

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31/12/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice A.K. RAJAN

Civil Miscellaneous Appeal No. 1031 of 1996

National Insurance

Company Limited, Bhavani. ..3rd Respondent/ Appellant.

-Vs-

1. Samiyathal,
2. Parameswari,
3. Dhanabagyam,
4. San Kumar,
- ..Petitioners 1 to 4.
5. C. Kandasamy,
6. Chinnasamy.
- ..Respondents 1 and 2.
- .. Respondents.

Appeal under Section 173 of Motor Vehicles Act against the Award and Decree dated 31-01-96 made in M.C.O.P.No. 336 of 1992 on the file of the Motor Accidents Claims Tribunal (Prl.Subordinate Judge), Erode.

For Appellant :: Mr. S. Arunkumar

For Respondents 1 to 4 :: Mr. V.K. Nachimuthu

Mr. Kaithaimalai Kumaran for Mr. A.K. Kumarasamy for R-6.

No appearance for R-5.

:JUDGMENT

(Judgment of the Court was made by P. Sathasivam, J.)

Aggrieved by the award of the Motor Accident Claims Tribunal (Principal

Subordinate Judge), Erode, dated 31-01-1996 made in M.C.O.P.No. 336 of 1992, National Insurance Company Limited, Bhavani has preferred the above appeal.

2. In respect of death of one Karuppanna Gounder in a motor accident that took place on 04-12-1988, his widow and children preferred a claim for Rs.2,00,000/-. Before the Tribunal, the first claimant, widow of the deceased got herself examined as P.W.1 and she also examined two more witnesses as P.Ws.2 and 3, besides marking documents as Exs. P-1 to P-7 in support of their claim for compensation. On the side of the Insurance Company, their officer was examined as R. W.1 and documents were marked as Exs.R-1 to R-5. The Tribunal, on appreciation of the evidence, both oral and documentary, after holding that the accident was caused due to negligence on the part of the driver of the lorry, passed an award for Rs.1,61,000/- and directed the Insurance company/appellant herein to settle the same. Questioning its liability, the Insurance company has preferred the present appeal.

3. Heard the learned counsel for the appellant as well as respondents.

4. Mr. S. Arunkumar, learned counsel for the appellant/ Insurance company, by pointing out the fact that the driver was not having a valid driving licence to drive a lorry on the date of the accident, would contend that the Tribunal committed an error in passing the award against the Insurance company. He also contended that, in any event, since the statutory liability is restricted to the extent of Rs.1,50,000/-, the direction of the Tribunal fastening the entire liability namely Rs.1,61,000/- on them (Insurance company) cannot be sustained.

5. In the light of the limited question raised by the appellant/Insurance company, it is unnecessary for us to consider the findings with regard to the negligence and the quantum of compensation arrived at by the Tribunal.

6. With regard to the first contention that the driver was not possessed of a valid driving licence to drive the lorry, as rightly observed by the Tribunal, it is the Insurance Company to substantiate their plea by placing necessary materials that the driver was not having a valid driving licence on the date of the accident. In the counter statement, the Insurance Company has taken a plea that the driver was not having a valid licence to drive lorry. In support of their plea, the Insurance company has examined one Benchamin, an officer working in the Regional Office as R.W.1. He deposed before the Court that the lorry belonged to the second respondent/6th respondent herein. The said lorry was insured with their company and there was a valid policy for the period from 11-1-88 to 10-1-1989. A copy of the insurance policy has been marked as Ex.R-1. He admitted that as per the policy their liability to third parties is limited to Rs.1,50,000/-, for which the owner has paid a premium of Rs.240/-. He also deposed that no additional premium has been paid for unlimited liability. According to him, on the date of the accident, the lorry driver Kandasamy/5th respondent herein was not having a valid licence to drive lorry. He further deposed that he (driver) was charge-sheeted for the same. According to him, their company had sent a notice-Ex.R-2 on 12-01-95 to the driver-Kandasamy to produce his driving licence. Ex.R-2 was returned un-served, and the returned cover has been marked as Ex.R-3. The insurance

company had also sent a similar notice dated 29-5-95 to the owner of the lorry-Chinnasamy informing him about the non-production of driving licence by the driver and the violation of Motor Vehicles Act and policy conditions, and the same has been marked as Ex. R-4. Since the owner refused to receive the registered notice, the same was returned and the returned cover has been marked as Ex. R-5. It is true that R.W.1 has admitted that the Insurance company had not taken steps to ascertain from the Regional Transport Office, whether the lorry driver was issued with a driving licence to drive vehicle like lorry. Here, we have to note that after taking the stand in the counter statement that the driver was not possessed with a valid driving licence to drive a lorry, the insurance company has sent registered legal notices to the driver as well as the owner of the lorry. It is also brought to our notice that both the notices were returned un-served. As a matter of fact, the verification of the cover addressed to the owner, shows that he refused to receive the same. These materials would show that the insurance company had taken necessary steps to ascertain the fact whether the driver was having a valid driving licence or not? It is not either clear or explained as to why the driver and the owner did not respond to the notice issued by the insurance company. Likewise, they could have appeared before the Tribunal and informed their stand. However, before this Court, the owner of the lorry is represented by a counsel. Even before us, there is no explanation or information regarding the stand taken by the insurance company, namely, whether the driver was having a valid licence at the time of the accident to drive a lorry. In such a circumstance, as rightly contended by the learned counsel for the appellant/insurance company, though the appellant had discharged the initial responsibility in proving the fact that the driver of the vehicle had no valid driving licence, the said fact had not been discharged either by the claimants or by the owner of the vehicle. However, as observed by the Hon'ble Supreme Court in *NEW INDIA ASSURANCE CO. LTD., v. KAMLA*, reported in 2001 ACJ 843, the insurance company is liable to pay to the third parties irrespective of the fact that there has been any breach of violation of the policy conditions. In the event that there is a breach/violation of the policy conditions, the insurance company can recover from the insured the amount so paid to the third parties, if as per the policy conditions, the insurer had no liability to pay such sum. The Tribunal, by relying on the very same judgment, rightly directed the insurance company to pay the compensation amount to the claimants. However, the grievance of the appellant is that the Tribunal has not issued any direction to the Insurance Company to recover the amount from the insured. In 2001 ACJ 843 (cited supra), the Supreme Court issued a direction to the Claims Tribunal to decide the question whether the insurance company is entitled to recover the amount from the owner of the vehicle on account of the vehicle being driven by a person who had no valid licence to drive the vehicle after affording opportunity to all the parties concerned. Learned counsel for the appellant has also relied on a Division Bench decision of this Court rendered in C.M.A.No.627 of 1999 dated 03-08-2001 (*M/S. NATIONAL INSURANCE CO., LTD., v. SAKTHI AND OTHERS*) (P. Sathasivam and A. Subbulakshmy, JJ). Before the Division Bench similar question was raised by the appellant/insurance company. After referring to the decision of the Supreme Court in *NEW INDIA ASSURANCE COMPANY, SHIMLA v. KAMLA AND OTHERS* (2001 ACJ 843), the Division Bench has held that, "the insurer and the 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". The Division Bench has also held that "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 third parties, if there was any breach or violation of the policy condition on account of the vehicle being driven without a valid licence." We are in respectful agreement with the above view. In the present case, we have already referred to the specific stand taken by the insurance company in their counter statement, the evidence of R.W.1, their officer, Exs. R-1 to R-5, and the conduct of the driver and the owner in not responding to the request of the insurance company for production of valid licence to drive a lorry. Accordingly, as observed by the Supreme Court in 2001 ACJ 843 (cited supra), we hold that the insurance company is liable to pay compensation to the claimants/respondents 1 to 4 herein and on account of violation/breach of terms of insurance policy, namely, the lorry being driven without a valid licence, the appellant/insurance company is entitled to recover from the insured.

7. Learned counsel appearing for the appellant by drawing our attention to a Division Bench decision of this Court in KUMAR (MINOR) etc., v. NATIONAL INSURANCE CO. LTD., reported in 2002-4-L.W. 691, would contend that if the insurance company is liable to pay compensation to third parties in respect of breach of policy conditions, a further direction may be issued to proceed against the owner by way of execution of the award. The Division Bench in similar situation namely that the vehicle which was involved in the accident driven by a person who did not have a licence for driving heavy goods vehicle, passed a decree in favour of the insurer and against the owner for the amount which the insurer had already deposited and permitted the insurer to execute the same (decree) against the owner of the vehicle. This is clear from para 10 of their judgment. Following the same, it is made clear that if the insurance company had deposited the entire amount of compensation, which amount is now being permitted to be withdrawn by the claimants subject to para 10, it is open to the insurer to execute the same as a decree against the owner of the vehicle.

9. Now coming to the second contention, the learned counsel for the appellant/Insurance company, by drawing our attention to the fact that in terms of the insurance policy-Ex.R-1, their liability to third parties is limited to Rs.1,50,000/-, contended that the direction of the Tribunal to satisfy the entire award namely Rs.1,61,000 /- is liable to be set aside. Here again, as rightly contended, since the owner has paid a premium of Rs.240/-, the statutory liability of the insurance company is limited to Rs.1,50,000/- in so far as third parties are concerned. We have already referred to the evidence of R.W.1, an officer of the insurance company that the owner had not paid additional amount/premium for unlimited liability to the third parties. In such a circumstance, we hold that the liability of the insurance company is limited to Rs.1,50,000/- and the claimants are entitled to recover the balance amount i.e., Rs.11,000/- with corresponding interest from the owner by way of execution of the award.

10. In modification of the award of the Tribunal, we pass the following

order:

(i) As per the terms of the policy, the appellant/insurance company is liable to pay to the claimants/respondents 1 to 4 herein, being the third parties, the statutory amount of Rs.1,50,000/- with interest as awarded by the Tribunal;

(ii) Since there is a breach of terms of insurance policy, the appellant-insurance company is entitled to recover the said amount of Rs.1,50,000/- from the owner of the lorry namely Chinnasamy-6th respondent herein by filing an execution petition before the Tribunal.

(iii) The claimants are permitted to proceed against the owner-Chinnasamy/6th respondent herein in so far as the balance amount of Rs.11,000/- with interest as awarded by the Tribunal by filing an execution petition;

(iv) The claimants are also permitted to withdraw the amount as apportioned by the Tribunal (as per clause 4 of the decree).

Civil Miscellaneous Appeal is allowed to the extent mentioned above. No costs.

R.B.

Index:- Yes

Internet:- Yes.

To-

1) The Motor Accidents Claims Tribunal(Prl.Subordinate Judge), Erode (with records).

2) The Section Officer, V.R. Section, High Court, Madras.

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