
(2000) 01 MAD CK 0043
In the Madras High Court
Case No : C.M.A. No. 1068 of 1993

National Insurance Co., Ltd.,

APPELLANT

Vs

Sundar Raj and 2 others

RESPONDENT

Date of Decision : 07-01-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 96

Citation : (2000) 1 ACC 452 : (2001) ACJ 1685 : (2000) 1 CTC 521

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : Mrs. Kala Ramesh, for the Appellant; Mr. N. Paulvasanthakumar, for the Respondent

Judgement

1. The Insurance Company is the appellant, The appeal has been filed against the award passed by the Motor Accidents Claims Tribunal,

Padmanabhapuram in M.C.O.P.No. 9 of 1989 on 31.3.1993 against the appellant/ Insurance Company.

2. In an accident involving an autorickshaw belonging to the second respondent in the appeal and insured with the appellant herein, the first

respondent was injured and he made a claim for Rs.60,000 as compensation. The third respondent was the driver of the autorickshaw.

3. The only question arising for consideration in the present appeal is as to whether the insurance company can be made liable for payment of the

compensation inasmuch as the driver did not have a valid endorsement for driving the autorickshaw.

4. Admittedly the driver though held a licence for driving a light motor vehicle did not have an endorsement for driving an autorickshaw. The

Tribunal found that the autorickshaw is only a light motor vehicle and the licence

to drive the light motor vehicle would also cover the case and the Insurance Company is therefore liable to indemnify the owner of the vehicle.

5. Mrs. Kala Ramesh, learned counsel appearing for the appellant relied on the following decisions in support of her contention.

(1) R.Dhanaraj and another v. Rubia and another, 1992 (I) L.W 250; (2) Anjanadevi Vs. Arumugham and Another, ; (3) United India Insurance Co. Ltd. Vs. K. Subramaniam and Others, ;

6. Mr. Paulvasanthakumar, learned counsel for the first respondent/claimant submitted that the conclusion reached by the Tribunal fastening the liability on the insurance Company is perfectly in order and the same is in conformity with the decisions of this Court, other High Courts and the Supreme Court. The decision relied on by the learned counsel are:-

(1) M/s. Srinivasa Roadways Etc., v. Saroja and others, 1974 (II) MLJ 364; (2) Madras Motor and General Insurance Co. Ltd. Vs. Madathi Ammal and Another, ; (3) B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, ; (4) Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., ; (5) National Insurance Company Ltd., Tuticorin Vs. Smt. Maisy Alex, and 5 others, ;

7. Relying on the Srinivasa Roadways etc., and Madras Motor and General Insurance Co. Ltd. Vs. Madathi Ammal and Another, .

Mr.Paulvasanthakumar submitted that the driver had a valid licence to drive light motor vehicle that he was not disqualified for holding or obtaining

the driving licence at the time of the accident that it must be deemed that he had a valid licence to drive an autorickshaw as well and that therefore

the liability has to be fastened on the insurance Company. In those two cases, what was decided was that the person driving the vehicle should not

have been disqualified for holding or obtaining a valid licence. In the words of Maharajah, J. in Madras Motor and General Insurance Co. Ltd. Vs.

Madathi Ammal and Another, Section 96 enables the Insurance Company to defend the action against it on the ground that there has been a

breach of specified condition of the policy and enables company to incorporate in the policy any of the conditions mentioned in Sub-Clause (ii) and

Clause (b) of Section 96(2), which enables the Insurance Company to incorporate in the Insurance policy, the conditions excluding the driving by a

named person or persons or by any person who is not duly licenced or by any

person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. This clause it may be noted contains three Sub-Clauses which are disjunctive viz.,

(1) excluding driving by a named person or persons, or

(2) Excluding driving by any person who is not duly licenced; or

(3) excluding driving by any person who has been disqualified or holding or obtaining a driving licence during the period of disqualification, The first

Clause permits an Insurance Company to rid itself of the liability by providing that if an accident occur while a named person drives the vehicle, the

Company shall not be liable to indemnify the owner. The second clause enables the Insurance Company to disclaim liability in cases where at the

time of the accident, the driver is a person who does not hold a licence duly granted to him. The third Clause enables the Insurance Company to

disclaim liability in cases where during the accident the vehicle was driven by a person who might not hold a valid licence at the time of the

accident, but who had held a licence previously, but who had not been disqualified for holding or obtaining it. In other words, the three sub-clauses

in Section 96(2)(b)(ii) indicate the ampli-tude of exclusion. As the sub clauses are disjunctive, an option is given to the Insurance Company, to

exclude driving either by a named person or by a person who is not duly licensed or by a person who has been disqualified for holding or obtaining

a driving licence or to exclude driving by all these three classes of persons. In other words, it is open to the Insurance Company to refuse to cover

a risk brought about by a person like driver Ramachandran (in that case) who at the time of the accident, had held a licence, but had no effective

licence covering the period of the accident. But, unfortunately, the Insurance Company has in this case exercised its option even to include a

person, who had held a licence prior to the date of the accident (that is to say licence that had expired prior to the date of accident) and yet was

not disqualified for holding or obtaining such a licence at the time of the accident.

8. The stress by Mr.Paulvasanthakumar counsel for the first respondent is with regard to the observations, by the learned Judge while dealing with

the third clause. In my view sub-Clause (3) presupposes the existence of a prior valid licence for driving "" that vehicle The driver in the instant case

must have held a licence endorsement to drive the autorickshaw even if at the

time of the accident, the period specified in the endorsement had expired, As long as it was found that he had not become disqualified for holding or obtaining it the insurance company would be liable. In as much as admittedly in the instant case, the driver did not have an endorsement for driving the autorickshaw at any earlier point of time, the decision will not apply to the facts of the present case. The earlier decision in M/s Srinivasa Roadways etc. is also on facts identical with the decision in M.M.G.I.Co., Ltd., and Justice Maharajan was a party to the earlier decision.

9. The policy was perused by me and it specifically provides that the driver should have a licence to drive the vehicle meaning thereby the autorickshaw.

10. In Anjanadevi Vs. Arumugham and Another, the vehicle involved in the accident was a tourist car. The driver had a licence to drive the car but there was no endorsement on the licence enabling him to drive the tourist car. The bench held that the insurance company can disown its liability as the driver was not having a valid driving licence to drive a tourist car. In the course of its judgment, the bench referred to the terms of the policy and found the vehicle had been registered as a tourist taxi and it can be used only in connection with the insurer's business of running as a tourist vehicle that under the head "" driver"" it said that the vehicle could be driven by the insured or by any other person in his employ holding a licence to drive the vehicle and held that the vehicle had been registered as a tourist taxi and as per the terms of the policy it should be driven by a person who held a licence to drive a tourist taxi.

11. In United India Insurance Co. Ltd. Vs. K. Subramaniam and Others, was a case involving a tempo, a three wheeler goods vehicle, which was driven by a driver who was holding licence to drive a light motor vehicle, though the licence was endorsed after the date of accident authorising him to drive the transport vehicle as paid employee Ratnam, J as the learned Judge held that the driver did not have a valid licence on the date of the accident to drive the tempo and the Insurance company was not liable.

12. In National Insurance Co.,Ltd, v. Mahadevayya, 1981 T.L.N.J. 170. The question arose as to whether a mere licence to drive a light motor vehicle, which includes an autorickshaw would not enable the holder of the licence to drive an auto-rickshaw as a public carrier and it was held

that in the absence of a special authorisation, it was not possible to conclude that on the strength of the holding of a licence to drive an auto-

rickshaw, such a vehicle could also be driven as a public carrier. In that case the terms of the licence were not available. The Insurance Company

had called upon the driver as well as the owner of the vehicle to produce the licence by a notice to produce but the licence was not produced and

the Bench held that non production of actual licence can lead to adverse inference that the licence if produced would indicate that there was no

endorsement authorising the licensee to drive the auto-rickshaw as a public carrier. The Insurance Company was exempted from liability .

13. In *National Insurance Co., Ltd., v. Sugantha Kunthalambal and others*, 1981 A.C.J 302. The vehicle involved was an auto-rickshaw. The

driver of the auto-rickshaw had a licence to drive light motor vehicle at the time of the accident, but he had a no endorsement on-the licence

authorising him to drive the auto-rickshaw. The Police Officer who was examined as R.W.I concluded that the autorickshaw would come within

the definition of the light motor vehicle. The Insurance Company did not take any steps calling upon either the owner of the auto-rickshaw or its

driver to produce the driver's licence by invoking the provisions of Section 110-C(2) of the Motor Vehicles Act. The Bench observed that in the

absence of the actual production of the driver's licence before the Court, it was not possible to assume that the licence which he had did not

authorise the driver to drive the autorickshaw as a private vehicle or as a public transport vehicle. It was only on that footing the Bench confirmed

the award passed by the Tribunal against the Insurance company. In the instant case, the licence has been produced and marked as ExR3. The

permit has been marked as Ex R4 and the licence does not bear an endorsement for driving an autorickshaw. In view of the discussion above, the

conclusion is inescapable that the Insurance Company had been wrongly made liable. It is but necessary to refer to the other decisions relied on by

the learned counsel for the first respondent.

14. *B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan*, is a case of damage to the vehicle; there was a breach of

carrying humans in a goods" vehicle more than the number permitted in terms of the insurance policy. It was held by the Supreme Court that the

breach cannot be said to be such a fundamental breach that the owner in all events be denied indemnification unless there were some factors which contributed to the causing of the accident and that the exclusion clause of the Insurance Company had to be read down to serve the main purpose of the policy

15. In *National Insurance Company Ltd., Tuticorin Vs. Smt. Maisy Alex, and 5 others*, . The question arose as to whether the driver holding

permanent driving licence authorising driving of light motor vehicle could drive the tourist car and in the event of an accident, the Insurance

Company be made liable. It was held by the learned Judge on facts that in the column in policy against the business it was left blank and there was

no mention of authorisation to drive tourist vehicle in policy and therefore the Insurer was liable. In the same decision, the learned Judge considered

the case of another Tourist Car and the liability of the Insurance Company where the tourist Car was involved but the permit conditions required

that vehicle should be driven only by those who obtained Special authorisation to drive the tourist taxi car and in as much as there was no

endorsement to that effect in the driver's licence, the learned Judge held that the insurer was not liable to pay compensation. In my view, the

decision does not in any way help the first respondent. The learned Judge had proceeded on facts in the present case, the policy required that the

driver should have a licence to drive the vehicle meaning the autorickshaw.

16. In *Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd.*, . The Supreme Court interpreting the word ""effective"" in the expression

effective driving licence"" u/s 3 of the Motor Vehicles Act 1988 held that it means a valid licence both as regards the period and the type of

vehicle. In that case, the light motor vehicle even though designed to be used as a goods carrier or transport vehicle neither had a permit for a

goods carriage nor carrying any goods on the date of accident, the Supreme Court held that the vehicle remained a light motor vehicle and was not

a light goods vehicle or a transport vehicle and therefore licence to drive the light motor vehicle issued in Form 6, in the rules was an effective and

valid licence to drive such a vehicle. The Supreme Court rejected the contrary contention of the insurer disowning liability, I fail to see how the

decision of the Supreme Court will in any way assist the case of the first

respondent in the instant case. I, therefore, hold that the Tribunal was clearly in error in fastening the liability on the Insurance Company in the accident involving an autorickshaw for driving which the third respondent required a valid endorsements. The appeal will therefore stand allowed and the Insurance Company will stand exonerated from liability. So far as the owner of the vehicle is concerned, he will be liable to pay the compensation amount to the first respondent.

17. It is seen from the records that the entire amount had been deposited into court and the claimant was permitted to withdraw 1/2 of the compensation amount, proportionate interest and the entire cost without security. This order was passed in C.M.P.No. 12660 of 1993 and 8132

of 1994. The balance amount was directed to be deposited in Fixed Deposit in any Nationalised Bank initially for a period of five years from

4.7.1994. One half of the amount having been withdrawn by the claimant I feel that it is just and proper to direct the Insurance Company to

proceed against the owner of the vehicle for recovery of the said amount. It can do so. As regards the balance amount, the insurance Company is

entitled to the same and the amount will be refunded to the Insurance Company.