
(1997) 02 MAD CK 0142

In the Madras High Court

Case No : C.R.P. No's. 1564 to 15688 of 1994 and A.A.O. No's. 1368 to 1371 of 1995

Branch Manager, National Insurance Co. Ltd., Pudukottai

APPELLANT

Vs

Murugesh and S.K. Muthu Lorry Owner, (Lakshmi Transport)
and others

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Citation : (1997) 02 MAD CK 0142

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : N. Rosi Naidu, for the Appellant; M. Baskar for the 1st Respondent, Mrs. Pushpa Sathyanarayanan for 2nd respondent, Mr. V. Sairam for the 1st respondent in C.R.P. No. 1567/94, Mr. S. Viswanathan for the respondents 1 and 2 in A.A.O. No. 1369/95, for the Respondent

Judgement

S.S. Subramani, J.—All these Revision and Civil Miscellaneous Appeals arise from a common judgment passed by the Motor Accidents Claims Tribunal (Sub Court) Pudukottai. In all these cases, Insurance Company who is second or third respondent before the Tribunal, is the revision petitioner or appellant.

2. In the counter - affidavit filed by the Insurance Company, it disputed its liability mainly under three heads namely, (1) the vehicle that was involved in the accident, was already transferred to one S.K.Muthu, and the transfer has not been informed to the Insurance Company, and so long as there is no contract between the purchaser and the Insurance Company, it is not liable to compensate the victims; (2) at the time when the accident occurred, there were more than 13 persons as loadmen in the lorry, which is violation of the conditions of the policy which permits only six loadmen excluding the driver. Since the driver has carried more than six persons, it is exonerated from the liability, and (3) alternatively, it contended that even if the company is held liable it could be made liable only to six loadmen. and not to all the injured.

3. I will consider these points in seriatim.

4. The accident happened during the late hours of 25.3.1988. At the time of accident, the admitted registered owner of the vehicle was one S.Panchavarnam, who is impleaded as one of the respondents in all the claim petitions. The permit also stands in the name of Panchavarnam and that permit is valid between 22.9.1987, to 22.2.1992. It is seen that subsequent to that period, the permit stands in the name of one Muthu.

5. Learned counsel for the appellant submitted that in all the Claim Petitions, the claimants have said that Muthu is the registered owner and even one witness (P.W.1) has spoken about the same. Learned counsel, therefore, said that if Muthu is the registered owner, the Company cannot be made liable for it.

6. The said argument cannot be accepted. The claimants are only illiterate strangers, who happened to be in the lorry at the time of accident. They cannot be expected to have any personal knowledge whether the vehicle has been transferred by Panchavarnam to Muthu, the Tribunal has entered a finding on the basis of other evidence that Muthu is only a Contractor under Panchavarnam, and in that capacity, the vehicle came into his possession at the time of accident. There is no transfer. The Insurance Company has also failed to prove any transfer by Panchavarnam to Muthu. No evidence was also adduced or attempted to be adduced by the appellant either by examining Panchavarnam or Muthu, to prove the so called sale or transfer of the vehicle.

7. Learned counsel for the appellant relied on the decision reported in 1991-1-L.W.635 (The Oriental Insurance Company Ltd., v. Rajamani and others) and also the decision reported in AIR 1997 Kerala 26 (S.Sudhakaran v. A.K.Francis and others) to contend that if there is a transfer and the same is not informed to the Insurance Company, it is not liable to pay the compensation amount.

8. In the first decision, there was no evidence to prove that there was a transfer of the Motor Vehicle. In fact, the registered owner of the vehicle has proved the transfer by documentary evidence in that case, That is clear from paragraph 5 of the judgment.

9. In the decision of the Kerala High Court, there was an agreement for sale of a Motor Vehicle with certain conditions. The vehicle was also in possession of the intended purchaser. Conditions had not been complied with. The question was, whether there was a transfer or sale of the vehicle. Their Lordships said that unless the conditions were complied with, there cannot be a sale. Even though the proposed purchaser is in possession, the sale is not complete and, therefore, the registered owner continues, to be liable. The Insurance Company also continued to be liable along with the owner. I do not think the above decision will help the appellant in any way.

10. The Tribunal has entered a finding that there was no transfer of the vehicle and Muthu is not the owner. On the available evidence, I do not think a different

conclusion could be arrived at.

11. Point No. 2:- Learned counsel for the appellant submitted that there is a violation of the policy. The driver has taken nearly 13 persons when the Policy permitted only six persons. How far the said contention could be accepted in view of the settled law, is to be considered.

12. While considering the exclusion clause in a contract of insurance under the Motor Vehicles Act in the decision reported *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, it has been held that the Court must read down the deed and the construction should always be to advance the object and purpose of the provision. In paragraph 14 of the judgment (at page 663 of the Reports) of, their Lordships considered as to what is the meaning of the word "breach".

(It was held thus:-

"Section 96(2) (b) (ii) extends immunity to the insurance company if a -breach is committed of the condition excluding driving by a named person or person or by any person who is not fully licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression "breach" is of great significance. The dictionary meaning of "breach" is infringement of violation of a promise or obligation." It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation of infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault no has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is "guilty" of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive himself it cannot be said that the insured is guilty of any breach. And it is only in case of a breach of a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause. In a way the question is as to whether the promise made by the insured is an absolute promise or whether he is exculpated on the basis of some legal doctrine. The discussion made in

paragraph 239 of Breach of Contract by Carter (1984 Edition) under the head proof of Breach, gives an inkling of this dimension of the matter. In the present case even if the promise were to be treated as an absolute promise the grounds for exculpation can be found from Section 84 of the Act which reads thus:-

"84. Stationary Vehicles:- No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measure taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver."

In view of this provision apart from the implied mandate to the licensed driver not to place an unlicensed person in charge of the vehicle, there is also a statutory obligation on the said person not to leave the vehicle unattended and not to place it in charge of an unlicensed driver. What is prohibited by law must be treated as a mandate to the employee and should be considered sufficient in the eye of law for excusing non-compliance with the conditions. It cannot therefore in any case be considered as a breach on the part of the insured. To construe the provision differently would be to rewrite the provision by engrafting a rider to the effect that in the event of the motor vehicle happening to be driven by an unlicensed person, regardless of the circumstance in which such a contingency occurs, the insured will not be liable under the contract of insurance. It needs to be emphasised that it is not the contract of insurance, which is being interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted. These must therefore be interpreted in the spirit in which the same have been enacted accompanied by any anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfill its life aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obedience to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe

successfully at the main purpose. This, theory which needs no support is supported by Carter's "Breach of Contract" - Vide paragraph 251. To quote:-

" Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the "main purpose Rule" which may limit the application of wide exclusion clauses defining a promisor's contractual obligations. For example, in Glynn, v. Margeston & Co., Lord Ilasbury L.C.stated:

"It seems to me that in construing this document, which is a contract of carriage between the panics, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard..... as its main purpose, one must reject words indeed whole provisions, if they are inconsistent with what one assumes in be the main purpose of the contract".

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in Suisse Atlantique Socited Armament Maritime S.A. v. N.V Rotterdamsche Kolan Centrale Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract"

(Emphasis supplied).

The said decision was followed by the Supreme Court again in the decision reported in Sohan Lal Passi Vs. P. Sesh Reddy and others, In that case, their Lordships further said thus:-

"The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident look place, the insurer shall he deemed to he judgment- debtor in respect of the liability in view of sub Section (1) of Section 96of the Act...."

Further down, their Lordships held thus:-

"The whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accidents Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."

13. If we approach the question in this background, it cannot be said that there was any wilful breach of any of the conditions of the policy. While disowning the liability, a duty is also cast on the Insurance Company to show that it is because of the presence of the additional persons who were allowed to be in the lorry, the

accident happened. Absolutely no evidence was adduced in that regard.

14. In a very recent decision of the Supreme Court, again in B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, a similar point arose for consideration. There also, six workmen were allowed to be in the lorry. But it seems, the driver permitted few more persons to be in the lorry at the time of the accident. Insurance Company disclosed their responsibility. While considering the same, their Lordships said thus:-

"It is plain from the terms of the Insurance policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying. In the present case the driver of the vehicle was not responsible for the accident. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner, it cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident."

The Insurance Company has not adduced any evidence to show that it was with the knowledge of the owner, more persons were allowed to be in the vehicle, and it was because of the presence of those persons, the accident happened. In that case also, their Lordships followed the decision reported in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, Therefore, the second ground urged by learned counsel for the appellant also has to be rejected.

15. The alternate contention taken by learned counsel for the appellant is that under the Policy, the maximum liability that can be fastened on the Insurance Company can be only in respect of six persons. In this case, more than nine persons have filed their claim petitions, and the Insurance Company cannot be made liable for all these claimants when there is a basis for the liability under the terms of the policy, that alone can be the basis for the liability. A similar case came for consideration by a learned Judge of this Court (P.Sathasivam J) in C.R.P. Nos. 643 to 647 and 667 to 672 of 1991 and C.M.A.211 of 1991 (National Insurance Co. Ltd., v. Chellakkannu and others) in his order dated 1.10.1996, the learned Judge has held, following various other decisions, that the Insurance Company might be made liable only to the extent for which it has agreed to be made liable. In that case, the learned Judge held that the first seven claim petitioners will be entitled to claim the respective portions of compensation amount from the Insurance Company. Following the same procedure, I hold that the Insurance Company is made liable in so far as Claim Petition Nos. 117, 122, 123, 125, 127 and 128 of 1989 are concerned. The claimants in those cases will be entitled to recover compensation amount from the Insurance Company also.

That means, in those cases, the Insurance Company is also made liable for paying the compensation amount. In the result, C.M.A. Nos. 1368, 1369, 1370 and 1371 of 1995 and C.R.P. Nos. 1567 and 1568 of 1994 are dismissed. In C.R.P. Nos. 1504, 1565 and 1506 of 1994 which arise from Claim Petition Nos. 131 of 1989, 129 of 1989 and 130 of 1989 respectively, I hold that the Insurance Company is not liable, and to that extent, those Revisions are allowed. In all these cases, parties will suffer their respective costs.