M/s. National Insurance Co. Ltd. Vs Anugula Munaswamy Naidu and Another

Court: Andhra Pradesh High Court

Date of Decision: Nov. 18, 2013

Hon'ble Judges: U. Durga Prasad Rao, J

Bench: Single Bench

Advocate: Kota Subba Rao, for the Appellant; P. Govind Reddy, for the Respondent

Final Decision: Dismissed

Judgement

U. Durga Prasad Rao, J.
Aggrieved by awarding of compensation of Rs. 3,84,575/- in favour of injured/claimant in its judgment dated

08.08.2008 in M.V.O.P. No. 177 of 2004 by Motor Accidents Claims Tribunal-cum-V Additional District Judge, Tirupathi, the 2nd respondent-

National Insurance Company Limited preferred the present M.A.C.M.A. 1st and 2nd respondents in this appeal are the claimant and 1st

respondent respectively before the Tribunal.

2. The brief facts of the case which led to file the present appeal can be stated thus:

a) A. Muna Swami Naidu, Supervisor in Head Post Office, Tirupathi, the claimant while proceeding on his Hero Honda Motorcycle bearing No.

AP 03 J 0998 along with his daughter as pillion rider from Tirupathi to Bandarlapally on the road leading to Tirupathi Chandragiri on the night of

11.09.2012, on the way, when they reached C. Mallavaram Village at about 7:45 p.m., a Jeep bearing No. AP 03 C 8298 came in the opposite

direction being driven by its driver G. Vijay Kumar in a rash and negligent manner and without following road rules and dashed claimant''s

motorcycle and thus caused the accident. In the resultant accident, it is averred that the claimant sustained fracture to his right leg besides multiple

injuries all over the body. The claimant took treatment in different hospitals namely S.V.R.R G.G. Hospital, Rassh Hospital, Tirupathi and Bone

and Joint Hospital, Chennai for considerable period and underwent surgeries three to four times by incurring huge medical expenditure and

ultimately suffered disability in his right leg. It was his case that the driver of the Jeep was at fault as he drove the vehicle in a rash and negligent

manner and caused the accident. The claimant reported the matter before M.R. Pally Police Station. A case in Crime No. 145 of 2002 was

registered on 12.09.2002 and charge-sheet was filed against the driver of the Jeep. Ultimately, the claimant filed O.P. No. 177 of 2004 against

respondents 1 and 2 who are the owner and insurer of the offending vehicle and claimed compensation of Rs. 9,00,000/- under different heads

mentioned in the O.P.

b) Both the respondents opposed the claim. Respondent No. 1, the owner of vehicle opposed the claim on the main contention that his driver was

not at fault and in fact the claimant himself drove his motorcycle in a rash and negligent and in a zigzag manner and dashed the Jeep and caused the

accident. He denied the injuries and medical expenditure incurred by the claimant and urged to put him in strict proof. He contended that the claim

is highly excessive and exorbitant and claimant does not deserve the same. Respondent No. 1 further contended that he insured his vehicle with

respondent No. 2 and respondent No. 2 is liable to pay compensation if any awarded.

c) The 2nd respondent-Insurance Company opposed the claim on two main grounds. Firstly, the facts of the case would show that it was an

accident by collision of two vehicles and therefore, there was contributory negligence on the part of the petitioner/claimant. Secondly, though

respondent No. 1 insured his vehicle, he grossly violated the terms and conditions of the policy and allowed an unlicensed driver to drive the Jeep

knowing that his driving licence bearing No. 894/93 was valid up to 12.07.2001 only. Due to such breach, respondent No. 2 contended that it

may be exonerated from its liability. Further respondent No. 2 denied the injuries, treatment in different hospitals, disability, and huge medical

expenditure as pleaded by the claimant in his O.P and urged that he should be put to strict proof. Finally, respondent No. 2 contended that the

claim was highly excessive and exorbitant and untenable.

d) The judgment of the Tribunal shows that during trial, P.Ws. 1 to 5 were examined and Exs. A.1 to A.18 were marked for petitioner/claimant

and R.Ws. 1 and 2 were examined and Exs. B.1 and B.2 were marked on behalf of 2nd respondent/Insurance Company.

e) The judgment would further show that considering the evidence of P.W. 1-claimant, P.W. 2- his daughter and eye witness and also Ex. A.1-

F.I.R., Ex. A.2-charge sheet etc., the Tribunal on Issue No. 1 held that the accident was occurred due to the rash and negligent driving of the

driver of the 1st respondent''s Jeep.

f) About the contention of Insurance Company that the driver had no valid license on the date of accident, the Tribunal on considering the evidence

of R.Ws. 1 and 2, observed that the driver of the Jeep had driving licence till 12.07.2001 and again it was renewed from 08.09.2003 to

07.09.2006 but the licence was not in force on 11.09.2002 i.e., the date of the accident. The Tribunal further observed that on that count alone the

Insurance Company cannot repudiate its liability in view of the decision of Hon''ble Apex Court rendered in National Insurance Co. Ltd. Vs.

Swaran Singh and Others, wherein it was held that mere absence or fake or invalid driving licence or its disqualification of driver from driving at the

relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards

insured, 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 regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time.

g) Emulating the above decision, the Tribunal further observed that the Insurance Company failed to prove that the insured while knowing the fact

that driver has no license still allowed him to drive the vehicle. It also observed that the accident was occurred not because the driver was not

knowing the driving but because of his negligent driving. The driver had valid driving licence both prior and subsequent to the accident and he was

not disqualified to drive the vehicle at the relevant time. With these observations and following the Apex Court''s decision, the Tribunal gave a

finding that both insured and insurer are jointly and severally liable to pay compensation and the Insurance Company is entitled to recover the

compensation amount from the owner of the vehicle.

h) Then regarding the quantum of compensation, the Tribunal granted Rs. 3,84,575/- under different heads.

Hence, the appeal by the appellant/Insurance Company.

2. Heard arguments of both sides.

3. Carping the judgment of Tribunal, learned counsel for appellant argued that in this case admittedly the driver of the Jeep had no valid driving

licence on the date of accident as his driving licence expired long back. Even then owner of the Jeep knowingly allowed his driver to drive the

vehicle and therefore, he committed breach of the terms of the policy. Though the Tribunal agreed with the contention of Insurance Company that

the driver did not hold valid driving licence by the date of accident, instead of exonerating the appellant/Insurance Company from the liability it

erroneously directed the appellant to pay compensation and then recover the same from the insured. Learned counsel vehemently argued that when

there is no liability on the part of Insurance Company, the question of it paying the compensation at first and recovering the same later from the

insured does not arise. In support of his arguments he relied upon the following decisions: a) National Insurance Co. Ltd. Vs. Parvathneni and

Another, , b) III (2013) ACC 918 (SC) and c) National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, . He thus prayed to allow

the appeal.

4. Per contra, supporting the judgment of Tribunal learned counsel for respondent No. 2 argued that the Tribunal has rightly applied the ratio of

Swaran Singh''s case (Supra) to the present case and decreed the O.P. Expatiating it, he argued, the Tribunal firstly observed that it is not

established by the evidence of R.Ws. 1 and 2 that the insured knowingly allowed the driver to drive the vehicle, though his licence was not

renewed as on the date of accident. Hence as per this observation, no knowledge of lack of driving licence can be attributed to the owner of the

vehicle and consequently, breach of terms of policy also cannot be attributed to him. Learned counsel further argued that secondly, the Tribunal

observed that the accident was occurred not due to lack of driving knowledge by the driver but because of his rash and negligence. Since he had

valid driving licence prior and subsequent to the accident, the Tribunal observed that the accident was not because of his not knowing the driving.

It also observed that he was not disqualified to drive the vehicle at the relevant time of accident. Learned counsel submitted that in the opinion of

Tribunal, lack of driving knowledge was not the fundamental breach of the policy and hence the Tribunal rightly rejected the contention of

Insurance Company. Learned counsel argued that in fact while observing as above, the Tribunal ought to have fastened the entire liability on the

Insurance Company instead of directing it to pay and recover. He thus submitted that the contention of appellant is not valid and the citations relied

upon by it are not applicable to the present case and the appeal may be dismissed. To buttress his argument, he relied upon the decision reported

in Pepsu Road Transport Corporation Vs. National Insurance Company, wherein it was held that when the owner without knowing that the licence

of the driver was a fake one allowed him to drive the vehicle by verifying his licence and providing him training in the driving school, the Insurance

Company cannot absolve its liability in an accident.

5. In the light of above divergent arguments, now the point for consideration is:

Whether the owner of the offending vehicle/2nd respondent knowingly committed breach of terms of the policy to absolve appellant/Insurance

Company of its liability?

6. POINT: The factum of accident and involvement of Jeep of 2nd respondent and motorcycle of claimant are not in dispute. Regarding the fault of

driver of the Jeep in the resultant accident, we have the evidence of P.Ws. 1 and 2 who are victims, besides the documentary evidence Ex. A.1-

F.I.R. and Ex. A.2-charge sheet. P.W. 1 deposed that when himself and P.W. 2- his daughter were proceeding on his motorcycle from Tirupathi

to Bandarlapally and reached C. Mallavaram village, on the night of 11.09.2002, the offending jeep came in the opposite direction being driven by

its driver in a rash and negligent manner and without following road rules and dashed their vehicle and caused the accident. In the cross-

examination he stated that he holds valid driving licence. In fact he produced Ex. A.14- driving licence which shows that he had valid driving

licence. He denied the suggestion that he does not know driving and he drove the motorcycle in a zigzag manner and dashed against the Jeep and

that the accident was occurred due to his fault. Regarding topography of the accident road, he stated that the road at the place of accident was a

30 feet wide road and two vehicles can pass at a time. P.W. 2 also deposed in similar fashion. Ex. A.2- charge sheet shows that police after

investigation found fault with Jeep driver and charge-sheeted him. To rebut aforesaid oral and documentary evidence, the respondents have not

examined the driver of Jeep to prove his innocence if any. On the other hand, the evidence on claimant''s side clearly shows that though there was

ample space on the road, the driver of the Jeep went and dashed the motorcycle. Therefore, the accident can be said to have occurred due to his

rash and negligent driving. The Tribunal thus rightly held that the Jeep driver was at fault.

7. Then coming to the driving licence issue of the Jeep driver, the evidence of R.W. 2, the Senior Assistant in R.T.O. office coupled with Ex. B.2-

driving licence particulars of the driver, would show that the driver G. Vijay Kumar possessed the driving licence to drive transport vehicles from

13.07.1998 to 12.07.2001 and his licence was again renewed from 08.09.2003 to 07.09.2006. Thus it is clear that his licence was not renewed

as on the date of accident i.e., 11.09.2002. Then Ex. B.1- policy copy shows that the offending Jeep bearing No. AP 03 C 8298 was insured with

appellant/Insurance Company for the period covering 01.06.2002 to 31.05.2003, thus covering the date of accident. It is the contention of

appellant that one of the terms and conditions of Ex. B.1-policy is that the vehicle should be driven by a driver holding valid and effective driving

licence and since the Jeep driver did not hold such valid driving licence as on the date of accident and as 1st respondent knowingly allowed him to

drive the vehicle, it amounts to breach of terms of the policy and Insurance Company is not liable to pay compensation on that count. In this

regard, it must be mentioned that Ex. B.1-policy copy is only a one page document and it is not containing the full details of all the terms and

conditions entered into by the parties. However, since the parties addressed before Tribunal that such a condition was in existence in the policy

and the Tribunal also answered the same, the existence of such condition in the policy is taken for granted, of course with a note of caution to the

Trial Courts that while marking documents as exhibits they shall not only check their relevancy and admissibility but also confirm whether the

documents contain the necessary details touching their pleas or not.

8. Now regarding the contention of breach of terms of policy, the Tribunal following the ratio of Swaran Singh''s case (Supra) held that there was

no breach. In the said case, Hon''ble Apex Court was dealing with wide spectrum of defence pleas of Insurance Companies basing on the

deficiencies in driving licences. Such deficiencies are:

a) Fake driving licenses of the driver.

b) Driver not having licence whatsoever.

c) No renewal of driving licence as on the date of accident.

d) License granted for one class or description of vehicle but vehicle involved in accident was of different class or description.

e) Driver holding only a learner''s licence.

The Apex Court after discussing various issues involved in this regard, summarized its findings thus:

i) Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences

available to the insurer against either the insured or the third parties. To avoid its liability towards insured, 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 regarding use of vehicles by duly

licensed driver or one who was not disqualified to drive at the relevant time.

ii) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said

proceedings but must also establish ''breach'' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

iii) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by

the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the

said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The

Tribunals in interpreting the policy conditions would apply ""the rule of main purpose"" and the concept of ""fundamental breach"" to allow defences

available to the insured u/s 149(2) of the Act.

iv) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake

one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

v) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in

accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the

insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party

under the award of the tribunal.

9. From the above summarization, it is clear that an Insurance Company in order to succeed in its defence pleas touching the driving licence issues

must:

a) Firstly establish that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy

regarding use of vehicle by a duly licensed driver or one who was not disqualified to driving at the relevant time.

b) Secondly, the breach which was committed by the insured was so fundamental as is found to have contributed to the cause of the accident.

Upon establishing the above conditions by the Insurance Company, the Tribunal can direct that the insurer is liable to be reimbursed by the insured

for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal.

10. Now the point is whether the appellant has established aforesaid two conditions to absolve itself of the liability. The first condition to be

established is that the owner allowed his driver to drive the vehicle knowing that his licence was not renewed by the date of accident. In the

evidence of R.W. 1, except stating that the driver had no driving licence at the time of accident, we do not find him saying that the owner knowing

this fact and still allowed him to drive the vehicle. Such a knowledge was not imputed to the owner in the evidence of R.W. 1. It should be noted

that such a burden is on the Insurance Company as per the above Apex Court''s judgment. Then the second condition to be established is that the

breach of the policy which was committed by the owner is a fundamental one causing the accident. It must be said that this condition is also not

established by the Insurance Company because it is nobody''s case that either the driver does not know the driving or that his lack of driving

knowledge had resulted in accident. Therefore, following Apex Court''s decision, the Tribunal has rightly held that the Insurance Company cannot

avoid its liability to a third party. The arguments of appellant which are in similar lines before the Tribunal, cannot be accepted and the judgments

cited by it can be distinguished.

11. In Parvathneni''s case (Supra), the defence of Insurance Company was not in respect of deficiency in driving licence as in the present case.

Rather its defence was on the ground of non-coverage of insurance policy to the date of accident i.e., 30.11.2003 since the cheque dated

29.11.2003 issued towards premium for renewal of the policy was dishonoured. Hence the defence in that case was basically non-coverage of

policy on the date of accident. In the light of these facts, Hon''ble Apex Court observed that when the Insurance Company has no liability to pay

compensation, it cannot be compelled to make payment and later on recover from the owner. It differed with some earlier decisions and directed

that the matter be placed before the Hon''ble the Chief Justice of India for constituting a larger Bench for decision. Hence this decision will not help

the appellant.

12. The Sujata Arora''s case (Supra) cited by the appellant can also be distinguished on facts. A careful reading of the said judgment would give an

impression that in that case, the owner knowingly entrusted the offending van to the driver who was holding a fake driving licence. In that context,

Hon''ble Apex Court held that liability cannot be fastened on the Insurance Company. However in the instant case, the appellant could not

establish that owner knowingly entrusted the vehicle to the driver whose licence was not renewed on the date of accident.

13. In the case of Vidhyadhar Mahariwala and others (Supra) cited by the appellant, the facts are that, the driving licence of the driver of the

offending vehicle was not in force as on the date of accident. The Tribunal and High Court have turned down the plea of Insurance Company

holding that mere gap in the renewal of driving licence cannot be a ground for its exoneration. The appeal by the Insurance Company was allowed

by Hon''ble Apex Court. From the facts, it is not clear whether the owner knowingly allowed the driver to drive the vehicle or not. In view of this

and the judgment in Swaran Singh''s case (Supra) being rendered by a larger Bench, this judgment cited by the appellant cannot be accepted.

14. So in the light of above discussion, no merits are found in the appeal. It may be noted that on behalf of respondent No. 2, it was argued that

the Tribunal ought not to have granted opportunity to Insurance Company to recover the compensation amount from the owner of the vehicle since

it failed to establish the breach of the terms of the policy. The said argument cannot be accepted because respondent No. 2/owner of the vehicle

has not carried out appeal against said finding.

15. In the result, this M.A.C.M.A is dismissed by confirming the judgment of the Tribunal in M.V.O.P. No. 177 of 2004. No costs. Miscellaneous

applications if any pending in this appeal, shall stand closed.