
(1986) 03 MAD CK 0055
In the Madras High Court
Case No : A.A.O. No. 618 of 1985

New India Assurance Co. Ltd.

APPELLANT

Vs

Subbu and Others

RESPONDENT

Date of Decision : 17-03-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(13), 2(14), 2(30), 2(32), 2(8)

Citation : (1986) 03 MAD CK 0055

Hon'ble Judges : Shanmukham, J

Bench : Single Bench

Advocate : R. David, for Kurian and Associates, for the Appellant; S. Sadhasivam, for N. Nallappan, for the Respondent

Final Decision : Dismissed

Judgement

Shanmukham, J.—The insurance company challenges its liability under the Motor Vehicles Act to pay compensation to the victims who met with an accident, on the sole ground that the driver who drove the vehicle did not possess the requisite licence and that therefore there is a clear violation of the contract of insurance. This argument in turn depends upon the further contention that the trailer and tractor are medium goods vehicles, as defined in Section 2(14) of the Motor Vehicles Act, 1939, hereinafter referred to as "the Act". The learned Counsel for the Appellant would also vehemently rely upon the admission of the driver examined as RW 2, who deposed that he held a licence only for light motor vehicle. To support his contention the learned Counsel relies upon a decision of a Division Bench of this Court in E. Enjanadevi v. Arumugham 1983 ACJ 625 (Madras).

2. But in Narcinva V. Kamat v. Alfredo Antonio Doe Martins 1985 ACJ 397 (SC), the Supreme Court has laid down the principle that the onus is on the insurance company to prove that the driver had no licence, to escape from its liability and that the mere non-production of the licence by the driver does not exonerate the insurance company of its liability. In other words, the insurance company relies

upon the fact that there is a breach of the terms of the contract and that such breach enables it to escape from the liability. It is therefore that the Supreme Court has pointed out that as long as it is the insurance company which asserts that there has been a breach of the terms of the policy it is for it not only to allege but also to prove that fact like any other fact. In this case the breach of the terms of the policy relates to the Appellant's contention that the driver of the vehicle concerned did not have a valid licence to drive such vehicle which, according to him is a medium goods vehicle. It is here the learned Counsel for the Appellant relies upon the admission of the driver RW 2 that he had only a licence for light motor vehicle. According to the learned Counsel for the Appellant, as long as there is the admission of the driver himself that he possessed only a licence for light motor vehicles, the insurance company had discharged the burden. I am unable to agree, for, the liability of the insurance company is not as against the driver, but as against the claimants who were victims in the accident. It is not as if there are no records relating to the licence possessed by, or issued to, the driver concerned. The best evidence is such record, even if the driver were to refuse to produce his licence. In this case, the insurance company had not taken any steps to summon the best record. I cannot rule out the possibility of the driver supporting the case of the insurance company. I reiterate that unless the insurance company had produced the best evidence on this aspect, it cannot escape from the liability fastened unto it under the Act. Further the liability is foisted on the insurance company under the Act. Of course a defence is available to the insurance company under the contract of insurance provided it establishes that there had been a breach of the terms of the insurance policy which would enable it to plead that because of such breach it could escape from its liability under the Act.

3. Secondly, there is another additional feature which goes against the insurance company. A copy of the driving licence was sought to be marked through RW 2 but then the insurance company opposed the marking of the said document on the ground that it was a copy. When there is a document to find out what kind of licence RW 2, the driver of the vehicle concerned, possessed any amount of oral evidence will not enable the insurance company to successfully contend that it had discharged the burden. In other words, when there is documentary evidence, it will be highly unsafe to act upon the oral testimony of RW 2, the driver in whose favour the licence was issued.

4. A Division Bench of this Court in *New India Assurance Co. Ltd. Vs. C.B. Shannnkar and Others*, , has ruled as follows:

There could be no doubt, therefore, that in order to escape liability, not only it should be proved that the driver of the vehicle was not having a licence at the time of the accident, but also the insurance company should prove that the driver was disqualified from holding or obtaining a licence or never had "any licence at all. Merely proving that on the date of the accident the driver did not have a licence and mat he pleaded guilty and was convicted in a criminal court

itself is not enough to hold that the insurance company is not liable for the claims. The onus of proving that the driver of the vehicle never had a licence or was disqualified from holding a licence is on the insurance company.

5. In any view of the matter, the insurance company has thus failed to discharge the burden. If so, I have no hesitation to find that the insurance company has failed to prove that the driver did not possess the requisite licence and therefore it is not liable.

6. Even on merits, I find that the insurance company has no case. The vehicles which were involved in the accident are trailer and tractor. According to the learned Counsel for the Appellant, these two vehicles will not come under "light motor vehicles" as defined in Section 2(13) of the Act, but would only fall u/s 2(14) of the Act, which defines "medium goods vehicle". According to Section 2(13), "light motor vehicle" means "a transport vehicle or omnibus the registered laden weight of which, or a motor car or tractor the unladen weight of which, does not exceed 4,000 kilograms", while "medium goods vehicle" as defined in Section 2(14) means "any goods vehicle, other than a light motor vehicle or road-roller". In this context, it is essential to look to Section 8(2) of the Act. It refers to various types of vehicles, which a driving licence shall specify and they are:

- (a) a motor cycle.
- (b) invalid carriage,
- (c) light motor vehicle,
- (d) medium goods vehicle.
- (e) medium passenger motor vehicle, (ei) heavy goods vehicle,
- (eii) heavy passenger motor vehicle,
- (f) road-roller,
- (g) motor vehicle of a specified description.

I will now demonstrate that neither tractor nor trailer nor both can be called "medium goods vehicle"; Section 2(30) of the Act defines tractor, which means a motor vehicle, which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) but excludes a road-roller, while Section 2(32) of the Act defines a trailer as meaning any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle. It is now necessary to refer to the definition of "goods vehicle" which according to Section 2(8) means any motor vehicle constructed or adapted for use for the carriage of goods or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers. Therefore, to satisfy that vehicle is, a medium goods vehicle, it has to be proved in the first place that it is a goods vehicle. In this case, I have already referred to the fact that both the

tractor and the trailer were involved in the accident. The definitions of "tractor" and "trailer" do not indicate that each of them should always be goods vehicle. Hence, unless the insurance company establishes that both trailer and tractor are goods vehicles within the meaning of Section 2(8) it cannot be said that they are medium goods vehicles. Thus, I find that the insurance company has failed to prove that either a tractor or a trailer or both would fall under the category of "medium goods vehicle". If so, the contention of the learned Counsel for the Appellant that as the driver did not possess licence for medium goods vehicle, there is a breach of the covenant in the policy of insurance and therefore it is not liable cannot be accepted. Thus, I find that there are no merits in the appeal and accordingly it is dismissed with costs.