

(2009) 02 MAD CK 0166

In the Madras High Court

Case No : C.M.A. No's. 420 of 2004 and 2085 of 2006

S. Latha Devi and Others

APPELLANT

Vs

M. Kamalanathan and The New India Assurance Co. Ltd.,
Periamet Branch, A.R. Complex, 1090, Poonamallee High
Road, Chennai

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 14, 141, 149, 149(2), 15

Citation : (2009) 02 MAD CK 0166

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : Mrs. Saleem Fathima for Mr. M. Swamikannu, for the Appellant; K. Padmanabhan for Insurance Company, for the Respondent

Judgement

Prabha Sridevan, J.—C.M.A. No. 420 of 2004 and C.M.A. No. 2085 of 2006 arise out of the same Motor Accidents Claims case, viz., MACT. OP. No. 2964 of 1999 on the file of Motor Accidents Claims Tribunal (Court of Small Causes), Chennai. The former appeal is by the claimants and the latter is by the insurance company. The deceased was a driver with a Travels Company and when he was going as a pillion rider in a motorcycle, the car belonging to the insured, hit against him, resulting in multiple injuries and he finally succumbed to those injuries three days later. The claimants sought for a compensation of Rs. 22,25,000/-. The Tribunal awarded Rs. 3,64,500/-. Against this, these two appeals have been filed.

2. On the question of negligence, no serious objections were raised and we also find, on a reading of the order of the Tribunal, that the finding of negligence is correct, since the car, which was driven by the insured, hit the motor cycle from behind, which resulted in the deceased toppling from the motor cycle and sustaining the fatal injuries.

3. The two questions raised on behalf of the insurance company to evade the

liability is that there was a breach of policy conditions, since the licence of the driver, who was driving the insured vehicle, had expired and was not effective on the date of accident and therefore, it was a case where there is no valid licence and the insurance company cannot be asked to pay compensation to the claimants. Alternatively, the learned counsel submitted that if this Court finds that the insurance company is liable to pay, then a direction may be given to pay and recover from the insured. The learned counsel also submitted that without any evidence at all, the Tribunal had fixed the monthly income at Rs. 2,500/- and adopted a very high multiplier of 17. On all these grounds, the learned counsel prayed for modification of the award passed by the Tribunal.

4. The learned counsel appearing for the claimants, who had filed C.M.A. No. 420 of 2004, submitted that the date of accident was 6.8.98 and the licence had expired on 27.7.98 and therefore, the licence was effective in view of the language of Section 14 of the Motor Vehicles Act, which provides that the driving licence, notwithstanding the expiry will continue to be effective for a period of 30 days from such expiry. The learned counsel further submitted that the compensation was fixed at a very low figure. The learned counsel submitted that P.W.4, who was running the Travels company, where the deceased was engaged as a driver, had given evidence that the deceased would earn Rs. 1,500/- per month in addition to daily batta of Rs. 150/- and 10% commission if there is some outside purchase and also tips. The wife of the deceased, who had given evidence as P.W.1 had also stated that he would bring home not less than Rs. 10,000/- to Rs. 15,000/- per month. The learned counsel, therefore, submitted that the compensation should be enhanced.

5. As regards the first point that the driver of the insured vehicle did not sustain an effective licence, we are afraid, we have to reject this contention in view of the clear language of Section 14 of the Motor Vehicles Act. Section 14 reads thus:

14. Currency of licenses to drive motor vehicles. -

(1)

(2) A driving licence issued or renewed under this Act shall, -

(a)

(b)

Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry.

In this case, the dates have already been given. Therefore, until 27.8.98, the licence continued to be "effective". It does not matter in the least whether subsequently the driver had made an application for renewal of the licence. That may be relevant in cases where the accident took place more than 30 days after the expiry of the licence. In this case, that question does not arise. The learned counsel for the insurance company referred to the decision of the Supreme Court

in *Ishwar Chandra & Ors. v. The Oriental Insurance Co. Ltd.* (2007 SAR (Civ) 339 : 2007-2-L.W. 733), where the Supreme Court had dismissed the appeal filed by the claimants on the ground that "as on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident". In that case, the facts were different. The accident took place on 28.4.95 whereas the licence of the offending vehicle had long expired on 27.8.94 and the 30 days period mentioned in Section 14 had long lapsed. In that case, the Supreme Court had referred to the earlier decision in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, wherein it is observed in paragraphs 42 to 46 as follows:-

42. We may also take note of the fact that whereas in Section 3 the words used are "effective licence", it has been differently worded in Section 149(2) i.e. "duly licensed". If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regards third-party risks.

43. A provision of a statute which is penal in nature vis-a-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

44. The words "effective licence" used in Section 3, therefore, in our opinion, cannot be imported for sub-section (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words "duly licensed" used in sub-section (2) of Section 149 are used in the past tense.

45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefore. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.

Therefore, when Section 3 of the Act uses the words "effective licence" and the proviso to Section 14 says that that the licence continues to be effective for a period of 30 days, we cannot ignore the statute. We hold that notwithstanding

the expiry of the licence, it was effective. Therefore, we reject the objection made on behalf of the insurance company that the driver of the offending vehicle did not have an effective licence on the date of the accident.

6. Now, we come to the quantum. According to the insurance company, without any evidence, the Tribunal had fixed the yearly income at Rs. 30,000/-. P.VV.4, the owner of the Travels Company, where the deceased allegedly worked, claimed that he had worked for four years and had been paid Rs. 1,500/- in addition to daily batta, etc. The Tribunal had observed that P.W.4 had not filed any document, such as salary register or salary receipt in order to prove that he was having a Travels Company and therefore, the Tribunal held that there was no documentary evidence to show that the deceased was working as a driver in the Travels Company. But, however, it came to the conclusion that since he was a driver and since his driving licence had been marked, he could be said to have earned Rs. 2,500/- per month.

7. The accident took place in 1998. The learned counsel for the claimants submitted that in 1998, for a non-earning member, a sum of Rs. 3,000/- was fixed as monthly income notionally. When that is so, the deceased, who was a driver, would have earned more than that. Therefore, in the absence of any other evidence, we will take the evidence of P.W.4 that the deceased was receiving a daily batta of Rs. 150/-, as the reference point for fixing the salary. This does not seem to be excessive; on the other hand, it is quite just and reasonable and if the deceased had been taken for overnight travel, he would have been paid much more for the overnight batta and therefore, the sum of Rs. 4,500/- is more on the modest side than the excessive side. If we deduct one-third towards personal expenses, the monthly contribution to the family would be Rs. 3,000/-. The annual contribution would be Rs. 36,000/-.

8. Now, we come to the question of multiplier, regarding which there was strong objection by the learned counsel for the insurance company contending that 17 was on the excessive side. He referred to APSRTC & Anr. v. M. Ramadevi & Ors. (SC) reported in 2008 (1) TN MAC 234 = 2008-2-L.W. 714, where the deceased was 40 years old and he was employed with a transport corporation and the Supreme Court adopted multiplier of 12. The learned counsel also referred to Laxmi Devi & Ors. Mohammad Tabbar & Anr. Reported in 2008 SAR (Civil) 445 = 2008-2-L.W. 766, where the deceased was aged about 35 years and the Supreme Court adopted 14 as multiplier.

9. On the side of the claimants, the learned counsel relied on the decision of the Supreme Court in Mohan Singh Vs. Kashi Bai and Others, where the Supreme Court in the case of the deceased who was aged 31 years, has confirmed the multiplier of 17.

10. Taking into account all these various decisions, we feel that if we adopt 15 as multiplier, it would be reasonable, since we are taking a higher rate multiplicand. Therefore, if we multiply Rs. 36,000/- by 15, we arrive at the pecuniary loss of

Rs. 5,40,000/-.

11. Rs. 20,000/- is awarded to the wife, Latha Devi, towards loss of consortium as against the sum of Rs. 7,500/- awarded by the Tribunal both for loss of life and loss of consortium. Rs. 5,000/- was granted towards medical expenses. Since the deceased was alive for three days before succumbing to the injuries, this amount is confirmed. Rs. 2,000/- is awarded towards funeral expenses; this is also confirmed. As regards the two minor children and the parents of the deceased, Rs. 10,000/- each is awarded, aggregating to Rs. 40,000/-. Therefore, the aggregate compensation would be Rs. 6,07,000/-.

12. Now, we come to the rate of interest. The Tribunal had awarded 9% interest per annum. The enhanced compensation shall bear interest at the rate of 7.5% p.a. from the date of accident till the date of payment.

13. As regards the apportionment, the learned counsel for the claimants submitted that even before the appeal was filed by the insurance company, the entire sum deposited has been withdrawn. The Tribunal awarded Rs. 25,000/- to the father and Rs. 50,000/- to the mother. This is confirmed. Out of the balance of Rs. 5,32,000/-, Rs. 3,32,000/- is apportioned to the first appellant in C.M.A. 420 of 2004, namely, Mrs. S. Latha Devi and Rs. 1,00,000/- each to the children, by name S. Babu and S. Prakash, who are appellants 2 and 3 in C.M.A. No. 420 of 2004. Mrs. Latha Devi, the first appellant in C.M.A. No. 420 of 2004 shall withdraw her share as enhanced by us. It is seen that the second appellant in C.M.A. No. 420 of 2004, by name S. Babu, has been declared as major and hence, he is also permitted to withdraw his share. The share of the other minor, by name, S. Prakash, shall be kept in a Fixed Deposit in a nationalised bank to be renewed during the period of minority. The first appellant in C.M.A. No. 420 of 2004 is permitted to withdraw the accrued interest once in six months for his benefit. The appellant in C.M.A. No. 2085 of 2006 is given six weeks time to deposit the enhanced amount together with interest. In the result, C.M.A. No. 420 of 2004 filed by the claimants is allowed and C.M.A. No. 2085 of 2006 filed by the insurance company is dismissed. No costs.