

(2016) 02 KL CK 0096
In the High Court Of Kerala
Case No : MACA No. 2277 of 2010

The Executive Director, Index Chits and Finance Private Ltd.	APPELLANT
Vs	
V.K. Balan and Others	RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(4), Section 2(30), Section 3

Citation : (2017) 1 ACC 465 : (2016) 4 ACC 297 : (2016) ACJ 2582 : (2016) 162 AIC 501 : (2017) 1 AnWR 182 : (2016) 1 KerLJ 815 : (2016) 1 KHC 847 : (2016) 1 KLT 815 : (2016) 2 RCRCivil 810 : (2016) 3 TAC 411 : (2016) 1 TNMAC 371 : (2016) 2 TNMAC 224

Hon'ble Judges : P.N. Ravindran and K. Ramakrishnan, JJ.

Bench : Division Bench

Advocate : Sunil Nair Palakkat, K.N. Abhilash, R. Leela and N.K. Sheeba, Advocates, for the Appellant; T.C. Suresh Menon, Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Ramakrishnan, J.—1. The first respondent in O.P.(M.V.) No. 2169 of 2003 on the file of the Motor Accidents Claims Tribunal, Thrissur is the appellant herein. The first respondent herein filed the above claim petition claiming compensation for the personal injuries sustained by him in a motor vehicle accident involving a motor cycle with registration No. KL-8/V-9839 registered in the name of the first respondent, driven by the second respondent and insured with the third respondent and in the possession of the fourth respondent. According to the claimant, he sustained severe injuries in the accident. He is an agriculturist, aged 65 years, having a monthly income of Rs. 4,000/- and claimed a total compensation of Rs. 2,00,000/- under various heads.

2. The appellant, who is the first respondent in the lower court, entered appearance and filed a counter contending that on the basis of the hire purchase agreement, the second respondent is in possession of the vehicle and he is in possession as a de facto owner and as such, the first respondent is not liable to

pay any amount. They also denied the income, occupation, disability, etc. claimed in the petition. They further stated that the vehicle was insured with the third respondent and in case any compensation awarded, they are liable to pay compensation and they prayed for dismissal of the application.

3. The third respondent filed a written statement admitting the insurance. They also admitted that the vehicle was insured in the name of the first respondent. They have further stated that the second respondent, the rider of the motor vehicle have no valid and effective driving licence at the time of accident and as such, they are not liable to pay any amount as compensation. They also submitted that Valappad Police had taken a petty case against the second respondent for riding a motor cycle without valid and effective driving licence. They also contended that there was no negligence on the part of the second respondent and they have no liability to pay the amount. They challenged the quantum of compensation claimed as well. They prayed for dismissal of the petition.

4. On the basis of the contentions raised the claimant filed I.A. No. 3768 of 2009 to implead Sri. Joshy E.P., S/o. Peethambaran, Erankizhakath House, Pallippuram, P.O. Valappad, as the additional fourth respondent and the same was allowed. But neither the second respondent nor the fourth respondent appeared and filed any statement. No oral evidence was adduced on the side of the parties. Exts.A1 to A8 and Exts.B1 to B5 were marked on the side of the parties.

5. After considering the evidence on record, the Tribunal found that the accident occurred due to the negligence of the second respondent and found the first respondent, being the owner of the vehicle, liable. The court below found that the second respondent has no driving licence to drive the vehicle and so exonerated the insurance company from liability but directed them to pay the amount and recover the same from the first respondent under section 149(4) of the Motor Vehicles Act, hereinafter called "the Act" for short. Aggrieved by the direction to recover the amount from the first respondent and other finding that making them liable to pay the amount, the above appeal has been preferred by the first respondent/financier in the case.

6. Heard Sri. Sunil Nair Palakkat, learned counsel appearing for the appellant, Sri. T.C. Suresh Menon, learned counsel appearing for the first respondent and Sri. K.C. Santhosh Kumar, learned counsel appearing for the third respondent insurance company. Others remained absent.

7. Learned counsel for the appellant submitted that they are only the de jure owner and there is no liability for them as the vehicle was in the possession of the fourth respondent. So they are not liable to pay the compensation and the court below was not justified in ordering recovery of the amount from them. He had relied on the decision reported in M/s. Godavari Finance Co. v. Degala Satyanarayanamma and Others (, 2008 KHC 6295) in support of their case.

Learned counsel for the appellant also submitted that there is no evidence adduced on the side of the insurance company to prove that the second respondent is not having any valid driving licence so as to get themselves exonerated from the liability. There is no finding in the petition filed by them that no driving licence was produced. The documents produced also do not show that the second respondent who was charge-sheeted by the Police, was driving the vehicle without valid driving licence as well. So under the circumstances, the finding of the court below, exonerating the insurance company from the liability, is not correct.

8. On the other hand, the learned counsel for the insurance company submitted that this court cannot go into that question as it was not challenged in the appeal memorandum. They are only challenging the proposition that being the de jure owner, they are not liable to pay any amount. Further the documents produced will go to show that the second respondent had no driving licence to drive the vehicle. The petitioner has been directed to produce the driving licence but it was not produced. So the Tribunal was justified in drawing an adverse inference against the driver.

9. The question regarding negligence is not in dispute. The fact that insurance coverage stands in the name of the appellant and they were shown as the registered owner of the vehicle is also not in dispute. They have produced Ext. B2 to prove that the fourth respondent is in possession of the vehicle as a hirer of the vehicle. It may mentioned here though in the decision reported in M/s. Godavari Finance Co. v. Degala Satyanarayanamma and Others (supra) it has been held that the person in possession will be deemed to be owner under the Act, there is no evidence to show as to whether the insurance and registration certificate were stood in the name of the finance company and that question has not been considered in the said decision. But in this case as per the documents produced, it will be seen that the appellant is not only the financier but also the registered owner and the insured as per the documents. So they cannot now say that they are not the owner of the vehicle invoking the definition under section 2(30) of the Act. Even if there is any liability between them, the person in possession as per the hire purchase agreement is liable to indemnify them later if they were made to pay any amount for any violation. So on the basis of the documents available on record, the dictum laid down in the decision in M/s. Godavari Finance Co. v. Degala Satyanarayanamma and Others (supra) is not applicable to the facts of this case. Further the decision reported in Managing Director, KSRTC v. New India Assurance Co. Ltd. and Another (2015 KHC 4725) the Honourable Supreme Court has held that merely because the agreement holder was in possession of the vehicle which involved in the accident that will not absolve the liability of the insurance company to indemnify the insured in whose name the policy stands, even if the intimation was not given regarding the transfer of the vehicle. So the insurance company also cannot now plead that they are not liable to indemnify the insured, who is the appellant herein.

10. The court below came to the conclusion that the second respondent has no driving licence to drive the vehicle. It is only on the basis of an application filed by the insurance company summoning the second respondent to produce the driving licence as I.A. No. 2488 of 2007. It is true that such an application has been filed. But except noting in the petition that "R2 called absent and the petition is closed", there is no finding by the Tribunal that the second respondent has not produced the driving licence and since he had not produced the driving licence, an adverse inference has to be drawn against him. Further Ext. A5 is the final report filed by the Police in respect of the incident. There is nothing mentioned in the certified copy of the final report produced that the driver was charge-sheeted for driving the vehicle without driving licence under section 3 of the Act. Merely because it was mentioned that he was not having the required documents to drive the vehicle alone is not sufficient to come to the conclusion that he was not holding a valid driving licence as on the date of the accident. Though the insurance company had taken a contention in the written statement that a petty case was registered against the rider of the motor vehicle for driving the vehicle without driving licence, no such document was produced before the court except the final report which we are referred to above which is not sufficient to come to the conclusion that the driver was not having valid driving licence at the relevant time. What happened to the criminal case is also not clear from the documents produced. Whether he had been convicted for not holding driving licence under section 3 of the Act as well is not in evidence in this case. So under the circumstances, merely because they filed an application and it was closed as the second respondent did not appear, alone is not sufficient to come to the conclusion that the second respondent is not holding a valid driving licence at the relevant time and in the absence of anything endorsed by the court that the second respondent has not produced the driving licence inspite of direction given by the Tribunal and as such adverse inference will have been drawn. Mere closing the application as stated above alone is not sufficient in law to draw an adverse inference against the second respondent to come to the conclusion that he was not having a valid driving licence to drive the vehicle at the relevant time. Only if there is a direction by the court to produce the document in his possession and inspite of that, if that party did not produce the same, then only the court can draw an adverse inference against that party who was directed to produce the document. No such direction was seen given in this case except ordering notice in that application filed by the insurance company for that purpose. Further, the burden is on the insurance company to prove that the driver had no valid and effective driving licence to drive the vehicle and knowing that the insured had permitted him to drive the vehicle so as to hold that there is fundamental breach of contract committed by the insured so as to exonerate the insurance company from liability. No such evidence adduced on the side of the insurance company in this case. In such circumstances, the finding of the court below that the insurance company is entitled to get exoneration from liability as the second respondent was not having valid driving licence to drive the vehicle at the relevant time is unsustainable in law. Consequently, the direction issued by the

court below giving liberty to the third respondent to recover the amount from the first respondent is also, for the reason mentioned above, not sustainable in law and the same is liable to be set aside and we do so. Since we have set aside the finding of the Tribunal exonerating the insurance company from liability and the direction issued by the court below to pay the amount and recover the same from the first respondent, the third respondent is not entitled to recover the amount from the first respondent and they are liable to satisfy the award as the insurer of the vehicle.

So the appeal is allowed and the award passed by the court below to the extent mentioned above making the first respondent liable to indemnify the insured for the amount deposited by them is set aside, making the third respondent alone liable to pay the amount. Considering the circumstances, the parties are directed to bear their respective costs in the appeal.