

(1997) 09 MAD CK 0152
In the Madras High Court
Case No : A.A. No. 745 of 1985

New India Assurance Company Limited	APPELLANT
Vs	
Mari and 12 others	RESPONDENT

Date of Decision : 27-09-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 96

Citation : (1997) 09 MAD CK 0152

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Advocate : Kurian Associates, for the Appellant; G. Krishnan, G. Ravinchandran, K. Srinivasan, M/s. Bagirathi Narayan, A.V. Kala, J. Marteen, M. Josefh, Thatheous Jerome and Gunaraj, for the Respondent

Judgement

Govardhan, J.—This Appeal coming on for hearing on Monday, the 23rd and Thursday, the twenty-sixth days of September 1996. an having stood over for consideration till this day, the court delivered the following judgement:

This Appeal is against the order passed by the Motor Accidents Claims Tribunal, Tuticorin, in M.C.O.P. No. 19/1981.

The petitioners" case is as follows:

The petitioners are the dependants and legal representatives of the deceased Gopal. On 25.11.1980, Gopal was going to Uvari. He travelled in the bus from Pillaiyan Manai to Thisaiyanvilai. From Thisaiyanvilai, he travelled in the jeep bearing registration No. MSQ 4247 belonging to the respondent and driven by the first respondent. The third respondent is the insurer of the said Vehicle. At about 12 noon, in the road from Thisaiyanvilai to Uvari, the bus bearing registration No. TMN 518 belonging to the 4th respondent driven in a rash and negligent manner, dashed against the jeep resulting in the death of Gopal. The petitioners have made a claim for Rs. 55,000/-as compensation.

2. The respondents 1 and 2 have contended that the accident was due to the

rash and negligent driving of the bus. The third respondent has stated that they were not informed of the accident and the petitioners have to prove that it was due to the rash and negligent driving of the first respondent. Apart from stating that they are not liable to pay any compensation, the third respondent has also stated that their liability is only Rs. 50,000/-.

3. The 4th respondent has contended in the counter that the accident was due to the rash and negligent driving of the first respondent and they are not liable.

4. On the above pleadings, the Motor Accidents Claims Tribunal, held an enquiry and gave a finding that the accident was due to the rash and negligent driving of the jeep belonging to the second respondent and awarded a compensation of Rs. 65,000/- payable by the respondents 1 to 3 jointly and severally.

5. Against the said judgment the third respondent has come forward with this appeal.

6. The learned counsel appearing for the appellant has argued that they are not disputing the finding of the Tribunal that the accident was due to the rash and negligent driving of the jeep and they are also not disputing the compensation awarded, but they only contend that the third respondent insurer is not liable to make payment of any compensation to the petitioners and it has to be paid only by the owner of the jeep. The learned counsel appearing for the second respondent before the Tribunal, would contend that the appellant only wants to get away from the liability of not paying the compensation awarded to the petitioners in spite of the jeep being insured with them and the appeal has to be dismissed as no merits since the vehicle has been insured with the appellant under Ex. B-1. The learned counsel appearing for the appellant would argue that it is no doubt true that the jeep involved in the accident has been insured with the appellant; but the policy issued is an Act Policy and the premium collected is only basic Act premium of Rs. 36/- and the policy is very specific in stating the limitation as to use of the Vehicle and the Tribunal has failed to take note of the same. In Ex. B-1, it is specifically stated that the policy covers use for any purpose other than hire or reward and organised racing or speed testing. According to the learned counsel appearing for the appellant, the deceased has paid to the first respondent for permitting to travel in the jeep, R.W. 2 has no doubt stated that it is not his habit to collect money and transport people in the jeep. He has stated during cross examination that there are six members in his family and he is running a petty shop earning Rs. 500/- to Rs. 600/- per month. It is further stated by him that he purchased a jeep for Rs. 9,000/- and at the same time, he would say that he is not in the habit of collecting money and allowing the people to travel in the jeep. The owner of the jeep, viz. R.W. 2 was not in the jeep when the accident had taken place. The vehicle, was run by the driver engaged by R.W. 2. There were pilgrims to Uvari temple in the jeep at the time of the accident. When these facts are considered, the contention of R.W. 2, he is not in the habit of collecting fare and permitting the people to travel in the jeep is unbelievable, especially when he has not travelled in the jeep at the time of the

accident. Therefore, I am of opinion that the vehicle has been used by the first respondent as the driver of the second respondent only for him. The policy under Ex. B-1 shows that it will not cover if the vehicle is used for hire or reward. In the decision reported in *United India Fire and General Insurance Co. Ltd., Madurai Vs. M.S. Durairaj and Others*, it has been held that in a case where policy imposes prohibition against carrying passengers for hire or reward, the policy does not cover the risk of the passenger and as such insurance company is not liable. In the decision reported in *National Insurance Co. Ltd. Vs. Jaluben and Others*, it has been held that u/s 96 of the Motor Vehicles Act, if any accident due to composite negligence of the drivers of a tractor and a jeep occurs, resulting in the death of a gratuitous passenger in the jeep, the insurer of the jeep was not liable to pay compensation. Even if it is held that the deceased had not paid any amount to the jeep driver, to carry him to Uvari and the deceased was only a gratuitous passenger in the jeep belonging to the second respondent, as per the decision reported in *National Insurance Co. Ltd. Vs. Jaluben and Others*, the insurer cannot be made liable. In the result, the appeal is allowed setting aside the order passed by the Motor Accidents Claims Tribunal, Tuticorin, making the third respondent in the M.C.O.P. also liable jointly and severally with the respondents 1 and 2. The award is modified to the effect that the compensation awarded by the Tribunal is payable by the respondents 1 and 2 alone jointly and severally and the third respondent is not liable to pay the same. The third respondent had already deposited the compensation awarded at the time of the filing of the appeal. The Tribunal is directed to permit the third respondent to withdraw the amount so deposited with accrued interest, if any. No costs.