
(1983) 11 MAD CK 0036
In the Madras High Court
Case No : A.A.O. No. 358 of 1980

Jaikrishndas

APPELLANT

Vs

Chiruthail Ammal and Another

RESPONDENT

Date of Decision : 10-11-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 96

Citation : AIR 1984 Mad 321 : (1984) 2 MLJ 443

Hon'ble Judges : V. Ramaswami, J;Sathar Sayeed, J

Bench : Division Bench

Advocate : R. Krishnaswami, for the Appellant; K.T. Palpandian and S. Sanipath Kumar, for the Respondent

Judgement

V. Ramaswami, J.—The first respondent before the Motor Accidents Claims Tribunal, the owner of the car CRP 6835 is the appellant

herein. On 30-9-1976. at or about 10-30 a.m."when the appellant who was getting down from his parked car,opened the door, it hit the scooter

TMS 4191, driven by Divakaran, who was proceeding alongside the parked car resulting in the throwing away of the scooter driver and causing

his death. The mother of the deceased filed a petition under S.110-A of the Motor Vehicles Act. claiming compensation of Rs. 1.15.000, for the

death of the deceased. The Second respondent is the Insurance Company with whom the appellant, has insured " his vehicle. The additional Motor

Accidents Claims Tribunal, Madras, by order dated 19-0-1979, determined the compensation at Rs. 20,780 under the various headings.

However, the award was given only against the appellant and the Insurance company was held not liable. In this appeal by the insured, the learned

counsel for the appellant did not question the claim of the first respondent

herein, the mother of the deceased nor the quantum of compensation fixed. However, he contended that the Tribunal went wrong in absolving the insurance company of its liability to pay the money. If the award is both against the insured and the insurer, the learned counsel contended that the insured could have asked the Insurance company to pay and if he, had been made to pay the compensation, he would be in a position to recover the same " from the Insurance company. The question, therefore, for consideration is whether the second respondent Insurance Company is liable for the claim.

2. The facts relevant to this aspect of the matter may now be noticed. The vehicle CRP 6835 was insured with the second respondent originally from 23-9-1975 for a period of one year expiring on 22-9-1976. But the Insurance was not renewed with effect from 23-9-1976. As already stated, on 30-9-1976, the -accident took place at or about 10-30 a.m. On 30-9-1979 the appellant sent his proposal form Ex R-I praying for a comprehensive insurance policy. On the same day, the second respondent issued a cover note for a temporary period to expire on 14-10-1976.

Later a regular policy was issued on 4-10-1976 noting the period of insurance from 1 30-9-1976 to 22-9-1977, both days inclusive. The original insurance policy produced by the appellant is marked as Ex R. II in this case.

3. Column 17 of the proposal form related to the period of insurance and he had requested for insurance from 30-9-1976 to 29-9-1977. However, after the words "from 30-9-1976" we find in brackets "5:30 p.m.". In the temporary cover note issued on 30-9-1976, also, we find against the column "effective date of commencement of insurance for the purpose of the Act", "30-9-1976 (5-30 p.m.)" and against the date and place. it is also mentioned, "5.30 p.m.". The appellant disputed the reference to "5:30 p.m." in his proposal form and contended that it was, not there when he gave the proposal form and that there were some erasures and over-writings on "5:30 p.m." and " it is not believable. However, we find in the cover note, again a reference is made to ""5:30 p.m." and there are no erasures. But this fact, whether the proposal form was given at 5.30 p.m. or the cover note was issued at 5:30 p.m. is not going to matter on the point raised by the learned counsel for the appellant, and therefore, we need not well too much on this aspect. One other aspect mentioned by the learned

counsel may also be referred to as a statement and that was according to the learned counsel the proposal form was sent by the appellant in the morning on 30-9-1979 through his manager and that at the time when he sent the proposal, the accident had not taken place. The Court below was not willing to place any reliance on this statement of the appellant in view of the fact that the manager himself has not been examined. But one thing is clear that the proposal form was not given by the appellant personally to the Insurance company, but it was taken by his Manager, though it may be subsequent to the accident at 10:30 a.m. Therefore, we will proceed to consider the legal question on the basis that the proposal form was sent on 30-9-1976 some time after 10-30 a.m. and the acceptance also was subsequent, to the accident. But, as seen from the original Insurance Policy, produced, which does not mention anything about the time, the period of insurance covered is from 30-9-1976 to 29-9-1977. Clearly, therefore, the policy shall be deemed to cover from the midnight of 29/30-9-1976, which will cover the time of accident also

4. The learned counsel for the Insurance Company pointed out that under column 5 of the proposal form, the insurer is asked to state "what accident (if any) have occurred to this or to any other car at any time owned or driven by proposer during the last 5 years", and the appellant should have mentioned about the accident if he wanted to claim the benefit of the policy. We find against this column, the appellant had neither stated that there was an accident nor he stated that there was no accident. Therefore, we cannot say that the appellant had given a false statement that there was no accident on the basis of which the policy was given with effect from the same date 30-9-1976. It is not unusual, and it has come to the notice of courts also, that some times Policies given with retrospective effect. To the extent that a policy given in the day it takes effect from the midnight of the earlier date, it is retrospective, in the sense that the policy is not effective from the time when it is accepted or issued: it is effective from the date on which it is issued. In fact, the policy also states that it is effective from a particular (date to a particular date, inclusive of both days. Therefore, the policy was effective on 30-9-1976, and normally we should take it that it is effective from the midnight of the previous day. When we are bidden to imagine that though the policy was, in the

day time, it takes effect from the midnight of the previous day. We

Ranjit allow our mind to boggle, when it comes to the necessary corollary of treating the accident as having taken place after the policy took

effect. That is the real situation and that should be given effect to. Therefore, the accident is clearly covered by the policy.

5. A similar view was taken in a Division Bench of this Court in *Union India Fire and General Insurance Co. Ltd. v. V. Srinivasan*, 1980 ACJ

413. In that case also, the policy was given at 11 a.m. on 6-6-1969, while the accident took place at 8 a.m. The policy was to cover from 6-

6-1969 to 5-6-19-70, both days inclusive. This court held that though the policy was issued subsequent to the accident, the risk is covered as the

policy is effective from the whole of the day on which it was issued. It is true that in that case, when the proposal was sent by the insured, he was

not aware of the accident to his vehicle earlier. But that makes no difference for the legal effect of the policy itself. The learned Judges also noticed.

referring to the judgment of the Bombay High Court in *Chhotalal Hirachand Vs. Jethalal Varajbhai*, that a stipulation with regard to past risk is

neither void or illegal. In fact, the decision in *The Oriental Fire and General Insurance Co. Ltd. Vs. Tippanna Gadageppa Kundgol and Another*, is

very instructive and interesting. In that case, the accident took place on, 11th February 1978. The proposal along with the premium was received

by the Insurance Company on 13th February 1978. The proposal was accepted and the Insurance was renewed with effect from 10th February

1978. The question for consideration was whether the vehicle was not insured on the date of the accident. viz, 11th February 1978. A Division

Bench of the Karnataka High Court held that S. 96) of the Motor Vehicles Act is intended to enable third parties who suffer on account of the

user of the motor vehicle to get damages, and their ability to get damages should not be made dependent either on the financial condition of the

driver of the vehicle or the contractual rights and obligations between the insurer and the insured. The liability of the insurer to third parties being

statutory. the right of the third parties flows from the statute and is not contractual. Though the insurer was entitled to avoid or cancel the policy for

breach of certain restrictions, conditions and limitations contained therein, he could not avoid the liability to third parties. If there was a breach of

any restriction, condition and limitation, the insurer may be entitled to proceed against the insured, either to avoid or cancel the policy, but the

insurer is bound by the provisions of S. 96(1) of the motor Vehicles Act to pay a person entitled to the benefit of the decree any sum not

exceeding the sum insured therein, it" the policy had not already been cancelled before the claim is made. In this case, the policy was still effective

and it was not cancelled, and, therefore, apart from the fact that we have a doubt as to whether, on the facts and circumstances of this case, the

insurer could have cancelled the policy, since it is not factually cancelled and the policy being effective from 30-9-1976, it would cover the accident

in question.

6. We accordingly modify the award of the Claims Tribunal by giving a decree to the claimant both against the appellant and the second

respondent. The appeal is allowed. But there will be no order as to costs.

7. Appeal allowed.