

**(2014) 01 KAR CK 0142**

**Karnataka High Court**

**Case No:** Miscellaneous First Appeal No. 976 of 2009 (MV)

Muniswamy

APPELLANT

Vs

Charles Katanu George and The  
Bajaj Allianz General Insurance  
Co. Ltd.

RESPONDENT

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**Date of Decision:** Jan. 9, 2014

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 134(c) 158(6) 26

**Citation:** (2014) 2 AKR 312

**Hon'ble Judges:** B.S. Indrakala, J

**Bench:** Single Bench

**Advocate:** Shripad V. Shastri, for the Appellant; O. Mahesh, Advocate for R-2, for the Respondent

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### **Judgement**

B.S. Indrakala, J.

The above appeal is preferred against the judgment and award dated 22.10.2008 passed in MVC No. 1981/2007 on the file of the VII Additional Judge, Court of Small Causes and Member, MACT, Bangalore City. It is the case of the claimant that on 28.12.2006 at about 10.00 a.m. when he was standing by the side of the road near Auto Mart Junction at Sarjapura Road in order to cross the road, the Honda Activa Scooter bearing registration No. KA-01-ED-7301 came from Agara Circle towards Jakkasandra side in a rash manner in high speed and dashed against the claimant, who was on the extreme left side of the road, on account of which, the claimant fell and sustained grievous injuries and immediately he was shifted to St. John's Medical College Hospital where he was treated, etc; Further it is contended that in the said accident, he sustained grievous injuries such as fracture of both bones of right leg, fracture of roof of left orbit and further it is contended that at the time when he met with the accident, he was aged about 51 years working as a mason with an income of Rs. 4,500/- p.m. and on account of the injuries sustained, he suffered disability to

the right lower limb and in the circumstances, he sought awarding of compensation from the owner and insurer of the said vehicle which was involved in the accident.

2. To substantiate his case, the claimant apart from getting himself examined as P.W. 1 also examined the doctor, who treated and assessed his disability as P.W. 2 and got marked Exs. P. 1 to P. 13. On behalf of the respondents, one of the official of the insurance company is examined as R.W. 1 and Exs. R. 1 and R. 2 are got marked.

3. The Tribunal on appreciating the evidence so let in, deemed it fit to award a sum of Rs. 1,18,680/- with interest at the rate of 6% p.a. from the date of petition till realisation and the said award was passed only against respondent No. 1 the owner of the vehicle and dismissed the claim petition as against the insurer of the vehicle on the ground that the rider of the scooter was not having the required driving licence to drive the same and as such, there is violation of condition of the policy of the insurance.

4. Aggrieved by the said judgment and award, the claimant is in appeal inter alia contending amongst other grounds that the exonerating the liability of the insurance company on the ground of contents of charge sheet filed by the police is not proper, while the insurance company had not discharged its burden of proving its contention that the driver, who committed the accident, had no driving licence. Further it is contended that mere non production of the driving licence by the rider of the vehicle before the investigating officer by itself is not conclusive of holding that the driver had no licence to ride the scooter and the insurance company is expected to prove its contention that the driver had no valid and effective driving licence. It is also specifically contended that u/s 26 of the Motor Vehicles Act, a register is maintained by the Government with regard to the particulars of the driving licence and without referring to the said register, it cannot be held that the insurance company has discharged its initial burden of proving its contention.

5. Learned Counsel for the appellant relying upon the decision of the Apex Court in the case of [Pepsu Road Transport Corporation Vs. National Insurance Company](#), submitted that to avoid the liability, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy which the insurance company failed to establish in this case, in as much as the insurance company failed to take any steps to summon the owner of the vehicle to prove that the owner was negligent or committed willful breach in handing over the vehicle to the rider allegedly who was not possessing valid driving licence. He also relied upon an unreported decision rendered by the Coordinate Bench of this Court in the case of Iffco-Tokio General Insurance Co. Ltd., vs. Mr. K. Prabhakar Reddy & Another [MFA No. 865/2011 D.D. 19th September, 2013] wherein relying upon the various judgments it is opined that the mere production of charge sheet by itself is not sufficient to hold that the insurance company has discharged its burden of proving that the driver of the vehicle did not possess the driving licence.

6. Per contra, learned Counsel for the respondent contended that statute casts upon the rider of the vehicle to always carry with him his driving licence and whenever inspected by the police, he is also expected to produce the same. Under Rule 32 of the Rules of the Road Regulations, 1989, the rider is duty bound to carry his driving licence, certificate of registration, certificate of taxation and certificate of insurance of the vehicle and in case of transport vehicle, the permit and fitness certificate etc., and shall on demand by police officer is expected to produce and when the same is not produced, adverse inference will have to be drawn; further it is submitted that even u/s 134(c) of the Motor Vehicles Act, the owner of the vehicle is expected to inform in writing to the insurer in regard to the details of the driving licence etc., which the insured has failed to discharge; further u/s 158(6) of the Motor Vehicles Act as soon as the accident occurs, the officer in-charge of the police station is duty bound, on receipt of the information u/s 158(6) of the Act, to forward the same to the Claims Tribunal having jurisdiction and also a copy to the insurer and where a copy is made available to the owner, he the owner shall also within 30 days of receipt of such report, forward the same to such Claims Tribunal and the Insurer and thus, the insurer has failed to discharge all its duties under the statute. Further he submitted that in the circumstances, it has to be presumed that the driver of the vehicle did not possess the licence and as such, he has not complied with any of the provisions under the Motor Vehicles Act in which event, the finding given by the Tribunal that the insurer is not liable to indemnify the owner of the vehicle is just and proper and the same does not call for any interference.

7. In view of the submission made, the points that arise for consideration are:

i) Whether the Tribunal is right in exonerating the liability of the insurance company viz., respondent No. 2 from indemnifying the owner of the vehicle/respondent No. 1?

ii) What order?

8. It is seen from the records that right from the stage of pleading, the respondent/insurance company disputed that the rider of the vehicle did not possess the valid driving licence as on the date of accident to ride the said scooter which was involved in the accident. In support of its contention, the respondent/insurance company has also chosen to examine one of its official as R.W. 1 and got marked the copy of the charge sheet as Ex. R. 2.

9. R.W. 1 while reiterating the contentions of the insurance company with regard to non possessing of the driving licence by the rider of the motor bike and also getting marked the charge sheet as Ex. R. 2, during the course of cross-examination has conceded that Ex. R. 1 covers the risk of the third party and that the claimant is third party to the proceedings; further he has deposed that the insurance company has not issued any notice to the owner of the vehicle/insured and it is on the basis of the charge sheet, he is deposing that the rider of the motor bike had no driving licence

to ride the vehicle. Except the said contentions, there is no other material made available by the insurance company to substantiate that the owner had committed willful negligence in disobeying the conditions of the policy by allowing the person who was not possessing the required licence to ride the vehicle.

10. Though the owner of the vehicle has remained absent in the proceedings, he was placed *ex parte*, the burden was upon the insurance company to take witness summons to the owner and examine him with regard to the violation of the terms and conditions of the policy which the insurance company has failed to do. Further it is seen that on perusal of the records, though there is an order for service of notice to respondent No. 1 by affixture, it is not clear as to whether such affixture was carried out or not as no mahazar or no documents are available on the record of the Tribunal. In which event, the burden was upon the insurance company to summon the insured to speak about the contentions of the insurance company that he committed willful negligence. Further it is also seen that it is R.W. 1 who has clearly deposed that no notice was issued to the insured calling upon him to produce the driving licence and other particulars. Thus it is seen that the insured is not given any opportunity to explain away his case.

11. Further it is seen that strangely the charge sheet has not seen the end as it ought to be i.e., in other words on perusal of the certified copy of the order sheet maintained in the criminal case which is now produced by the learned Counsel for the appellant, it is seen that the accused failed to appear and the proceeding itself was dropped. No steps are taken as per the law by following the procedure of remitting the records to long pending case by examining the available witnesses and giving a finding thereon. In the circumstances, it is seen that the duty was more so upon the insurance company to examine the investigating officer in the criminal case independent of dropping of the proceedings against the accused. That is to say when the findings of the investigating officer is not available in the criminal case, it ought to have taken further steps to examine the investigating officer in that criminal case to depose along with the criminal case records to substantiate the contents of the charge sheet which the insurance company has failed to discharge. In the circumstances, it cannot be said mere filing of charge sheet by itself is sufficient to hold that the insurance company discharge its burden of proving that the driver of the vehicle did not possess the driving licence to drive the vehicle. Thus finding given by the Tribunal that the insurance company has established that the driver of the vehicle was not having the driving licence to drive is not proper.

12. At this stage, learned Counsel for the respondent/insurance company submits that he may be permitted to take appropriate steps to summon the owner as well as the investigating officer in the case to depose and the matter may be remitted to the jurisdictional Tribunal for the said limited purpose, for which learned Counsel for the appellant submits that he has no objection to remand the matter for that purpose.

13. In the foregoing circumstances, the impugned judgment and award dated 22.10.2008 passed in MVC No. 1981/2007 are set aside and the matter is remitted to the jurisdictional Tribunal to dispose of the matter afresh by giving opportunity to both the claimant as well as the insurance company to adduce further evidence, if they choose to do so and dispose of the matter within 3 months from the date of receipt of a copy of this order and the records. As both the claimant as well as the insurance are present, they are directed to appear before the Tribunal on 17.2.2014 and no fresh notice of posting need be given to them.