(2011) 09 MAD CK 0266

In the Madras High Court

Case No : C.M.A. No. 2878 of 2006 and M.P. No. 1 of 2006

United India Insurance Co. Ltd., Cuddalore — APPELLANT

Vs

Uma and Another — RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Citation : (2012) 1 MLJ 637 : (2012) 2 TAC 887

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : C. Padmanahhan for M.J. Vijayaraghavan, for the Appellant; N. Damodharan, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Akbar Ali, J.—Appeal filed against the judgment and decree dated 4.1.2006 made in M.A.C.T.O.P. No. 1293 of 2004 on the file of the learned Principal Sub Judge, Motor Accidents Claims Tribunal, (District Court O.P. No. 1179 of 2004 Cuddalore). The Insurance Company is the appellant. The liability is being challenged by the Insurance Company. The brief facts of the case leading to the appeal are as follows:

2. The 1st respondent filed a claim petition stating that on 22.3.2004 around 3.45 p.m. she was travelling in the auto bearing Registration No. TN-31-A-0245 from Vellagate Cuddalore. The driver of the auto drove the vehicle in a rash and negligent manner as a result of which the auto capsized resulting in injuries to the 1st respondent.

3. The appellant insurance company denied the liability stating that the auto driver did not possess valid licence at the time of the accident. However, the Tribunal found that the insurance company was liable as there was a valid policy and it would also state that the driving licence was also filed and hence fastened the liability on the insurance company. Aggrieved by which, the Insurance Company is before this Court.

4. Mr. M.J. Vijayaraghavan, learned counsel for the appellant would state that the driver of the auto did not possess a valid licence. According to the learned counsel, his licence had expired on 18.10.2003 and a renewed licence was filed before the Court which was issued on 2.4.2004, almost 10 days after the accident that occurred on 22.3.2004.

5. The learned counsel relied on the decisions rendered in Sardari and Others v. Sushi/ Kumar and Others 2008 (1) TNMAC 294 (SC): LNIND 2008 SC 562, New India Assurance Co Ltd v. Suresh Chandra Aggarwal, 2009 (2) TNMAC 273 (SC): LNIND 2009 SC 1433, National Insurance Co Ltd v. Vidhyadhar Mahariwala and Others 2008 (2) TNMAC 369 (SC) : LNIND 2008 SC 1857 : (2008) 8 MLJ 206 for the preposition that, when the driver was not holding an effective driving licence on the date of accident, the insurer is not liable as there is a breach of policy condition.

6. On the contrary, Mr. N. Damodaran, learned counsel for the 1st respondent would submit that Exhibit P-4 the xerox copy of the licence would show that the driver was in possession of valid licence and he was also authorised to drive transport vehicle as per endorsement dated 19.10.2000 and therefore, it is presumed that he continued to possess valid licence at the time of accident.

7. The learned counsel relied on the decision put forth in Bajaj Allianz General Insurance Co. Ltd. Vs. P. Manimozhi and Others, wherein the first bench of this Court has ordered the compensation on the principle of pay and recovery.

8. He also relied on a decision in K. Kanagammal, K. Ramakrishna and K. Jayakumar Vs. Chandran @ G. Mani, R. Ramesh, The New India Assurance Limited and The Oriental Insurance Company Limited, where a single Judge of this Court has ordered pay and recovery.

9. Heard both sides and perused the materials available on record.

10. The liability of the insurance company is challenged in this appeal for want of effective driving licence for the driver of the insured vehicle. Exhibit P.4 is the xerox copy of the licence produced by the claimants. The date of issue was 2.4.2004 and it was valid upto 1.4.2007. The endorsement on the licence would show that originally he was issued with a licence from the year 1986 and he was also authorised to drive transport vehicle badge no. 86805 dated 19.10.2000. However, there is also an endorsement to the effect that the previous driving licence expired on 18.10.2003. Obviously, the present licence was issued on 2.4.2004 i.e., ten days after the accident. Therefore on the date of the accident the driver was not holding an effective driving licence.

11. In National Insurance Co Ltd v. Vidhyadhar Mahariwala and Others (supra) the case involving one, where the accident took place on 11.6.2004 and the licence expired on 14.12.2003 and later renewed on 16.5.2005. the Apex Court held that there was no valid licence.

12. In New India Assurance Co Ltd v. Suresh Chandra Aggarwal (supra), the

Hon''ble Supreme Court has held that

18 . We are fortified in our view by the decision of this Court in the case of Jarnail Singh (supra). In that case also, the Driving Licence of the driver, who drove the vehicle which got involved in the accident, had expired on 16.5.1994 The accident took place more than five months thereafter i.e., on 20.10.1994 and the Driving Licence was renewed only with effect from 28.10.1996. On these facts, it was held that proviso to sub-section (1) of Section 15 applied; the driver had no licence to drive the vehicle on the date of accident; the condition in the policy identical to the one in the present case was violated and therefore, the Insurance Company was not liable to pay any amount to the insured.

13. In Bajaj Allianz General Insurance Co Ltd, Pune v. P. Manimozhi (supra), the First Bench held as follows:

14. The next contention raised by the learned counsel appearing for the appellant is that the third respondent, the rider of the two wheeler did not have a valid driving licence on the date of the accident and therefore, the insurer is not liable to pay. The Hon''ble Supreme Court as regards this point namely, possession of valid driving licence broadly classified the same under four different categories:

(i) Where, there was no licence

(ii) Where, the licence is forged/fake

(iii) Where, the licence is for a different class of vehicle and

(iv) Where, the licence is for a learner

and held that when there is a breach of condition under an Insurance policy is proved then the Insurance Company must pay and may recover. A Division Bench of this very Court in which one of us (T.S. SIVAGNANAM, J.,) was a party considered this very issue and after taking note of the decisions of the Hon''ble Supreme Court in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., United India Insurance Co. Ltd v. Lehru, 2004 (1) TN MAC 340(SC): 2004(1) L.W 5 Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, Sohan Lal Passi Vs. P. Sesh Reddy and others, Oriental Insurance Co Ltd v. Swaran Singh, 2004 (1) TN MAC 104 (SC) and National Insurance Co Ltd v. Laxmi Narain Dhut, 2001 (1) TN MAC 310 (SC) held that the insurer must pay the amount and then may recover.

14. In K. Kanagammal and Others v. Chandran (supra) the learned single Judge held as follows:

12. In the present case, the Tribunal has held that the driver, who actually drove the vehicle at the time of the accident, had no valid and effective driving licence and thus, exonerated the Insurance Company from its liability. The appellants/ claimants are the widow and sons of the deceased, who was working as a Watchman. It is seen that the claimants are in a state of penury and

compensation will not be immediately recoverable from the owner. In a fact situation, like the present case, the Honourable Supreme Court, even after exonerating the Insurance Company from the liability to pay compensation, has directed the insurance Company to pay and recover.

13. In view of the decisions of the Honourable Supreme Court and also in view of the fact that the owner of the offending vehicle was not contesting the claim petition and had remained ex parte, to meet the ends of justice, it is justified to pass an order directing the Insurance Company to pay the compensation awarded and recover it from the owner.

15. On the principles laid down by the above judgment, when there is no valid licence at the time of accident, there is no liability on the insurance company to indemnify the insured. However, the insured allowing the driver to drive the vehicle without valid licence is only a breach of policy condition and therefore, the insurance company may pay and recover the same from the owner.

16. As far as the compensation amount is concerned, it is just and reasonable and I am not inclined to interfere. In the result, the appeal is partly allowed. It is submitted that by order dated 10.4.2007 in M.P. No. 1 of 2006, the appellant was directed to deposit a sum of Rs. 1,00,000/-together with proportionate interest to the credit of M.C.O.P. No. 1293 of 2004 on the file of the Motor Accident Claims Tribunal (Principal Sub Court, Cuddalore). If the appellant has already complied with the condition imposed, the balance shall be paid within a period of eight weeks form the date of receipt of copy of this order. No costs. Consequently, connected MP is closed.

