(2008) 01 MAD CK 0057

In the Madras High Court

Case No : C.M.A. (MD) No. 1615 of 2007 and M.P. (MD) No. 1 of 2007

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Nagudevar, Valli, K. Solaimalai and Narayanan RESPONDENT

Date of Decision : 03-01-2008

Acts Referred:
Motor Vehicles Act, 1939 — Section 103A, 94, 95, 95(2), 96(2)

Citation : (2008) 01 MAD CK 0057

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : K. Bhaskaran, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This appeal is focussed as against the Judgement and Decree dated 23.07.2007 passed in M.C.O.P. No. 147 of 2003 by

the learned Motor Accidents Claims Tribunal-cum-the District Judge, Sivagangai.

2. Heard the learned Counsel appearing for the appellant/Insurance Company. Despite printing the name of the claimants, no one appeared.

3. The Tribunal vide Judgement dated 23.07.2007 awarded compensation to a tune of Rs.1,10,000/- (Rupees one lakh and ten thousand only)

under the following sub-heads:

For loss of income -Rs. 80,000/-

For funeral expenses -Rs. 5,000/-

For loss of love and

Affection -Rs. 25,000/-

Total -Rs.1,10,000/-

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4. The parties referred to herein according to the litigative circumstances before the Tribunal.

5. The challenge in this Civil Miscellaneous Appeal is on the following main grounds:

The insured viz., respondent No. 1, K.Solaimalai even though transferred the vehicle in favour of the respondent No. 3, Narayanan, the former has

not chosen to inform the factum of transfer to the respondent No. 2, the Insurance Company. Since there was no privity of contract between the

respondent No. 1 and the Insurance Company, the respondent No. 2, the Insurance Company cannot be mulcted with the responsibility of paying

the compensation. The compensation awarded is on the higher side.

6. The points for consideration are (i) whether the non-intimation to the insurer, about the transfer of the vehicle concerned by R1 in favour of R3,

would exonerate the Insurance Company from the liability of paying the compensation to third party? and whether the Tribunal awarded ''just

compensation''?

7. Point (i):

The learned Counsel for the appellant/Insurance Company by placing reliance on the decision of this Court in Rangaperumalraja v. Moideen

Muthu Beevi and 5 Ors. reported in 1993 2 L.W. 65 would develop his arguments to the effect that the Insurance Company could be mulcted

with the responsibility of paying the compensation as the insured did not inform the Insurance Company about the transfer effected by him. An

excerpt from the aforesaid decision would run thus:

In our opinion, the terms of Section 96(2) of the (old) Motor Vehicles Act, 1939, do not exclude other defences available to any insurance

company under the general law. For example, an insurance company can always raise a plea that as a fact there was no accident as claimed by the

claimant and there was collusion between the claimant and the owner of the vehicle(insured) in order to extract money from the insurance

company. That is not one of the defences which is not contemplated by Section 95(2). It is because, Section 96(2) does not set out such defences.

It does not mean that they are not available to the insurance company. The purpose of introduction of Section 95(2) of the Motor Vehicles Act is

only to enable the claimant to recover easily compensation from the insurance company and the insurance company, to defend the proceedings for

compensation in the best manner possible so that it need not be cases in which the insured may allow the proceedings to go by default. If the

insurance company is itself a party to the proceedings it will be open to it to contest the same and only in order to facilitate such contest the Section

has been introduced in the Act.

Learned Counsel for the appellant refers to Section 103A of the Motor Vehicles Act, 1939. That section sets out only the procedure by which a

certificate of insurance can be got transferred in the event of the insured deciding to transfer the vehicles. In fact, the section contemplates on

application being made in the prescribed Form to the insurer for the transfer of the certificate of insurance and also the policy described in the

certificate in favour of the person to whom the motor vehicle is proposed to be transferred. Thus the procedure prescribed in S.103A should have

been availed of by the transferor before transferring the vehicle to any other person. In this case, there is nothing on record to show that the said

procedure was availed of by the prior owner or the appellant herein. Hence the Section does not help the appellant on the facts of this case.

8. The cited decision by the learned Counsel for the appellant/Insurance Company is an old decision. But the subsequent decision of the Hon''ble

Apex Court referred to by the Tribunal is very much relevant. An excerpt from the decision in Rikhi Ram and Another Vs. Smt. Sukhrania and

Others, would run thus:

On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser.

The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee

who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act.

However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of

insurer does not cease so far as the third party/ victim is concerned, even if the owner or purchaser does not give any intimation as required under

the provisions of the Act.

9. The fact remains that during the currency of the Insurance policy only, the transfer of the vehicle took place. Even though such transfer might not

have been intimated to the Insurance Company, yet a third party should not be made to suffer. Taking into consideration the object of the Motor

Vehicles Act, which is a benevolent legislation, the mere technical error committed by the insured should not come in the way of the third party

claiming compensation, whether the respondent No. 1, K.Solamalai was the owner of the vehicle or the respondent No. 3, Narayanan was the

owner of the vehicle at the relevant time of the accident, the liability of the Insurance Company in no way would get diminished or enhanced

because of the non-intimation of such transfer of the vehicle by the first respondent, K.Solaimalai in favour of the third respondent Narayanan.

When such is the factual as well as the legal position, there is no substance in the argument that simple because the transfer was not intimated to the

Insurance Company, it should be exonerated from its liability as there was no privity of contract between the third respondent and the Insurance

Company. Hence, in this view of the matter, I hold this point as against the appellant Insurance Company and the view taken by the Tribunal is

confirmed, which is in commensurate with the popular interpretation of benevolent legislations.

10. Point (ii):

The Tribunal took into consideration the income of the deceased as Rs.15,000/- (Rupees fifteen thousand only) per annum, taking a cue from the

Second Schedule appended to the Motor Vehicles Act one could readily understand that even in respect of a non-earning person, the annual

income could be taken as Rs.15,000/- (Rupees fifteen thousand only). But here the individual concerned was unmarried and sufficiently young so

as to do some job. In such a case only a moderate sum was taken as the basis for assessing the compensation. The multiplier 8 has been correctly

chosen as the parents are the claimants here.

11. The learned Counsel for the appellant/ Insurance Company would criticise the

attitude of the Tribunal in believing the age of the deceased as

40 and the age of the mother of the deceased as 50. No doubt, in the petition the second petitioner, Valli, the mother of the deceased, was cited

as one of 50 years old whereas the deceased stated to be 40 years old. The copy of the post mortem report would reveal that the deceased was

aged about 42 years. Hence, in such a case, it could safely be taken that the age of the mother of the deceased was wrongly typed. The father''s

age was stated as 60 years old. As such the average age of the parents can be taken only as around 60. The multiplier 8 chosen, in such a situation

is not on the higher side as the total compensation awarded itself is only Rs.1,10,000/- (Rupees one lakh and ten thousand only). Hence, I am of

the view that no interference is required.

12. The learned Counsel for the appellant/ Insurance Company made an extempore submission to the effect that even though the Tribunal correctly

directed that the Insurance Company after paying the award amount could recover it from the first respondent N.Solaimalai and the third

respondent Narayanan jointly and severally, yet there is no direction that it could be enforced by filing straight away E.P. Hence, I make it clear

that in the event of the Insurance Company paying the award amount to the claimants, it could straight away by filing E.P., the amount could be got

reimbursed from the first and third respondents jointly and severally.

13. I, therefore do not find any merit in this Appeal and accordingly it is dismissed. The award of the Tribunal is confirmed. No costs.

Consequently, the connected M.P. is also dismissed.