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**(1987) 10 MAD CK 0028**  
**In the Madras High Court**

New India Assurance Co. Ltd.

APPELLANT

Vs

Parvathy Ammal and Others

RESPONDENT

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**Date of Decision :** 15-10-1987

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 103A

**Citation :** (1988) 2 ACC 494 : (1989) ACJ 114

**Hon'ble Judges :** Swamikkannu, J

**Bench :** Single Bench

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**Judgement**

Swamikkannu, J.—The appeal is preferred by the New India Assurance Company Limited (the Second respondent before the Tribunal) against the Award of the Tribunal dated 26-4-1982, passed in M.C.O.P. No. 108 of 1978, on a petition by respondents 1 to 5 herein as claimants for compensation for the accident that took place at 6-30 a.m. on 23-4-1976 on Tuticorin Palayamottah road, 3 kilometres west of Vagaikulam, finding that the claimants (respondents 1 to 5 herein) are entitled to a compensation of Rs. 30,000/-which is payable by respondents 2 and 3 before the Tribunal (the appellant and the 7th respondent herein). The compensation was apportioned as among the claimants (respondents 1 to 5) at the rate of Rs. 6,000/-each as desired by them in their petition, with proportionate interest payable to each of them. The amounts due to the minors (respondents 3 to 5) were directed to be deposited in a Scheduled Bank till they attained majority. The Tribunal dismissed the claim as against the first respondent before it (6th respondent herein).

2. The case of the claimants before the Tribunal was as follows:

On 23-4-1976, the lorry bearing registration Number TNT 1144 belonging to the 6th respondent herein was driven by its driver on Palayamcottah-Tuticorin road and it was heavily loaded with paddy. The owner of the paddy was seated in the cabin of the lorry. The lorry was driven in a rash and negligent manner and at a high speed and when it was proceeding 3 kilometers west of Vagaikulam, it suddenly capsized. The owner of the paddy, by name Payasam alias Madasamy,

got crushed under the lorry and died on the spot. The lorry had been fitted with a worn out tyre on the front left side. Because of the high speed with which the lorry was driven and also due to the heavy load, the lorry tyre got burst resulting in the accident, which could have been averted by the lorry being driven at a normal speed. The deceased victim, Payasam alias Madasamy, is survived by his wife (the first respondent) and his children (respondents 2 to 5). He was aged 40 years at the time of the accident. He was a paddy merchant as well as an agriculturist earning Rs. 600/- per menses. The father of the deceased died at the age of 85 and his mother, at the age of 80. Hence the deceased also would have lived upto the age of 80 but for the accident. He was hale and healthy at the time of accident. The 7th respondent herein was impleaded as third respondent before the Tribunal as he was the owner of the lorry at the time of the accident. The second respondent before the Tribunal (the appellant herein) is liable to pay compensation since the lorry had been insured with it at the time of the accident.

3. The first respondent (6th respondent herein) contended in his counter that he was not the owner of the lorry at the time of the accident, he having sold the vehicle to the 7th respondent herein on 13-3-1976 itself, and hence he was not a necessary party to the claim. He also denied the allegation that the accident was due to rash and negligent driving of the lorry, and further pleaded that the compensation of Rs. 30,000/- is a claim without basis. The appellant (the Insurance Company) contended in its counter that the vehicle in question had not been insured with it on the date of the accident. The 7th respondent herein, who was impleaded as the 3rd respondent before the Tribunal as the owner of the vehicle at the time of the accident filed counter and stated that the claim is not maintainable either in law or on facts and the petitioners claimants are not entitled to any relief. He admitted the case that the owner of the paddy was seated in the cabin of the lorry, but denied that the lorry was heavily loaded with paddy or that the lorry was driven rashly and negligently. On the other hand, the lorry was driven very carefully and at a normal speed and the accident happened due to circumstances beyond the control of the driver of the lorry. Due to the tyre getting burst unexpectedly the accident took place. The tyre was an original one. The driver of the lorry refused to take in the owner of the paddy and allow him to be seated inside the cabin, but in spite of his protest, the owner of the paddy got into the lorry. He denied the allegation that the deceased was earning Rs. 600/- per mensem. He characterised claim of Rs. 30,000/- as compensation as excessive.

4. On the above pleadings, the Tribunal framed the following points for determination:

- (1) Whether the first respondent or the third respondent was the owner of the lorry at the time of the accident?
- (2) Whether the accident had occurred due to the rash and negligent driving on the part of the driver of the lorry ?

(3) Whether all or any of the respondents are liable to pay any compensation and if so, what amount?

The first claimant Parvathiammal examined herself as PW 1 and also examined another witness by name Sivasubbu as PW 2 and filed Exhibits A 1 to A 6 including the post-mortem certificate relating to the deceased, and a copy of the FIR in the criminal case. On behalf of the respondents before the Tribunal, only the third respondent was examined as PW 1, who is none other than the 7th respondent herein, who is said to be the purchaser of the lorry and owning the lorry on the date of the accident.

5. On a consideration of the entire evidence, the Tribunal came to the conclusion under Point 1 that the 7th respondent herein was the owner of the lorry on the date of the accident. Under Points 2 and 3, the Tribunal held that the appellant and the 7th respondent herein are liable to pay the compensation to the claimants. According to the Tribunal, it was only due to the rash and negligent driving of the lorry by the driver, the accident took place and the appellant and the 7th respondent herein alone are liable to pay the compensation, they being the insurer and owner of the vehicle in question on the date of the accident. The Tribunal, on the evidence, fixed the compensation at Rs. 30,000/- and apportioned the same as among the six claimants at the rate of Rs. 6,000/- each with proportionate interest. It is this Award of the Tribunal that is challenged in this appeal by the Insurance Company.

6. Mr. A.R. Raman than, learned Counsel for the appellant, vehemently contends that the Tribunal had not properly appreciated the evidence on record and as such, had wrongly concluded that the appellant also is liable to pay the compensation along with the 7th respondent herein. He submits that the records would disclose that the 6th respondent herein, who was the erstwhile owner of the vehicle in question, had contended that he had transferred the lorry in favour of the 7th respondent herein. The 6th respondent herein had chosen to remain ex parte before the Tribunal, though he had earlier filed a counter, in which he had averred that he had sold the lorry in question to the 7th respondent herein, even on 13-3-1976. Evidently on the counter of the 6th respondent, the 7th respondent has been impleaded as per order in I. A. No. 41 of 1980. It is seen that the 7th respondent herein challenged that order of the Tribunal impleading him, in revision before this Court in C.R.P. No. 1757 of 1981 which was ultimately dismissed by this Court. Hence the order impleading him as a party in the claim petition has become final. He has filed his counter to the claim petition on 12-1-1982 and, according to Mr. A.R. Ramanathan, learned Counsel for the appellant, in the said counter the 7th respondent has not stated that his son had purchased the lorry and not he. In his evidence as RW 1, the 7th respondent would say for the first time that it was his son who purchased the lorry. It is pointed out by Mr. Ramanathan that he would even go to the extent of saying that the deceased was seated in the cabin of the lorry during the time of the accident and that lorry was carrying a load of paddy. According to the 7th

respondent herein, the lorry was not driven rashly or negligently and the accident occurred due to the lorry capsizing as a result of the tyre bursting. He has not chosen to examine his son who, according to him, had purchased this lorry, so as to corroborate his evidence, that it was only his son, and not he, who purchased the lorry from the 6th respondent. It is also pointed out by Mr. Ramanathan that the 7th respondent, in his evidence, has stated that on 13-3-1976 his son Rajarathnam had purchased the lorry and in cross-examination he had also submitted that he had refused to receive the notice issued to him by the 6th respondent herein. The 6th respondent herein, in his turn, has stated in his counter that he had sold the lorry to the 7th respondent. It is also pointed out that the claimants served a memo (as found in Exhibit A. 4) on the counsel for the 7th respondent calling upon him to produce the Policy of insurance relating to the vehicle in question. But, Mr. Ramanathan would point out that at no point of time, was there any intimation received from anyone alleging that the lorry had been purchased by the 7th respondent and as such, the policy of insurance had to be transferred in his name. It is only after receipt of such an intimation or application, according to him, the Insurance Company is obliged to dispose of the same within fifteen days. In this regard, he also points out paragraph 11 of the Award of the Tribunal, which shows that the Tribunal had taken into consideration all the factors and rendered a comprehensive Award.

7. Mr. Peppin Fernando, learned Counsel for the claimants-respondents 1 to 5, would contend that his clients may be given another opportunity by the petition being remanded. During the course of his arguments, he referred to the ratio decidendi in *National Insurance Co. Ltd. Vs. Mahadeb Kar and Others*, as well as *Madineni Kondaiah and Others Vs. Yaseen Fatima and Others*, and Section 103-A of the Motor Vehicles Act, 1939.

8. Mr. Venugopala Nayakar, learned Counsel for the 7th respondent herein, would vehemently contend that the appellant-Insurance Company has not come with clean hands. He would also contend that the alleged sale in favour of his client has not been proved since, according to him, there is no legal evidence available for proving the alienation of the interest in the lorry in favour of his client, the 7th respondent. He also submits that the transferor of the lorry, viz., the 6th respondent herein, has not chosen to enter the witness-box and as such, the Court is not able to know whether there was any such agreement to sell the lorry and if there was any, if it was a written agreement or an oral one. It is at this stage that he submits that the 7th respondent, who was impleaded as a party to the claim pennon, had no knowledge of the contents of the policy which is now sought to be introduced in evidence and, as such, he had no opportunity to put forth his case on the basis of the contents of the policy. In other words his argument would be only on the pivot that of the policy. In other words, his that is liable to pay compensation in the circumstances, and not the 7th respondent herein. He also pointed out that unless there is specific evidence on record by means of a document, the alleged transfer of the vehicle by the 6th respondent to the 7th respondent herein cannot be given credence or weight.

9. Based on the above arguments addressed by learned Counsel before this Court, the only points that arise for determination in the appeal are:

(1) Whether the appellant is liable to pay the compensation, or whether it is the owner of the lorry, to be ascertained from the evidence, at the time of the accident that is liable to pay the compensation ? and

(2) Whether the application at this stage has to be allowed so far as the introduction of the policy is concerned ?

10. All the parties to the appeal have perused the policy. It is common ground that this policy is the evidence of contract of motor vehicle insurance that was entered into by the 6th respondent herein with the appellant-Insurance company. There is nothing material so as to reject this document at this stage. This Court is of opinion that it would be in the interests of justice to receive the policy and merely because it is produced by the insurance company it cannot be rejected especially when the contract of insurance is evidenced by the same.

11. The point which has, incidentally, to be decided is whether any attempt at all has been made by the purchaser to have the policy transferred in his name. His case is that it is his son who purchased the lorry The seventh respondent's son has not gone into the witness box. But, the case of the 6th respondent herein in his counter is that he sold the lorry only to the 7th respondent herein Merely on the ground that no document had been produced, this Court is not inclined to reject the contention of the 6th respondent in this behalf. The Tribunal itself had applied its mind and discussed the evidence comprehensively on this aspect and come to the conclusion that it was only the 3rd respondent (7th respondent herein) who had purchased the lorry from the first respondent (6th respondent herein). This Court therefore confirms the said finding.

12. So far as the quantum of compensation is concerned no argument has been advanced by either side. This Court has also gone into the evidence with respect to the quantum. It finds that the quantum arrived at by the Tribunal is correct and that is confirmed.

13. Now, the most important crucial point that has to be decided is to be viewed from the evidence available on record. The policy of Insurance is now produced by the appellant, the Insurance company It is a so proved by the contents of the affidavit accompanying the petition for reception of he document v. C.M.P. No. 16445 of 1982. It is seen that it is valid policy that was entered into between the 6th respondent (owner of the lorry) and the appellant herein. Mr. A.R. Ramanathan would also refer to my decision in United India Insurance Co. Ltd. v. Dhanalakshmi and Ors. C.M.A. No. 122/82 of this Court--Judgment dated August 31, 1987, in this context. It is also pointed out by Mr. Peppin Fernando that in the said policy the carrying capacity of the lorry in question is mentioned as "3 persons and 7 tons". It also admits of no doubt that the deceased, Payasam alias Madasamy, did travel in the lorry. It is the averment in the counter of the 6th respondent herein that the deceased did travel in the cabin. That the lorry was

driven in a rash and negligent manner by the driver during the time of accident is also proved beyond reasonable doubt. In what capacity did he travel in the lorry, is the next question that confronts us. It is alleged that the driver of the lorry refused to allow entry to the deceased in the lorry. But, as already stated, the 6th respondent and even the 7th respondent herein, have stated that the deceased travelled in the lorry, seated in the cabin. Further, no burst tyre had been produced in support of the theory that the tyre got burst due to the speed of the lorry which should be said as vis major and that the lorry was not driven in a rash and negligent manner by the driver during the time of the accident. Under these circumstances, the finding of the Tribunal that the vehicle was driven in a rash and negligent manner has to be accepted and it is confirmed.

14. Now, who is liable to pay the compensation ? Is it, as decided by the Tribunal that both the appellant and 7th respondent herein are liable equally to pay the same ? It is argued on behalf of the 7th respondent herein, by Mr. Venugopala Nayakar, that he is not at all liable, because it is not proved that he purchased the lorry from" the 6th argument, because the irresistible conclusion that can be drawn in the circumstances on the basis of the evidence, oral and documentary is that the 7th respondent did purchase the lorry from the 6th respondent herein. We are not concerned with the question as for how much consideration was the purchase. What we are concerned now is, who was owning the lorry at the time of the accident. In this regard, the evidence clearly points out only the 7th respondent herein as the owner of the lorry.

15. In law, when the liability of the Insurance company comes to play its part ? It is needless to state that unless the Insurance company is informed by the purchaser of the vehicle or its seller, the Insurer cannot be expected to come to know of the alienation of the vehicle. It is only after the Insurer is informed of the transfer of the vehicle, if anything is not done by the insurer in the matter of effecting a transfer of the policy, then only the Insurance company can be accused of. As a matter of fact, it is only the purchaser who is in law duty bound to inform the Insurance company about his purchase of the vehicle and demand a transfer of the insurance policy in his name, and the said application has to be sent within a reasonable time. The test of reasonableness is one of fact. The duration of time that can be held reasonable, depends upon the facts of each case. In the instant case, it is seen that at no time was any application made by the purchaser of the vehicle (the 7th respondent herein) or the seller (the 6th respondent herein) informing the Insurer of the alienation of the lorry in favour of the 7th respondent. Can it, therefore, be held that the Insurance company is liable, under the circumstances of the case ? Certainly not. For, the insurance company was kept in the dark about the transfer of the vehicle that took place between the 6th respondent and the 7th respondent. Therefore, I hold that the Insurance company is not liable to pay any compensation in this case. The entire compensation that had been granted by the Tribunal in favour of the claimants (respondents 1 to 5 herein) has, in the circumstances, necessarily to be paid by the 7th respondent herein, viz., the third respondent before the Tribunal, who is

held to be the purchaser of the lorry in question and was owning it on the date of the accident. In the circumstances, the appeal deserves to be allowed and it is hereby allowed. The compensation awarded by the Tribunal, which is also confirmed by this Court, is payable only by Meenakshisundaram, the 7th respondent herein (the 3rd respondent before the Tribunal), who is found to be the purchaser and owner of the lorry on the date of the accident.

16. In view of the foregoing discussion and findings, the appeal filed by the Insurance company is allowed as indicated above and the 7th respondent herein alone is made liable to pay the compensation awarded by the Tribunal and confirmed by this Court. C.M.P. No. 16445 of 1982 is also allowed and the Policy of Insurance bearing No. 4264341 S3 issued on 18-12-1975 filed along with the said petition is received in evidence and marked as Exhibit B 1 and will form part of the record. In the circumstances of the case, there will be no order as to costs.