

(1996) 11 MAD CK 0072
In the Madras High Court
Case No : C.M.A. No. 61 of 1986

Maduraiveeran and Another

APPELLANT

Vs

Subburaj and Others

RESPONDENT

Date of Decision : 16-11-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 8

Citation : (1998) ACJ 765 : (1997) 1 LW 271

Hon'ble Judges : C.V. Govardhan, J

Bench : Single Bench

Advocate : S. Udayarakumar, for the Appellant; S. Gopalarathnam and V. Venkatasami, for the Respondent

Final Decision : Allowed

Judgement

C.V. Govardhan, J.—This appeal is against the order passed by the Motor Accidents Claims Tribunal, Madurai in M.C.O.P. No. 39 of 1984.

2. The petitioners are the parents of Pichaigani who was working as a loadman in Palani Murugan lorry TNU 9630. On 25.7.1983 at 7.30 a.m., in Pandalgudi near Kalguvari, the driver of the said lorry drove it in a rash and negligent manner and the deceased Pichaigani, who was sitting in the lorry, was thrown out and the lorry ran over him. Pichaigani died as a result of the injuries sustained by him. He was earning a sum of Rs. 450/- per month. The petitioners have therefore come forward with this claim petition claiming compensation of Rs. 51,000/-.

3. The respondent No. 3, insurance company filed a counter statement disputing its liability contending that the accident was not due to the rash and negligent driving of the lorry.

4. On the above pleadings, the Motor Accidents Claims Tribunal held an enquiry and gave a finding that the accident was due to the rash and negligent driving of the lorry and awarded a compensation of Rs. 32,250/- with interest at 6 per cent per annum and directed the respondent Nos.

1 and 2 to pay the same and dismissed the petition as against the respondent No. 3.

5. The present appeal has been filed by the claimants challenging the order passed by the Motor Accidents Claims Tribunal in dismissing the petition against the respondent No. 3.

6. In the grounds of appeal even though the appellants have stated that they are entitled to more compensation, during the course of arguments, the

learned Counsel appearing for the appellants has made it clear that the appellants are satisfied with the compensation awarded by the Tribunal, but

the appeal is prosecuted for the purpose of directing the respondent No. 3 to pay the amount.

7. The learned Counsel appearing for the appellants has argued that the respondents have examined an Assistant from the R.T.O. office to show

that the driver of the lorry did not have a licence to drive a lorry, but the evidence of RW 2 has shown that the driver had a valid licence on the

date of the accident and yet the Tribunal has dismissed the claim of the claimants against the respondent No. 3 on the ground that the petitioners

have failed to show that the driver of the lorry was not issued a licence with an endorsement to drive the lorry or goods vehicle, and it has to be set

aside since the driver has been issued a licence with an endorsement to drive a stage carrier, i.e., a bus. The learned Counsel appearing for the

respondents would argue that as per Section 8(2) of the Motor Vehicles Act, licence has to be issued with specific endorsement to drive a

particular type of vehicle and the licence of the driver of this vehicle even though has been issued a licence to drive a stage carrier as per the

endorsement, the licence does not show that he has been permitted to drive a goods vehicle and therefore, as per the terms of the policy, the

insurance company cannot be made liable. The insurance policy has been marked as Exh. R-3, which provides limitation to the liability by stating

that the person driving holds a valid driving licence at the time of the accident or has held a permanent driving licence other than a learner's licence

and is not disqualified for holding or obtaining such a licence. In the present case, the driver of the lorry has a valid licence with an endorsement to drive a stage carrier. It was a permanent driving licence. The driver has not been disqualified from holding or obtaining such a licence. Yet, the Tribunal has negated the claim of the claimants on the ground that the driving licence does not have an endorsement to the effect that he can drive a common carrier. The order passed by the Tribunal rejecting the claim of the claimants against the respondent No. 3 is thus purely on a technical ground that the licence of the driver does not have an endorsement enabling him to drive a goods vehicle. The object of making an endorsement specifically for particular class of vehicle is to make the driver of the vehicle qualified to drive such a class of vehicles. In the present case, the driver is having a valid driving licence and his licence also has an endorsement to the effect that he can drive a stage carrier, otherwise called as a bus, in which, number of passengers can travel. The issue of a licence with an endorsement for stage carrier indicates that the licensing authorities have found him fit to drive a vehicle in which number of passengers can travel and the welfare of the passengers will be safe in the hands of the concerned driver. In the case of a goods vehicle, the persons affected, if any untoward incident happens, will be the driver or the cleaner as the case may be and damage may be caused to the goods in the lorry or a goods vehicle. But, if any untoward incident happens to a stage carrier, the consequences of the same will not only affect the driver or the conductor of the vehicle, but also innocent passengers who travel by that stage carrier. Viewing from this angle, I am of opinion that when licence has an endorsement enabling the driver to drive a stage carrier, he is found fit by the Licensing Authority in such a way that interest of the innocent passengers will be safe in his hands. In other words, unless the driver has more efficiency and capacity to drive a vehicle, in which innocent passengers could travel, he would not be issued with the licence with an endorsement to drive a stage carrier. The percentage of ability, capacity and responsibility, in driving the vehicle for a person who has been issued with an endorsement to drive a stage carrier, will be much more than one issued to a person with an endorsement to drive a goods vehicle, or common carrier in which articles alone are transported and interest and lives of innocent persons are not involved. Therefore, I am of opinion that to

disallow the claim of the claimants against the respondent No. 3 on the ground that the driver of the lorry has not been provided with an

endorsement to drive a goods vehicle is not in consonance with the purpose with which Section 8(1) of the Motor Vehicles Act has been

incorporated under the Act. The rejection of the claim is, in my opinion, purely a technical one. In *B.V. Nagaraju Vs. M/s. Oriental Insurance Co.*

Ltd., Divisional Officer, Hassan, , it has been held by the Supreme Court that in case of damage caused to vehicle, alleged breach of carrying

humans in a goods vehicle, more than the number permitted in terms of insurance policy is not so fundamental a breach so as to afford to insurer to

eschew liability altogether, their Lordships have held in the above decision that exclusion term of insurance policy must be read down so as to

serve the main purpose of policy, that is, indemnify the damage caused to the vehicle.

8. In the decision reported in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, , the Supreme Court while considering the scope of Section 96(2)(b)

(ii) of the Act, has held that in the case of an accident to a vehicle insured by a person who has appointed a duly licensed driver, but the vehicle

was driven by a person not licensed, on the basis of the authority of the driver duly authorised to drive the vehicle, the insurance company will have

to establish that the insured was guilty of infringement, or violation of a promise in order to get itself absolved from liability. Their Lordships have

observed that the expression "breach" occurring in Section 96(2)(b) means infringement or violation of a promise or obligation and as such, the

insurance company will have to establish that the insured was guilty of an infringement or violation of a promise and the insurer has also to satisfy

the Tribunal or the Court, that such violation or infringement on the part of the insured was wilful. The Supreme Court has also held in the above

decision that in accident claims cases, while interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that

right to claim compensation by heirs and legal representatives or the victims of the accident is not defeated on technical ground. In the present case,

the lorry has been driven by the driver holding a licence with an endorsement to drive a stage carrier and yet the Tribunal has held that there is

violation of the terms of the insurance policy, on the technical ground that the endorsement is not to the effect that the driver can drive a goods

vehicle. I am of opinion that such technicalities cannot weigh to disallow the claim of the claimants, in this case, for compensation on the death of

their son. In that view, I am of opinion that order passed by the Motor Accidents Claims Tribunal, Madurai cannot be upheld since it defeats the

very purpose for which the Motor Accidents Claims Tribunals are formed, i.e., to give redress to the dependants of a deceased person in a motor

accident. In that view, the appeal has got to be allowed.

9. In the result, the appeal is allowed setting aside the order passed by the Motor Accidents Claims Tribunal, Madurai and the respondents are

directed to deposit the compensation awarded by the Tribunal with interest at 12 per cent per annum from the date of petition till the date of

deposit. No costs.