Azhagusumathi Vs The New India Assurance Company Limited
The New India Assurance Company Limited Vs Azhagusumathi

Court: Madras High Court

Date of Decision: Dec. 1, 2014

Acts Referred: General Clauses Act, 1897 â€" Section 27
Motor Vehicles Act, 1988 â€" Section 147(5), 149(1)

Hon'ble Judges: M. Jaichandren, J; Aruna Jagadeesan, J

Bench: Division Bench

Judgement

Aruna Jagadeesan, J.

1. The appellant/ New India Insurance Company has filed the appeal in C.M.A.No. 2240 of 2011 challenging the award dated 22.11.2010,

passed by the Motor Accident Claims Tribunal/ Additional District (Fast Track Court-IV), Bhavani, in M.C.O.P.No. 61 of 2007. The claimants

have filed the Cross Objection, dissatisfied with the quantum of compensation awarded by the Tribunal in Cross Appeal No. 30 of 2012.

2. Brief facts are as follows:

The claimants being the legal heirs of the deceased L.Venugopal filed an application claiming compensation of Rs.60 lakhs due to the death of

L.Venugopal in a motor accident that took place on 25.11.2003 at about 10.00 a.m. while the deceased was proceeding in a fiat car from Punnum

to Erode. His vehicle was hit by a lorry which was coming in the opposite direction, as a result of which, he sustained fatal injuries.

3. Before the Tribunal, the owner of the vehicle remained exparte. According to the claimants, the policy of the offending vehicle was valid from

25.06.2003 to 24.06.2004 and therefore, the Insurance Company was liable to indemnify the owner. The appellant Insurance Company took a

plea in the counter that the cheque issued by the owner towards the premium was dishonoured by the Bank due to Insufficient Funds"".

Immediately, the insurer cancelled the policy and intimated the same to the owner as well as to the R.T.O, Pune, on 01.07.2003. Therefore, it was

contended that since the insurance policy dated 25.06.2003 was cancelled there was no contract of Insurance between insurer namely New India

Assurance Company and the owner and no liability could be fastened upon the insurer. As such the Insurance Company is not liable to pay any

compensation in the absence of valid insurance policy.

4. On the above pleadings, the Tribunal framed appropriate issues and after analysing the evidence held that the accident occurred because of rash

and negligent driving of the lorry driver and further held that as there was no due intimation regarding dishonour of cheque and the subsequent

cancellation of policy to the owner and therefore, the Insurance Company is liable to pay compensation. The Tribunal assessed the quantum of

compensation at Rs.30,15,000/- as follows:

5. The learned counsel appearing for the appellant/ Insurance Company submitted that the appellant had duly intimated the fact to the owner that

the policy was cancelled due to dishonour of cheque and the appellant also proved the intimation of cancellation of policy to the owner as well as

the RTO through registered post by filing the receipt thereon. Learned counsel contended that since the insurance policy was cancelled and there

was no valid insurance covering the date of accident, the impugned award is liable to be set aside which was passed as against the appellant is

liable to be set aside.

6. On the other hand, learned counsel appearing for the claimants submitted that the plea of the Insurance Company is not acceptable. The

claimants being the third parties, should not suffer as the Insurance Company issued a covered note of the policy on receipt of the cheque towards

premium.

7. Considering the above facts and circumstances of the case and from the rival submissions made by the learned counsel appearing for the parties,

the questions that arise for consideration in this appeal are (a) Whether the intimation of cancellation of Insurance Policy through registered post

can be treated as sufficient in the absence of any evidence to prove that the cancellation of policy was within the knowledge of the owner of the

offending vehicle. (b) Whether the Insurance Company having issued covered note of the policy on receipt of the cheque in respect of the

premium, can claim immunity thereunder to absolve itself from liability.

8. The appellants grievance is that since the insured/owner was immediately intimated about the dishonour of cheque and also about the

cancellation of policy and further the intimation in this regard was sent to the R.T.O, the appellant is not liable to pay compensation to the

claimants.

9. It is an admitted fact that the owner of the vehicle has insured the vehicle by payment of cheque towards premium and the appellant/ Insurance

Company issued a policy thereon. The cheque which was issued by the owner of the vehicle towards the premium was dishonoured on

27.06.2003, due to ""insufficient funds"". The appellant Bank namely UCO Bank returned the cheque with City Bank return memo (Ex.P3) on

28.06.2003. On receiving the said memo, the insurance company had sent a letter to the owner of the vehicle informing the dishonour of the

cheque and the cancellation of policy by registered post under Ex.P4. Ex.P5 is the postal receipts for sending the letters by registered post which

had been marked as Ex.P6 series. The letter sent by the appellant/insurance company to R.T.O informing the cancellation of policy issued by the

appellant has also been marked. The date of accident is on 25.11.2003.

10. The legal position is well settled where the policy of insurance is issued by an authorised Insurer on receipt of cheque towards payment of

premium and such a cheque is returned dishonoured, the liability of the authorised insurer is to indemnify the third party for receipt of the liability

which that policy cover subsists and it has to satisfy the award of compensation by reason of the provisions of sections 147(5) and 149(1) of the

Motor Vehicles Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has been sent to the

insured/owner before the accident. In this regard, it is relevant to refer to the judgment of the Honourable Supreme Court in Deddappa and Others

Vs. The Branch Manager, National Insurance Co. Ltd., where the Supreme Court considered the judgment in Oriental Insurance Co. Ltd. Vs.

Inderjit Kaur and Others, and New India Assurance Co. Ltd. Vs. Rula and Others, and held that if the insurance policy is cancelled on account of

dishonour of cheque and insured as well as the RTO are informed about the same, the third party would not be entitled to get the compensation

from the Insurance Company as they are liable only so long as the policy subsists.

11. In the case of National Insurance Co. Ltd. Vs. Seema Malhotra and Others, , it is held that when the premium promised is not paid, the insurer

cannot be held liable. The relevant paragraphs are extracted hereunder.

(17) In a contract of insurance when an insured gives a cheque towards payment of premium or part of the premium, such a contract consists of

reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be

forgotten that a cheque is a Bill of Exchange drawn on a specified banker. A Bill of Exchange is an instrument in writing containing an unconditional

order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

(18) Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured

by the bank concerned the insurer need not perform his part of the promise. The corollary is that insured cannot claim performance from the

insurer in such a situation.

12. Relying on the above said judgment of the Honourable Supreme Court, in the latest decision, the Apex Court in United India Insurance Co.

Ltd. Vs. Laxmamma and Others, has held as under.

In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of

premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability

which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of sections 147(5) and 149(1) of the

Motor Vehicles Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured

before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque

towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of

insurance and sends intimation thereof to the owner, the insurance company"s liability to indemnify third parties which that policy covered ceased

and the insurance company is not liable to satisfy awards of compensation in respect thereof.

Thus, it is clear from the settled position of law that if the Insurance Company cancelled the policy and informed the insured as also the R.T.O.

about such cancellation before the accident of the vehicle, it has no liability.

13. In the instant case, it has been proved that the cheque Ex.B1 was dishonoured on presentation with the bank for want of sufficiency of funds

and that the policy issued by the insurance company for the period from 25.06.2003 till 24.06.2004 was cancelled under Ex.B5 and further, the

dishonour of cheque as well as the cancellation of policy was intimated to the owner by a registered post in Ex.B6 as also to the RTO and the

postal receipts for sending the letters by registered post is marked as Ex.B6 series.

14. As per Section 27 of General Clauses Act, 1897 which deals with topic ''Meaning of service by post'' says that where any Central Act or

regulation authorizes or requires a document to be served by post, then unless a different intention appears, the service shall be deemed to be

effected by properly addressing'', prepaying and posting it by registered post, a letter containing the document, and, unless the contrary is proved,

to have been effected at the time at which the letter would be delivered in ordinary course of post. The Section, thus, raises the presumption of due

service or proper service if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the

addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. Of course, the

said presumption is rebuttable. But in the present case Exs.B4, B6 and B7 would show that the letter intimating about the dishonour of cheque

followed by cancellation of policy has been sent to the address of the owner given in the policy by registered post, of course, without any

acknowledgement due. The said letter having been sent properly addressing and posting it by registered post, it would raise a presumption that the

service been effected on the addressee to whom the communication was sent. Therefore, the appellant having intimated the notice of cancellation

by registered post to the owner and the RTO, the service of notice of cancellation can be treated as sufficient and the insurance company can take

advantage that it has duly intimated to the owner of the offending vehicle and the authorities concerned regarding cancellation of policy due to the

dishonour of cheque. Hence, the insurer cannot be held liable to indemnify the owner and it is absolved from liability. The reasoning given and the

finding recorded by the Tribunal in this regard is erroneous. Both the questions are answered accordingly. However, the claim of third party cannot

be defeated for the self created predicament of the insurer in issuing the policy without actually receiving the premium. Hence, the insurance

company shall pay the compensation to the claimants which it may realise from the owner of the offending vehicle.

15. Cross Objection No. 30 of 2012

In this case, the Tribunal has taken the monthly income of the deceased at Rs.27,000/- per month which includes the income from his profession as

an auditor and from agricultural sources and computed the loss of dependency by adopting the multiplier of 13. Insofar as the income from his

profession as an auditor is concerned, the tribunal has taken Rs.10,000/- as his monthly income on the basis of the income tax returns which in our

view does not call for any interference. The addition of Rs.7,000/- from the auditing of Canara Bank cannot be taken as the income tax returns do

not reflect the said income. However, insofar as the income calculated from the agriculture sources are concerned, the Tribunal"s assessment at

Rs.17,000/- appears to be improper. There is no doubt that the deceased had income from another source through agriculture. The proof of

ownership of agricultural land was also brought before the Court through documents. The evidence of P.W.5 and P.W.6 would indicate that the

agricultural produce were sold to them and thereby the deceased was earning income from the sale proceeds. Since the agricultural lands are still

with the legal heirs of the deceased, only the value of the agricultural work personally done by the deceased can be taken into consideration while

computing the loss of income. Therefore, we would make further addition of Rs.10,000/- as to the loss of managerial skill for the land which he

possessed and shall take the contribution to the family at Rs.10,000/- through agricultural income. Total income is fixed at Rs.20,000/- per month.

Considering the age of the deceased who was 48 years old at the time of accident, as per the judgment of the Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another, , 30% of the income should be added towards future prospects. The multiplier adopted by the Tribunal

is appropriate and after deducting 1/3rd towards personal expenses and by adopting the multiplier of 13 the loss of dependency comes to

Rs.27,03,480/- (17330 x 12 x 13). The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection and Rs.1,00,000/- towards

consortium which appears to be just and reasonable. Therefore, the award of Rs. 1,00,000/- towards the love and affection and Rs.1,00,000/- for

loss of consortium are maintained. In Rajesh and Others Vs. Rajbir Singh and Others, , the Supreme Court has awarded Rs.25,000/- towards

funeral expenses. Considering the same, this Court awards a sum of Rs.25,000/- towards funeral expenses. The award of Rs.2000/- for

transportation charges is maintained. Thus, the total compensation comes to Rs.29,30,480/- as follows:

The compensation amount shall attract 7.5% per annum interest from the date of petition till the date of payment.

16. Admittedly, the claimants are third parties to the contract of insurance between the insurer and the owner. In view of the decision rendered by

the Honourable Apex Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , National Insurance Co. Ltd. Vs. Swaran

Singh and Others, ; National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, and also in view of the fact that the owner of the vehicle was not

contesting the application for compensation before the tribunal as well as before this Court, it becomes justifiable in ordering the Insurance

Company to pay the compensation awarded and recover it from the owner. In Sardari and Others Vs. Sushil Kumar and Others, , the Honourable

Supreme Court has observed that in fact situations, the Court, while fastening the liability on the owner of the Vehicle may direct the Insurance

Company to pay to the claimants the award amount with liberty to it to recover the same from the owner. As regards the procedure to be adopted

by the Insurer for recovery of compensation paid by it to third party in terms of the award from the owner, the Apex Court in Oriental Insurance

Co. Ltd. Vs. Shri Nanjappan and Others, held in paragraph No. 8 as under.

Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in National Insurance Co. Ltd. Vs. Baljit

Kaur and Others, , that the insurer shall pay the quantum of compensation fixed by the Claims Tribunal, about which there was no dispute raised,

to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be

required to file a suit. It may initiate a proceeding before the concerned executing court as if the dispute between the insurer and the owner was the

subject-matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer.

17. In the result, the Civil Miscellaneous Appeal is allowed in the following terms.

i) The findings of the Tribunal that the appellant/Insurance Company and the owner of the vehicle are jointly and severally liable to pay the

compensation is set aside and the insurance Company is exonerated from the liability.

ii) However, the Insurance Company is directed to deposit the award amount at the first instance and recover the same from the owner of the

vehicle as per the mode incorporated in Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, .

iii) The compensation amount is reduced from Rs.30,15,000/- to Rs.29,30,480/-. The respondents 2, 3 and 4 / claimants 2, 3 and 4 each are

entitled to Rs.5,00,000/- and the 1st respondent/ 1st claimant is entitled to Rs.14,30,480/-. The claimants 1, 2 and 4 are permitted to withdraw

their respective apportioned amount with proportionate interest, after giving credit to the amount already withdrawn by them if any, on filing

appropriate application before the Tribunal. The share of the minor / 3rd claimant shall be invested in any one of the nationalized banks till she

attains majority. The 1st claimant is permitted to withdraw the accrued interest from the share of the minor claimant once in three months directly

from the Bank.

iv) The award amount along with interest after adjusting the payment/ deposit already made, be deposited within a period of eight weeks from the

date of receipt of the copy of this order.

v) The Cross Appeal filed by the claimants is dismissed.

vi) There shall be no order as to costs.