

(1973) 08 MAD CK 0010
In the Madras High Court
Case No : A.A.O. No. 380 of 1971

Madras Motor and General Insurance Co. Ltd.	APPELLANT
Vs	
Jagadeeswari and Others	RESPONDENT

Date of Decision : 09-08-1973

Acts Referred:

Motor Vehicles Act, 1988 — Section 101, 110, 96(1), 96(2)

Citation : AIR 1974 Mad 318 : (1978) 87 LW 231 : (1974) 87 LW 231

Hon'ble Judges : N.S. Ramaswami, J; Kailasam, J

Bench : Division Bench

Judgement

Kailasam, J.—This appeal is filed by the Madras Motor and General Insurance Co. Ltd., against the order of the Motor Accidents Claims

Tribunal, Madras, awarding a sum of Rs. 33,120, being the compensation payable to the respondents due to the death of the husband of the first

respondent and father of respondents 2 to 4.

2. The first respondent herein is the widow and respondents 2 to 4 are the minor children of the deceased Anandan, a railway employee, who died

in a traffic accident on 11-10-1968 at about 10-20 p. m. when he was knocked down and run over by a lorry MYD 2511 belonging to the first

respondent before the Claims Tribunal. The owner of the vehicle entered appearance though advocates but filed no counter. The counsel also did

not appear at the trial stage to conduct the defence on behalf of the first respondent. The Insurance Company, the appellant herein, filed a counter

raising the plea that the accident was solely due to the negligence on the part of the deceased and that it was not due to any rash or negligent

driving of the lorry by its driver. Before the Tribunal. P. Ws. 2 and 5 were examined as witnesses to the occurrence. According to P.W. 2, when

she was proceeding along Basin Bridge road at about 10 p. m. a lorry came following her at a high speed, that it knocked her down and swerved

to the left and knocked down the deceased and came to a stop after hitting the parapet wall of the bridge and that the deceased died on the spot

and the driver of the lorry jumped down and ran away. P.W. 5 said that on the date of the occurrence he engaged the lorry to take his belongings

to Perambur, that one Ranganathan the driver of the first respondents before the Tribunal was driving it, that he sat by his side that when it was

proceeding along Basin Bridge it knocked against the parapet wall of the bridge and himself and the driver jumped down and ran away. P.W. 6,

Deputy Superintendent of Police, who was at that time Inspector of Police, Traffic and Investigation, investigated the accident and drew a plan. On

the evidence of P. Ws. 2 and 5, the Claims Tribunal came to the conclusion that the driver of the lorry was rash and negligent in driving the lorry

which resulted in the death of the deceased. So far as this finding is concerned, on merits, there cannot be any dispute.

3. On behalf of the respondents, an objection was taken to the maintainability of the appeal by the Insurance Company. It was contended that the

Insurance Company has got only a limited right to defend u/s 96 (2) of the Motor Vehicles Act and that it has no right to question the quantum of

compensation awarded or as to the fact whether there was any rashness or negligence on the part of the driver. In support of this contention, Mr.

Chinnasami, learned counsel for the respondents referred to Section 96 (2) of the Motor Vehicles Act, and submitted that the only defences that

are open to the Insurance Company are those that are enumerated u/s 96 (2) (a) to (c). Sub-section (2) of S. 96 is as follows--

No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the

proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any

judgment so long as execution is stayed thereon pending an appeal and an insurer to whom notice of the bringing of any such proceedings is so

given shall be entitled to be made a party thereto and to defend the action on any of the following grounds enumerated in clauses (a) to (c)

The sub-section therefore enables the Insurance Company to have notice either before judgment or after judgment to raise the defences that are

made available in clauses (a) to (c). The sub-section is clear that the Insurance Company shall be entitled to defend only on any one of the grounds

mentioned. In construing the scope of Section 96 (2) it was held by the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain*

Itbar Singh and Others, that apart from the right conferred by the statute an insurer has no right to be made a party to the action by the insured

person against the insured causing the injury. The right to defend is conferred u/s 96 (2) of the Act and the right therefore is created by statute and

its content necessarily depends on the provisions of the statute. The Supreme Court observed that an insurer made a defendant to the action is not

entitled to take any defence which is not specified in it and when the grounds of defence have been specified, they cannot be added to.

4. The learned counsel for the respondents submits that the Insurance company is not entitled to question the quantum of compensation allowed or

as to the fact whether there was negligence on the part of the driver. But the Supreme Court in paragraph 16 at page 1335 in the above said

decision has laid down that the Insurer has the right provided he has reserved it by the policy to defend the action in the name of the assured and if

he does so, all the defences open to the assured can then be urged by him. This is an important right conferred on the Insurance Company, provided,

in the insurance contract, the company has reserved by its policy the right to defend the action in the name of the assured, although such right is not

conferred u/s 96 (2) of the Act. In the policy issued by the appellant, there is a condition namely, condition No.2 which provides that no admission,

offer, promise, or payment shall be made by the insured without the written consent of the company, which shall be entitled if it so desires to take

over or conduct in the name of the insured the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for

indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the insured

shall give all such information and assistance as the company may require. According to this condition the Insurance Company would be entitled if

it so desires to take over and conduct in the name of the insured the defence is conferred on the Insurance company in the conduct of any

proceeding for settlement of any claim. The Supreme Court has held that such a clause would enable the Insurance Company to raise all the

defences that will be open to the insured in spite of the fact that Section 96 (2) does not confer any such right on the Insurance company. In this

case as the Insurance policy contains a clause reserving a right on the Insurance company to conduct the defence on behalf of the insured, the

Insurance Company is entitled to the rights that are open to the insured.

5. In this view the objection that was taken on behalf of the respondents will have to be overruled.

6. We would refer to the few decisions cited in the case. In K. Gopalakrishnan Vs. Sankara Narayanan and Others, , a Bench of this court held

that the principle laid down in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, , is not applicable to cases that are

disposed by the Claims Tribunal and contemplate only proceedings before a Court. The Court observed thus--

The decisions do not relate to proceedings before a Claims Tribunal, where the Insurers are made parties and the scope of the defences which

they were to put forward has not in any way been restricted.

Rejecting the contention that if S. 96 would have no application to proceedings before the Tribunal, it would have been deleted after Section 110

was introduced in the Act the Court observed that the obvious answer is that it was only after the Claims Tribunal is constituted by the State

Government by a notification in the Official Gazette the Civil Court's jurisdiction would be barred. In conclusion it was observed that the Insurance

Companies who are mainly responsible to satisfy the claims of third parties and who are parties to the proceedings before the Claims Tribunal and

who are entitled to cross-examine, cannot be restricted to the defences specified in Section 96 (2) of the Act. The question before the Bench arose

as to whether the Insurance Company should be allowed to cross-examine the claimant and his witnesses on grounds other than those in Section

96 (2). It was held that Insurance Companies who are mainly responsible to satisfy the claims of third parties and who are entitled to cross-

examine cannot be restricted to the defences specified in Section 96 (2) of the Act. With respect, we find it difficult to accept the distinction made

by the Bench between the case reported in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, and the case before the

Bench. The decision rendered by the Supreme Court did not relate to a case

before a Tribunal.

7. In a subsequent case, a Bench of this Court in *Queensland Insurance Co., Ltd. Vs. Rajalakshmi Ammal and Others*, , while delivering the

judgment (Sadasivam, J. the learned Judge who delivered the judgment reported in *K. Gopalakrishnan Vs. Sankara Narayanan and Others*,

accepted the contention that the Insurance Company would be entitled to put forward only the defences mentioned in Section 96 (2) of the Act.

The earlier decision of the Bench of this Court in *K. Gopalakrishnan Vs. Sankara Narayanan and Others*, has not been referred to. The Calcutta

High Court in *Hukumchand Insurance Co. v. Subbashini Roy*, 1971 ACJ 156, dissented from the view expressed by the Madras High Court in *K.*

Gopalakrishnan Vs. Sankara Narayanan and Others, and held that whenever a claims tribunal is set up for any area the word "Court" occurring in

Section 96 (2) must be interpreted to mean "Claims tribunal". It also held that it is not open to the appellant insurers in that appeal to take up any

grounds other than those specified in Section 96 (2). With respect we agree with the view of the Calcutta High Court as well as the decision of the

Madras High Court in *Queensland Insurance Co., Ltd. Vs. Rajalakshmi Ammal and Others*, , hold that the defences that are open to the Insurance

Company are only those that are specified in S. 96 (2) of the Motor Vehicles Act.

8. But so far as this case is concerned, as we have already pointed out a reservation had been made in the policy that the Insurance Company will

be entitled to take over and conduct the defences on behalf of the insured, we find in this case that the Insurance Company is entitled to raise all

the grounds that are open to insured.

9. One other case which was cited was *N. I. G. Insurance Co. v. L. Krishnan*, AIR 1973 Mys 107. The Court held referring to the decision of the

Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, that in order to avail himself of the clauses

contained in the policy the insurer can urge all the defences open to the insured only when the insurer defends the action in the name of the insured.

10. In our view, all that the Supreme Court intended to lay down was if the clause of the Insurance policy provided reservation of right to the

Insurance company to defendant to conduct cases and raise all defences that are open to the insured the Insurance company can by itself raise

those defences.

11. Mr. Chinnasami, learned counsel for the respondents, referred to the recent amended Section 110-C (2-A) and submitted that the claims

Tribunal may direct impleading of the insurer as party to the proceedings when it finds that there is collusion between the person making the claim

and the person against whom the claim is made has failed to contest. It was submitted that only when the Court gives such a finding the insurer can

be added as a party, and otherwise the Insurer is not a proper party. It is unnecessary for us to examine this question. It is enough to state that the

Insurance Company is allowed to raise all the defences that are open to the insured as it is provided for in the policy. If such a clause is found in the

Insurance policy the Insurance Company will be entitled to come on record as part and defend the action on all grounds that are open to the

insured.

12. In this view we reject the contention of the learned counsel for the respondents that the Insurance Company is not entitled to question the

quantum or the fact of negligence.

13. As we have already stated, there cannot be any dispute about negligence on the part of the driver of the lorry. We confirm the finding of the

tribunal that the accident resulting in the death of the deceased was due to the negligence of the driver the lorry and as such the claimants are

entitled to compensation.

14. Regarding the quantum of compensation, we feel that the compensation awarded is very much on the high side. The deceased was earning

about Rs. 182 per month. Being a workman he would have spent some amount on himself and the benefit to the family would not have exceeded

Rs. 100. For the whole year he would have spent on the family Rs. 1200. A lump sum payment of Rs. 14,000 would be sufficient as the amount

would secure interest to the claimants.

15. In the result, we allow the appeal to the extent of reducing the compensation from Rs. 33,120 to Rs. 14,000 which amount will be paid by the

Insurance company. In other respects the judgment of the Claims Tribunal is confirmed. Time for payment of the compensation amount one month

from this date. The widow of the deceased (first respondent) would be paid Rs. 5,000 and the balance of the amount will be deposited in one of

the Nationalised Banks for a long term and on attaining majority the minors would be entitled to draw their share of Rs. 3,000 each. Interest will be drawn and when it accrues by the mother.

16. Order accordingly.