
(2012) 06 MAD CK 0031
In the Madras High Court
Case No : C.M.A. No. 1141 of 2007

Shenaz Begum and Others

APPELLANT

Vs

S. Kaja Mohideen and Another

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(2)(a)(ii), 149(2)(b), 149(4)

Citation : (2012) 4 TAC 33

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : V.K. Rajagopalan and Mr. P.T. Satishkumar, for the Appellant; K.S. Narasimhan, for the Respondent

Judgement

P. Devadass, J.—The dependents of a deceased Bank employee, who lost his life in a road accident have appealed as against the decision

of the Motor Accident Claims Tribunal (Principal District Judge), Vellore exonerating the second respondent/National Insurance Company from

paying them the compensation amount. On 13th November, 2003, at about 9.30 a.m., near a petrol bunk, in Bharathi Street, in Ranipet, Vellore

District the four-wheeler bearing the registration No. TN-23-L-4147, came driven in a rash and negligent manner hit against Mohamed Pazurullah,

who was then driving his Bajaj Scooter. In this, the scooterist lost his life. His wife/first appellant and others have sought for compensation in

M.C.O.P. No. 119 of 2004 from the Motor Accident Claims Tribunal (Principal District Judge) Vellore. The Tribunal determined the

compensation totally at Rs. 5,93,760/-.

2. The Tribunal directed the first respondent(vehicle owner) to pay the appellants the said compensation amount. It had exonerated the second

respondent(Insurance Company) from paying the compensation amount since at the time of accident, the driver of the first respondent was not

having driving licence. The Tribunal also held that as the first respondent had wilfully placed the vehicle in the possession of an unlicensed person

and the claimants have also not proved that the vehicle owner has sufficient assets to enable the Insurance Company to recover the compensation

amount from him, it did not direct the Insurance Company to pay the compensation amount to the claimants and recover it from the vehicle owner.

3. According to Mr. P.T. Sathish Kumar, learned Counsel for the appellants, there is no evidence that the vehicle owner had wilfully placed the

vehicle in the possession of his driver. There is no rule or law that to direct the Insurance Company to pay the compensation amount to the

claimants and recover it from the vehicle owner the claimants have to prove the financial capacity of the vehicle owner.

4. Mr. K.S. Narasimhan, learned Counsel for the second respondent/Insurance Company submitted that inspite of the notice, the vehicle owner

has not produced the driver's driving licence. So, his driver was not at all licenced. In the circumstances, the Tribunal had exempted the Insurance

Company from paying the compensation amount to the claimants.

5. I have given my anxious consideration to the rival submissions.

6. The four-wheeler belongs to the first respondent. Admittedly, it has been insured with the second respondent. At the time of accident, there is

policy coverage for the said vehicle. At the time of accident, one Kumar had driven the vehicle. Then he was employed under the first respondent.

The Insurance Company took the stand that the said Kumar did not possess driving licence. A notice was issued to the first respondent to produce

Kumar's driving licence (see Ext. R3). It was acknowledged by the first respondent (see Ext. R4). But, the driving licence was not produced. On

the basis of evidence adduced, the Tribunal concluded that at the time of accident, the said Kumar was not having driving licence. It had also held

that the first respondent had wilfully placed his vehicle in the possession of a person, who is not duly licenced.

7. There is no evidence to show that at the time of employing the said Kumar or at the time of entrusting his vehicle with Kumar, the first

respondent knew that he was not having a driving licence. There is no evidence

to show that the first respondent had wilfully placed his vehicle in the possession of a person who is not duly licenced to drive the vehicle. So, without evidence, the Tribunal had assumed that the first respondent had wilfully placed his vehicle in the possession of said Kumar. It is a finding without evidence. It is unsustainable.

8. In its judgment, at page No. 13, the Tribunal also held as under:-

(Vernacular matter Omitted)

(Emphasis supplied by me)

9. The Tribunal advocates a principle that to direct the Insurance Company to pay the compensation amount to the claimants and recover it from the owner of the offending vehicle, the claimants must prove that the vehicle owner has sufficient financial capacity to enable the Insurance Company to recover the said amount from him.

10. When the driver of the offending vehicle was not duly licenced, the Insurance Companies sought for exemption from paying the compensation

amount to the claimants on the ground that there is policy violation. At one point of time this was accepted and the Insurance Companies were

exempted from paying the compensation amount to the claimants. It has caused much havoc to the victims of road accidents. They were left high

and dry. They were not in a position to recover a single pie from the vehicle owners, although there was insurance coverage for the offending

vehicle with the insurance companies. The statutory compulsory scheme of insurance for the vehicles with the insurance companies is intended to

protect the road users and those depended on them. In the circumstances, Courts have conceived the "concept of pay and recover". It is when

there is insurance coverage for the offending vehicle, the Insurance Company shall be directed to pay the compensation amount to the victims of

road accident and recover the amount from the vehicle owner.

11. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, the Hon''ble Supreme Court was concerned with interpretation of Section

149(2)(a)(ii) of the Motor Vehicles Act in respect of three distinct situations: (i) when admittedly no licence was obtained by person and driving

licence was found to be fake; (ii) when driver has only ""learner''s licence""; and (iii) when driver is granted licence for one type of vehicle and at the

time of accident, he was driving another type of vehicle. After making reference to the entire case law, the Honourable Supreme Court held that (i)

in case where driver of vehicle admittedly did not hold licence and the same was allowed consciously to be driven by owner of the vehicle, the

Insurer is entitled to exoneration from its liability; (ii) in case when the Insurer take plea that driver's licence is fake, the defence can only succeed

when it is proved that Insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver; (iii) in

case of learner's licence, it is also a licence and allowing holder of learner's licence to drive the vehicle does not amount to breach of condition u/s

149(2) of the Act, and (iv) that the Tribunal has to take a decision as to whether effect of driver possessing licence for one type of vehicle and

found driving another type of vehicle was the main or contributory cause of accident and if it is found that accident occurred solely because of

some unforeseen or intervening causes like mechanical failure or some other cause having no nexus with driver not possessing requisite type of

licence, the Insurer will not be liable to be allowed to avoid its liability merely on technical breach of conditions concerning driving licence.

12. In *Jawahar Singh Vs. Bala Jain and Others*, the Honourable Supreme Court, dealing with a case where the driver had no valid and effective

driving licence, held us under:-

11. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from

behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the

responsibility of the petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the

Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the Petitioner and accordingly, directed the

Insurance Company to pay the awarded amount to the awardees and thereafter, to recover the same from the petitioner. The said question has

been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same.

13. *National Insurance Company Ltd. v. Swaran Singh (supra)*, was followed in *Divisional Manager, Oriental Insurance Company Ltd v. Malliga*

and Others, 2012 (2) LW 216 : LNIND 2012 Mad 734).

14. In *Iffco Tokyo General Insurance Co. Ltd. v. A. Jafer Sadiq and Others*, 2012 (1) TN MAC 394 (DB): LNIND 2012 Mad 1730, a Division

Bench of this Court has held as under:-

The Snapshot of the entire discussion is the inevitable conclusion we come to namely, as per Section 149(4) read with Section 149(2)(b) of M.V.

Act, 1988, the Insurer cannot deny liability on the ground that the driving licence had expired. The remedy for the Insurer may only be to pay and

recover from the insured, for the defence so raised is not one contemplated u/s 149(2) (b) for which defence alone, the Insurers appear permitted

to avoid liability in toto. Our decision in this regard falls in line with the spate of decisions of the Apex Court and this Court holding that in such

cases the Insurers may have to pay and recover and not be entitled to avoid liability. But, in the light of our specific discussion relating to the

distinction and difference between the legal position as obtaining under M.V. Act, 1939 and M.V. Act, 1988, we are fortified in our view that the

Tribunal has correctly ruled that insurer cannot escape liability though had proved that the driver of the insured possessed only an expired driving

licence. But, we would add that he is liable to pay compensation to the third party victim with liberty to recover such sum from the insured or

owner of the vehicle.

15. Recently, in *Ramasamy v. Selvaraj and another*, 2012 2 L.W. 946 : LNIND 2012 Mad 1562, under similar circumstances, this Court has held

as under:-

When the insurer seeks exoneration from its liability to pay compensation/ indemnify the insured on the ground that the driver of the vehicle is not

duly licenced or not licenced or driven by a person having learner's licence, the Court has to go into the question whether the vehicle owner,

wilfully with his full knowledge, placed the vehicle in the possession of such persons and further that has contributed to the accident. If it is not and

the vehicle is insured, the insurer shall be asked to pay the compensation amount to the claimants on behalf of the insured and recover the amount

from the vehicle owner in execution. No separate suit need be filed. Based on the findings of the Claims Tribunal, the execution petition can be

maintained. Thus, in view of this current position of law, we accept the

submission of the learned Counsel for the appellant.

16. Thus, from the above, it is clear that at the time of accident, if the driver was not duly licenced and the vehicle owner has not wilfully placed the

vehicle with an unlicensed person and there is insurance coverage for the offending vehicle, the Insurance Company shall be directed to pay the

compensation amount to the claimants and recover it from the vehicle owner. For issuing such a direction to the Insurance Company, the claimants

need not prove that the vehicle owner has sufficient financial capacity to enable the Insurance Company to recover the said amount from him.

17. Thus, the view of the Tribunal that in order to invoke ""pay and recover"" concept, the appellants have to prove that the owner of the offending

vehicle has sufficient financial capacity to enable the Insurance Company to recover the compensation amount from the vehicle owner is totally

uncalled for. It has no legal basis. It is against law. It is unsustainable in law. In the result, this appeal is allowed. The second respondent/Insurance

Company shall deposit the entire compensation amount together with accrued interest as awarded by the Tribunal within four weeks from the date

of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the amount as awarded by the Tribunal. The

Insurance Company can recover the said amount from the first respondent. For this purpose, it need not file a separate suit. Based on the above

direction, it can initiate proceedings before a competent Execution Court and such Court shall take all the necessary steps even by attaching the

offending vehicle and if it need be, it can also take the assistance of concerned Regional Transport Authority. No costs.