(1997) 03 MAD CK 0014

In the Madras High Court

Case No : A.A.O. No. 741 of 1996

National Insurance Co. Ltd., Gobichettipalayam APPELLANT

Vs

Ravindran and another RESPONDENT

Date of Decision : 25-03-1997

Acts Referred:

Citation : (1997) 03 MAD CK 0014

Hon'ble Judges : Govindarajan, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; M. Sathyanarayanan, for the Respondent

Judgement

Govindarajan, J.—The Insurance Company aggrieved against the award passed by the Tribunal has filed the above Appeal. On 1.12.1994

the first respondent was riding T.V.S.50 bearing Registration No. T.N. 3 6-4460 on the left side of the Bhavani to Kavundapadi Road. At that

time one Duraiswamy @ Kaliappan, the second respondent herein was driving his Moped bearing registration No. TAE.9630 in a rash and

negligent manner on the wrong side of the road from west to east and dashed against the first respondent vehicle. Due to the accident. the first

respondent sustained injuries. The first respondent claimed Rs. 1,50,000/- as compensation. The Tribunal after considering the oral and

documentary evidence: found that the accident took place only due to the rash and negligent driving of the second Respondent and awarded a

compensation of Rs. 45,000/- to the claimant.

2. The appellant/Insurance Company has filed the above appeal aggrieved against the said award. The learned counsel for the appellant has

submitted that though he had licence to drive four wheelers the claimant was not having any licence to drive the moped on the date of accident. So

the Insurance Company is not liable to pay any compensation. As per Section 10 of the Motor Vehicles Act a person should have valid licence to

drive the moped. The learned ""counsel relied on the judgment of (M/s. National Insurance Company Ltd., Gobichettipalayam, v. Thulasi and 2

others) reported in 1994-1- L.W.567 in support of his submission that the claimant had no driving licence at all and so the exclusion clause in the

policy of Insurance Company would come into play. In the said judgment the Division Bench of this Court has held as follows:

It is contended by the learned counsel for the claimant that the insurer must also prove that the driver of two vehicle was disqualified in law from

holding or obtaining a licence. Reliance is also placed on some rulings of this Court and the Allahabad High Court. Before considering the rulings it

is necessary to refer to the provision in the Motor Vehicles Act.S.96(2) of the Motor Vehicles Act 1939 which sets out the defence which can be

raised by the insurer in a proceeding for. compensation. Similar provision is found in S.149 of the Motor Vehicles Act, 1988. Under C1(b) (ii) of

S.96(2), the insurance can plead that there has been breach of a condition of the policy excluding driving by a named person or persons or by any

person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. There are two limbs to the Section

and the disjunctive ''or'' is used. The first part deals with a case where the driver is not duly licensed. If a person had no licence at all prior to and at

the time of accident, he will be covered by the first part. If the first part applies to a case the second part will not apply. The second part will

necessarily apply only to cases in which the driver had a licence some time or other and at the time of the accident it is not subsisting. The latter

part of the Section cannot be interpreted as meaning that even if the driver had no licence at any time, he must be shown to be disqualified to hold

or obtain a licence for the purpose of excluding the liability of the insurer.

In this case it is not disputed that the claimant is not having any licence to drive the moped on the date of the accident. In view of this admitted fact,

the Insurance Company is entitled to take advantage of the exclusion clause u/s 149 of the Motor Vehicles Act. In view of the above, the Appeal is allowed with costs. Consequently, connected C.M.Ps. are closed.

