

The Branch Manager Vs. K. Kumar

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Court : Chennai

Decided On : Mar-04-2011

Judge : C.S.Karnan, J.

Acts : Motor Vehicles Act - Section 3

Appeal No. : CIVIL MISCELLANEOUS APPEAL NO.2117 of 2004 and C.M.P.No.12420 of 2004 and M.P.No.1 of 2010

Appellant : The Branch Manager

Respondent : K. Kumar

Advocate for Def. : Mr. P. Mani; Mr. V. Ayyadurai, Adv.

Advocate for Pet/Ap. : Mr.S. Manohar, Adv.

Judgement :

J U D G M E N T

1. The above appeal has been filed by the appellant / Insurance Company, against the award and decree dated 28.03.2003 made in M.C.O.P.No.9 of 1999 on the file of the Motor Accidents Claims Tribunal, Cheyyar, Sub Court Cheyyar, Tiruvannamalai District.

2.The short facts of the case are as follows:

On 22.11.1991, at about 05.30 p.m., the claimant after ploughing his land and while he was returning in the tractor, bearing Registration No.TN-25-2891, which was driven by its driver in a rash and negligent manner, the tractor capsized. In the result, the claimant had sustained grievous injuries. Hence the compensation petition was filed against the respondent for a sum of Rs.1 Lakh with interest. The second respondent had filed a counter statement and resisted the Claim Petition. The respondent stated that the claimant had fallen down from the vehicle and due to this, he had sustained injuries. The claimant had also received compensation of a sum of Rs.1,700/- from the second respondent, on 17.07.1992. After that, the Claim Petition has been filed. The third respondent had filed a counter statement stating that on 22.11.1991, at about 05.30 p.m., when the tractor was returning from the land, after ploughing, it capsized due to rash and negligent driving of the first respondent and this was denied . The insurance particulars had not been furnished. The respondent further stated that the first and second respondent had colluded with the applicant and claiming compensation against the third respondent. At the time of accident, the driver was not in possession of a valid driving licence. The claimant had also not travelled in the tractor. The age and income of the claimant are denied. The respondent further stated that, as per the investigator's report, the driver was not possessing a valid driving licence.

3. On pleading of both parties, the Tribunal had framed two issues for consideration, viz.,:-

1. Did the first respondent commit the accident in a rash and negligent manner?
2. Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?
4. On the side of the claimant, one witness was examined i.e., the claimant and four documents were marked. On the side of the respondents, R.W.1, was examined and investigator's report was filed. The marked documents of the claimant are as follows:-

1.F.I.R.

2.Hospital records

3.Motor Vehicle Inspector's Report

4.Judgment copy of the Criminal Court.

5. P.W.1 has adduced evidence stating that the accident had occurred on 22.11.1991, at about 05.30 p.m. He further stated that the first respondent's rash and negligent driving was the cause of the accident. In order to prove the accident took place, F.I.R. was marked. P.W.2, doctor, stated that he had examined the claimant on 22.11.1991 at about 11.45 p.m. He further stated that the claimant had sustained injuries on his left leg. In order to prove the same, the claimant marked Ex.P.2, the medical records. On considering the evidence of the witnesses, the Tribunal had awarded a compensation of a sum of Rs.85,000/- with interest at the rate of 9%.

6. Aggrieved by the said award, the Insurance company has filed the above appeal.

7. The learned counsel for the appellant argued that the Insurance Company is not liable to pay compensation since the driver of the tractor was not possessing the valid driving licence. The charge sheet clearly established that the first respondent has been charge sheeted under Section 3 of the Motor Vehicles Act for driving the vehicle. The first respondent had also pleaded guilty to the charges framed against him. The second respondent has not contested the case and he has remained ex parte. As per the policy conditions, the Insurance Company is not liable to pay compensation as the claimant is an unauthorised passenger. Further, the compensation amount is on the higher side, since the claimant had sustained only minor injuries. The learned counsel has cited Judgments, which reads as follows:-

i) National Insurance company Limited v. V. Chinnamma and others (2004 ACJ 1909):-

Motor Vehicles Act, 1988, Section 147 (1) (prior to its amendment in 1994) Motor insurance Goods vehicle Passenger risk Liability of insurance company Death of passenger travelling in tractor trailer along with his bags of vegetables when he fell

down Accident occurred in 1991 Whether the insurance company is liable Held: no; insurance for owner of goods or his authorised representative travelling in a vehicle became compulsory only from the date of coming into force of 1994 amendment. (2003 ACJ 1 (SC) followed). Motor Vehicles Act, 1988, Sections 147 (1) and 149 (2) (a) (i) (c) Motor insurance Goods vehicle Agricultural purpose Passenger risk Liability of insurance company Death of owner of goods travelling in tractor trailer along with his goods when he fell down due to jerk Deceased had purchased vegetables and was transporting them to the market for sale Contention that carrying of vegetables in a tractor would be for agricultural purpose and insurance company is liable Whether insurance company is liable Held: no; use of tractor for agricultural purposes would not be construed to mean that tractor trailer can be used for carriage of goods by another person for his business activities; vehicle was not being used for agricultural purposes.

ii) Branch Manager, United India Insurance Company Limited vs. Nagammal and others (2009 (1) TN MAC 1 (FB)):-

Motor Vehicles Act, 1988, Sections 147, 149(4) & 149 (5) Gratuitous Passengers travelling in Goods vehicle Liability of Insurer Extent Under Section 147 Insurer not statutorily required to cover liability in respect of passenger in goods vehicle unless such passenger is owner of goods or agent of owner of goods accompanying such goods in goods vehicle In absence of any statutory requirement to cover liability in respect of passenger in goods vehicle, principle of pay and recover as statutorily recognized in Sections 149 (4) & 149 (5) not applicable ipso facto Therefore, ordinarily Court not expected to issue direction to Insurer to pay to claimant and thereafter to recover same from owner Where, relying upon decision in Satpal Singh, Tribunal directed Insurer to pay compensation, Appellate Court required to consider as to whether such direction could be set aside in its entirety or liability should be fastened only on driver and owner or whether Insurer should be directed to comply with direction to pay & recover No such direction can be issued by Tribunal after decision in Baljit Kaur's case, merely because date of accident was before such decision Date of accident is immaterial However, where matter already decided by Tribunal before decision in Baljit Kaur, it would be in discretion of Appellate Court depending upon facts

and circumstances of case, whether doctrine of pay and recover to be applied or not.

8. The learned counsel for the claimant argued that the claimant had sustained injuries due to the accident, while he was walking on the road. At that time, the first respondent had driven the vehicle in a rash and negligent manner. The same was established by way of F.I.R. and charge sheet. The driver pleaded guilty. The learned counsel in support of his case, cited a Judgment, which reads as follows:-
i) The New India Assurance Company Limited, Tirunelveli v. Chandran and another (2010 (2) TCJ 342):-

Motor Vehicles Act, 1988:- Section 147 Statutory requirement to cover the liability Gratuitous passengers claimed compensation Tribunal passed a common order awarding compensation Appellant contending that the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle. High Court held:- It would be in the decision of the appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of Pay and recover should be applied or as to whether the claimant would be left to recover the amount from the person liable All the persons travelled in the tempo van are villagers and they belong to the poorest Section of the Society Insurance Company has to pay the compensation at the first instance and thereafter, they could be permitted to recover the amount from the vehicle owner Appeals are disposed of. Therefore, the claimant is entitled to receive compensation for sustaining an injury in the said accident.

9. The learned counsel for the second respondent/owner of the vehicle argued that there was no discussion about the driving licence and also no discussion on the first respondent's driver had a valid driving licence at the time of the accident. The driver was not examined and the second respondent was also not examined regarding the driving licence issue. The Regional Transport Officials were also not examined to prove that the driver did not have a valid driving licence at the time of accident. In the absence of documentary and oral evidence, pay and recovery is not applicable against the owner of the vehicle. Therefore, the second respondent driver is not liable to pay any compensation to the claimant.

10. The learned counsel further argued that the case was not registered under Section 3 of the Motor Vehicles Act. Supporting his argument, he had marked the following decisions:-

i) Ashok Gangadhar Maratha v. Oriental Insurance Company Ltd. ((1999) 6 SCC 620):-

Motor Vehicles Act, 1988 Sections 3, 2(10), (21), (28), (47), (14), (16) & (23), 66, 77, 78 and 79 Effective licence Light motor vehicle Neither having a permit for a goods carriage nor carrying any goods on the date of accident Such a vehicle, even though designed to be used as a goods carrier or transport vehicle, held, remained a light motor vehicle and was not a light goods vehicle or a transport vehicle Hence, licence to drive the light motor vehicle issued in Form 6, held, was an effective and valid licence to drive such a vehicle Contrary contention of the insurer disowning his liability, rejected Words and phrases - Effective driving licence - Meaning of Held, means a valid licence both as regards the period and type of vehicle Words and phrases - Light motor vehicle - Scope Central Motor Vehicles Rules, 1989, Rr.2(h) (formerly 2 (e)) & 16 and Form 6 Consumer Protection Act, 1986, Sections 2 and 14 Insurance claim.

ii) Radhey Shyam Agarwal and another Vs. Gayatri Devi and others (1998 ACJ 1177):-

Motor Vehicles Act, 1988, Section 149 (2) Motor Insurance Defences available to insurance company- Overloading Death of passenger in a bus when he was thrown out Tribunal exonerated the insurance company on the ground that conditions of permit were violated as the bus was overloaded Whether the insurance company is exempted from liability Held: no; this defence is not available under Section 149 (2) against third party risk as the vehicle was not used for a purpose not allowed by the permit. Quantum Fatal accident Deceased aged 30, a businessman, earning Rs.3,250/- p.m.-Claimants: widow and five minor children Tribunal assessed dependency at Rs.1,000/- p.m., adopted multiplier of 25, made deductions for lump sum payment and uncertainties of life and allowed Rs.1,50,000/- plus Rs.5,000/- for loss of consortium, Rs.15,000/- for loss of company to minor children and Rs.2,000/- for funeral expenses-Appellate Court

adopted multiplier of 17, disallowed deductions and assessed compensation at Rs.2,04,000/-, but, Tribunal's award of Rs.1,72,000/- upheld in appeal in the absence of cross-appeal or cross-objections.

iii) National Insurance company Limited v. J.Maheshwaramma ((2009) 13 SCC 188):-

A. Consumer Protection Services Insurance Liability of insurer in case of fake driving licence Own damage claim National Commission holding fabrication of driving licence was of no consequence in view of Swaran Singh, (2004) 3 SCC 297, since insured died during validity of policy Held, Swaran Singh is applicable only in third-party claim cases but not to own damage claim cases as clarified in Laxmi Narain, (2007) 3 SCC 700 Instant case not being third-party claim case but arising out of contractual liability, matter remitted to National Commission to consider afresh in the light of Laxmi Narain Consumer Protection Act, 1986 Sections 2(1) (o) and (g) Motor Vehicles Act, 1988 Sections 149 (2) (a) (ii) and 3.

B. Consumer Protection Services Insurance Repudiation of claim- Burden on insurer Type of vehicle in driving licence at variance with type of vehicle victim was driving Held, when insurer repudiating claim on ground of variance in type of driving licence of victim, insurer is bound to discharge burden that victim died mainly because to type of vehicle for which he had no licence to drive If such a case is not made out, insurer cannot escape liability merely on technical breach of licensing conditions Motor Vehicles Act, 1988 Sections 149(2)(a)(ii) and 3.

iv) Raghvendra Singh Chouhan and others v. Rambabu Singh and others (1998 ACJ 978):-

Motor Vehicles Act, 1939, Section 96 (2) (b) (ii) (Section 149 (2) (a) (ii) of 1988 Act) Motor insurance Defences available to insurance company Driving licence Insurance company disputed its liability on the plea that the driver of the offending vehicle had no licence but it led no evidence in support thereof Whether a statement by a witness of the claimants that the driver had no licence would absolve the insurance company of its liability when the insurance company made no efforts in this regard Held : no.

v) New India Assurance Company Limited v. Vidya Bai and others (1998 ACJ 768):-

Motor Vehicles Act, 1988, Section 149 (2) (a) (ii) Motor insurance Defences available to insurance company Driving licence Insurance company contended that driver of the offending vehicle was holding a fake licence Administrative Officer of the company produced an application by the Surveyor on which the Licensing Authority had made a remark that the relevant licence was not issued by it Surveyor's report was produced but the Surveyor was not examined No official from Regional Transport Office was examined to establish that no licence was issued in favour of the driver Despite opportunity afforded by the appellate court no certificate from the R.T.O. was produced in relation to the validity of the relevant licence whether in the absence of record from the Transport Authority indicating that the driver had no licence at the relevant time the insurance company can be exempted from liability Held: no.

11. On considering the facts and circumstances of the case and after hearing the arguments advanced by the learned counsel on either side of the parties concerned and on perusing the impugned decision of the Tribunal, this Court is of the considered opinion that in the impugned award, there was no findings as to whether or not the claimant was a gratuitous passenger. Further there was also no discussion to establish that the driver was not possessing a valid driving licence, as there was no recording evidence of driver or owner or R.T.O. Officials. Therefore, pay and recover does not arise in this case. But, as per F.I.R. and charge sheet, it has been proved that the accident had occurred due to the rash and negligent driving of the driver of the tractor. In the said accident, the claimant had sustained injuries. Therefore, this Court confirms the impugned award dated 28.03.2003 passed by the Tribunal made in M.C.O.P.No.9 of 1999, on the file of the Motor Accidents Claims Tribunal, Sub-Court, Cheyyar.

12. It is open to the claimant to withdraw the entire compensation amount with accrued interest thereon lying in the credit of M.C.O.P.No.9 of 1999 on the file of the Motor Accident Claims Tribunal, Sub-Court, Cheyyar, Tiruvannamalai District, after filing necessary payment out application, in accordance with law, subject to

withdrawals, if any, made already.

13. In the result, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree dated 28.03.2003, made in M.C.O.P.No.9 of 1999, on the file of the Motor Accidents Claims Tribunal, Sub-Court, Cheyyar, Tiruvannamalai District, is confirmed. Consequently, connected Miscellaneous Petition is closed and the M.P.No.1 of 2010 in Cross Objection SR.No.81939 of 2010 is rejected. There is no order as to costs.

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