
(1971) 03 MAD CK 0066

In the Madras High Court

Case No : Civil Revision Petition No. 1615 of 1968

Motor Owners' Insurance Co. Ltd.

APPELLANT

Vs

V. Daniel and Another

RESPONDENT

Date of Decision : 15-03-1971

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 110(A), 96(2)

Citation : (1971) ACJ 318 : AIR 1972 Mad 15 : (1971) 41 CompCas 922 :
(1971) 84 LW 518 : (1971) 2 MLJ 377

Hon'ble Judges : Raghavan, J

Bench : Single Bench

Judgement

Raghavan, J.—The second respondent in the lower court is the petitioner herein. The above revision petition is directed against the order in O. P. No. 583 of 1966 on the file of the Additional Claims Tribunal, Madras u/s 110(A) of the Motor Vehicles Act awarding compensation to the first respondent of Rs. 1330. the first respondent filed the above O. P. claiming compensation of Rs. 5000 for the injuries alleged to have been caused to him by the rash and negligent driving of the lorry MSY 3068 belonging to the second respondent on 2-10-1966 at 9 p.m. in Walltax Road, Madras. The vehicle was insured to the petitioner-company. The Insurance Company denied that the accident was brought about by any rash and negligent driving of the vehicle. In any event, it is contended that the claim is excessive. The Insurance Company raised further contention that the driver of the vehicle MSY 3068 by name Pakkiriswami did not hold a valid licence to drive the vehicle at the time of the accident. The licence held by him expired on 12-2-1966 itself. The Insurance Company therefore contended that they are not liable to meet the claim.

2. The Tribunal held that the vehicle was run in rash and negligent manner and that the compensation payable would be Rs. 1330. Dealing with the insurance company's contention the tribunal held on a construction of Section 96(2)(b)(ii) that the driver held a valid driving licence which expired on 12-2-1966. and

although the accident occurred on 2-10-1966 subsequent to the expiry of the licence the driver was not suffering from any disqualification from holding the licence. With the result the contention of the insurance company was repelled and a decree was passed against the insurance company also.

3. The Insurance Company has filed the present revision petition and the only contention raised relates to the proper construction of Section 96(2)(b)(ii) which is repeated in the insurance policy Ex. R. 1. I set out below the provisions of Section 96(2)(b)(ii):

"96 (2). 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 proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely,

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely-

(i)...

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or....."

Analysing sub-clause (b)(ii) the position is as follows. The liability of the Insurance Company is excluded (1) when the vehicle is run by a named person or persons who are excluded, (2) when the vehicle is driven by a person who is not duly licensed, (3) when the vehicle is run by a person having a licence but disqualified for holding the licence and (4) when the vehicle is run by a person who has obtained a driving licence during the period of disqualification. The disqualification referred to in the second limb may be (1) for holding the licence or (2) for obtaining the licence. The disqualification for holding the licence in the first case can only be with reference to the licence held by him. In the second case, the disqualified person seeks to obtain a licence during the period of disqualification. In both cases the liability of the Insurance Company will be excluded. The learned counsel for the respondent contends that it is sufficient if the driver of the vehicle has a licence at some anterior point of time that the licence need not be in force at the time of the accident, and that if he is not disqualified C1. (ii) of Section 96(2)(b) is not attracted and consequently the insurance company is liable. I am unable to accept this contention. As stated above the liability of the Insurance company is excluded (1) when at the time of the accident the driver while duly licenced is disqualified from holding such licence and (2) when during the disqualifying period he somehow seeks to obtain a driving licence. In the present case the driver did not have a valid licence on

the date of the accident and he was not disqualified from holding the licence. Under those circumstances the Insurance company is entitled to rely on S. 96(2) (b)(ii) and disclaim liability.

4. The above civil revision petition arises under Art. 227 of the Constitution. It is no doubt true that the question of law as to the interpretation of Section 96(2)(b) (ii) of the Act arises for consideration,. But the question of law is not a question of jurisdiction and I am not inclined to set aside the just order of the Tribunal awarding compensation to the injured respondent. The civil revision petition is dismissed. There will be no order as to costs.

5. Petition dismissed.