Ramasamy Vs. Selvaraj

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Court : Chennai

Decided On : Apr-09-2012

Judge : P.Devadass. J.

Acts : Motor Vehicles Act - Sections 2(10), 3, 149(2)(a)

Appeal No. : C.M.A.No.42 of 2007

Appellant : Ramasamy

Respondent : Selvaraj

Advocate for Def. : Ms.B.Rekha, Adv.

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

Judgement :

PRAYER: Appeal against the judgment and decree dated 19.1.2006 made in MCOP No.45 of 2004 on the file of the Motor Accidents Claims Tribunal (Sub Court), Mettur.

JUDGMENT

1. Ramasamy, father of the deceased in a road accident, is the appellant.

2. The appellant, lost his son in a road accident, in which vehicle of the first respondent was involved, which has been insured with the second respondent.

The Motor Accidents Claims Tribunal, Mettur, assessing the evidence let in before it, came to the conclusion that at the time of accident, the rider of the offending two-wheeler was not duly licensed to drive it. In the circumstances, the Tribunal had directed the first respondent to pay the quantified compensation amount and exonerated the insurance company. As against that, the father of the deceased is before us.

3. The learned counsel for the appellant is not disputing the determination of the Tribunal that at the time of accident, the driver of the offending vehicle was not duly licensed and also the quantification of damages claimed. His only grievance is that in the facts and circumstances, the insurer may be directed to pay the compensation amount to the appellant and recover it from the vehicle owner.

4. Ms.B.Rekha, learned counsel for Mr.K.S.Narasimhan, learned senior counsel, representing the New India Assurance Company/second respondent, would submit that the Tribunal has rightly exonerated the insurer. In the facts and circumstances, the insurer cannot be asked to pay the amount and the vehicle owner/insured has the capacity to pay the amount to the claimant and therefore, the appellant should proceed as against the insured only.

5. Exactly, similar question recently cropped up before this Court in Divisional Manager, Oriental Insurance Co. Ltd. v. R.Malliga & Others (2012 (2) LW 216). In that case, this Court has referred to Sections 2(10), 3 and 149(2)(a)(ii) of the Motor Vehicles Act, and the decision of the Supreme Court in National Insurance Co. Ltd. v. Swaran Singh, [2004 ACJ 1 SC] and observed as under in paragraphs 14, 17 and 18:

"14. In 2004-ACJ-1-SC (M/s.National Insurance Company Limited Vs. Swaran Singh), the Honourable Supreme Court was concerned with interpretation of Section 149(2)(a)(ii) of the Act in respect of three distinct situations: (i) when admittedly no licence was obtained by person and driving licence was found to be fake; (ii) when driver has only "learner's licence"; and (iii) when driver is grnated licence for one type of vehicle and at the time of accident, he was driving another type of vehicle. After making reference to the entire case law, the Honourable Supreme Court held that (i) in case where driver of vehicle admittedly did not hold licence and the same was allowed consciously to be driven by owner of the vehicle, the Insurer is entitled to exoneration from its liability; (ii) in case when the Insurer take plea that driver's licence is fake, the defence can only succeed when it is proved that Insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver; (iii) in case of learner's licence, it is also a licence and allowing holder of learner's licence to drive the vehicle does not amount to breach of condition under Section 149(2) of the Act and (iv) that the Tribunal has to take a decision as to whether effect of driver possessing licence for one type of vehicle and found driving another type of vehicle was the main or contributory cause of accident and if it is found that accident occurred solely because of some unforeseen or intervening causes like mechanical failure or some other cause having no nexus with driver not possessing requisite type of licence, the Insurer will not be liable to be allowed to avoid its liability merely on technical breach of conditions concerning driving licence...

17. In the recent decision of the Honourable Supreme Court reported in CDJ-2011-SC-507=2011-5-L.W.416 (Jawahar Singh Vs. Bala Jain and others) the Honourable Supreme Court, dealing with a case where the driver had no valid and effective driving licence, approved the findings of the Tribunal and the High Court in applying the doctrine of pay and recover. It held as follows:-

'11. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the Petitioner and accordingly, directed the Insurance Company to pay the awarded amount to the awardees and thereafter, to recover the same from the Petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same.'

18. In the decisions of this court reported in 2010-4-LW-742 (Bajaj Allianz Insurance Company Limited, Pune Vs. P.Manimozhi and others), 2009-5-MLJ-715=2009-5-L.W.339 (United India Insurance Company Limited, Salem Vs. S.Saravanan and another) and 2001-3-LW-367 (M/s.National Insurance Company Limited, Karaikudi Vs. Sakthi and others), similar directions were given to pay and recover against the Insurance Company placing reliance on the decisions of the Honourable Supreme Court."

6. When the insurer seeks exoneration from its liability to pay compensation/indemnify the insured on the ground that the driver of the vehicle is not duly licensed or not licensed or driven by a person having learners license, the Court has to go into the question whether the vehicle owner, willfully with his full knowledge, placed the vehicle in the possession of such persons and further that has contributed to the accident. If it is not and the vehicle is insured, the insurer shall be asked to pay the compensation amount to the claimants on behalf of the insured and recover the amount from the vehicle owner in execution. No separate suit need be filed. Based on the findings of the claims Tribunal, the execution petition can be maintained. Thus, in view of this current position of law, we accept the submission of the learned counsel for the appellant.

7. In the result, the insurance company/second respondent shall deposit the compensation amount awarded by the Tribunal within four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the amount with interest as awarded by the Tribunal. For the purpose of recovering the said amount from the insured, the insurer need not file a separate suit and it can initiate proceedings before the concerned Execution Court and such Court shall take all the necessary steps even by attaching the offending vehicle, if it need be and if required also take the assistance of the Regional Transport Authority. No costs. The appeal is allowed to the extent above.