

(1965) 12 MAD CK 0035
In the Madras High Court

General Assurance Society, Ltd.

APPELLANT

Vs

N.A. Mohamed Hussain and Another

RESPONDENT

Date of Decision : 16-12-1965

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)(a)

Citation : (1966) ACJ 203 : (1966) 79 LW 177 : (1966) 2 MLJ 120

Hon'ble Judges : T. Venkatadri, J

Bench : Single Bench

Judgement

T. Venkatadri, J.—This appeal arises out of an order passed by the Motor Accidents Claims Tribunal (District Judge), Chingleput, awarding compensation in a sum of Rs. 4,500 to the first respondent who sustained an injury, in an accident which occurred on 24th December, 1961, while he was returning from Nagore to Madras in the delivery van of the second respondent Snuff Factory (P.), Ltd., MSX 6134, driven by one Jayavelu, and which van has been insured with the appellant, M/s. The General Assurance Society, Ltd., Madras, under a comprehensive policy including third party risk.

2. The General Assurance Society, Ltd., have preferred the appeal, on the grounds that they are not liable to pay compensation to the first respondent, that their obligations rest only with recompensing the insured company for the loss or damage caused to the insured car, that the accident did not occur while the first respondent was in the course of his employment and that the injured person was not a third party as per the provisions of the Motor Vehicles Act. They further contend that the injured person being a passenger is not a third party and there is no statutory liability on the part of the Insurance Company to give compensation to the injured person and that the policy itself does not cover risk to the passenger of the car.

3. In the appeal before me, learned Counsel for the appellant took me through the relevant provisions of the terms of the policy. Section 11 of the terms of the Policy deals with liability to third parties. Clause 1 is as follows;

Subject to the limits of liability the Society will indemnify the Insured against all, sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of,

(i) death of or bodily injury to any person caused by or arising out of the use...of the motor vehicle;

(ii) . . .

Provided always that:

(a) . . .

(b) Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Society shall not be liable in respect of death of or bodily injury to any person in the employment of Insured arising out of and in the course of such employment.

(c) Except as far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the Society shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises.

4. Learned Counsel for the appellant contends that the Insurance Company is not liable to pay compensation, according to the provisions of the Policy, to the injured person, even assuming that the accident arose out of and in the course of his employment. Further, the injured person is not either a driver or conductor or any person in pursuance of contract of employment travelling in the vehicle at the time of the accident.

5. It is usual for the insurance companies to insert the abovesaid provisions, that is the customary exclusions under the third party liability, as stated by Batten and Lindsale in their book "Motor Insurance" (Third Edition) at page 182. Learned Counsel for the appellant has contended that under the provisions of the Policy, the liability of the third party is completely excluded not only under the terms of the contract but also u/s 85(2) of the Motor Vehicles Act. The injured person has no claim against the Insurance Company. He has to look for his compensation to the employer that is the insured and he has to take appropriate proceedings under the Workmen's Compensation Act. It is further contended that when there is a definite contract between the insured and the Insurance Company to exclude certain persons who are employed under him, then such injured persons cannot claim compensation from the Insurance Company in respect of injuries caused to them. There may be some force in the contention urged by learned Counsel for the appellant; still, we have to consider and examine the provisions in the Motor Vehicles Act which provide for the insurance of third parties. In this connection, it is useful to refer to the provisions of

Section 95 of the Act:

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) . . .

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by him or them in respect of the death of, or bodily injury, to, any person caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required (i) to cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to any such employee....

6. Learned Counsel for the first respondent stresses on the words, " other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to any such employee ". Sub-section (2)(a) of Section 95 is as follows:

Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability insured in respect of any one accident up to the following limits, namely:

(a) where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all, including the liabilities, if any arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury, to employees (other than the driver) not exceeding six in number, being carried in the vehicle;

7. This section has been introduced by the Amending Act C of 1956. The injured person can always get a remedy in the common law to claim compensation for tortious liability. He has also got a further right to claim compensation under the Workmen's Compensation Act. In the instant case when the injured man is employed under one who has insured his vehicle and when he sustains an injury in the course of an accident to the vehicle, though he has right to get compensation under the Workmen's Compensation Act, it is not necessary for him to go to the Workmen's Compensation Tribunal, when he had the right to claim compensation along with his employer under the Motor Vehicles Act. Though the employer has got a liability under the general law to pay compensation to the injured person, since the employer happens to be the insured as in this case, as per the provisions of the Motor Vehicles Act, the Insurance Company has to indemnify the employer, in spite of the fact that there are provisions in the Policy to exclude a liability of this kind. It has been specifically stated that u/s 95 of the Act in order to comply with the requirements of the Chapter relating to insurance of Motor Vehicles against third parties, the policy of insurance must be a policy which should comply with the requirements

of the Act. Therefore no useful purpose will be served by inserting in the Policy the condition that they are not liable to pay compensation to the persons employed who would be entitled to get compensation under the Workmen's Compensation Act. In effect, if the employee is injured in an accident arising out of his employment under the employer the Insurance company is liable to pay compensation not only to the owner of the vehicle for the loss or damage but also to pay compensation to the injured person who will be entitled to get compensation under the Motor Vehicles Act. I am therefore of opinion that under the provisions of the Motor Vehicles Act, the Insurance Company is liable to pay compensation both to the insured and the injured, of course within the limited liability prescribed under the Act.

8. It is contended, and rightly in my view, by learned Counsel for the first respondent that the appellant is not entitled to question the award of compensation given by the Motor Accidents Claims Tribunal, in view of the recent decision of the Supreme Court in *B.I.C. Insurance Co. v. Itber Singh* (1960) S.C.J. 44 : (1960) 1 A. W.R. 6 : (1960) 1 M.L.J. 6 : (1960) 1 S.C.R. 168. It is true that Section 96 of the Act gives the Insurance Company the right to be made a party to defend the action. But the Insurance Company cannot avoid its liability, except by establishing such defences as are catalogued in Sub-section (2). In the instant case, I do not think that the appellant could defend on any of the grounds mentioned in Section 96(2). The principle that has been laid down in the Supreme Court decision is that, on the construction of Section 96(2), the Insurance Company, whenever they are made a party in a claim petition, have only the defences enumerated in Section 96(2) and beyond that they cannot question the award of compensation. I am, therefore, of opinion that the appellant is liable to pay compensation not only to the owner of the vehicle but also to the employee who is injured in an accident arising out of his employment, the employee being a person who is entitled to get compensation under the Workmen's Compensation Act.

9. In the result, the appeal is dismissed.

10. The injured employee, the first respondent in the main appeal, has preferred a cross-appeal. There appears to be no reason to interfere with the quantum of compensation awarded by the Tribunal. The cross-objector has claimed enhanced compensation to the extent of Rs. 55,500 on various heads, viz., expenses incurred and liable to be incurred in regard to the injury, pain and suffering inflicted on the victim, loss of time during the cure and permanent injury and consequent pecuniary loss. It is true that the injured person could claim under the Workmen's Compensation Act, under the various heads mentioned in his appeal, as against his employer but not as against the Insurance Company. Having got a relief under the Motor Vehicles Act, it is not open to him to claim under the Workmen's Compensation Act. Further, he has sailed with his employer in preferring a claim against the Insurance Company, the liability of which company is limited to the extent prescribed u/s 95(2)(a) of the Motor

Vehicles Act. The cross-appeal is also dismissed. There will be no order as to costs in both the appeal and the cross-appeal.