

***THE HON'BLE SRI JUSTICE M.LAXMAN**

+ MACMA.No.2114 OF 2007

% 21—08—2023

The New India Assurance Company Limited,
Rep. by its Branch Manager and Another

...Appellants

vs.

\$ Malladi Sumathi and Others

... Respondents

!Counsel for the Appellants: Sri K.Laxmi Prasad

^Counsel for Respondent Nos.1 to 4: Sri T.Damodar

^Counsel for Respondent No.5: None appeared

<Gist :

>Head Note :

? Cases referred

1. 1998 ACJ 547
2. 2022 ACJ 1108
3. 2008 (17) SCC 624
4. (2001) 8 SCC 748
5. (1997) 7 SCC 481
6. MFA No.5342 of 2010 (MV), dated 05.07.2018
7. (2003) 3 SCC 338

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

MACMA.No.2114 OF 2007

Between:

The New India Assurance Company Limited,
Rep. by its Branch Manager and Another

...Appellants

And

Malladi Sumathi and Others

... Respondents

JUDGMENT PRONOUNCED ON: 21.08.2023

THE HON'BLE SRI JUSTICE M.LAXMAN

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

M.LAXMAN, J

THE HON'BLE SRI JUSTICE M.LAXMAN**M.A.C.M.A.No.2114 of 2007****JUDGMENT:**

1. The present Motor Accident Civil Miscellaneous Appeal has been directed against the award dated 16.12.2005 in M.V.O.P.No.989 of 2003, on the file of the Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Warangal (for short “Tribunal”) whereby the claim made by the claimants for the death of the deceased in the accident was allowed and the Tribunal has granted compensation of Rs.6,00,000/- as claimed by the claimants and directed insurance company to pay compensation. Aggrieved by the same, the present appeal is filed at the instance of the Insurance Company.

2. The appellants herein are the Insurance Company, respondents No.1 is the wife of the deceased, respondent Nos.2 and 3 are the son and daughter of the deceased, respondent No.4 is the father of the deceased and respondent No.5 is the owner of the offending vehicle. For the sake of convenience, the appellants herein are referred as the Insurance Company; respondent Nos.1 to 4 are referred as the claimants; and respondent No.5 is referred as owner of the offending vehicle.

3. Brief facts of the case are that on 21.07.2003 at about 12.30 p.m., while Sammi Reddy (deceased) was proceeding on his cycle towards Rising Sun School, Bhupalpally, to handover carriage to his children and when he reached near Kakatiya Bank, Bhupalpally, rider of the motorcycle bearing No.AP 15 N 3052 drove it in a rash and negligent manner and dashed against the cycle of the deceased. In the said accident, the deceased sustained grievous injuries all over the body and died while he was undergoing treatment. In the said circumstances, the claimants have filed the above said M.V.O.P.No.989 of 2003 before the Tribunal seeking compensation for the death of the deceased.

4. The counter pleadings of the owner of the vehicle show that he is the owner of the offending vehicle and it was stolen by unknown offenders on 09.05.2003. In this regard, an FIR was registered in Crime No.78 of 2003 under Section 379 of IPC; that when the accident had occurred, the offending vehicle was driven by the person who had stolen the vehicle. Further, even if the policy was in force as on the date of accident, he is not liable to pay any compensation.

5. The Insurance Company has also filed counter denying its liability.

6. Heard the learned counsel on either side and perused the material placed on record.

7. The contention of the learned counsel for the insurance company is that the offending vehicle was stolen by an unknown offender and the accident has occurred when the vehicle was being driven by him. Therefore, both the owner of the offending vehicle and the Insurance Company are not liable to pay compensation. In support of her contention, she relied upon the decision of the Madras High Court in ***New India Assurance Company Limited Vs. Selvarajamani***¹.

8. Learned counsel for the claimants contended that there is no evidence on record to show that the crime vehicle was stolen; that the owner has not entered into the witness box to prove the same; that the Insurance Company has also not produced any evidence to prove that the vehicle was stolen when the accident had occurred; and that therefore, such contention cannot be raised without any evidence. He has also contended that even if the vehicle was stolen when the accident had occurred, still the registered owner is liable to pay the compensation and the Insurance Company, which shall indemnify the insured, is also jointly and severally liable to pay the compensation along with

¹ 1998 ACJ 547

registered owner. In support of his contention, he relied upon the decision of the High Court of Delhi in ***United India Insurance Company Limited Vs. Anita Devi***².

9. In the said background of the contentions, the following two points arise for consideration in the present appeal.

- (i) Whether there is evidence to hold that the crime vehicle was stolen; and
- (ii) Whether even if the vehicle was stolen and the accident was committed by the person who has stolen the vehicle, the insured and insurer are liable to pay compensation jointly and severally?

10. The claimants, to prove their case, examined PWs.1 to 3 and relied upon Exs.A-1 to A-9. RW.1 was examined on behalf of the Insurance Company and they relied upon Exs.B-1 and B-2. The owner of the vehicle has not entered into witness box.

11. Admittedly, in the present case, the deceased was a third party. Ex.A-6 is the only document which refers that the vehicle which caused the accident was stolen. A close scrutiny of charge sheet, such a reference was made in the charge sheet without there being any witness being examined. Apart from that, the owner of the vehicle was not examined, who is the best person to say the commission of offence. However, in the counter pleadings, the owner has pleaded that the vehicle was stolen in the month of

² 2022 ACJ 1108

May and the accident had occurred in the month of July and that an FIR was also registered in that regard. But, this part of the pleadings has not been proved by examining the owner. The evidence of R.W.1 also does not refer that the vehicle involved in the accident was stolen. The only defence taken by the insurance company is that the rider of the vehicle was not holding licence.

12. In the said background of facts and the evidence, the Tribunal did not advert to the ground raised in the present appeal by the insurance company. Absolutely, no issue was sought on the said aspect and no findings have been invited with regard to theft of the crime vehicle. Therefore, the insurance company cannot raise such a ground before this Court for the first time. Even if the contention of the learned counsel for the insurance company that the vehicle was stolen is accepted, still the registered owner and the insurance company are jointly and severally liable to pay the compensation.

13. In this regard, it is apt to refer to Section 2(30) of the Motor Vehicles Act, 1988 (for short "the Act"), which reads as under:

"Owner means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

14. A reading of the above provision, it is clear that the owner means, a person in whose name motor vehicle stands registered. When the vehicle is the subject of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation, person in possession of the vehicle under that agreement also falls within the definition of owner. This means the person, who is in possession of the vehicle, is treated as the owner for limited purpose.

15. It is relevant to refer to Section 3 of the Act which reads as under:

“3. Necessity for driving licence:- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the central Government.”

16. A reading of the above provision, it is clear that no person shall drive a motor vehicle in any public place unless he holds effective driving licence.

17. It is relevant to refer to Section 39 of the Act which reads as under:

“39.Necessity for registration:- No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displaced in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.”

18. A reading of the above provision makes it clear that without registration, no person shall drive the motor vehicle or no owner shall cause or permit the vehicle to be driven in any public place.

19. It is also relevant to refer to Section 140(1) of the Act, which reads as under:

“Section 140:- Liability to pay compensation in certain cases on the principle of no fault:- (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.”

20. A reading of the above provision makes it clear that for claims under no fault liability, the claimants must establish that there must be death or permanent disablement resulted from the accident arising out of the use of motor vehicle. Then only the owners of motor vehicles shall jointly and severally be liable to pay the compensation.

21. Further, it is relevant to refer to Section 146(1) of the Act, which reads as under:

“Section 146:- Necessity for insurance against third party risk:- (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).”

22. A reading of the above provision makes it clear that no person shall use or cause or allow any other person to use a motor vehicle in a public place without there being a valid policy of insurance compliance with the requirements of the Act.

23. It is also relevant to refer to Section 165(1) of the Act, which reads as under:

“Section 165:- Claims Tribunal: (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.”

24. A reading of the above provision makes it clear that the State Government may constitute one or more Motor Accident Claims Tribunals for the purpose of adjudication of claims for

compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles or damages to any property of third party or death.

25. A conjoint reading of the above provisions makes it clear that the condition precedent for claimants to seek compensation under the Act is that there must be death or bodily injury to any person resulting from the accident arising out of the use of a motor vehicle. For use of the vehicle in a public place, there must be an insurance policy apart from valid driving licence. Even in private place also, the person must hold valid licence to drive the vehicle.

26. The difference between claims under fault and no fault liability is that under no fault liability, the claimants need not to prove the negligence, but it must be proved under fault liability.

27. A reading of the definition 'owner' also indicates that not only the registered owner, but also the person in actual possession of the vehicle is also deemed to be the owner for the purpose of liability.

28. The Apex Court, in **P.P.Mohammed v. Rajappan**³, had an occasion to deal with the liability of a registered owner *vis-à-vis* the transferee of the owner without there being registration by the

³ 2008 (17) SCC 624

time of accident in the case and held that it is the registered owner who is liable to pay the compensation.

29. In **T.V. Jose (Dr.) v. Chacko P.M**⁴, the Apex Court had an occasion to deal with the liability of transferee whose name is not registered. In the said case, by relying upon its earlier decision in **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari**⁵, the Apex Court held that the registered owner and the person in actual possession both are jointly and severally liable to pay compensation.

30. In the present case, even if the vehicle is stolen, the owner is continued to be the registered owner and it is his primary liability to pay the compensation, since the third party is unconcerned with the theft of the vehicle. Similarly, the person who was riding the vehicle and the person who had stolen the vehicle, both are liable to pay the compensation jointly and severally along with the registered owner of the vehicle.

31. The contention of the learned counsel for the insurance company is that since the crime vehicle was stolen, the owner of the vehicle is not liable and consequently, the Insurance Company is also not liable to pay the compensation. In support of her

⁴ (2001) 8 SCC 748

⁵ (1997) 7 SCC 481

contention, she has relied upon the **Selvarajamani's** case (*supra*), wherein no principles have been laid down to the effect that the registered owner is not liable to pay the compensation. The only reason given was that immediate control was not with the owner. However, in order to fasten liability, the aspect of immediate control is not the criteria. The registered owner is liable even though he had no immediate control over the vehicle. The person in actual possession and the registered owner both are liable to pay the compensation.

32. A similar issue fell for consideration before the High Court of Delhi in **Anita Devi's** case (*supra*), in which the High Court of Delhi had differed with the decision of Madras High Court in the case of **Selvarajamani** (*supra*), by relying upon the decision of Karnataka High Court in **Sri Sathish Kini v. Smt.Jnaneshwari M.H. Nutan**⁶ and held that the owner and insurer both are liable to pay the compensation.

33. The Apex Court in **United India Insurance Company Ltd. v. Lehu**⁷ held as under:

“18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in **Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan** {(1987) 2 SCC 654} and **Sohan Lal Pasi v. P.Sesh Reddy** {(1996) 5

⁶ MFA No.5342 of 2010 (MV), dated 05.07.2018

⁷ (2003) 3 SCC 338

SCC 21}, the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had not license. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom has made insurance, at least third party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the Company is to insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."

34. A reading of the above decision makes it clear that the Insurance Company in order to avoid the liability must establish material breach on the part of the insured and that breach must be material so as to avoid the liability.

35. In the present case, own case of the Insurance Company is that the crime vehicle was stolen and the accident had occurred when the rider was driving the vehicle, which was stolen by him. If that is the case, it rules out the conscious knowledge on the part of the owner of the vehicle to handover the vehicle to the owner, who has no licence. Even if the rider has no licence, the owner

cannot be blamed since the own case of the insurance company is that the vehicle was stolen by the rider. For the act of the rider, the owner cannot be said to have breached the terms and conditions of the policy. Therefore, the Insurance company cannot contend that it has no liability even in respect of stolen vehicle, if the rider of such vehicle found no licence. Hence, there are no merits in the appeal and it is liable to be dismissed.

36. In the result, the MACMA is dismissed, confirming the Award dated 16.12.2005 in M.V.O.P.No.989 of 2003, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Warangal. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

M.LAXMAN, J

Date: 21.08.2023

Note: L.R. to be marked.

B/o. TJMR