

(2013) 06 BOM CK 0103
In the Bombay High Court
Case No : First Appeal No. 939 of 2011

United India Insurance Company Ltd.	APPELLANT
Vs	
Umashankar and Another	RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Citation : (2013) 5 ABR 416 : (2014) 1 ACC 346 : (2014) ACJ 1097 : (2013) 6 ALLMR 540 : (2013) 6 MhLj 254

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : B. Lahiri, for the Appellant; M.H. Pathade, for the Respondent

Judgement

A.P. Bhangale, J.—Heard Mr. B. Lahiri, learned counsel for the appellant and Mrs. M.H. Pathade, learned counsel for Respondent No. 1. Though served, none appears on behalf of Respondent No. 2. The appellant/Insurance Company has questioned the judgment and order passed by the Chairman, Motor Accident Claims Tribunal, Nagpur in Claim Petition No. 891 of 1999 on 4.7.2008 whereby it was held that the claimant was entitled to compensation in the sum of Rs. 1,05,500/- along with interest @ 7.5 % p.a. from the date of petition till its realisation. Joint and several liability was imposed upon the Insurer as well as owner of the vehicle by the Tribunal.

2. It is the case of the appellant/Insurer that the offending vehicle bearing Registration No. MH-31/AA-9407 was a Bajaj Scooty with engine capacity of 60 cc and, therefore, a person below the age of 16 years could not have been allowed to drive the said vehicle in the public place. It is contended that there was breach of Section 4 of the Motor Vehicles Act, 1988 since the owner of the offending vehicle was responsible for breach of Insurance policy as he had allowed the offending vehicle to be driven by a person of minor age. The learned counsel for the appellant submitted that the Tribunal erred to fix responsibility for compensation upon the Insurer, while it could have been held that only owner of the offending motor cycle was responsible to pay compensation. In support of his

submissions, the learned counsel for the appellant placed reliance upon the ruling in the case of *United India Insurance Co. Ltd. Vs. Rakesh Kumar Arora and Others*, wherein the Apex Court considered Sections 3, 4 and 5 along with Section 149(2)(a)(ii) regarding driving license as also liability for Motor Insurance Contract of the Insurer. In that case, it was established that a 15 years old boy was driving the car at the time of accident without any valid driving license and the Insurer had sought to avoid its liability on the ground that the driver had no driving license at the time of accident pleading Section 4 as a provision which bars a minor belong the age of 18 years from driving a motor vehicle in a public place. Section 5 of the Act also imposes statutory responsibility upon owner of the motor vehicle not to cause or permit any person who does not satisfy provisions of Section 3 or 4 to drive the vehicle in a public place. Thus, in that case, the Tribunal had exempted Insurance Company from liability to pay compensation. It appears that, considering the facts established in that case and the evidence led, it may be clear that the driver was aged about 15 years; he did not know driving and had no driving license at the time of accident. Thus, on the basis of that evidence, the Insurance Company was exempted from liability to pay compensation. While concluding the judgment, the Insurer was held to be entitled to recover the amount in question from the owner of the vehicle in that case. The ruling would also indicate that Sections 4 and 5 of the Motor Vehicles Act was ignored by the High Court and therefore, the appeal was allowed as to impugned judgment was not sustainable according to law.

3. Learned counsel for the appellant also placed reliance upon the ruling in the case of *Jawahar Singh Vs. Bala Jain and Others*, to plead that liability of owner of offending vehicle arises when driver had no license to drive the offending motor vehicle. Furthermore the driver was minor at the time of accident in *Jawahar Singh's* case, who had no driving license to drive the offending motor cycle and therefore, it was held that liability for payment of compensation was rightly saddled upon the owner of the vehicle since it was held on evidence that the owner was responsible since he had allowed a minor to take keys of the motor cycle and drive the vehicle.

4. The learned counsel for the respondents opposed the submissions on the ground that the facts established must indicate that the driver of the offending vehicle was a minor and that he was driving the vehicle without any valid driving license at the time of accident. She argued that the Chairman of the Motor Accident Claims Tribunal, Nagpur did consider the legal position stated in the case of *Rajendra Raghunath Girme Vs. Pramila Dattu Surse and Others*, making reference to the ruling of this Court in the case of *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, . The Tribunal did consider the burden of proof upon the Insurer to establish the fact that the driver of the offending motor vehicle was minor and was driving the offending motor vehicle without driving license at the time of accident. The Tribunal observed thus:

Here in this case Insurance Company has neither summoned the driver of the

scooty to produce the license nor lead any evidence to substantiate its allegation that driver of scooty was not having valid and effective license and thereby Insurance Company has failed to prove that there was breach of terms of contract.

Thus, according to law, it is for the Insurer claiming exemption from liability to pay compensation to bring on record the necessary legal evidence to establish that the owner or/and driver of the motor vehicle alone is responsible to pay compensation on the ground that there was breach of Insurance Contract. The legal position also appears to be clear in view of the ruling in the case of Jawahar Singh Vs. Bala Jain and Others, that the primary responsibility to pay compensation is that of Insurer and the Insurer may thereafter recover the same from the owner of the vehicle provided that it can satisfy the Tribunal that there was breach of Insurance contract by owner/driver or/and the driver. If the Tribunal is satisfied that the Insurer is not responsible according to law, it can certainly exempt the Insurer from the liability to pay compensation even in execution proceedings in respect of payment of compensation before the Tribunal. With these observations if the Insurer can establish to the satisfaction of the Tribunal even in execution proceedings that the driver/owner alone and exclusively were responsible for causing the accident to the exclusion of the Insurer because of breach of Insurance contract then the Tribunal may pass necessary order considering the legal position stated in the rulings referred to hereinabove. In the absence of legal evidence, the plea that the Insurer was not liable to pay compensation even jointly and severally, as ordered cannot be accepted. Hence, the appeal is dismissed with liberty to the appellant to approach the Tribunal in the execution proceedings for the purposes as stated above. The First Appeal is disposed of accordingly.