

C. Balakrishna Vs. C. Muniraju and Another

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Court : Karnataka

Decided On : Mar-22-2016

Judge : Raghvendra S. Chauhan

Appeal No. : Miscellaneous First Appeal No. 6206 of 2009 (MV)

Appellant : C. Balakrishna

Respondent : C. Muniraju and Another

Judgement :

(Prayer: This Miscellaneous First Appeal is filed under Section 173(1) of the Motor Vehicles Act against the Judgment and award dated 23-6-2009 passed in MVC No. 137/2004 on the file of the II Additional Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore, partly allowing the claim petition for Compensation and seeking enhancement of Compensation.)

1. The appellant, Mr. C. Balakrishna, is aggrieved by the award dated 23-6-2009, passed by the II Additional Civil Judge (Senior Division), Bangalore Rural District, Bangalore, whereby the learned Tribunal has exonerated the M/s. Cholanmandalam General Insurance Company Limited, respondent No. 2, from its liability to pay the compensation to the appellant in M.V.C. No. 137 of 2004.

2. The brief facts of the case are that on 26-1-2004 at about 7.30 a.m., the appellant was riding a motor cycle, bearing Registration No. KA-02 EH-1726, on the Bangalore-Sarjapura road. At the relevant time, a TVS Moped, bearing

Registration No. KA-05 EN-2542, came from the opposite direction, being driven rashly and negligently, dashed against the appellant. Consequently, the appellant suffered grievous injuries. He was admitted in the HOSMAT Hospital at Bangalore for a period of five days. Subsequently, the appellant filed a claim petition before the learned Tribunal. In order to support his case, the appellant examined two witnesses, and submitted forty-nine documents. The Insurance Company, on the other hand, examined a single witness and submitted four documents. After going through the oral and documentary evidence, by award dated 23-6-2009, the learned Tribunal granted a compensation of Rs. 1,81,000/- together with an interest at the rate of 6% per annum from the date of petition till its realisation, but exonerated the Insurance Company. The learned Tribunal imposed of liability of paying the compensation upon Mr. C. Muniraju, the respondent No. 1, before this Court. Hence, this appeal filed by the appellant.

3. Relying on the case of the National Insurance Company v. Swaran Singh [(2004) 3 SCC 297], the learned counsel for the appellant has pleaded that even if the driver of the offending vehicle did not have a valid driving licence, even then the Insurance Company can be held liable for paying the compensation amount and the right of recovery can be given to the Insurance Company.

Secondly, relying on the case of Rukmani and Others v. New India Assurance Company Limited and Others (1999 ACJ 171), the learned counsel for the appellant has pleaded that the burden of proof lies upon the respondents to establish that the driver of the offending vehicle did not have a valid driving licence. Moreover, it is for the Insurance Company to prove that there has been a violation of condition of the insurance policy. In case, the Insurance Company fails to discharge the particular burden, it cannot be absolved of the liability to pay the compensation. In the present case, the Insurance Company neither examined the driver, nor the owner of the offending vehicle as a witness, nor a witness from the Regional Transport Authority, in order to establish the fact that the driver of the offending vehicle did not possess a valid driving licence. Merely because the Insurance Company had made a vague statement that the driver of the offending vehicle did not possess a valid driving licence at the pertinent time, the said statement cannot be accepted in the absence of the proof thereof. Since in the

present case, the Insurance Company has failed to establish the said fact, the learned Tribunal has erred in absolving the Insurance Company of its liability. Therefore, the impugned award deserves to be modified to the limited extent that the liability to pay the compensation should be imposed upon the Insurance Company and not on the respondent No. 1, the owner of the offending vehicle.

Lastly, it would be extremely difficult for the claimant appellant to realise the compensation amount from the respondent No. 1, the owner of the offending vehicle. Hence, the Insurance Company should be directed to pay the appellant, but with the right of recovery from respondent No. 1.

4. On the other hand, Mr. O. Mahesh, the learned counsel for the respondent Insurance Company, has raised the following contentions before this Court:-

Firstly, according to Section 134 of the Motor Vehicles Act, 1988 (for short, the Act), it is a duty of the driver of the vehicle, or other person in charge of the vehicle, to inform in writing to the insurer about the occurrence of the accident, and to explicitly name the driver, and to give particulars of his driving licence. Therefore, it is a burden imposed upon the driver of the offending vehicle, or other person in charge of the vehicle to reveal the name of the driver and particulars with regard to his driving licence.

Secondly, since the Insurance Company does not have the true knowledge about the driving licence, or about its existence, or non-existence, the Insurance Company cannot be expected to establish the invalidity of the driving license under Section 106 of the Evidence Act, 1872.

Lastly, according to Section 32 of the Rules of the Road Regulations, 1989, a person driving a vehicle is required to carry certain documents, and to produce the said documents when called upon either by the Police Officer, or by the Officer of the Motor Vehicle Department. Therefore, the burden of submitting the documents is upon the driver of the offending vehicle. However, in the present case, respondent No. 1, the owner of the offending vehicle, has remained absent before the learned Tribunal. Therefore, the burden of proof cannot be shifted upon the Insurance Company in the absence of the owner of the offending vehicle. Hence,

the learned Tribunal was justified in concluding that if a driver of the offending vehicle does not have a valid driving licence, then the Insurance Company should be absolved of its liability to pay the compensation amount. Thus, the learned counsel has supported the impugned award.

5. Heard the learned counsel for the parties, and perused the impugned award.

6. The relevant part of Section 134 of the Act is as under:

134. Duty of driver in case of accident and injury to a person When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall

a) xxx xxx xxx

b) xxx xxx xxx

c) Give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:-

i. insurance policy number and period of its validity;

ii. date, time and place of accident;

iii. particulars of the persons injured or killed in the accident;

iv. name of the driver and the particulars of his driving licence.

7. A bare perusal of the said provision clearly reveals that it is the duty of the driver of the vehicle, or owner of the offending vehicle to inform in writing with regard to name of the driver, and particulars of his driving licence. Thus, the Section casts a duty upon the owner, or on the driver prior to filing of the claim petition. This particular provision does not deal with the burden of proof which is required by the driver, or owner of the offending vehicle. Even if the driver, or owner does not inform the Insurance Company about the name of the driver, and particulars of the driving licence, the Insurance Company has sufficient means for discovering the

said information through the concerned Police Station. After all, a F.I.R. would be lodged against the driver, or owner of the vehicle, which would clearly contains the name of the driver, or owner of the offending vehicle, and after a thorough investigation, the Police would discover whether the driver has a valid driving licence or not.

8. Therefore, the contention raised by the learned counsel for the Insurance Company that the burden of proof first lies on driver, or on owner, is an unacceptable.

9. Rule 32 of the Rules of the Road Regulations, 1989, also casts a duty on the driver of the vehicle not only to carry certain documents in the vehicle, but also to exhibit the same to a Police Officer, or to an Officer of the Regional Transport Office.

10. Rule 32 reads as under:

32. Production of documents A person driving a vehicle:

i. Shall always carry with him his driving licence; certificate of registration; Certificate of taxation and certificate of insurance of the vehicle and in Case of transport vehicle the permit and fitness certificate, also;

ii. shall on demand by police officer in uniform or an officer of the Motor Vehicle Department in uniform or any other officer authorised by the Government, produce the documents for inspection:

(Provided that where any or all of the documents are not in the his possession, he shall produce in person an extract or extracts of the documents duly attested by any police officer or by any other officer or send it to the officer who demanded the documents, by registered post, within 15 days of the demand).

11. Therefore, the said provision does not cast a burden of proof upon the driver, or owner, to be discharged during the proceedings pending before the learned Tribunal. It merely imposes a duty to carry the documents while driving the vehicle and to show the same when called upon to do so.

12. In catena of cases, the Hon ble Supreme Court has clearly held that the Insurance Company must not only take a defence that there was a violation of the condition of the policy, but must also prove the defence that there has been a substantive violation of the said policy condition. Moreover, the burden of proving a defence is always on the party which pleads it. In order to discharge this burden, the Insurance Company can either summon the driver as a witness, or adduce the documents from the Regional Transport Authority as documentary evidence to prove and establish its plea that the driver of the offending vehicle, indeed, did not have a valid driving licence. In the case of Rukmini (supra), the Hon ble Supreme Court has clearly opined that until and unless the Insurance Company were to be discharge its burden, it cannot be absolved of its liability to pay the compensation amount.

13. The issue whether the Insurance Company is liable to pay the compensation in the absence of a valid driving licence has been laid to rest in the case of Swaran Singh (supra). In paragraph No. 69 of the judgment, the Hon ble Supreme Court has observed as under:

69. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its ability.

14. Therefore, even if the Insurance Company succeeds in proving that the driver did not have a valid driving licence, even then, it is still liable to pay the compensation amount. The only right which can be bestowed on the Insurance Company is the right of recovery. Therefore, the Insurance Company will certainly have a right against the owner of the offending vehicle.

15. For the reasons stated above, the learned Tribunal was not justified in concluding that since respondent No. 1, the driver of the offending vehicle, did not have a valid driving licence, therefore, the Insurance Company should be absolved of its liability to pay the compensation. The learned Tribunal has clearly ignored the decisions of the Hon ble Supreme Court in the case of Swaran Singh and

Rukmani (supra).

16. Therefore, this Court modifies the impugned award dated 23-6-2009 to the limited extent that the Insurance Company is liable to pay the compensation amount of Rs. 1,81,000/- to the appellant along with the interest at the rate of 6% per annum from the date of filing of the claim petition till the date of its realisation. The Insurance Company is directed to deposit the said amount with the Tribunal within a period of one month from the date of receipt of a copy of this order. Accordingly, the appeal is allowed.

17. The learned counsel for the respondents points out that the present appeal was dismissed by this Court by its judgment dated 21-10-2011 for non-prosecution. It was restored on 6-9-2013 by this Court. Therefore, the learned counsel prays that the Insurance Company should not be asked to pay the interest at the rate of 6% per annum for the period from 21-10-2011 to 6-9-2013, i.e. for 635 days.

The submission is worthy of acceptance. Therefore, the Insurance Company is not liable to pay the interest for the above mentioned period. However, it is liable to pay the interest for the remaining period, i.e. from the date of filing of the claim petition till the date of its realisation.

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