

(1981) 09 MAD CK 0067
In the Madras High Court
Case No : A.A.O. No. 138 of 1979

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Alamelu and Others

RESPONDENT

Date of Decision : 09-09-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 95, 95(2)

Citation : (1982) ACJ 256 : AIR 1983 Mad 221 : (1983) ILR (Mad) 60 : (1983) 96 LW 82

Hon'ble Judges : Singaravelu, J; Ramanujam, J

Bench : Division Bench

Advocate : K.C. Jacob, for the Appellant; V.T. Gopalan, for the Respondent

Judgement

Ramanujam, J.—The insurer of the vehicle MDS 8287, which was involved in a fatal accident and attains whom an award was passed for a sum of Rupees 25000/- by the Tribunal in M.A.C.T.O.P. 42 of 1977, is the appellant herein.

2. On 15-2-1977, at about 9.30 a.m. one Junjithapatham was checking in the said bus as he was the checking inspector employed by the transport company which owns the bus. while he was so checking the tickets, the vehicle got off the road and dashed against a palmyra tree and capasized. As a result of the sudden jerk and unexpected dashing and capasizing of the bus the said Kunjithapatham was crushed to death. On the ground that the accident was due to the rash and negligent driving of the said bus by its driver, the dependants of the deceased Kunjithapatham filed a claim petition in M.A.C.T.O.P.No.42 of 1977 claiming a compensation of Rs.50,000/- for his death.

3. The said claim petition was opposed by the owner of the vehicle and insurer with which the vehicle had been insured. The owner's case was that the accident was not due to the rash and negligent driving of the bus by its driver, that the road was too narrow at that place and on seeing a lorry coming on the opposite direction, the driver of the bus, in order to give way to the lorry, went to the left side of the road and the wheels got stuck in the sandy portion and that it

ultimately dashed against the palmyra tree and capsized. According to him, the accident was an inevitable one. They also contended that in any event the compensation claimed was excessive. The insurer filed a counter-statement contending that the accident took place as a result of a mechanical defect and the deceased, who was standing at the footboard in a careless manner, fell on the road and sustained injury on his head and died.

4. The Tribunal, after considering the evidence adduced by the parties, held that the accident was clearly due to the rash and negligent driving of the bus by its driver. In that view, the Tribunal awarded a compensation of Rs.25000/- to the claimants payable by the insurer. Aggrieved by the award of the Tribunal the insurer had come in appeal.

5. Though the finding of the Tribunal that the accident was solely due to the rash and negligent driving of the bus by its driver is sought to be challenged, the circumstances under which the accident took place will clearly attract the principle of *res ipsa loquitur*. The fact that the vehicle had gone off the road and hit against the palmyra tree and rolled down would indicate the rash and negligent driving of the bus by its driver. We cannot, therefore, interfere with the finding of the Tribunal that the accident was solely due to the rash and negligent driving of the bus by its driver.

6. Coming to the quantum of compensation the appellant's contention is that the deceased, being a checker, his risk need not be covered as per the provisions of Section 95(2) and therefore the insurer cannot be held liable at all for his death. It is also contended by the learned counsel for the appellant, that even if the Insurance company is bound to indemnify the owner as regards the risk to a checker, the extent up to which the insurer has to indemnify the owner of the vehicle is limited under the Workmen's Compensation Act and as such it will not extend to the entire amount awarded by the Tribunal. Though the learned counsel appearing for the appellant has relied on the provisions of Section 95(2) to disclaim the insurer's liability to cover a risk to a checker travelling in a bus, we find that the insurer has, in fact, covered the risk of all employees travelling in the bus under the contract of Insurance. Section II of the Policy deals with the Insurer's liability to third parties. Clause (i) of Section II says -

"Subject to the limits of liability the Company will indemnify the Insured against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle."

Then the provision contains an exception. Cl.(c) of the proviso is as follows -

"Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act 1923, the company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in

pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the motor vehicles at the time of the occurrence of the event out of which any claim arises.

7. A reading of that clause indicates that the company shall not be liable in respect of death or bodily injury to any person other than a passenger carried by reason of or in pursuance of contract of employment, being carried in or upon the motor vehicle at the time of the occurrence. Thus the exception from liability contained in the proviso will not apply to a person carried in the vehicle in pursuance of a contract of employment. Thus, even though the appellant is not bound to indemnify the insured u/s 95(2) in respect of the employees other than the driver, conductor and the loaders, the insurer under the policy issued seems to have covered the liability of a person under main provision in Section II(1) in respect of persons who are carried in the vehicle in pursuance of a contract of employment. Normally insurer's liability is to be determined not only with reference to the statutory provisions of Section 95(2) of the Motor Vehicles Act, but also with reference to the contract of Insurance, which it has entered into with the insured. Though the opening words in cl. (c), set out above, refer to the liability u/s 95 of the Motor Vehicles Act, the parenthetical clause therein "other than a passenger carried by reason of or in pursuance of a contract of employment" will bring in any employee, who was travelling in the vehicle in the course of his employment. In our view, therefore under the terms of the policy the insurer cannot disclaim liability in toto. However, the limit of liability contained, in Section 95 of the Motor Vehicles Act is limited to the amount payable by the insurer under the Workmen's Compensation Act in relation to that employee. In this case, the Tribunal has specifically held that under the Workmen's Compensation Act, the compensation payable by the appellant will come to Rs.18000/-. Therefore, the appellant's liability as an insurer has to be limited only to the sum of Rs.7000/- has to be paid by the owner of the vehicle.

8. In this view of the matter, the appeal is allowed and the award of the Tribunal is modified as follows - Out of the sum of Rs.25000/- awarded as compensation, the insurer, who is the second respondent in the claim petition, is liable to pay a sum of Rs.18000/- and the owner of the vehicle the first respondent in M.A.C.T.O.P 42 of 1977 is liable to pay the balance of Rs.7000/- to the claimants. There will be no order as to costs.

9. Appeal allowed.