

(2011) 08 MAD CK 0221

Madras High Court

Case No: Civil Miscellaneous Appeal No. 2967 of 2008 and M.P. No. 1 of 2008

P. Dhandapani

APPELLANT

Vs

The National Insurance
Company Ltd. and Others

RESPONDENT

Date of Decision: Aug. 2, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 15(1)

Hon'ble Judges: R. Subbiah, J

Bench: Single Bench

Advocate: Sathish Parasaran, for the Appellant; D. Bhaskaran, for R1 and Ma. P. Thangavel, for R3 to R5, for the Respondent

Final Decision: Dismissed

Judgement

R. Subbiah, J.

The civil miscellaneous appeal has been preferred by the owner of the vehicle aggrieved over the award dated 13.12.2007 passed by the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No. 2) at Gopichettipalayam, in M.C.O.P. No. 192 of 2005 filed by Respondents 3 to 5, claiming a sum of Rs. 8 lakhs as compensation.

2. Respondents 3 to 5 herein/the claimants are the legal heirs of one deceased Annamalai and they filed a claim petition before the Tribunal stating on 23.06.2004, while the deceased Annamalai was riding a bicycle on the left side of Thirumurugan Poondi Avinashi Main Road, a Maruti car bearing registration No. TN-39-X-2793, which was driven by the Appellant in a rash and negligent manner, came from the opposite direction, without observing the traffic rules, and dashed against the bicycle, during which the deceased was thrown away from the bicycle and sustained grievous injuries and he was immediately admitted in the hospital; but in spite of treatment, he succumbed to the injuries. Hence, the legal representatives of the

said Annamalai filed a claim petition as against the owner and the insurer of the vehicle, namely, the Appellant and the 1st Respondent.

3. The 1st Respondent insurance company had taken a specific defence before the Tribunal that the Appellant is the driver-cum-owner of the car in question and at the time of the accident, he had No. valid driving licence to drive the said car. The driving licence issued by the Assistant Licensing Authority, Thirupur, had expired on 29.03.2004 and the same was not renewed on the date of accident i.e. on 23.06.2004. The Appellant had renewed the licence only on 25.06.2004 i.e. subsequent to the date of accident. Since there was no licence on the date of accident, the insurance company is not liable to pay compensation.

4. After considering the evidence both oral and documentary and by accepting the defence put forth by the insurance company, the Tribunal had directed the owner of the vehicle to pay a sum of Rs. 3,94,200/- as compensation and exonerated the insurance company from the liability. Aggrieved over the same, the present appeal is filed by the owner of the vehicle.

5. Learned counsel for the Appellant submitted that this is not the case of No. licence. The Appellant had the driving licence up to 29.03.2004 and thereafter, the same was renewed only on 25.06.2004. In the meantime, the Appellant was not disqualified by the authorities concerned from holding the licence. Under such circumstances, the insurance company cannot deny their liability to pay the compensation. The learned counsel further submitted that the application for renewal was pending before the authorities concerned and as such, it cannot be said that the driver was not having authority to drive the vehicle at the time of accident.

6. By relying upon a judgment reported in [National Insurance Co. Ltd. Vs. Swaran Singh and Others](#), the learned counsel for the Appellant further submitted that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant point of time, are not by themselves defences available to the insurer against either the insured or the third parties. Therefore, non-renewal of licence at the relevant point of time cannot be a defence for the insurance company for repudiating their claim.

7. Per contra, the learned counsel for the 1st Respondent insurance company submitted that an application for renewal of licence has to be filed within a period of 30 days from the date of expiry thereof. If the accident had taken place within 30 days from the date of expiry of licence, it may be construed that the driver was possessing a valid licence. In this regard, the learned counsel further submitted that Sub-section (1) of section 15 of the Motor Vehicles Act, says that where an application for renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal. The learned counsel has also relied on the decisions reported in SARDARI

and OTHERS.vs. SUSHIL KUMAR and OTHERS (2008 ACJ 1307) and BHUWAN SINGH.vs. ORIENTAL INSURANCE COMPANY LTD., (2009(2) CTC 452) in support of his contentions.

8. Heard the learned Counsel for the parties.

9. The only question that falls for consideration in this appeal is, whether the owner of the vehicle is liable to pay compensation amount when the driver of the vehicle, who caused the accident, was not disqualified from holding or renewing the licence of the Light Motor Vehicles, which he was holding prior to the date of accident.

10. It is the submission of the learned counsel for the Appellant that it is not the case that the driver had No. licence or the driver had renewed it subsequently or he was not disqualified from renewing the licence on the date of accident. Under such circumstances, the insurance company is liable to pay compensation. Per contra, it is the submission of the learned Counsel for the 1st Respondent insurance company that the licence has to be renewed within 30 days from the date of expiry and if the application for renewal of licence is filed within 30 days from the date of expiry thereof, the same would be renewed automatically and hence if the accident had happened within the grace period of 30 days, then, the insurance company would be held liable to pay compensation and if the application for grant of regular licence had been filed after the expiry of grace period of 30 days, the renewal will take effect only from the date of renewal.

11. In this regard, an useful reference could be placed on the decisions relied on by the 1st Respondent reported in 2009(2) CTC 452, wherein the Hon"ble Supreme Court has held as follows:

14. The Act provides for grant of a learner"s licence. It indisputably is a licence within the meaning of the provisions thereof. A person holding a learner"s licence is also entitled to drive a vehicle but it is granted for a specific period. The terms and conditions for grant of a learner"s licence are different from those of a regular licence. Holding of a learner"s licence is imperative for filing an application for grant of licence as provided for in Rule 4 of the Rules. The converse however is not true. Only because the Appellant held a learner"s licence which had expired and was not valid on the date of accident, he cannot be said to be duly licensed. It is true that despite the expiry of a regular licence, it may be renewed, but No. provision has been brought to our notice providing for automatic renewal of learner"s licence

In [Ram Babu Tiwari Vs. United Indian Insurance Co. Ltd. and Others](#), , this Court held:

18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period of 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be

possessing a valid licence. The proviso appended to Sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.

12. In [Sardari and Others Vs. Sushil Kumar and Others](#), it has been held by the Apex Court, as follows:

7. The concurrent finding of fact herein is that Sushil Kumar never held a licence. The owner of the vehicle has a statutory obligation to see that the driver of the vehicle whom he authorised to drive the same holds a valid licence. Here again, a visible distinction may be noticed viz. where the licence is fake and a case where the licence has expired, although initially when the driver was appointed, he had a valid licence.

8. Yet again in *New India Assurance Company Ltd. v. Prabhu Lal*, 2008 ACJ 627 (SC), the court stated the law in the following terms:

In *Ishwar Chandra v. Oriental Insurance Company Ltd.*, 2007 ACJ 1067 (SC), this Court held:

9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the Rules framed there under. The proviso appended to Section 15 (1) of the Act in No. uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident.

13. Therefore, a reading of the said judgments would show that if the licence has been renewed after the grace period, the validity of licence would take effect only from the date of renewal. In the instant case, the licence was expired on 29.03.2004 and the accident had occurred on 23.06.2004 i.e. after 30 days from the date of expiry of the licence, whereas the licence had been renewed only on 25.06.2004. Under such circumstances, it has to be construed that as on date of accident, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident. Therefore, in my considered opinion, the decisions relied upon by the learned counsel for the 1st Respondent give an answer to the issue involved in this appeal. Hence, I hold that the insurance company cannot be held liable to pay compensation in the case of this nature and the owner of the vehicle is liable to pay compensation. I see No. ground to interfere with the finding arrived at by the Tribunal and the appeal deserves to be dismissed.

14. Accordingly, the civil miscellaneous appeal fails and the same dismissed. No costs. Connected M.P. is closed.