Madras High Court
The Oriental Insurance Company ... vs Bhanumathi on 10 July, 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.07.2008

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

C.M.A.No.961 of 2002

The Oriental Insurance Company Limited,
76, Kumaran Road,
Tiruppur. ... Appellant

Vs.

1.Bhanumathi
2.Minor Prabhu
3.Minor Kalpana Devi
4.Muthusamy ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and D

For Appellant : Mr.H.Mohamed Ismail
For Mr.N.Vijayaraghavan

For Respondent : Mr.C.Prakasam

JUDGMENT

This appeal is directed against the Judgment and Award of the Tribunal dated 12.11.2001 made in M.C.O.P.No.1104 of 1999 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Tiruppur.

2.Respondents 1 to 3 herein preferred the claim before the Tribunal against the appellant and the fourth respondent herein in their capacities as the insurer and owner of the lorry bearing Registration No.TMS 9838 for the death of Ponnuswamy, the husband of the first respondent and father of the respondents 2 and 3, who died in the road accident that took place at about 20.30 hours on 21.11.1998 near Puthukannu on the Angeripalayam to Chettipalayam Road within the territorial jurisdiction of the Anupparpalayam Police Station. Contending that he was hit by the lorry bearing Registration No.TMX 9838 belonging to the fourth respondent herein which stood

insured with the appellant herein and that the driver of the said lorry drove it in a rash and negligent manner and caused the accident, respondents 1 to 3 had claimed a sum of Rs.5,00,000/- as compensation from the fourth respondent herein and appellant herein.

3.The fourth respondent, owner of the alleged offending vehicle did not contest the case and remained exparte. The appellant herein (Oriental Insurance Company Limited) which figured as the second respondent before the Tribunal contested the MCOP by filing a counter statement denying the petition averments in general and in particular the allegation that the accident took place due to the rash and negligent driving of the vehicle bearing Registration No.TMX 9838. The appellant/second respondent filed an additional counter stating that an unidentified vehicle was involved in the accident as per the FIR registered by the Police in Crime No.368 of 1998 and that the vehicle bearing Registration No.TMX 9838 was not the one that caused the accident.

4.The Tribunal, after framing necessary issues, conducted trial in which three witnesses were examined as P.W.1 to P.W.3 and Exs.A.1 to A.7 were marked on behalf of the petitioners. On the side of the appellant and fourth respondent/respondents, one witness was examined as R.W.1 and three documents were marked as Ex.B.1 to Ex.B.5. After considering the evidence in the light of the arguments advanced on either side, the Tribunal came to the conclusion that the vehicle bearing Registration No.TMX 9838 belonging to the fourth respondent herein was the one that caused the accident and that the driver of the said vehicle was at fault. As it was not denied, but admitted that the said vehicle stood insured with the appellant/second respondent as on the date of accident and also on the basis of the policy copy produced on the side of the appellant/second respondent and marked as Ex.B.1, the Tribunal held that the fourth respondent as owner of the offending vehicle and the appellant herein as the insurer of the offending vehicle were jointly and severally liable to pay compensation to the respondents 1 to 3/petitioners, the dependents of the deceased. The Tribunal also rejected the contention of the appellant herein/second respondent that there was a collusion between the claimants and the fourth respondent (owner of the alleged offending vehicle) and that such a fraud had been played upon the appellant/second respondent in making the claim against the fourth respondent and the appellant. The Tribunal held that the deceased was aged 40 years at the time of his death, assessed his monthly income at Rs.3,500/- (annual income Rs.42,000/-), deducted one third from the same, applied 16 as the appropriate multiplier and awarded a total sum of Rs.4,25,000/- as compensation which amount was directed to be paid along with an interest at the rate of 9% per annum from the date of petition till realisation and with proportionate costs.

5.Aggrieved by and challenging the said award, the appellant Insurance Company has brought forth this appeal on various grounds set out in the memorandum of appeal.

6.This appeal has been preferred challenging the award of the Tribunal not only regarding the fixation of the liability on the appellant/insurer but also on the question of reasonableness of the quantum of compensation awarded by the Tribunal. The appellant has also contended that the amount awarded is highly excessive and exorbitant requiring drastic reduction in this appeal.

7.This Court heard the submissions made by Mr.H.Mohamed Ismail, learned counsel for the appellant and Mr.C.Prakasam, learned counsel for the respondents.

8.The insurer of the alleged offending vehicle is the appellant herein. An appeal by the insurer is maintainable only on the grounds of defence available to the insurer under Section 149 of the Motor Vehicles Act unless permission had been obtained before the Tribunal under Section 170 of the Motor Vehicles Act to avail the grounds of defence available to the insured namely, owner of the offending vehicle. Admittedly, in this case, no such permission was obtained before the Tribunal under Section 170 of the Motor Vehicles Act. On the other hand, the learned counsel for the appellant would contend that as there was a plea of collusion between the claimants and the owner of the alleged offending vehicle and also a plea of fraud, no permission need be obtained for raising those grounds before the Tribunal as well as in the appeal preferred against the award of the Tribunal. This Court is in complete agreement with the said contention raised by the learned counsel for the appellant that the Insurance Company shall always have the right to defend the case and prefer an appeal based on the plea of collusion and fraud. But when such grounds are alleged, it is for the Insurance Company to prove it by adducing proper and sufficient evidence. In any event, the Insurance Company cannot maintain its challenge to the award of the Tribunal on the question of quantum in the absence of permission under Section 170. Therefore, the only question that arises for consideration in this appeal is:

"Whether the appellant Insurance Company has proved its case of collusion and fraud?"

9.The learned counsel for the appellant, relying on Ex.A.1-Copy of the First Information Report, vehemently argued that the vehicle involved in the accident was an unidentified tanker lorry used for carrying water; that as an afterthought the vehicle bearing Registration No.TMX 9838 belonging to the fourth respondent which stood insured with the appellant was implicated in the case subsequently; that the same would be enough to substantiate the contention of the appellant that there was collusion between the claimants and the fourth respondent and that by such collusion, a fraud had been played upon the appellant Insurance Company. In support of his contention the learned counsel cited the Judgment of a learned Single Judge of Rajesthan High Court Jaipur Bench in United India Insurance Company Limited V. Pawan Kumar Tikkiwal and Others reported in 2007 ACJ 2570.

10.On the other hand, the learned counsel for the respondents 1 to 3 would contend that the mere fact that there was a recital in the FIR which was prepared based on the information given by a person, who admittedly was not an eyewitness, would not be enough to hold that the case of the appellant that there was a false implication of the vehicle belonging to the fourth respondent. The learned counsel also pointed out the fact that in the case delivered by Rajesthan High Court (Jaipur Bench), the witnesses examined by the Investigating Officer throughout the investigation of the case, had given clear statements to the effect that the deceased therein sustained fatal injuries as the Scooter in which he was travelling as a pillion rider skidded without the involvement of another vehicle and that only after six months there was a request for reinvestigation of the case. The facts of the said case cannot be related to the facts of the case on hand. In fact, in the case on hand, the Village Administrative Officer, who went to the place of accident after receiving information

regarding the accident, saw the dead body and then went to the Police Station to lodge the complaint. Thereafter he gave the statement to the police expressing his suspicion that one of the tanker lorries which passed in the said road would have caused the accident. Immediately thereafter, the police embarked upon an investigation in which witnesses gave statement to the effect that it was not a tanker lorry, but the lorry belonging to the fourth respondent bearing Registration No.TMX 9838 used for carrying sand and bricks that caused the accident.

11.One of the eyewitnesses by name Subbian was also examined on the side of the claimants as P.W.2. Two copies of the statement of another eyewitness by name Dhanasekar recorded by the Police during investigation were produced and marked as Exs.A.6 and A.7. On the other hand, excepting the oral testimony of R.W.1, the law officer of the appellant Insurance Company, there is no other material evidence touching the above said aspect adduced on the side of the appellant/second respondent. Even R.W.1 was not in a position to say with certainty that it was a tanker lorry which caused the accident. A consideration of the entire evidence of R.W.1 would show that only based on the FIR, R.W.1 stated that the vehicle bearing Registration No.TMX 9838 was not the one which caused the accident. At the same time, he would also admit that he was not an eyewitness to the accident. Then on what basis he was asserting that the vehicle bearing Registration No.TMX 9838 was not the one involved in the accident? - is a mystery to be resolved. Therefore, this Court is of the considered view that the testimony of R.W.1 alone will not be enough to sustain the contention of the appellant Insurance Company that the said vehicle had been wrongly implicated and that a fraud had been committed on the appellant Insurance Company.

12.As pointed out supra, the recitals found in the FIR are not based on the direct knowledge of the informant to the police and hence, the same will not lend any help to the appellant to substantiate its case of fraud. The appellant has not chosen to examine the driver or owner of the offending vehicle. The appellant has also failed to examine any other eyewitness to show that it was a tanker lorry which caused the accident not the lorry bearing Registration No.TMX 9838. The police officer who investigated the case has also not been examined. The appellant Insurance Company seems to have simply relied on the recital found in Ex.A.1-First Information Report and contended merely on surmises that the actual vehicle involved in the accident was not identifiable and that the vehicle of the second respondent had been wrongly implicated with a view to claim compensation from the appellant Insurance Company. After having an independent re-appreciation of evidence, this Court comes to the conclusion that the appellant Insurance Company has miserably failed in its attempt to prove its case of collusion between the respondents 1 to 3 and 4th respondent or the fraud alleged.

13.In view of the said finding, this Court comes to the conclusion that the appellant has failed in its attempt to challenge the award of the Tribunal so far as the fastening of the liability on the appellant Insurance Company is concerned. There is no merit in the appeal and the same deserves to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. However, there shall be no order as to costs.

Sgl To The Subordinate Judge, Motor Accidents Claims Tribunal, Tiruppur