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K.Annamalai Vs. B.Arunkumar and Another

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Court : Chennai

Decided On : Sep-27-2012

Judge : The Honourable Mrs. Justice Aruna Jagadeesan

Appeal No. : CMA.NO.1621 of 2001

Appellant : K.Annamalai

Respondent : B.Arunkumar and Another

Advocate for Pet/Ap. : For the Appellant: A.N.Viswanatha Rao, Advocate. For the Respondents: R2, Ms.C.Sangamithirai, Advocate.

Judgement :

(Prayer:- This Civil Miscellaneous Appeal is filed against the Judgement and Decree dated 18.07.2000 made in MCOP.No.3240/1996 by the learned II Judge, Small Causes Court (MACT) Chennai.)

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2. By the impugned award, the Tribunal held that the accident had occurred due to the rash and negligent driving of the motorcyclist, however, since he had no valid driving licence at the time of the accident and the owner having allowed the rider to use the vehicle without having a valid licence, exonerated the Insurance

Company from paying compensation and directed the owner/the 1st Respondent herein to pay compensation of Rs.1,67,961/- with interest at 12 per cent p.a. from the date of the claim petition till the date of realization. The Appellant/claimant has challenged the said finding and the also quantum of compensation by filing this appeal.

3. There is no dispute that the motorcycle which caused the accident was ridden by one Jayakamal, who had no driving licence at the time of the accident. A case has been registered in Cr.No.4255/1995 under Section 337 read with 184 of the Motor Vehicles Act and after investigation, he has been charge-sheeted in CC.No.9566/1995 under Sections 338 and 184 read with 3 and 181 and 134A and B of the Motor Vehicles Act. The evidence placed on record also proved that he has admitted the guilt and paid fine for the said offences. The Insurance Company has examined the Sub Inspector of Police concerned to prove the said facts. The Administrative Officer of the Insurance Company has also been examined to prove the fact that the rider had no driving licence to drive the motorcycle at the time of the accident. Therefore, the finding of the Tribunal that the driver of the offending vehicle was not having valid driving licence at the time of the accident and there was violation of the policy conditions and consequently exonerating the Insurance Company from liability is confirmed.

4. The learned counsel for the Appellant has submitted that considering the pathetic case of the claimant, who is a third party, this court must enhance the compensation awarded by the Tribunal and also direct the Insurance Company to pay the amount and thereafter, recover the same from the owner.

5. In New India Assurance Company Limited Vs. Kamla (2001-ACJ-843-SC) the Insurance Company was exonerated of its liability on the proof of breach of conditions of the Insurance Policy. The Honourable Supreme Court looked at the effect of all the provisions under Chapter XI of the Motor Vehicles Act, 1988, in particular, the proviso to sub-section (4) of Section 147 and sub-section (5) and then said that:-

"21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of

an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But, the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."

Then they summed up the position thus:

"The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But, the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence..."

6. Like wise, in United India Insurance Company Limited Vs. Lehru (2003-ACJ-611-SC) , the Insurance Company attempted to avoid its liability on the ground that the driver of the insured vehicle had a fake licence. The Honourable Supreme Court has further held thus:-

"... It shows that the Insurance Company has to pay to third parties but it may recover from the person who was primarily liable to pay. The liability of the Insurance Company to pay is further emphasised by sub-section (5). this also shows that the Insurance Company must first pay, then it can recover..."

"... The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the company is of insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements...."

The Honourable Supreme Court has held that if it was proved that the insured owner was aware that the licence was fake,

"even in such cases, the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. "

7. Considering the above said decisions and the facts as seen from the records, it is evident that the owner has breached the policy conditions. At the same time, in so far as the third party risk is concerned, the consistent view has been, as could be seen from the above decisions that the Insurer must pay the third party and then it can take a decision whether to proceed against the owner to recover the amount. In the instant case, it would be the only just and reasonable course apply the pay and recovery theory, since the claimant and his family members have been put to traumatic state after the accident.

8. As regards the quantum of compensation fixed by the Tribunal, the claimant was aged 46 years old at the time of the accident and sustained the following injuries, (1) cut injury on the right temporal region, (2) cut injury on left leg near medial malleolus and (3) open wound on the left leg fracture. He has been hospitalized from 26.10.1995 to 9.11.1995, from 4.12.1995 to 5.12.1995, from 8.2.1996 to 13.2.1996 and from 2.11.1996 to 8.11.1996. He has taken treatment in different hospitals for different periods. PW.2 Dr.JRR.Thiagarajan has assessed his disability to an extent of 50 per cent. He has deposed that there was mal union

of fractured bone and there was shortening of leg and he was limping while walking. He has further deposed that squatting is difficult for him and there is restriction of movements. Considering the nature of injuries and the disability suffered by him and also the year of the accident, I am of the considered view that it would be proper to award Rs.1500/- per percentage and accordingly, for 50 per cent disability, the loss of the future earnings due to the disability would come to Rs.75,000/-.

9. The Tribunal has awarded Rs.10000/- towards pain and suffering, which needs to be enhanced considering the nature of injuries suffered by him and the treatment undergone by him and accordingly, it is enhanced to Rs.15,000/-. The award amounts of Rs.41460, rounded off to Rs.41,460/- towards medical expenses, which is borne out by medical records, Rs.3000/- towards transportation expenses and Rs.3000/- towards extra nourishment and Rs.10,000/- towards the loss of income during the period of treatment awarded by the Tribunal shall stand unaltered. Further, a sum of Rs.20,000/- towards loss of amenities and Rs.20,000/- towards attendants charges are awarded. In all, a sum of Rs.1,87,460/- as total compensation with interest at 7.5 per cent p.a. from the date of the claim petition till the date of realization for the enhanced amount is awarded to the claimant.

10. In the result, this Civil Miscellaneous Appeal is allowed and the impugned award is enhanced to the extent mentioned above. The claimant is entitled to a total compensation of Rs.1,87,460/- (Rupees one lakh eighty seven thousand four hundred and sixty only) with interest 7.5% p.a. from the date of the claim petition till the date of realization for the enhanced amount as detailed below:-

The 2nd Respondent Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is entitled to with draw the entire amount with interest. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit and it may initiate a proceedings before the concerned executing court. No costs.

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