

(1999) 07 MAD CK 0001
In the Madras High Court

Mahendra Kumar

APPELLANT

Vs

Nagamani and Co. and Another

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 3(1)
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2000) 2 ACC 450

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Judgement

M. Karpagavinayagam, J.—Mahendra Kumar, the claimant is the appellant before this Court.

2. He filed a claim petition before the Tribunal claiming compensation of Rs. 50,000/- for the injuries sustained by him.

3. On 7.5.1985, when he was riding on his bi-cycle in Chengalpet-Kanchepuram High Road, the accident took place due to the rash and negligent

driving of the driver of the Tourist Taxi, Ambassador car bearing registration No. TDU 5656 belonging to the first respondent, which was insured

with the second respondent herein.

4. The first respondent, the owner of the vehicle, did not contest the claim and he remained ex parte.

5. The second respondent-Insurance Company filed a counter stating that the driver of the tourist taxi was not negligent and at any rate, the

Insurance Company is not liable to pay the claim of compensation, since the driver of the tourist car was not possessing a valid driving licence for

driving the tourist taxi at the time of the accident.

6. During the course of enquiry, the claimant examined himself as P.W. 1 and marked Exs. A1 to A24. On behalf of the Insurance Company one

Somasundaram, Legal Assistant attached to the Company, was examined as R.W. 1 and Exs. B1 to B4 were marked.

7. The Tribunal, after analysing the materials placed before it, concluded that the driver of the tourist taxi was negligent and directed the owner of

the vehicle, the first respondent, who remained ex parte, to pay the entire amount of compensation of Rs. 50,000/- holding that the Insurance

Company would not be liable to pay any amount of compensation, as the driver was not having the driving licence to drive the tourist taxi.

8. Though the quantum of the amount claimed by the claimant was awarded by the Tribunal, the claimant filed this appeal challenging the finding

that the Insurance Company was not liable to pay the compensation.

9. According to the Counsel for the appellant, the Insurance Company alone has to bear the liability, as it has been established by the claimant that

the driver of the tourist taxi was possessing the driving licence to drive the transport vehicle, which includes the tourist taxi.

10. On the other hand, the learned Counsel appearing for the Insurance Company, in support of the finding with reference to the liability in the

judgment impugned, would submit that the Insurance Company has clearly demonstrated before the Tribunal that the driver of the tourist taxi was

not having the special authorisation or special endorsement in the driving licence to drive the tourist taxi.

11. The Counsel for both the parties have cited various authorities.

12. I have carefully considered the submissions made by the Counsel for the parties and gone through the records and the judgment impugned.

13. At the outset, I shall mention that the question posed in this case has already been answered by a Division Bench of this Court in the decision in

E. Enjanadevi v. Arumugham 1983 ACJ 625.

14. In the said case, it is held that the driver of a tourist car is required under the Motor Vehicles Act to have a special authorisation, in addition to

the usual licence to drive a light motor vehicle or transport vehicle to enable him to drive the tourist car and that if such special authorisation is not

available, then the Insurance Company cannot be made liable.

15. Though the decision in Dhanaraj and Another Vs. Rubia and Another, has

been cited by the learned Counsel for the appellant to distinguish the Enjanadevi's case cited (supra), in my view, the decision in Dhanaraj v. Rubia (supra), is to be distinguished in view of the fact that the factual details of Enjanadevi's, case are quite similar to the facts of the case on hand.

16. In Dhanaraj v. Rubia (supra), it has been held in the light of the facts of that case that the policy marked did not insist on the driver to have the driving licence to drive a tourist taxi, as the reference to "the" vehicle is missing in the policy placed before the Division Bench.

17. But, in the instant case, the policy Ex. B3 would make it clear that a person would be entitled to drive the tourist taxi provided the said person driving holds a valid licence to drive "the" vehicle. Therefore, the decision cited by the Counsel for the appellant in Dhanaraj v. Rubia (supra), would not be of any use.

18. The decisions in E. Enjanadevi v. Arumugham (supra), and United India Insurance Company Ltd. Vs. Palaniammal and others, , would elaborately deal with the classification of the vehicles into different categories and also issue of driving licence to persons to drive the vehicle belonging to different categories by referring several provisions of the Act.

19. Section 3(1) of the Motor Vehicles Act reads as follows:

No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to himself authorising him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a transport vehicle unless his driving licence specifically entitles him so to do.

20. From the reading of the above section, the expression "effective driving licenec" would reveal that if the vehicle happens to be a transport vehicle, the driving licence should contain a special endorsement or authorisation.

21. A "transport vehicle" is defined in Section 2(33) of the Act as a public service vehicle or a goods vehicle. A "public service vehicle" is defined in Section 2(25) of the Act which means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage.

22. Section 2(15) of the Act defines "motor cab" which means any motor vehicle construed, adapted or used to carry not more than six

passengers excluding the driver, for hire or reward. Section 2(29-A) of the Act defines "tourist vehicle", which means a contract carriage

constructed or adapted and equipped and maintained in accordance with such specifications as the State Government may, by notification in the

Official Gazette, specify in this behalf.

23. There is no dispute in this case that the Ambassador car involved in the accident has been registered as a tourist car. Thus, the car having been

registered as a "tourist vehicle" comes under the definition of "public service vehicle", which in turn comes under the definition of "transport vehicle".

Hence, it attracts the latter part of Section 3(1) of the Act, which would say that for driving a "transport vehicle" a special endorsement is

necessary.

24. Section 3(3) of the Act enables a person who holds an effective driving licence authorising him to drive a motor car may drive any motor cab

hired by him for his own use. Section 5 of the Act prohibits the owner of the vehicle from permitting any person who does not satisfy the provisions

of Section 3 to drive the vehicle.

25. Section 8 of the Act relates to the form and contents of the driving licence. The different kinds of vehicles in respect of which the driving licence

may be issued entitling the holder to drive a motor vehicle belonging to one or other of the categories enumerated therein are given.

26. To put it specifically, in Section 8(2) of the Act, it is mentioned that a driving licence shall specify whether the driven is entitled to drive a motor

vehicle of one or more of the following classes, namely:

- (a) a motor cycle,
- (b) invalid carriage,
- (c) light motor vehicle,
- (d) medium goods vehicle,
- (e) medium passenger motor vehicle,
- (ei) heavy goods vehicle,
- (eii) heavy passenger motor vehicle,
- (f) road roller,
- (g) motor vehicle of a specified description.

27. Out of these classes, the class "g" assumes great importance, since it indicates that in the driving licence, the class of "motor vehicle of a specific description" should be mentioned.

28. In the background of the above statutory provisions, it is clear that there is a nexus between the classification of vehicles into different categories and also issue of driving licences to persons to drive the vehicles belonging to different categories.

29. In other words, if a person, holding a licence under the Act to drive a particular category of vehicle, cannot be permitted to drive a totally different category of vehicle altogether, merely on the basis of a licence to drive a vehicle belonging to one category.

30. Moreover, the requirement of obtaining a driving licence in respect of a heavy goods vehicle or a tourist taxi is not the same. That is the reason why these statutory provisions have been introduced by giving various classification of vehicles and issue of driving licences to drive the vehicles belonging to different categories.

31. Under these circumstances, the argument advanced by the learned Counsel for the appellant that the "transport vehicle" would mean tourist taxi as well, is liable to be rejected.

32. However, it has to be seen as to whether the Insurance Company has proved by producing the relevant materials to show that no such special authorisation or special endorsement referred to was made in the driving licence to drive the tourist taxi.

33. It would be relevant, in this context, to refer to Ex. A-24 F.I.R. copy. A perusal of the F.I.R. would show that a case was registered only for the offences under Sections 279 and 337,1.P.C. and not against the driver for the offence of having driven the tourist taxi without proper licence.

34. In a bid to establish the same, R.W. 1, who was working as Legal Assistant in the Insurance Company, had been examined. According to him, if the vehicle is driven by the driver, who does not possess the driving licence to drive the tourist taxi, the Insurance Company is not liable to pay the compensation. Through him, Exs. B1 Claim Form, Ex. B2 letter from the Transport Department, Ex. B3 Policy and Ex. B4 investigation report were marked.

35. According to Ex. B4 investigation report, the driving licence, which the driver

was possessing during the relevant time, did not contain the specific authorisation for driving the tourist taxi.

36. On the basis of this reference made in Ex. B4 sent by the Insurance Claims Investigator, R.W. 1 would say that there was no such

endorsement in the driving licence. However, in the cross-examination, he would admit that he did not know whether additional endorsement was

made in the driving licence for driving the tourist taxi. Under these circumstances, it becomes necessary to peruse the driving licence in order to

point out whether such endorsement is made or not.

37. As a matter of fact, it is stated by the Insurance Claims Investigator in Ex. B4 that the certified copy of the original driving licence had already

been forwarded to the Tribunal and alongwith Ex. B4 Report, a copy of the driving licence was also enclosed for ready reference.

38. Thus, though the certified copy of the original driving licence as well as the copy of the driving licence was available, the Insurance Company

had not chosen to mark the same, in order to enable the Tribunal to verify as to whether such special endorsement for driving the tourist taxi was

made or not.

39. In view of the factual situation, it would be too difficult to say that the Insurance Company has discharged its burden of proving the fact that the

Insurance Company is not liable to pay the compensation for the reason that the driver was not possessing the driving licence containing the special

authorisation.

40. In this context, it would be appropriate to refer two decisions.

41. The first decision is *New India Assurance Co. Ltd. v. Srikanta Ghosh* 1972 ACJ 153. In the said decision, the Insurance Company repudiated

its liability on the ground that the driver of the truck did not hold a licence, for driving heavy vehicles and the owner of the truck failed to produce

the licence stating that the driver had left the services. The Orissa High Court held that the Insurance Company ought to have taken steps to bring

on record the licence so as to show that it was not valid for driving heavy vehicles. It was also observed by the Court in that case that the difficulty

in establishing such a fact by the insurer cannot give rise to a position that an adverse inference should be drawn against the truck owner and the

burden that laid on the insurer can be taken to have been discharged.

42. Following the judgment of the Orissa High Court, a Division Bench of this Court in *National Insurance Co. Ltd. v. Sugantha Kunthalambal*

1981 ACJ 302, on similar facts, would consider this aspect and hold that it is for the Insurance Company to take steps to produce the driving

licence in order to establish such special authorisation to drive a particular category of vehicle in the driving licence. The relevant observation is as

follows:

The appellant who has insured the vehicle and who is normally bound by the terms of the policy cannot avoid its liability under the policy unless it

establishes those facts which will enable it to disown its liability. In cases where the insurer establishes that the terms of the policy have been

violated or facts established invalidate the policy, it can escape the liability under the policy. Therefore, the onus is clearly on the appellant to

establish that the driver did not have a valid licence to drive the vehicle. It is not sufficient for the appellant to make allegations that the driver had

no licence at all to drive the vehicle without adducing necessary proof and escape its liability under the policy. The learned Counsel for the

appellant would say whether the licence contains the endorsement or not as required u/s 3 of the Act, is within the exclusive knowledge of the

driver and the owner, of the auto-rickshaw and that, therefore, that fact need not be proved by the Insurance Company. As already stated, even if

the licence is in the custody of the driver, who is not a party before the Tribunal, the Insurance Company can call upon him to produce the licence

by issuing notice to produce the same and if the licence is not produced notwithstanding such a notice, the Insurance Company may request the

Court to draw adverse inference. But in this case, no such step has been taken by the Insurance Company and it got satisfied merely by examining

the police officer and producing Exhibit R1 which, in our view, is quite insufficient to establish the absence of the authorisation to drive the vehicle

in the licence, admittedly possessed by the driver to drive a light motor vehicle.

43. The observation made in the above decision is quite in accordance with my view that the Insurance Company cannot escape from the liability,

especially, when it has failed to prove that the licence did not contain the special authorisation or special endorsement. Consequently, the Insurance

Company is held liable to pay the compensation on behalf of the owner of the vehicle.

44. Thus, the award passed by the Tribunal is set aside and the same is modified to the effect that the Insurance Company alone is to bear the

liability by making payment of the compensation of Rs. 50,000/- alongwith interest at the rate of 12 per cent per annum from the date of filing of

the petition till the date of payment.

45. In the result, the appeal is allowed. No costs.

46. However, it is open to the Insurance Company to take steps to recover the sum given as compensation from the owner of the vehicle, if so

advised.