
(1999) 07 MAD CK 0048
In the Madras High Court
Case No : C.M.A. No. 802 of 1992

Divisional Manager, United India Insurance Co. Ltd. APPELLANT
Vs
R. Thangaraj and Another RESPONDENT

Date of Decision : 15-07-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 157

Citation : (2001) ACJ 715 : (1999) 3 MLJ 708

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : R. Vedantham, for the Appellant; K.M. Venugopal, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—United India Insurance Co. Ltd. is the appellant herein.

2. Challenging the award directing the appellant to pay the compensation amount of Rs. 59,067 payable to the claimant, respondent No. 1 herein,

this appeal has been presented before this court.

3. The claimant, Thangaraj, was working as a cleaner at the relevant period. On 9.12.89, he was travelling as a cleaner in the lorry bearing

registration No. TNW 6946 belonging to one Mani, the respondent No. 2 herein. The said lorry was proceeding towards Mennandai from

Pararnakudi at Madurai Mandapam Main Road. While so, near Vagaikulam bus-stop, the driver of the said lorry in which the claimant was

travelling as a cleaner, in a rash and negligent manner, hit against the rear side of another lorry bearing registration No. MDM 5045 which was also

proceeding towards Mennandai. Due to the impact, the claimant sustained grievous injuries. Then he was taken to the hospital. Initially, he took

treatment in a Government Hospital, Ramanadhapuram and thereafter, he was hospitalised in a private clinic. He filed a claim petition seeking

compensation of Rs. 80,000 from the owner of the lorry and the insurance company with which the lorry was insured. Mani, respondent No. 1 in

the claim petition, the lorry owner, remained ex parte. The claim was contested only by the insurance company, the appellant herein.

4. According to the counter filed by the insurance company, the driver of the lorry in which the claimant was travelling as a cleaner was not

negligent and that, even assuming that the insurance company was liable, only limited liability of Rs. 10,000 can be fastened on the company, since

the claimant was not travelling as a cleaner, but only as a traveller without ticket.

5. During the course of enquiry by the Tribunal, the claimant examined himself as PW 1, the doctor as PW 2 and another passenger of the lorry as

PW 3. To prove the case of the claimant, Exhs. A-1 to A-12 were marked.

6. On behalf of the insurance company, Exh. D-1 was marked. One Karuppasamy, working in the insurance company was examined as RW 1.

He would state that there was only a limited liability in respect of the passenger in the vehicle without ticket.

7. The Tribunal, after enquiry and on analysing of the material available on the record, concluded that the claimant was working as a cleaner, that

he was not a traveller without ticket, and that the insurance company would be liable to pay the compensation of Rs. 59,067 to the claimant on

various heads. The Tribunal further held that Mani, the respondent No. 1 in the claim petition, cannot be held to be liable as he had sold the vehicle

to one Abdul Nazeer.

8. While assailing the award, Mr. R. Vedantham, learned counsel appearing for the appellant insurance company, would mainly contend that the

Tribunal having found that the respondent No. 1, Mani, was not the owner of the lorry which was involved in the accident, cannot pass an award

against the insurance company. In order to substantiate the plea, he cited the following decisions:

(1) Oriental Fire & Genl. Ins. Co. Ltd. v. Bachan Singh 1982 ACJ 211 (P&H);

(2) New India Assurance Co. Ltd. v. Ponnammal, C.M.A. No. 341 of 1993, decided on 5.4.1999 (judgment delivered by P. Sathasivam, J.); (3)

G. Govindan Vs. New India Assurance Co. Ltd. and Others, .

Wherein it was held that when the owner was exonerated, the insurance company cannot be held liable.

9. On the other hand, Mr. Venugopal, learned counsel appearing for respondents, by referring to Section 157 of the Motor Vehicles Act, 1988,

would submit that though at the relevant time, one Abdul Nazeer was the owner, when the vehicle has been sold and the insurance policy has been

transferred, the policy shall be deemed to be transferred in favour of the person to whom the motor vehicle was sold. Therefore, even after the

transfer, the insurance company is liable. For this proposition, he cited the following decisions:

(1) Madineni Kondaiah v. Yaseen Fatima 1986 ACJ 1 ; (2) M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd., ; (3)

New India Assurance Co. Ltd. v. Sheela Rani, (1999) 1 LW 257.

10. I have given my anxious consideration to the rival contentions.

11. At the outset, I shall mention that it cannot be debated with reference to the position of law where the owner of the vehicle involved in the

accident is exonerated, then, the insurance company with whom the vehicle was insured by the said owner, cannot be made liable.

12. In the instant case, though one Mani was made as a owner of the lorry, involved in the accident, the claimant during the course of cross-

examination admitted that during the relevant period, the vehicle was sold to one Abdul Nazeer. On this ground, it is true that the Tribunal found

that the said Mani, who was the transferor of the lorry, cannot be held liable.

13. In this context, it is to be noticed that RW 1, the officer of the insurance company, has stated that the said Mani, respondent No. 1 in the claim

petition, was the owner and he insured the vehicle with the company. Neither in the counter nor in the deposition, the question relating to the

transfer was raised. It was not the case of the appellant that Abdul Nazeer was the present owner and in the absence of impleading the said owner,

the insurance company cannot be held liable. Therefore, in the absence of any specific plea to the said effect, the appellant cannot take advantage

of the fact that Tribunal held that the said Mani was not liable and that, therefore, the insurance company also cannot be fastened with liability.

14. Even assuming that there was a transfer of the vehicle from Mani to Abdul Nazeer, as admitted by the claimant during the cross-examination, it

is settled law that mere passing of title in the vehicle to the transferee would not put an end to the liability of the insurance company. In other words, it is not correct to assume that the moment, the title of the vehicle passed to the transferee, the statutory obligation u/s 149 ceased to exist. Even after the title passes to the transferee the purchaser shall take steps to get the policy transferred to him under the Act, after following the legal procedures.

15. It is held in the decision in G. Govindan Vs. New India Assurance Co. Ltd. and Others, , that the third party liability of the insurer would not come to an end on mere transfer of vehicle by the insured to someone else, till the procedure prescribed for transfer of policy is fulfilled. It is also further held that the third party would not include a transferee whose transferor has not followed the procedure for transfer of policy. Therefore, unless there are materials to show that the policy has been transferred in the name of the said Abdul Nazeer, the point urged by the appellant's counsel would not be of any use to the appellant. As indicated earlier, there is no such plea before the Tribunal.

16. For the reasons stated above, Section. 157 of the Motor Vehicles Act also would not be applied to this case, since even according to RW 1, the officer of the insurance company, the respondent No. 1 alone was the owner and the insured. Therefore, the insurance company is liable to pay the amount of compensation to the claimant on behalf of the said Mani, respondent No. 1 herein, the owner of the vehicle.

17. In view of the above conclusions, the finding given by the Tribunal, stating that the said Mani was not the owner of the vehicle and as such, he is not liable, cannot be said to be correct, though final decision is correct. Under these circumstances, the appeal is dismissed. No costs.