
(2010) 08 MAD CK 0449

Madras High Court

Case No: C.M.A. No. 1195 of 2007

Munusamy

APPELLANT

Vs

Oriental Insurance Co.
Ltd.

RESPONDENT

Date of Decision: Aug. 10, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 147(1), 147(1)(b), 149(1)

Citation: (2012) 3 TAC 639

Hon'ble Judges: B. Rajendran, J

Bench: Single Bench

Advocate: K. Kovi Ganesan, for the Appellant; S.K. Krishnamoorthy, for the Respondent

Final Decision: Dismissed

Judgement

B. Rajendran, J.

The claimant is the appellant in this appeal. The claimant has filed M.C.O.P. No. 182 of 2003 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Madurantagam claiming compensation of ` 3,00,000/- for the burn injuries sustained by him in his face, leg and hand in the accident that took place on 30th March, 2003. The Court below dismissed the claim petition, hence, this appeal. It is seen from the records that on 30th March, 2003 at about 4 p.m., when claimant was driving the lorry bearing registration No. TDL 6557 with a load of casurina wood from Kumuli Village to Madurantagam, in order to avoid hitting a child who crossed the road suddenly, he applied brake and lost control of the vehicle. Resultantly, the claimant hit a tamarind tree on the roadside. In the impact, the engine of the lorry caught fire and burnt resulting in injuries to the claimant on his face, leg and hand. He was immediately taken to Madurantagam Government Hospital where he took treatment as inpatient till 25th May, 2003. Therefore, for the injuries sustained by him, he filed the claim petition.

2. The Insurance Company resisted the claim made by the claimant on the ground that the claimant himself is the owner of the lorry and he had driven the vehicle and sustained injuries. As the petitioner is not third party, but owner of the vehicle, the claim petition is not maintainable. Further, the insurance policy issued to the petitioner does not cover the injuries sustained by him. When the petitioner himself is at fault, he cannot claim any compensation for his own fault. Further, as per the policy condition, for his own damage, claim will not be entertained in the policy. Moreover, there is a delay of 55 days in lodging F.I.R. before the police which gives suspicion about the alleged accident.

3. The Court below dismissed the claim petition on the ground that claimant himself is the owner of the lorry, he himself drove it and met with an accident by dashing against a tamarind tree and sustained injuries. Inasmuch as the petitioner is not a third party as specified in the policy to cover the owner's damage, the claim petition is not maintainable and accordingly dismissed it.

4. The learned Counsel for the appellant contended that the appellant is a driver-cum-owner of the lorry. At the time when he was driving the lorry, a small child darted across the road suddenly, in order to avert any untoward incident, he applied sudden brake, lost control of the vehicle and dashed it against a tamarind tree and in the impact, he sustained injuries. Since, the accident took place not due to the fault of the claimant but due to sudden crossing of a small child which resulted in the accident, merely because he had driven the vehicle at that time, the Court below ought not to have dismissed the claim petition.

5. learned Counsel for the Insurance Company sustained the award passed by the Court below on the ground that when the petitioner himself is the owner of the vehicle and has driven it, he cannot expect the Insurance Company to compensate him inasmuch as he is not a third party and he has not paid any separate amount towards the policy so as to cover the owner's risk and liability. Under those circumstances, the dismissal of the claim petition is sustainable and interference of this Court is not warranted.

6. I have heard the Counsel for the both sides. It is seen from the records that the F.I.R. itself has been lodged by the claimant after one month from the date of accident, namely, 30th March, 2003. No explanation is forthcoming from the petitioner for the inordinate delay in registering an F.I.R. especially in a case where the owner himself drove the vehicle and sustained injuries. In this context, it is necessary to look into the decision of the Hon"ble Supreme Court reported in [New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others](#), where in para 18 it was held as follows :

(18)... It was furthermore held--

(13) The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(1)(b) of the Motor Vehicles Act, which in no uncertain terms covers a risk of a third party only, would be attracted in

the present case.

The matter came up for consideration yet again in [The Oriental Insurance Company Limited Vs. Meena Variyal and Others](#), wherein it was observed:

(10)... As we understand Section 147(1) of the Act, an insurance policy, thereunder need not cover the liability in respect of death or injury arising out of and in the course of employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923, in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place and against death or bodily injury to any passenger or a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923, in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under Clause (h) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy). This provision cannot, therefore, be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.

(11) The object of the insistence on insurance under Chapter 11 of the Act, thus seems to be to compulsorily cover the liability relating to their person or properties to third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923, in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Section 147, we find it difficult to hold that the Insurance Company, in the case on hand, was liable to indemnify the owner, the employer-company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the Insurance Company is not liable to indemnify the insured in the case on hand.

The said principle was reiterated in [United India Insurance Co. Ltd. Vs. Davinder Singh](#), holding:

(10) It is, thus, axiomatic that whereas an Insurance Company may be held to be liable to indemnify the owner for the purpose of meeting the object and purpose of the provisions of the Motor Vehicles Act, the same may not be necessary in a case where an Insurance Company may refuse to compensate the owner of the vehicle towards his own loss. A distinction must be borne in mind as regards the statutory liability of the insurer vis-a-vis the purport and object sought to be achieved by a beneficent legislation before a forum constituted under the Motor Vehicles Act and enforcement of a contract qua contract before a Consumer Forum.

7. In view of the above decision of the Hon"ble Supreme Court that the Insurance Company is not liable to pay compensation when no separate amount was paid as premium to cover the owner"s risk when the owner himself was driving the vehicle, I am of the view that the conclusion arrived at by the Court below to dismiss the claim petition filed by the claimant is justifiable and in accordance with law. Accordingly, I do not find any reason to interfere with the well considered decision of the Court below. In the result, the appeal is dismissed. No costs.