

Radhika Devi Vs. Vasantha

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Court : Kerala

Decided On : Jan-30-2004

Reported in : III(2004)ACC323; 2005ACJ259; 2004(2)KLT954

Judge : J.B. Koshy and; K. Thankappan, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 149(2)

Appeal No. : M.F.A. No. 15 of 2001

Appellant : Radhika Devi

Respondent : Vasantha

Advocate for Def. : K.T. Shyam Kumar and; P.V. Jyothiprasad, Adv.

Advocate for Pet/Ap. : J. Harikumar and; Poovappaly M. Ramachandran Nair, Adv.

Disposition : Appeal allowed

Judgement :

J.B. Koshy, J.

1. Whether the insurance company can avoid liability, if the driver of the insured vehicle was having only a learner's licence at the time of accident is the question to be answered in this case. Before answering the question, we may consider the

facts of the case.

2. Appellant was the second respondent in O.P.(M.V.) No. 430 of 1995 on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram. First respondent filed a claim petition stating that her mother, Smt. Bhargavi Amma, while walking through the public road, was hit by a scooter bearing registration No. KL-01/7321 driven by the appellant and insured by the fourth respondent in the O.P. As a result of the hit Bhargavi Amma suffered serious injuries. It is also stated that the vehicle is owned by the second respondent and it was insured by the third respondent (Addl.Fourth respondent in the O.P.). According to the first respondent, the accident occurred due to the negligent driving of the appellant. The deceased was aged 65 years at the time of accident. Against the claim of compensation of Rs. 1,50,000/-, the Tribunal found that compensation payable will be Rs. 89,540/-. It was also found that second respondent had no valid driving licence; but, only a learner's licence and, therefore, the insurance company is not liable to compensate the same in view of the judgment of the Supreme Court reported in *New India Assurance Co. Ltd. v. Mandar Madhav Tambe and Ors.* (AIR 1996 SC 1150) = (1996 (2) KLT SN 53, Case No. 59). There, the Supreme Court held that unless the driver is having a valid driving licence, the insurance company is not liable to pay compensation. Therefore, the appellant was directed to pay compensation.

3. The appellant is challenging the award on three grounds: First, there is no negligence on the part of the appellant; secondly, it was contended that the amount awarded was very high; and thirdly, it was contended that if she is liable to pay compensation, since the vehicle was insured, the insurance company is liable to pay the compensation.

4. With regard to the first ground, the contention of the appellant was that the deceased fell down due to her old age and the accident happened due to the carelessness of the deceased. The deceased was walking through Punnakamughal Thirumala public road, when the scooter hit her. From the totality of the evidence and the fact that the appellant was charge-sheeted and on the facts of the case, according to the Tribunal, negligence can be presumed and the

accident happened due to the negligence of the appellant. Ext.A1 is the First Information Report. Ext.A2 is the scene mahazar and Ext.A6 is the charge sheet. Even though the appellant was finally acquitted by Ext.B3 judgment due to lack of evidence, on preliminary investigation, the police found that the appellant was negligent. There is no material to show that the deceased fell down due to her old age. In fact, the oral evidence, Exts. A1 and A2, the scene mahazar and the report of the Assistant Motor Vehicles Inspector show that the scooter hit the deceased and she fell down. If she was not negligent, accident would not have happened. Therefore, we see no infirmity in the finding of negligence.

5. With regard to the amount of compensation, according to the claimant, the deceased was getting Rs. 2,300/- per month as a vegetable vendor. But, there is no evidence regarding the income of the deceased. The Tribunal has taken Rs. 2,000/- as the monthly income, deducted one-third and loss of dependency income was calculated at Rs. 1,334/-. Since she was aged 65 years, multiplier 5 was taken and calculated loss of dependency income at Rs. 80,040/-. She did not suffer an immediate death. She died in the hospital later. For pain and suffering, transport to the hospital, funeral expenses etc. Rs. 9,500/- was added. Thus total compensation awarded was Rs. 89,540/-. Since the Tribunal has taken only 5 as the multiplier, considering the totality of the case, we are of the opinion that no interference is required in the amount of compensation awarded.

6. Third ground is the main question argued before us. Even though it was pleaded in the written statement that the appellant had got a driving licence, in the evidence it was proved that she was having only a learner's licence. Ext.A1 is the learner's licence. The above licence was valid at the time of accident. RWs.1 and 2 deposed that while driving, RW2 was sitting as a pillion rider. RW2 was her uncle and he was having Ext.B2 licence. The above aspects are not discredited in evidence. So, she was driving the vehicle satisfying the condition in Rule 3 of the Motor Vehicles Rules. Since she was having only a learner's licence, in view of the decision of the Supreme Court reported in Mandar Madhav Tambe's case (supra), Tribunal held that the insurance company is not liable to pay the amount of compensation. The decision of the Supreme Court in Mandar Madhav Tambe's case (supra) was on the basis of the provisions of the Motor Vehicles Act, 1939 in

respect of an accident which occurred when the Motor Vehicles Act, 1939 was in force. In this case, the accident occurred on 21.1.1995 after the introduction of the [Motor Vehicles Act, 1988](#). The learned counsel for the appellant pointed out that there is no specific mention in the insurance policy that if there is learner's licence only, the insurance company will not be liable to pay the compensation. Even though the insurance company was a party, they did not produce the insurance policy. A copy of the policy was shown to us wherein it is specifically stated as follows:

'Persons or classes of persons entitled to drive:

Any person including Insured.

Provided that a person driving holds an effective driving licence at the time of accident and is not disqualified from holding or obtaining such a licence.

Provided also that the person holding an effective Learner's Licence may also drive the vehicle and such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989'.

No evidence was adduced by the insurance company that the appellant did not satisfy Rule 3 of the Central Motor Vehicles Rules, 1989. Further, it has come out in evidence that RW1 was travelling as a pillion rider who was having a valid driving licence. The question in issue was considered by a three-member bench of the Supreme Court recently with respect to the accident that occurred after coming into force of the [Motor Vehicles Act, 1988](#). In National Insurance Co. v. Swaran Singh and Ors., 2004 (1) KLT 781 = (SLP (C) No. 10017 of 2003 and connected cases, alongwith many issues in that case, the Hon'ble Apex Court considered the question whether insurance company is liable if the insured vehicle was driven by a person having only a learner's licence. The Apex Court held as follows:

'Learner's Licence:

[Motor Vehicles Act, 1988](#) provides for grant of learner's licence. (See Sections. 4(3), Section 7(2), Section 10(3) and Section 14). A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore,

be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act'.

The decision of the Apex Court in Mandar Madhav Tambe's case (supra) was distinguished by the Supreme Court and it was held that Tambe's case was decided only on the facts of that case and, that too, under the Motor Vehicles Act, 1939. The Court also referred to an unreported decision of the Apex Court in Mall Prakasarao v. Mall Janaki and Ors. (Civil Appeal No. 163 of 1996) and held as follows:

'In that case, the Court presumably as in the case of Mandar Madhav Tambe's case (supra), was concerned with the terms and conditions of the contract of insurance. Before the Court, no occasion arose to consider the general terms and condition of the contract of insurance vis-a-vis liability of insurance under the Motor Vehicles Act'.

The Apex Court summarised the main findings as follows:

(i) Chapter XI of the [Motor Vehicles Act, 1988](#) providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act haven to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the [Motor Vehicles Act, 1988](#) inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition, e.g., disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them'.

As far as the case under consideration is concerned, conclusion No. (viii) is more important and it is as follows:

'(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree'.

In view of the above recent Apex Court decision, we are of the view that the insurance company cannot avoid liability to third party on the ground that the driver of the insured vehicle has got only a learner's licence at the time of accident and it cannot be stated that the owner has also committed breach of policy condition. Therefore, the respondent insurance company is liable to pay the compensation of Rs. 89,540/- awarded by the Tribunal with 9% interest from the date of application till its deposit. The above amount shall be deposited by the insurance company within three months from the date of receipt of a copy of this judgment. On deposit of the amount, applicant can withdraw the same.

The amount deposited by the appellant as a condition for filing the appeal shall be refunded to the appellant.

In the result, the appeal is allowed.

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