

(2006) 11 MAD CK 0031

Madras High Court

Case No: CRP (PD) No"s. 332 and 333 of 2006 and C.M.P. No"s. 1 + 1 of 2006

The Branch Manager, National
Insurance Co. Ltd.

APPELLANT

Vs

Shanaz Begam and Others

RESPONDENT

Date of Decision: Nov. 28, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149, 149(2), 170

Citation: (2007) 3 LW 338

Hon'ble Judges: S. Ashok Kumar, J

Bench: Single Bench

Advocate: K. Govi Ganesan, for the Appellant; K.V. Anantha Krishnan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Ashok Kumar, J.

As against the dismissal of the two Interlocutory Applications filed by the revision petitioner/second respondent-Insurance Company in the MCOP, to receive additional counter affidavit and to receive two additional documents, the present two revisions are filed.

2. According to the revision petitioner/Insurance Company, at the time of filing of the counter, they did not have the investigation report and the copy of the letter sent to CBCID office and the reply received from them for making an enquiry and therefore the delay in filing the documents is not wanton or willful.

3. The first respondent filed a counter statement which is adopted by the other contesting respondents in the two I.As contending that the Investigation has been done by the Insurance Company itself and even though the complaint was referred to the District Crime Branch, there is no whisper about the investigation done by the

CID and now only they sought to produce the same and the only intention of the Insurance Company is to avoid the payment of compensation to the victims.

4. The learned Principal District Judge, after considering the averments and the submissions of the learned Counsel appeared on both sides dismissed the two Interlocutory Applications holding that the Insurance Company is not entitled to raise a plea of defence on any ground not coming under the purview of Section 149 of the Motor Vehicles Act when the owner of the vehicle herself is really contesting the case. It is also stated that the first document which is the investigation report of the Insurance Company, is sought to be marked for the purpose of proving that the accident never took place, but the same cannot be received in evidence when there is a specific bar from raising such a plea u/s 149 of the Motor Vehicles Act. The other reason cited by the learned Principal District Judge is that in the absence of a plea of collusion between the first respondent and the claimants or failure to diligently contest the case by him, the Insurance Company cannot even seek permission or leave u/s 170 of the Motor Vehicles Act to contest the case. Aggrieved over the same, these two revisions are filed by the Insurance Company.

5. Learned Counsel for the revision petitioner contended that the learned Principal District Judge has failed to see whether the claim itself was fabricated and a complaint has also been lodged with CBCID as per the directions of this Court in the case reported in 2005 (2) LW.439 (National Insurance Company Ltd., Coimabatore, v. K. Nandabalan). The learned Judge also ignored to take note of the decision reported in 206 (1) L.W. 176 wherein the First Bench of this Court directed all Claims Tribunals to permit the Insurance Companies to adduce evidence on such fraud and fabrication of claims and in such circumstances, both the Interlocutory Applications ought to have been allowed.

6. Section 149 of the Motor Vehicles Act deals with the duty of the Insurers and also the grounds on which they can defend any claim or action brought against them which are as follows:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non disclosure of a material fact or by a representation of fact which was false in some material particular.

7. But, Section 170 of the Motor Vehicles Act makes it clear that if there is a collusion between the person making the claim and the person against whom the claim is made, or the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

8. Thus it is clear that Section 170 of the Act has an overriding effect on Section 149 of the Act. This Court is aware of the fact that number of bogus claims have been filed and awards have been obtained based on such bogus claims incurring heavy loss to the Insurance Companies. In this regard in [National Insurance Co. Ltd. Vs. Director General of Police and Others](#), the First Bench of this Court in a batch of Writ Petitions observed as follows:

8...The Director of Central Bureau of Investigation, New Delhi is directed to constitute a Special Team of Investigation for carrying the investigation in the present matter. It is further directed that when filing of such complaint is brought to the notice of the concerned Motor Accident Claims Tribunal, the Tribunal shall take note of it before passing the order and if necessary to record further evidence in order to ascertain the genuineness of the claim....

9. Again the First Bench of this Court in a batch of writ petitions filed by the contesting parties and some of the Insurance Companies as well, gave the following direction:

4. We find considerable merit in the submission of the learned Counsel for the Insurance Companies. Insurers alone are not the affected parties due to such fraudulent claims. The liability saddled on the insurers is naturally being passed on to the ordinary consumers of the Insurance. Such large scale insurance fraud is prevailing not only in the State of Tamil Nadu but even in other parts of the Country. In the State of Tamil Nadu alone more than 1100 cases have been detected. It is pertinent to note that as soon as the CBI started taking cognizance of the cases,

more than 1500 claims involving Rs. 60crores of rupees have been withdrawn by the so called claimants. Considering the large number of fraudulent cases and the amount involved, which directly affects the financial interest of the PSU Insurers in particular and the ordinary consumers of insurance, it is high time that Union of India and the Insurance Regulatory Development Authority to consider the setting up of Insurance Frauds Offices/Bureaus or such similar bodies in different parts of the country to deal with the insurance frauds. The Secretary to Government, "Finance Department, Union of India is directed to file an affidavit explaining the stand of the Union of India on this issue within a period of eight weeks.

10. The anguish and concern of their Lordships referred to above equally applies to the present facts of this case. In the present case, the contention of the Insurance Company is that the Insurance Claim itself is false and according to them the accident never occurred. According to the learned Counsel for the revision petitioner/Insurance Company, there is a collusion between the first respondent-owner of the vehicle as well as the claimants. To fortify their contention, they sought to produce the Investigation Report submitted by the Investigator of the General Insurance Companies (GIC) wherein it is stated that the deceased dashed against a Tamarind Tree and sustained injuries and later on died in a private hospital. Further, as per the FIR the accident was occurred on 4.12.2001, but the FIR has been registered in Kaveripatnam Police Station on 4.9.2002 i.e., nearly after Nine months and no explanation has been offered in this regard.

11. The other document which is sought to be adduced is the copy of the letter given to the CBCID office and the reply received from them directing the District Crime Branch to enquire into the matter. Therefore, both these documents which are sought to be adduced as additional evidence by the Insurance Company assumes much importance in the light of the observations made by the Hon"ble First Bench of this Court wherein their Lordships have observed that when filing of such complaint is brought to the notice of the concerned Motor Accident Claims Tribunal, the Tribunal shall take note of it before passing the order and if necessary to record further evidence in order to ascertain the genuineness of the claim. Therefore the revision petitioner/Insurance Company must be given an opportunity to make a defence as contemplated u/s 170 of the Motor Vehicles Act, which provisions has a overriding effect on the provisions of Section 149 of the Act under certain peculiar circumstances of the Case when it comes forward with a contention that the claim itself is bogus and the accident never took place as alleged by the claimants, besides there is a delay of Nine months in lodging the FIR which raises a serious doubt as to the genuineness of the claim.

12. In all motor accident claim cases, the usual plea taken by the claimants is that the accident occurred due to the negligent driving by the Driver of the vehicle involved in the accident. The usual defence taken by the Driver and owner of the vehicle will be that the accident was not due to the rash and negligent act on the

part of the Driver of the vehicle. Even in cases where the Driver of the concerned vehicle is prosecuted for rash and negligent act before a criminal court and ultimately acquitted, yet, the Motor Accident Claims Tribunal can come to the conclusion that the accident occurred due to the rash and negligent driving of the vehicle driven by the Driver of the concerned vehicle. This is the situation in cases where an accident has actually occurred. Therefore, in such circumstances, it may not be necessary for the insurer to take the pleas available to the insured. But, in cases where no accident has actually taken place, but for the purpose of making a bogus claim, a stage managed accident is created, and the Claim is filed before the Tribunal, the Insurer cannot depend upon the insured to make all the defences against the claim. Otherwise, if the Insurer is not permitted to take all the available defences, then great hardship will be caused to the Insurance Companies, particularly, in view of the prevailing situation, where large number of bogus claims have been found out throughout the country.

13. Therefore, in the peculiar facts and circumstances of the case, it is just and necessary for the revision petitioner/Insurance Company to file additional counter and additional documents which shall be received by the Principal District Judge, Krishnagiri, and taking into consideration of the same pass suitable orders and if necessary to record further evidence in order to ascertain the genuineness of the claim as directed by the Hon"ble First Bench of this Court.

14. In the result, both the CRPs are allowed setting aside the orders made in I.A.Nos:398 and 469 of 2006 respectively in MCOP. No. 560 of 2003 passed by the learned Prl. District Judge, Dharmapuri at Krishnagiri. Consequently, connected Miscellaneous Petitions are closed. No costs.