
(1986) 09 MAD CK 0031
In the Madras High Court

National Insurance Co. Ltd. APPELLANT
Vs
V. Vasantha and Others RESPONDENT

Date of Decision : 26-09-1986

Acts Referred:

Citation : (1988) 1 ACC 249 : (1987) 100 LW 683

Hon'ble Judges : T. Sathiadev, J;G. Maheswaran, J

Bench : Division Bench

Judgement

T. Sathiadev, J.—National Insurance Co. Ltd., third respondent in M.C.O.P. No. 38 of 1979 on the file of the Motor Accidents Claims Tribunal Coimbatore, is the appellant. Petitioner Nos. 1 to 3 and respondent Nos. 1 and 2 before it are the respondents herein. Ranking of parties is, as before Tribunal.

2. Petitioners claimed that they are entitled to a compensation of Rs. 75,000/- for the death of one Vyasarao, who died in a scooter accident on 13-9-1978, on the Avinashi Road, Peelamedu, Coimbatore. They stated as follows: On the fateful day when Vyasarao, the husband of first petitioner and the father of petitioner Nos. 2 and 3, was travelling in the pillion of the scooter TNB 5601, which was then being driven by the first respondent and belonging to the second respondent, it skidded, and as a result thereof, he was thrown off the pillion and he sustained injuries and later on he succumbed to the injuries in the hospital. This accident was due to the rash and negligent driving of the first respondent who was then in the scooter for the business of the second respondent. He was aged 44 years and drawing a monthly salary of Rs. 600/-, and he was entitled to annual increments and better prospects, and he could have normally lived upto 70 years, and the compensation, as claimed is fair.

3. Respondent Nos. 1 and 2 stated that the scooter was driven with extreme caution and at moderate speed, and as the deceased was a heart patient and often used to get giddiness, he suddenly felt giddy and fell down from the pillion seat and sustained injuries and, therefore, they are not liable to pay compensation and that there was no rash driving by the first respondent.

4. Third respondent stated that as the pillion rider is not covered by the insurance policy, it cannot be made liable for the consequences of the accident.

5. The Tribunal held that the scooter was driven rashly and negligently by first respondent, that Exh. B 2 insurance policy is a comprehensive policy, that as the deceased was travelling in the pillion of the scooter only in connection with the work of the Medical College wherein he was employed as a cashier, the insurance company is liable to pay petitioners, and that a compensation of Rs. 50,000/- has to be paid.

6. Aggrieved against this award, the insurance company alone had preferred the appeal claiming that the pillion rider is not covered by the nature of policy taken under Exh. B 2, and the Tribunal was in error in holding that he was travelling in the scooter in connection with the work of the Medical College and that in the nature of duties discharged by the deceased in relation to the insured, the insurance company is not liable to pay compensation.

7. This appeal having been confined only with regard to the liability of the insurance company, the finding of the Tribunal on other aspects do not require reconsideration. Mr. Ranganathan, learned Counsel for third respondent, submits that Exh. B 2 is a comprehensive policy and not an Act policy and that unless the terms contained therein fasten the liability on it to pay for a pillion rider, it cannot be made liable in the instant case to pay compensation. He relies on the decision in *K. Gopalakrishnan v. San-kara Narayanan* 1969 ACJ 34, wherein a Division Bench of this Court held that an owner of a scooter is not bound to take out a policy covering the claim of a pillion rider, and in the absence of the policy covering that risk, the insurance company cannot be held liable to pay compensation for the injuries sustained by the pillion rider. If it is an Act policy and how far the liability could be fastened on to the insurance company and how to understand the words "third party" he relies upon the decision of the Supreme Court in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.* 1977 ACJ 343, wherein it was held as follows:

Sections 95 (a) and 95 (b) (i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960 and excluded the liability of the insurance company, regarding the risk of the passengers. Section 95 provides that a policy of insurance must be a policy which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negated as the insurance cover is not available to the passengers is made clear by the proviso to sub-section which provides that a policy shall not be required:

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried on in

or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

8. Therefore, it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

9. Hence, he contends that the expression "third party" cannot be widely construed as to take in a pillion rider and treat him as if he is a third party to the accident. A Division Bench of this Court in *N. G anapathy v. K. Viswanathan*, C.M.As. 764 of 1977 and 18 of 1978; decided on 29-10-1980, had considered the scope of Section 93 and the various decisions rendered about the entitlement of a pillion rider to claim compensation and it held as follows:

Therefore a mere comprehensive policy by itself cannot be taken to cover a risk to an occupant of a scooter as in this case other than the owner or driver unless the said risk is agreed to be covered by the insurance company on payment of an extra premium.

10. These decisions go to show that, for the death or injury of a pillion rider, the insurance company will not be liable to pay compensation, unless he was carried in pursuance of a contract of employment or for hire or reward or such a liability is specifically provided for in the policy.

11. Mr. Santhanagopalan, learned Counsel appearing for respondent Nos. 1 and 2, submits that, when a wider connotation is called for regarding contract of employment occurring in second proviso to Section 95(1) of the Act, and in the instant case, when the cashier had been taken on the scooter and died in the accident, he got injured only at the time when he was under the contract of employment. To strengthen this line of submission, he relies upon *United India Insurance Co. Ltd v. Nagammal* 1983 A CJ 541 , wherein a Division Bench of this Court held that the contract of employment occurring in the second proviso to Section 95(1) should receive a wider connotation and not a narrow connotation of referring only to a contract of employment entered into between the occupant of the car and the injured. It further held that, even if there is no regular contract of employment, if the travel by the passenger in the vehicle has been necessitated by business considerations, then the person should be taken to have been carried by reason of or in pursuance of the contract of employment. When the deceased was taken by first respondent student, it was not for any contract of employment, connected with the insured, being the second respondent. In the petition it is claimed as follows:

The second respondent who was the owner of the scooter and for purpose and business and benefit, the vehicle was driven by the first respondent who is and deemed to be his agent, he is also vicariously liable.

12. First respondent, on being examined as RW 1, has stated that on that day, the deceased had come in the scooter in respect of the affairs of the college. Therefore, the petitioners having claimed that it was for the business of the second respondent who is the owner of the scooter, but no other evidence having been placed that the deceased was in any manner connected with the second respondent in his avocations, and having not been in fact employed by him, merely because he was a cashier in the College who was not the insured, in applying a wider connotation, his employment in that capacity cannot be taken into account to fasten liability on the insurance company.

13. He then referred to *Vanguard Insurance Company Ltd. v. Chinnammal* 1969 ACJ 226 (Madras), in which it was held that the words "contract of employment" will also cover persons who are on the vehicle in pursuance of a contract of employment with the owner of the goods carried in it. This conclusion was arrived at on the basis that, what is necessary is that for sufficient practical or business reasons, the person must be on the vehicle in pursuance of a contract of employment. *Madras Motor and General Insurance Co. v. Katanreddi Subbareddy* 1975 ACJ 95, is relied upon, but in the light of the decision of the Supreme Court and the decisions of the Division Bench referred to, the view taken therein cannot any longer be relied upon. *Oriental Fire and General Insurance Co. v. V. Ganapathi Ramalingam* 1982 ACJ 106, is relied upon for the limited purpose to show as to how "comprehensive policy" could be understood. It is stated therein as follows:

The limitation provided for in Section 95(2) will not apply to vehicles which have been comprehensively insured to cover all risks.

14. Though an attempt was made to plead that once a policy is captioned as a "comprehensive policy", it could take all sorts of risks, it is apparent that the said decision has not gone to the extent of holding that irrespective of the terms and conditions agreed to between the parties, for specified areas in respect of which alone when risk is undertaken by the insurance company yet, once a comprehensive policy is taken, it would take all the risks which could be conceived of. The expression "comprehensive" is used in Exh. B 2, to mean that apart from the loss or damage suffered to the vehicle, it also assumes responsibility for third party liability. To what extent such liability is undertaken, would depend on the terms and conditions of that policy.

15. Therefore, in so far as the deceased was concerned, at the time of the accident, he was a cashier in the Medical College, but himself being employed in that capacity would not bring him within the expression "in pursuance of a contract of employment", unless it be shown that at least there was some connection between his nature of employment and that of the second respondent, the owner of the vehicle. He was a total stranger to the second respondent. Even though an attempt had been made to make a claim in this direction in the petition, being fully aware of the futility of making such a claim, it was never pursued by adducing any evidence in that direction. The extreme

contention put forth that the expression "in pursuance of a contract of employment" on being given a wider connotation, will also include instances in which, at the time when the deceased or injured was in the vehicle, it was for discharging certain duties for somebody or some institution, cannot be accepted. There must be some nexus between the affected person and the insured person. Hence, the deceased was not travelling in the scooter in pursuance of a contract of employment of the insured second respondent.

16. Mr. Santhanagopalan, would then attempt to interpret the scope of the policy and claim that when the policy is taken to cover two persons, and when written conditions would override printed conditions as found in *Wavne Distributors & Advertisers Ltd. v. General Accident Assurance Co.* 1968 ACJ 434 (Ontario, Canada), Exh. B 2, the insurance company, is liable to pay compensation in the instant matter. It is stated that a motor cycle shall be deemed to include a side-car attached to motor cycle. Under the caption seating capacity of side-car (if any) it is typed as "sole". Hence, quite ingenuously he puts forth a claim that whether a side-car is to the left of the scooter or in the form of a pillion seat, having assumed the responsibility for two persons, the interpretation should be in favour of the affected party. A side-car is one attached to a motor cycle, and it would be a misnomer to construe it as a pillion seat. A term in a policy has to be construed in the context in which it is used and the words there under cannot be misapplied or wrongly understood. As a motor cycle is deemed to include a side-car and since its capacity could be more than one; in describing it, it is stated that it could be only a side-car of such capacity which could be for one person and not for any other bigger type of side-cars. The term "sole" therein is with reference to the capacity of the side-car and not with reference to the pillion rider. Hence, the strange construction which he had attempted to put on the description of the vehicle as found in the schedule, does not alter any of the terms and conditions of the policy, so as to include a pillion rider.

17. Mr. Santhanagopalan referred to the last sentence in para 12 of the award which reads:

The claim against respondent Nos. 1 and 2 is dismissed without costs.

18. This is an appeal preferred by third respondent. The claimants have not preferred any appeal against the dismissal of the claim, as against respondent Nos. 1 and 2. In an appeal preferred by third respondent, on claimants being impleaded as respondents, they cannot now ask for relief as against respondent Nos. 1 and 2 who are impleaded as co-respondent Nos. 4 and 5 herein by invoking Order 41, Rule 33 of Civil Procedure Code. In *Madras Motor & Genl. Ins. Co. v. Katanreddi Subbareddy* 1975 ACJ 95, relying upon a Full Bench decision of this Court in *(Delhi) Venkatarama Doss Pantulu Vs. (Delhi) Bheema Rao*, , it was held as under-

It cannot, therefore, be contended that once the appeal reached the H.C. all the provisions in CPC applicable to appeals to the H.C. are automatically attracted.

19. When an appeal was preferred u/s 110-D of the Motor Vehicles Act, the above observation was made. Therefore, this Court would not, in this appeal, deal with a finding which has been arrived at as against respondent Nos. 1 and 2 before the Tribunal, merely because they are impleaded herein as respondent Nos. 4 and 5.

20. Therefore, the Tribunal was in error in holding that the insurance company-third respondent is liable to pay compensation. Hence, the appeal is allowed.

21. No costs are awarded.