(2017) 06 KAR CK 0116

In the Karnataka High Court

Case No : 4616 of 2011 (MV)

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

SMT PARVATHI HEBBAR, W/O LATE RAMAKRISHNA HEBBAR, & ORS. — RESPONDENT

Date of Decision : 20-06-2017

Acts Referred:
Motor Vehicles Act, 1988, Section 3, Section 3, Section 4, Section 4, Section 14, Section 14, <a href=2221-15>Secti

Citation : (2017) 06 KAR CK 0116

Hon'ble Judges : B.Manohar

Bench : SINGLE BENCH

Advocate : A.N.KRISHNA SWAMY, MAHESH KIRAN SHETTY, S.A.KHADRI

Final Decision : Allowed

Judgement

1. The United India Insurance Company Ltd. has filed this appeal challenging the legality and correctness of the judgment and award dated 18th March 2011 passed in MVC No.1167/2008 by the Motor Accident Claims Tribunal, Kundapura (hereinafter referred to as ''the Tribunal'' for short) fastening liability on them to compensate the claimants.

2. Facts leading to the filing of this appeal are as under:

The respondents No.1 to 4 herein are the wife and children of deceased Ramakrishna Hebbar. They filed a claim petition contending that on 02-07-2008 at about 6.30 a.m., when the deceased Ramakrishna Hebbar was standing on the southern side mud portion of Udupi - Karkala Road, in front of Manipal Bakery at Manipal of Shivalli village, Udupi Taluk and District, the driver of Maruthi Omni bearing Registration No.KA-20/Z-3931 drove the same in a rash and negligent manner and dashed against the said Ramakrishna Hebbar. Due to the impact, he fell down and sustained grievous injuries. Immediately after the accident, he was shifted to KMC Hospital, Manipal. However, he succumbed to the injuries on 16-07-2008. In the claim petition, it was contended that at the time of death, the deceased was aged about 60 years. He was working as a Head Cook and earning Rs.15,000/- per month. In view of death of the deceased, the claimants have lost the bread earner of the family. The accident occurred due to the rash and negligent driving of the offending Maruthi Omni which was insured with the appellant - Insurance Company. Hence, both the insurer and the insured are liable to compensate the claimants to an extent of Rs.11,48,000/-

3. In response to the notice issued by the Tribunal, the owner of the Maruthi Omni remained unrepresented. The Insurance Company defended the case by filing written statement denying the entire averments made in the claim petition. They specifically contended that as on the date of accident, the driver of Maruthi Omni was not holding a valid and effective driving license to drive the same. Further, the accident had occurred due to negligence on the part of the deceased and sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. In order to prove the case of the claimants, the 2nd claimant got himself examined as P.W.1 and one of the eye witnesses to the incident was examined as P.W.2 and got marked the documents as Ex.P1 to Ex.P79. On behalf of the respondent-Insurance Company, one of the officials was examined as R.W.1 and got marked the documents as Ex.R1 and Ex.R2.

6. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration the panchanama, copy of the complaint and police note held that due to actionable negligence on the part of driver of the Maruthi Omni, the accident had occurred. Though the Insurance Company took the defense with regard to negligence on the part of the deceased, no evidence was let in by them to prove the same. Further, though the Insurance Company took a specific contention that the driver of offending Maruthi Omni was not having valid and effective driving license as on the date of accident, subsequently the said driving license was renewed. Merely because of expiry of the period of license and omission of driver to get the license renewed, it cannot be said that there is breach of condition of the policy, for which, the Insurance Company be exonerated from its liability. The Tribunal taking notional income of the deceased as Rs.30,000/- per annum, deducting 1/3rd towards personal expenses, as he was aged about 60 years applying the multiplier `9'' awarded a sum of Rs.1,80,000/- towards `loss of dependency'', Rs.50,000/- towards `funeral expenses/medical expenses'' and Rs.15,000/- towards conventional heads. In all, a sum of Rs.2,45,000/- has been awarded with interest at 6% p.a. and the liability was fastened on the Insurance Company to compensate the claimants. The Insurance Company being aggrieved by the judgment and award passed by the Tribunal has filed this appeal.

7. Sri A N Krishna Swamy, learned counsel appearing for the appellant contended

that the judgment and award passed by the Tribunal is contrary to law. As on the date of accident, the driver of Maruthi Omni did not possess a valid and effective driving license. Hence, the Insurance Company is not liable to compensate the claimants. While elaborating the said contention, he contended that the driving license issued by the competent authority expired on 30th April, 2008 and the accident had occurred on 2nd July 2008. Subsequently, the driver of offending Maruthi Omni got the driving license renewed on 04-07-2008. Under Section 15 of the Motor Vehicles Act, (for short `Act''), if an application for renewal of the license is made more than 30 days after its expiry, the license shall be renewed with effect from the date of its renewal. In the instant case, as on the date of accident, the driving license issued by the competent authority had expired. An application was made for renewal after three months of expiry of driving license. Hence, the claimants are not entitled to benefit under Section 15(1) of the Act. In support of his contention, he relied upon a judgment of the Hon''ble Supreme Court reported in 2008 ACJ 2654 in the case of Ram Babu Tiwari -vs- United India Insurance Co. Ltd and others.

8. On the other hand, Sri Mahesh Kiran Shetty, learned counsel appearing for respondents No.1, 3 and 4 argued in support of the judgment and award passed by the Tribunal and contended that though the driver of offending vehicle got renewed the driving license subsequently, it would not amount to breach of conditions of the policy. From the year 1992 till 2008, the driver of offending vehicle was holding valid and effective driving license. The driving license was not withdrawn or cancelled by the competent authority. The subsequent renewal of driving license inures the benefit. In support of his contention, he relied upon a judgment reported in ILR 2002 Kar 1088 in the case of K G Srinivasamurthy and others -vs- Smt.Habib Khathun and others and 2004 (3) SCC 297 in the case of National Insurance Co. Ltd. -vs- Swaran Singh and others and sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel for the parties, perused the judgment and award, oral and documentary evidence adduced by the parties.

10. The dispute in this appeal is only with regard to liability to compensate the claimants.

11. The occurrence of accident due to rash and negligent driving of Maruthi Omni and the death of deceased Ramakrishna Hebbar in the road traffic accident occurred on 02.07.2008 are not in dispute. The defense of Insurance Company is that, as on the date of accident, the driver of Maruthi Omni was not holding valid and effective driving license. The driving license issued by the competent authority had expired on 30-04-2008, whereas the accident occurred on 02-07-2008. Proviso to Section 15 of the Act contemplates that where an application for renewal of license is made, more than 30 days after the date of its expiry, the driving license shall be renewed with effect from the date of its renewal. Further, where an application for renewal of driving license is made

within 30 days of expiry, the driving license shall be renewed from the date of expiry. Section 15 of the Act reads as under:

"15. Renewal of driving licenses.-

(1) Any licensing authority may, on application made to it, renew a driving license issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a license is made more than thirty days after the date of its expiry, the driving license shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a license to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner''s license.

(2) An application for the renewal of a driving license shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving license is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving license is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government:

Provided that the fee referred to in sub-

section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving license made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub- section (3):

Provided further that if the application is made more than five years after the driving license has ceased to be effective, the licensing authority may refuse to renew the driving license, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section

9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central

Government.

(6) Where the authority renewing the driving license is not the authority which issued the driving license it shall intimate the fact of renewal to the authority which issued the driving license."

12. Section 3 of the Act contemplates that no person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to him authorizing him to drive the vehicle and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub- Section 2 of Section 75 unless his driving license specifically entitles him so to do. Under the Motor Vehicles Act, holding of valid and effective driving license is mandatory requirement and one of the conditions of contract of insurance. The driving of a vehicle without valid license is an offence. In case of expiry of driving license, the same is ordinarily renewed in terms of the Act and Rules framed there under. Despite the fact that during the interregnum period, viz., the date of accident and the date of expiry of license, he did not possess a valid license, during the prescribed period he could apply for renewal thereof and could have obtained the same automatically without undergoing a test or without being disqualified. Therefore, the proviso appended to Section 14 of the Act is unequivocal terms and states that the license remained valid for a period of 30 days from the date of expiry. If an application is made within a period of 30 days, the renewal of license will be effected from the date of expiry. If an application is made beyond 30 days of expiry, renewal is from the date of renewal. In the instant case, the driver of offending Maruthi Omni got the license to drive the motor cycle with gear from 13-05-1992 to 30-04-1998. Thereafter, he got the driving license to drive the light motor vehicles with effect from 3.4.2002 to 30.4.2008. Subsequently, he got renewed the driving license with effect from 04-07-2008 to 03-07-2014. In the interregnum period i.e., from 30-04-2008 to 04-07-2008, the driver of offending Maruthi Omni was not holding valid and effective driving license and the accident had occurred on 2.7.2008. The admitted position is that as on the date of accident, the driver of offending Maruthi Omni was not having valid and effective driving license. A similar issue came before the Supreme Court in the case of Ram Babu Tiwari referred to above, whereby the Hon''ble Supreme Court in para-18 of the judgment has held as under:

"18. It is beyond any doubt or dispute that only in the event an application for renewal of license is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid license. The proviso appended to sub-section (1) of section 15, however, clearly states that the driving license shall be renewed with effect from the date of its renewal in the event the application for renewal of a license is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the license on such terms, the driver of the vehicle cannot be said to be holding a valid license, the insurer would not be liable to indemnify the insured.

13. One of the conditions of the insurance policy in this case which reads as under:

Persons or class of persons entitled to drive:

Any person including insured provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such license, provided also that the person holding an effective learners'' license may also drive the vehicle and such person satisfy the requirement of Rule (3) of Central Motor Vehicles Rules, 1989.

In the instant case, the insurance company lead evidence and proved their defense as required under Section 149(2)(a)(ii) of the Act and the Tribunal held that as on the date of accident, the driver of the offending vehicle was not having effective driving license.

14. Further, the Hon''ble Supreme Court in Swaran Singh''s case referred to above held that the owner of motor vehicle, in terms of Section 5 of the Act, has a responsibility to see that no vehicle is driven by a person, who does not satisfy the provisions of Sections 3 or 4 of the Act. Further, the Hon''ble Supreme Court in a judgment reported in 2008 ACJ 2860 in the case of National Insurance Co. Ltd. -vs- Vidhyadhar Mahariwala and others relying upon the judgment of the Hon''ble Supreme Court in the judgments reported in 2006 ACJ 1336 (SC) in the case of National Insurance Co. Ltd

-vs- Kusum Rai and 2007 ACJ 1067 (SC) in the case of Ishwar Chandra -vs- Oriental Insurance Co. Ltd. held that the driving license of the driver of the offending vehicle had expired prior to the date of accident and was renewed after the accident, hence he is not entitled to contend that he got valid driving license as on the date of accident.

15. The liability fastened on the Insurance Company is contrary to law. The Tribunal ought to have fastened the liability on the owner of the vehicle, who entrusted the vehicle to a person, who did not possess valid and effective driving license as on the date of accident. Admittedly, he got the driving license renewed after three months of expiry of the license. Hence, he is not entitled to the benefit under Section 15 of the Act. The subsequent renewal will come into operation only from the date of renewal and not from the retrospective period. Hence, the judgment and award passed by the Tribunal fastening the liability on the Insurance Company to compensate the claimants is liable to be set aside and the liability has to be fastened on the owner of the vehicle.

16. Since it is the statutory right of the third party to recover the amount of compensation so awarded either from the owner or the driver, as the vehicle in question is insured, the insurance company shall pay the amount and recover the same from driver or the insured. Having regard to the totality of the facts and

circumstances of the present case, the driver of the offending vehicle was earlier having driving license which expired on 30-04-2008 and got renewed the driving license on 04-07-2008. Hence, I am of the opinion that the interest of justice would be met if the insurance company is directed to pay the compensation amount and recover the same from the insured by filing necessary applications before the Tribunal. The Hon''ble Supreme Court in a judgment reported in the NATIONAL INSURANCE COMPANY v/s SWARAN SING case reported in 2004 3 SCC 297 and also latest judgment reported in AIR 2017 SCW 1204 in the case of MA-NUARA KHATUN AND OTHERS v/s RAJESH Kr.SINGH AND OTHERS keeping in view the benevolent object of the Act and other relevant factors arising in the case, directed the insurance company to pay the awarded sum to the claimant and then recover the said sum from the insured in the same proceedings by applying the principle of "Pay and Recover". In the present case also direction can be issued to the insurance company to pay the amount awarded and to recover the same from the insured and the driver. Accordingly, I pass the following:

ORDER

The appeal is allowed. The judgment and award dated 18-03-2011 made in MVC No.1167/2008 by the Motor Accident Claims Tribunal, Kundapura is modified. The liability is fastened on the owner of the offending Maruthi Omni Car, however, the Insurance Company is directed to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "Pay and Recover".