
(1999) 04 MAD CK 0003
In the Madras High Court
Case No : C.M.A. No. 664 of 1992

National Insurance Co. Ltd. APPELLANT
Vs
V. Boopathi alias Venkatachalapathy and Others RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)(a)

Citation : (2000) ACJ 1071 : (1999) 2 LW 501

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K. Ranganathan, for the Appellant; A.K. Kumarasamy and Bharathidasan, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the award of the Motor Accidents Claims Tribunal (Principal Sub Judge), Erode, in M.C.O.P. No. 230 of

1988, National Insurance Co. Ltd. has filed the above appeal questioning its liability.

2. Respondent No. 1 herein has filed the said claim petition claiming a sum of Rs. 4,00,000 for the permanent disability sustained due to the

accident which took place on 15.2.1988. The respondent No. 2 herein is the driver of the offending lorry bearing registration No. TNE 9769 and

respondent No. 3 herein is the owner of the same. After considering the oral and documentary evidence, the Tribunal after holding that the

accident was caused due to the negligence of the driver of the lorry, passed an award for Rs. 4,00,000 against all the 3 respondents therein jointly

and severally. The driver and owner of the lorry did not contest the claim petition. The insurer alone has filed the present appeal questioning its

liability.

3. In the light of the limited issue, it is unnecessary for this court to refer negligence and quantum aspects.

4. Heard the learned counsel for the appellant as well as respondents.

5. Mr. K. Ranganathan, learned counsel for the appellant insurance company by pointing out the insurance policy relating to the lorry No. TNE

9769 which is marked as Exh. R-1, would contend that in the absence of any additional premium, its liability is restricted to Rs. 1,50,000. He also

contended that as per the terms and conditions of policy under Exh. R-1 and in view of the statutory provisions and on the basis of the oral and

documentary evidence of RW 1, the Tribunal ought to have restricted its liability only to the extent of Rs. 1,50,000. On the other hand, Mr. A.K.

Kumarasamy, learned counsel appearing for the respondent-claimant No. 1 has contended that in the absence of any acceptable evidence

regarding its limited liability, the Tribunal is fully justified in passing the award against all the respondents; accordingly prayed for dismissal of the

appeal.

6. I have carefully considered the rival submissions.

7. The vehicle involved in the accident is a lorry bearing registration No. TNE 9769. It dashed against the petitioner, who was a pillion rider at the

time of the accident, thereby he sustained multiple injuries; and ultimately his left leg has been amputated above knee. As stated earlier, we are

concerned with the liability of the insurance company. Mr. K. Ranganathan, after taking me through the true copy of the insurance policy, Exh. R-

1, has contended that inasmuch as the owner of the vehicle has paid only Rs. 240 towards liability for public risk, as per Section 95(2)(a) of the

Motor Vehicles Act, the liability of the insurance company to third party's claim is restricted to Rs. 1,50,000. He also brought to my notice that the

owner has not paid any extra premium to cover unlimited liability. The perusal of the insurance policy Exh. R-1 clearly shows that the owner had

paid only Rs. 240 and hence as per tariff schedule as well as the provisions of the Act, the liability of the insurance company is restricted to Rs.

1,50,000. The court below after perusing the schedule of premium after holding that in the absence of any records to show that the liability of the

insurance company is restricted to Rs. 1,50,000 and of the fact that Exh. R-1 is

only true copy and not the carbon copy of the original policy, rejected the plea of the insurance company. Mr. A.K. Kumarasamy has also reiterated the very same contentions as arrived by the learned Tribunal. It is seen from the records that even in the counter-affidavit filed by the appellant herein, respondent No. 3 before the Tribunal, it is specifically pleaded that its liability is restricted to Rs. 1,50,000 and if any award is passed over and above the said amount, the owner of the vehicle alone is liable to pay the same. In support of the above plea, an officer of the insurance company was examined as RW 1 and an attested true copy of the insurance policy was marked through him as Exh. R-1. Even on 13.4.89 the insurance company sent a notice to the owner informing its stand. The said cover has been returned. The copy of the registered notice is marked as Exh. R-2. The returned cover is marked as Exh. R-3. The registered notice dated 13.4.1989 addressed to the owner of the vehicle is marked as Exh. R-4. The requisition made by the insurance company to the owner of the vehicle is marked as Exh. R-5. For none of the notices, the owner of the vehicle sent any reply. Even in the notice under Exhs. R-2 and R-4, it is specifically stated that it would not be liable to pay any amount extending to Rs. 1,50,000 in this case as per the policy condition, since he opted only for limited third party liability in his policy. Even though the schedule of rates has not been marked on the side of the insurance company, it is clear that the said rates have been fixed by tariff advisory committee. As per the schedule of rates with "cover" and "liability" fixed under the Act, for the vehicle in question, the owner has to pay minimum premium of Rs. 240. If such amount is paid, the liability of the insurance company is restricted up to Rs. 1,50,000 and if the owner wants to indemnify him for the entire liability, additional premium in terms of "schedule of rates" has to be paid. I have already observed that the perusal of Exh. R-1 does not show payment of additional premium for unlimited liability.

8. In the case of Oriental Fire and General Insurance Co. Ltd. Vs. Poompavai and others, a Division Bench of this court in similar circumstances, after holding that when there is no extra premium charged for coverage of liability in excess of the requirements of the Act and the policy specifically limits the liability as per the Act, even though the policy is styled as a

comprehensive one, inasmuch as no extra premium is paid for coverage of liability in excess of the requirements of the Act, the insurance company is liable to pay to the extent mentioned in the Act. The said decision supports the stand of the appellant. Similar view has been expressed by another Division Bench of this court in *New India Assurance Co. Ltd. v. K. Chandra* 1991 ACJ 386 (Madras).

9. In *National Insurance Co. Ltd. Vs. Nathilal and Others*, , their Lordships of the Supreme Court, after referring to Sections 95 (2) (b) and 110-

A of the Motor Vehicles Act, 1939, have held that in the absence of payment of any special premium for unlimited liability the mere fact that in the insurance policy the column against liability was left blank would not justify the inference of unlimited liability. The following conclusion of their

Lordships is very relevant:

(6) A perusal of the insurance policy, which has been exhibited through the witness examined on behalf of the insurance company, clearly shows

that the policy was in respect of seven passengers and one driver. The premium under Part B of the Schedule of Premium paid as against the seven

passengers at Rs. 12 per passenger was shown as Rs. 84 and an additional sum of Rs. 8 for the driver. In addition to this, a premium of Rs. 180

was paid towards liability to public risk. As against unlimited column, no premium was paid as is evident from the policy. The mere fact that the

column against unlimited liability was not filled, will not automatically lead to the inference that the liability was unlimited in the absence of any

special premium paid towards that claim.

The said decision also supports the case of the appellant. Similar view has also been taken by another Division Bench of this court in *National*

Insurance Co. Ltd. Vs. Ramachandran and others, I have already observed that in our case, apart from the specific defence taken in the counter-

affidavit, the officer of the insurance company was examined as RW 1, Exhs. R-1 to R-5 were marked in support of its defence of limited liability.

Accordingly, the contra conclusion arrived at by the Tribunal cannot be sustained.

10. It is also seen from the order of the Tribunal that since the insurance company failed to produce the carbon copy of the insurance policy as well

as proposal made by the owner of the vehicle, it disbelieved the contents of Exh. R-1 and ultimately rejected the stand taken by the insurance

company. It is true that the insurance company has not produced the carbon copy of the policy. However, RW 1, an officer of the insurance

company explained the reason for the non-production of the said copy. On the other hand, the attested true copy of policy in question has been

filed as Exh. R-1 through RW 1. At this stage, it is relevant to refer that the owner of the vehicle who was shown as respondent No. 2 before the

Tribunal having received notice, did not contest the claim petition. He could have produced the original policy and informed the court regarding the

quantum of liability assured by the insurance company. He has not done so. In an identical circumstance, a Division Bench of this court in a

decision in Oriental Insurance Co. Ltd. Vs. Jalaja and Others, , has observed as follows:

An insurance company which is carrying on business of insurance is not expected to fabricate documents. Unless some material is produced before

the court to suspect the bona fides of the insurance company, the court cannot readily draw an inference that the copy of the policy produced by it

as a true copy is not a genuine one, particularly when the provision in the Act of 1939 was that the maximum liability of the insurance company with

regard to third party risk was Rs. 1,50,000. The policy does not mention any specific amount. The limitation clause merely refers to the Act and

says that such amount as is necessary to meet the requirements of the Act. When that is the relevant clause, we have no doubt whatever about the

genuineness of the copy of the policy produced by the company. This is the general form used by the company in the case of all persons who take

insurance. It is not the suggestion of the claimants that the form itself is fabricated for the purpose of this case. The limitation clause is in printed

portion of the form. It is not as if it is handwritten or typewritten. In these circumstances, we differ from the view taken by the Tribunal and hold

that Exh. B-1 is a true copy of the policy. It has been held in New India Assurance Co. Ltd. Vs. V.K. Chandra and Others, , that u/s 95(2)(b) of

the Act, the insurance company is not liable to pay anything more than the amount limited by the statute unless the policy contains a different

provision. We agree with the view taken by the Bench and hold in this case that the statutory liability at Rs. 1,50,000 is applicable and

consequently the insurance company is liable to pay only Rs. 1,50,000 out of the award amount.

The said conclusion of their Lordships of the Division Bench is directly an answer to the doubt raised by the Tribunal. As rightly contended by the learned counsel for the appellant, the insurance company being a Government organisation, it is not possible to conclude that Exh. R-1 is a fabricated document. Admittedly, no material is produced before the court below to suspect the bona fides of the insurance company and in such circumstance, as rightly observed by their Lordships, it is not open to the court below to draw an inference that a copy of the policy produced by it as a true copy is not a genuine one. Even though the policy does not mention any specific amount, the limitation clause refers to the Act and says that such amount as is necessary to meet the requirements of the Act. In such circumstance, I am unable to share the view expressed by the Tribunal for rejecting Exh. R-1. If Exh. R-1 is accepted, undoubtedly, the liability of the insurance company is restricted to Rs. 1,50,000 only.

Accordingly I hold that u/s 95(2)(a) of the Act, the insurance company is not liable to pay anything more than the amount limited by the statute unless the policy contains a different provision. In this case, the statutory liability of the vehicle in question is Rs. 1,50,000 and consequently, the insurance company is liable to pay Rs. 1,50,000 out of the award amount.

11. Under these circumstances, the award of the Tribunal is modified; consequently the insurance company is liable to pay only Rs. 1,50,000 out of the award amount. Except the said modification, the impugned award is confirmed in all other respects. Net result, the appeal is allowed.

However, there shall be no order as to costs.