

(1989) 07 MAD CK 0032
In the Madras High Court

National Insurance Company Ltd.

APPELLANT

Vs

V.S.R. Kumaresan and Others

RESPONDENT

Date of Decision : 20-07-1989

Acts Referred:

Citation : (1990) ACJ 873 : (1989) 2 MLJ 120

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—The insurance Company which was the second - respondent before the Motor Accidents Claims Tribunal, Vellore, in M.A.C.T.O.P. No. 18 of 1980, is the appellant in this Civil Miscellaneous Appeal. The first respondent herein was the claimant before the Tribunal. The second-respondent was the owner of the vehicle, namely, a stage carriage bus which was involved in the accident. The second respondent died pending this Civil Miscellaneous Appeal and his legal representatives have been brought on record. The claimant was inside the bus at the time of the accident. He was not a passenger/being carried in the bus for hire or reward at the time of the accident. It has been found that the accident occurred on account of the rash and negligent driving of the bus by its driver. The bus had undergone repair works and at the time of the accident was on the road for test driving in order to find out whether the defects had been properly rectified. In the accident, the claimant sustained injuries, and, in particular, he lost vision in his left eye and he laid a claim for compensation of Rs. 1,00,000. The Tribunal awarded only a total compensation of Rs. 29,600. The Claimant first respondent in this Civil Miscellaneous Appeal has preferred a Memorandum of Cross-Objections coveting enhanced compensation.

2. Mr. N. Rosi Naidu, learned Counsel appearing for the insurance-company-appellant herein, made submissions to have his client exonerated from liability. First, learned Counsel for the insurance-company,appellant herein, would contend that the terms of the policy related only to the user of the vehicle as a stage carriage and the accident having occurred when the vehicle was not being

used as a stage carriage the liability cannot be pinned down on his client. The condition in the policy marked in the case as Ex.B-1 and relied on by the learned Counsel for the insurance-company-appellant reads as follows:

Use only under a stage carriages permit within the meaning of the Motor Vehicles Act, 1939

This condition certainly does not convey the meaning that the accident should have occurred only at the time of the user of the vehicle as a stage carriage, namely, while the vehicle was plying on a route as a stage carriage. It could only connote and denote that the vehicle must be one covered under a stage carriage permit within the meaning of the Motor Vehicles Act, 1939, hereinafter referred to as the Act, and nothing more. Hence, we eschew this contention of the learned Counsel for the insurance-company-appellant herein.

3. Secondly, learned Counsel would submit that the claimant would not come within the category of "third party" so as to be covered by the policy. According to learned Counsel for the insurance-company-appellant herein, the expression "third party" could only mean a person outside the vehicle and as such the policy would not cover the claimant. The terms of the policy, as such do not support such a theory. Nothing is stated in the policy to the above effect. But, learned Counsel would rely on a pronouncement of the Supreme Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, ; in support of the theory advanced by him. The Supreme Court has dealt with the case of a car which was driven rashly and negligently and as a result of which the accident occurred, causing the death of a person who was travelling in the car. There was advertence to Section 95(1)(b) proviso (ii) of the Act, to hold that it is not required that the policy of insurance should cover such a risk. That is the position evident from a reading of the said proviso. The operative or the latter portion of the proviso, as such, stated that a policy shall not be required to cover liability in respect of death or for bodily injury to a person being carried in or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises. But, there is an exception adumbrated" in the first part of that proviso by virtue of which if 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, then it will fall outside that proviso and the general proviso and the general provisions requiring coverage by the policy shall govern. The vehicle with which the Supreme Court was concerned was a car and not a vehicle, in which the passengers were carried for hire or reward, as in the present case, and hence the view was expressed that it is not required that the policy of insurance should cover such risks. This would be the position, where the policy is in terms of the provisions of the Act. But, in addition to statutory terms, wider risks could be covered by what we call as a comprehensive policy. But, in our case, as we shall presently see the policy in terms of the Act itself will cover the claimant. We do not think that this decision can be availed of by the learned Counsel for the insurance-company-

appellant herein, to wriggle out of the liability on this ground. In any event, the pronouncement of the Supreme Court relied on by the learned Counsel for, the insurance-company-appellant herein, does not at all support the theory projected by him that a third party could only mean a person outside the vehicle and on the road.

4. However, learned Counsel for the insurance-company, appellant herein, would place reliance on the pronouncement of Swamikkannu, J., in *New India Assurance Co. Ltd. v. Kuppuswamy Naidu* 1988 A.C.J. 774. That pronouncement does not express any specific opinion on this contention put forth by the learned Counsel for the insurance company, appellant herein, namely, that a third party take only a person outside the vehicle and on the road. The facts of the case dealt with by the learned Single Judge show that there was an unauthorised handling of the vehicle and in those circumstances it was opined that the insurance-company cannot be made liable for the death of the pillion rider.

5. Learned Counsel for the insurance-company-appellant herein, thirdly wants to base a submission on the Proviso (ii) to Section 95(1)(b) of the Act, to say that a policy shall not be required to cover risks for persons, who do not travel for hire or reward or in other words who or not passengers carried in the vehicle for hire or reward. This is a misconception and misconstruction of the language of the said proviso. Let us examine the relevant provisions of the Act. Chapter VIII of the Act deals with insurance of motor vehicles against third party risks. For our purpose, advertence to Sections 93,94 and 95 may be sufficient. Section 93(d) defines "third party" thus:

third party includes the Government.

This is not very helpful and the definition is not exhaustive. But, it is now well accepted that the insurer or the insurance-company, being one party to the contract; the insured or the policy-holder being another, the claims made by others in respect of the negligent use of the motor vehicle would be claims made by others in respect of the negligent use of the motor vehicle would be claims made by third parties. The concept entertained by the learned Counsel for the insurance-company-appellant herein, that the expression "third part" would cover only a person, who was outside the vehicle and on the road, is too restricted one to be accepted. Section 94 prohibits the user of a motor vehicle by any person other than a passenger, in a public place, unless there is in force in relation to the use of the said motor vehicle by the concerned person, a policy of insurance, complying with the requirements of Chapter VIII. Section 95 sets down the requirements of policies and limits of liability. Section 95(1)(b) says that in order to comply with the requirements of Chapter VIII, a policy of insurance may be a policy which insures the person or classes of persons, specified in the policy to the extents specified in Sub-section (2)--

(1) against any liability which may be incurred by him in respect of the death of 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;

(ii) against the death of or bodily injury to any passenger of a public service vehicle, caused by or arising out of the use of the vehicle in a public place:

Section 95(1)(b)(i) is generally couched, in respect of death or bodily injury to any person, without restricting it to any particular person or classes of persons. The person or classes of persons with reference to extent of liability in respect of such person or classes of person get exemplified by Sub-section (2), which we shall presently advert to. As per proviso (ii) to sub-section (1), a policy shall not be required, except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason or in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence or event out of which a claim arises. This proviso, as per the inbuilt exception, would not apply to the case of a vehicle, in which passengers are carried for hire or reward or by reason or in pursuance of a contract of employment. The exception is with reference to the nature of the vehicle and not with reference to the persons carried in the vehicle. That the bus involved in the accident was such a vehicle is not in dispute. The contention that the accident must have occurred only in the course of and at the time of the user of the bus or the plying of the bus carrying passengers for hire or reward has been already repelled. Hence, the bus in question falls outside the said proviso, and it will come within the general provision found in Sub-section 1(b)(i) and (ii). The position is made more clear when we advert to Sub-section (2)(b) of Section 95. It says that subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident, upto the following limits, namely:- (b) where the vehicle is a vehicle in which passengers are carried for hire or reward by reason or in pursuance of a contract of employment- (i) in respect of persons other than the passengers carried for hire or reward, a limit of fifty thousand rupees in all; (ii) in respect of passengers a limit of fifteen thousand rupees for each individual passenger. Here, again the reference is to the nature of the vehicle and the limitations are prescribed with reference to categories of persons carried in. It has been already found that proviso (ii) to Sub-section (1) of Section 95 would not apply to a vehicle in which passenger are carried for hire or reward. Thus the rigor of Sub-section (2)(b) of Section 95 would fully come into play and by Clauses (i) and (ii) provision has been made to cover two categories; one in respect of persons other than the passengers carried for hire or reward; and the other in respect of passengers. This is a statutory requirement and this cannot be got over by any condition getting incorporated in the policy, militating against or abrogating from the statutory requirement.

6. Lastly, learned Counsel for the insurance-company, appellant herein, would submit that there excepts liability in case the vehicle was used for reliability trial. Section 96(2) of the Act enables the insurance-company to defend an action for

claim only on the enumerated grounds. This ground, namely, user of the vehicle on reliability trial, does not at all fall within the enumerated statutory grounds and it is not possible for the insurance-company, appellant herein, to take cover under such a condition which militates against the statutory provision. Certainly, statutory provision cannot be overridden by any condition in the insurance policy. Thus, we are obliged to eschew all the contentions put forth by the learned Counsel for the insurance-company, appellant herein. Hence, we dismiss the Civil Miscellaneous Appeal.

7. As already noted, there is a memorandum of cross-objections by the claimant, the first-respondent in this Civil Miscellaneous Appeal. Mr. G.S. Selvatharasu, learned Counsel for the claimant, cross-objector, would canvass only one aspect with regard to the quantum of compensation and that is the disallowance of compensation for loss of earning power. As per the medical evidence, the claimant lost his vision in the left eye. The claimant was aged nineteen years at the time of the accident. He was employed as a mechanic in an automobile workshop. The reasoning given by the Tribunal for disallowing this claim is that there is an award for pain and suffering and for the disability suffered by the claimant. This is no reasoning at all in the eye of law for disallowing the claim for loss of earning power. Certainly, the claimant could not be held to be as fit a person as he was before the accident, to carry on his avocation even as a mechanic in the future efficiently. We can also envisage the difficulties which he has to experience, as time passes on in respect of bettering his prospects, on account of this draw back, namely, loss of vision in his left eye. We think we can award appropriately a sum of Rs. 15,000 under the head loss of earning power and we award it. To the above extent, the memorandum of cross-objections is allowed and this enhanced compensation of Rs. 15,000 shall be deposited by the insurance-company, appellant herein, within a period of two months from today, failing which it shall carry interest at 6 per cent per annum from the date of default. We make no order as to costs in the Memorandum of Cross Objections. Equally so, there will be no order as to costs in the Civil Miscellaneous Appeal.