

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2008

CORAM:

THE HONOURABLE MR.JUSTICE P.MURGESEN

C.M.A. No.1016 of 2002

M/s.United India Insurance Company Limited,
Xavier Buildings,
FWD Office Road,
Nagercoil, Kanyakumari District. .. Appellant/3rd Respondent

Vs.

1.Tamilselvi ..1st Respondent/Petitioner
2.S.Iyyappan
3.Sivananayaitha Perumal
(Sl.Nos.2 and 3 were ex parte in
the Lower Court) ..2nd&3rd Respondents/
1st and 2nd Respondent

Appeal under Section 173 of the Motor Vehicles Act, 1988
against the judgment and decree dated 27.7.2000 made in MCOP
No.17/99 on the file of the Motor Accidents Claims Tribunal
(Principal District Judge) at Kanyakumari District, Nagercoil.

For Appellant : Mr.S.Natarajan
For Respondents : Mr.I.Irulappan for R1
Mr.S.Subbiah for R2

JUDGMENT

This Civil Miscellaneous Appeal is directed against the
judgment and decree dated 27.7.2000 made in MCOP No.17/99 on the
file of the Motor Accidents Claims Tribunal (Principal District
Judge) at Kanyakumari District, Nagercoil.

2. The brief facts arising out of this appeal are as under:-
On 23.05.1998, the deceased Charles was slowly riding his
bicycle towards east to west on the southern side of the
Anjugramam-Nagercoil Main Road. When he reached near South
Bhagavathipuram in front of the house of one Vettumperumal at
about 8.30 p.m., the third respondent herein came from west to
east direction driving his Mahindra Van bearing Registration
No.TN-74-C-3535 at high speed and in a rash and negligent manner
without blowing the horn and dashed against the deceased Charles
and thereafter, he ran away without stopping his vehicle. Due
to the accident, the deceased sustained injuries. Thereafter, he
was admitted in the hospital and he died in the hospital. Ex.P1
is the First Information Report. Ex.P2 is the Sketch and Ex.P3
is the Observation Mahazar. The body of the victim was sent for
post mortem and Ex.P4 is the Post Mortem Report. The accident
did not occur due to mechanical defect, which is evident from
Ex.P5-Motor Vehicle Inspector's Report. Charge sheet was filed
under Ex.P6.

3. The first respondent / claimant is the wife of the deceased. She filed a claim petition before the Tribunal, claiming a sum of Rs.5,00,000/- as compensation.

4. Before the Tribunal, P.W.1, R.W.1 and R.W.2 were examined and Ex.P1 and P7 and Ex.R1 to R3 were marked. On consideration of the evidence on record, the Tribunal awarded a compensation of Rs.2,42,400/- with interest at 12% p.a. from the date of petition and the said sum of Rs.2,42,400/- was ordered to be paid by the respondents before the Tribunal, jointly and severally.

5. Challenging the judgment of the Tribunal, the present appeal has been filed by the appellant / Insurance Company.

6. At the outset, the learned counsel for the appellant / Insurance Company did not dispute the quantum, but he questioned the liability itself. It is submitted by the counsel for the appellant that the driver of the vehicle was not having a valid driving licence to drive the vehicle on that day. He relied on the witnesses of R.W.1 and R.W.2 and also Ex.R1 to R3 in support of his contention.

7. Counsel for the appellant relied on the decisions of the Hon'ble Supreme Court in the case of New India Assurance Company Limited v. Prabhu Lal, (2008) 1 Supreme Court Cases 696 and in the case of Sardari and others v. Sushil Kumar and others, 2008 ACJ 1307 and argued that a person having licence to drive Light Motor Vehicle is not authorised to drive a commercial vehicle.

8. Per contra, learned counsel for the first respondent / claimant relied on the decisions of the Hon'ble Supreme Court in the case of Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd, AIR 1999 SUPREME COURT 3181 and in the case of National Insurance Company Ltd. v. Annappa Irappa Nesaria alias Nesaragi and others, (2008) 3 Supreme Court Cases 464, and argued that a person who is having a licence to drive LMV can drive the commercial vehicle also.

9. Heard the learned counsel on either side.

10. The judgment of the Hon'ble Supreme Court in the case of Sardari and others v. Sushil Kumar and others, cited supra, which has been relied on by the learned counsel for the appellant / Insurance Company is the latest decision. In the above case, the Supreme Court has relied on its own decision in the case of National Insurance Co. Ltd. v. Kusum Rai, 2006 ACJ 1336, and observed that a person who is not having licence to drive a commercial vehicle cannot drive it and it has resulted in exemption of the Insurance Company from liability.

11. It has not been disputed that the vehicle was being used as a taxi, which is a commercial vehicle. The driver of the said vehicle was required to hold an appropriate licence therefor. The third respondent herein, who was driving the said vehicle at the relevant time, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. In the present case, R.W.2 has deposed that the driver of the vehicle was not having the licence to drive a commercial vehicle on the date of accident. Therefore it is clear that the driver was not having the driving licence to drive commercial vehicle on the date of accident.

Evidently therefore, there was a breach of the condition of the contract of insurance. Having tested the present case in the light of the Supreme Court judgment in the case of Sardari and others v. Sushil Kumar and others, cited supra, this Court is of the considered view that, since the driver was not possessing the driving licence to drive a commercial vehicle, the Insurance Company is not liable to pay any compensation to the claimant and the owner of the vehicle is alone liable to pay the compensation to the claimant.

12. With the above observation, the Civil Miscellaneous Appeal is allowed. Consequently, C.M.P. No.7230 of 2002 is closed. No costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

W. Jothirani 26/11/08
Sub-Assistant Registrar

To

The Principal District Judge,
Motor Accidents Claims Tribunal at
Kanyakumari District, Nagercoil.

+One Cc to Mr.S.Natarajan, Advocate, SR.No.36517
+Two Ccs to Mr.G.R.Swaminathan, Advocate, SR.Nos.36719,36989
+One CC to Mr.S.Subbiah, Advocate, SR.No.36711

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