraud on the owner of the vehicle by producing a forged driving licence. Essentially a claim for compensation for injuries or death in a claim under S. 166 of the Motor Vehicles Act is an action in tort. Negligence is the sine qua non for such action. In a motor accident claim, negligence which gives rise to the claim is ordinarily that of the driver, who drove the vehicle, although in rare cases negligence of other employees in the vehicle can also be the basis of an action in tort. So the person liable in the first instance is the driver himself. The owner becomes liable for the negligence on the part of the driver only because of the application of the principle of vicarious liability in an action for tort. The insurance company becomes liable to indemnify the owner of the vehicle because of the contract of insurance entered into between the owner of the vehicle and the insurance company. In fact, ultimately what the insurance company takes upon themselves by virtue of the contract of insurance is the primary liability of the driver for paying compensation for his negligent act to the party, who suffered because of his negligence. Therefore, it cannot be said that the driver is not a stranger to the contract of insurance between the insurance company and the owner of the vehicle. In fact, when the policy specifically stipulates that the vehicle shall be driven only by a person possessing a valid driving licence, the contract of insurance stands extended to the driver also insofar as he is aware of the fact of insurance and the necessity to drive the vehicle only with a valid driving licence. In fact, by undertaking to drive the vehicle on behalf of the insured, there arises a quasi contract between the driver and the insurer. Therefore, when the driver commits a fraudulent and criminal act by driving the vehicle with a forged licence without the knowledge of the owner, he cannot escape the liability towards the insurance company on account of breach of contract, he having violated the policy condition. In any event, it is settled law that fraud vitiates everything and therefore, a person who commits a fraud, which results in another having to shoulder a liability only because of the fraud, is liable to compensate the latter by reimbursing to the latter the monetary liability shouldered by the latter. In this case, the 1st respondent committed a fraud on the owner in driving the offending vehicle with a forged licence, which resulted in the insurance company to shoulder the liability to indemnify the owner for the compensation payable to the claimants on account of the accident, despite the violation of the policy condition, which would have exonerated the insurance company from liability. Even otherwise, the fact that despite the fraud committed by him, no consequences fall on him would send wrong message to the public that crime does pay, which should be avoided at all costs. The 1st respondent and the public should be given the message that crime does not pay and for every crime apart from the legal sanction attached to the crime other compensatory consequences would follow if that crime results in loss to somebody else. Therefore, on the ground of public policy also, it is necessary

to make the 1st respondent-driver liable to make good the loss caused to the insurance company as a result of his fraudulent act. Apart from that, in equity also, the victim of a fraud shall not be left with no remedy against the perpetrator of the fraud. Here, because of the fraud committed by the 1st respondent-driver on the owner and the insurance company, the insurance company has suffered loss and will be left with no remedy against the 1st respondent-driver, unless this Court comes to their rescue. For that reason also, we are of opinion that a right should be conferred on the appellant to enable them to recover the loss from the perpetrator of the fraud, namely, the 1st respondent-driver, who took the owner and the insurance company for a ride, by driving the car unauthorisedly with a forged driving licence, which is a violation of the conditions of the policy issued by the appellant-insurance company.

7. But at the same time, insofar as the owner was totally unaware of the fact that the licence possessed by the driver is a fake one, the owner cannot be deprived of the benefit of the contract of insurance between himself and the insurance company notwithstanding the violation of the policy condition unknowingly. It is all the more so, when even the police could not detect the forgery of the licence and only after information was received from the R.T.O., that they had not issued any such licence, that the forgery came to light. In any event, in view of the decision in Pepsu Road Transport Corporation's case (supra), which is later in time to the decision in Sujata Arora's case (supra), the law laid down by the Supreme Court in the later decision has to be followed by us. That being so, the owner cannot be deprived of the benefit of the contract he entered into with the insurance company, since he was totally unaware of the fact that the licence possessed by the 1st respondent-driver was a forged one. In the absence of any knowledge regarding the forgery of the licence, it cannot be said that he permitted the driver to drive the vehicle with the knowledge that he did not possess a valid driving licence to drive the vehicle, which is the law laid down by the Supreme Court in Pepsu Road Transport Corporation's case (supra). However, because of our finding that in cases of fraud, the contract of insurance between the owner of the vehicle and the insured should stand extended to the driver also insofar as fraud vitiates everything, we are of opinion that the driver should be made liable to compensate the insurance company for having been made them liable to pay the compensation to the claimants because of his fraudulent act. Accordingly, while rejecting the contention of the appellant that because of violation of policy condition, they must be given opportunity to recover the compensation paid by them to the claimants from the owner of the vehicle, we hold that the 1st respondent-driver of the vehicle is liable to reimburse the amounts paid by the insurance company to the claimants and, therefore, the insurance company is entitled to recover the amounts paid by them to the claimants in these two cases from the 1st respondent-driver of the vehicle.

With the above modification of the impugned common award, the appeals are disposed of.