
(1990) 03 MAD CK 0033

In the Madras High Court

Case No : C.M.A. No's. 842 to 844 of 1983

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Poompavai and others

RESPONDENT

Date of Decision : 28-03-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1991) ACJ 220 : (1993) 77 CompCas 171 : (1990) 2 LW 209

Hon'ble Judges : V. Ratnam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : K.S. Narasimhan, for the Appellant; S. Jagadeesan and V. Nicholas, for the Respondent

Judgement

Ratnam, J.—We have dealt with these appeals, at the instance of the Oriental Fire and General Insurance Co. Ltd. questioning the extent of

its liability, together, as they are directed against the awards on claim petitions filed by different persons in respect of the same accident.

2. In C.M.A. No. 842 of 1983, directed against the award of the Motor Accidents Claims Tribunal (District Court), Dharmapuri at Krishnagiri, in

M.C.O.P. No. 96 of 1979, respondents Nos. 1 to 8 therein are the claimants and respondents Nos. 9 and 10 are respectively the driver and

owner of the vehicle which was responsible for the accident. Likewise, in C.M.A. No. 843 of 1983 against the award in M.C.O.P. No. 97 of

1979, respondents Nos. 1 to 4 therein are the claimants while the owner and the driver of the vehicle are arrayed as respondents Nos. 6 and 5,

respectively. The claimants are respondents Nos. 1 to 3 in C.M.A. No. 844 of 1983, preferred against the award in M.C.O.P. No. 80 of 1979

and the owner and the driver of the vehicle are respondents Nos. 4 and 5 therein.

3. On March 3, 1979, at about 6.30 p.m. a jeep belonging to the Government of Tamil Nadu bearing registration No. 5098 driven by one

Pandurangan met with an accident on the Palacode - Marandahalli Main Road, as a result of the rash and negligent driving of the lorry bearing

registration No. MSR 8177 belonging to one Damodaran by its driver Subramaniam. In that accident, the driver of the jeep, Pandurangan,

sustained some injuries. Besides, one N. K. Subramaniam, an assistant divisional engineer, Lakshmanan, an assistant engineer, and a road

inspector of the name of Venugopal lost their lives. In C.O.P. No. 96 of 1979, the heirs of the deceased, N. K. Subramaniam, claimed that

compensation in a sum of Rs. 1,50,000 should be awarded to them in respect of the death of N. K. Subramaniam. Similarly, in M.C.O.P. No. 97

of 1979, the heirs of the deceased, Lakshmanan, prayed for the award of compensation to them in a sum of Rs. 1,50,000. The heirs of the

deceased, Venugopal, in M.C.O.P. No. 80 of 1979, prayed that compensation should be awarded to them in respect of death of Venugopal in a

sum of Rs. 75,000. The claim for compensation thus made in M.C.O.P. Nos. 96, 97 and 80 of 1979, referred to earlier, was disputed by the

owner of the lorry MSR 8177 and the insurance company on the ground that the lorry bearing registration No. MSR 8177 was not driven rashly

or negligently and that the amount of compensation claimed was excessive. Besides, the appellant-insurance company questioned the extent of its

liability on the terms of the policy issued by it, though the policy was styled as a comprehensive one and it contended that its liability is limited to

Rs. 50,000 in all with regard to all the claims arising out of one accident. Before the Tribunal, on behalf of the claimants, exhibits A-1 to A-29

were marked and PWs 1 to 7 were examined while, on behalf of the appellant and the owner and the driver of the lorry, exhibits B-1 to B-3 were

filed and the driver of the lorry gave evidence as RW 1. On a consideration of the oral as well as the documentary evidence so let in, the Tribunal

found that the accident took place only on account of the rash and negligent driving of the lorry MSR 8177 by its driver. The Tribunal awarded to

the claimants in M.C.O.P. Nos. 96, 97 and 80 of 1979, Rs. 1,50,000, Rs. 1,50,000 and Rs. 75,000, respectively, by way of compensation and

directed the owner of the lorry and its driver and the appellant-insurance company to pay those amounts to the respective claimants with interest at

6 per cent. per annum from the date of petition. In so far as the owner and the driver of the lorry MSR 8177 are concerned, they have not

preferred any appeal and, in these appeals, the only question agitated is limited to the liability of the insurance company under the provisions of the

Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), as well as the terms of the policy.

4. Though the appellant-insurance company had taken a stand in the course of the counter filed by it before the Tribunal that its liability is limited to

Rs. 50,000 in all with regard to all the claims arising out of the same accident, that cannot be countenanced in view of the clear pronouncement of

the Supreme Court in *Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi* [1981] ACJ 507; [1982] 52 Comp Cas 454. In that case,

there was collision between a motor car and a truck resulting in the death of the driver of the car and the traveller in the car sustained some injuries.

The heirs of the deceased driver and the injured made claims for payment of compensation of Rs. 30,000 and Rs. 10,000, respectively. But those

claims were rejected by the Tribunal on the finding that the truck was not driven rashly and negligently. However, on appeal, the High Court

awarded compensation in a sum of Rs. 19,125 to the legal representatives of the deceased driver and a sum of Rs. 10,000 to the injured. The

matter was taken to the Supreme Court by special leave granted, limited to the construction of section 95(2) of the Act, as it stood prior to

February 1, 1966. It was argued that the total amount of compensation awarded to the claimants exceed Rs. 20,000 and that, u/s 95(2)(a) of the

Act, as it stood at the material time, the liability of the insurer under the policy was limited to Rs. 20,000 in all in respect of any one accident and,

therefore, the balance of the liability of Rs. 9,125 should be fastened on the owner of the vehicle. Repelling this argument, the Supreme Court

pointed out that the words "any one accident" mean "accident to any one" and that, in matters involving third party risks, it is the subjective

consideration which must prevail and the occurrence has to be looked at from the point of view of those who are immediately affected by it and a

consideration of preponderating importance in a matter of this nature is not whether there was any one transaction which resulted in injuries to

many, but whether more than one person was injured, giving rise to more than one claim or cause of action and, if more than one person is injured

during the course of the same transaction, each one of the persons has met with an accident. Thus, viewing the accident as one which had taken place with reference to each one of the persons who had either lost their lives or sustained injuries, the Supreme Court laid down that, with reference to each claim at the instance of each one of the persons injured or heirs of the deceased, it could be entertained up to Rs. 20,000 as per section 95(2)(a) of the Act, as it stood prior to its amendment on March 2, 1970, by the Amendment Act 56 of 1969. In view of this decision, it is no longer open to the insurance company to contend that though several persons might have lost their lives and sustained injuries in one accident, the totality of its liability would only be Rs. 50,000 in respect of all the claims for compensation arising out of the accident. In other words, with reference to the death of N. K. Subramaniam, Lakshmanan and Venugopal, though all of them might have lost their lives in the same accident, with reference to the claims for compensation made by their heirs, each one of the claims has to be regarded and dealt with as relatable to the taking place of three accidents and not one and, with reference to each one of the accidents, the insurance company would be liable to the extent of Rs. 50,000 as per section 95(2)(a) of the Act.

5. Whether the comprehensive policy issued by the appellant-insurance company would have the effect of further increasing the liability of the insurance company may now be considered. The Tribunal, relying upon the decision in *Oriental Fire and General Insurance Co. Ltd. v. Ganpathi Ramalingam* [1982] Supp ACJ 106 (Mad) took the view that the persons who lost their lives in the accident were in the position of third parties in so far as the owner of the vehicle was concerned and that the liability of the insurance company cannot be limited to Rs. 50,000 and, therefore, the entire liability for the payment of compensation of the amounts awarded could also be fastened on the appellant-insurance company. It would be necessary to refer to the terms of the policy issued by the appellant-insurance company which is marked as exhibit B-1 (same as exhibit B-3). The policy is stated to be a comprehensive one in respect of the commercial vehicle covered by it and it is seen therefrom that the premium paid does not include any coverage of liability in excess of Rs. 50,000. On the contrary, it is seen that u/s II-I (i) relating to third parties, the limit of liability is

stated to be such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939. The other endorsements I.M.T. Nos. 10, 16,

23 and 26 do not, in any manner, alter or enhance the limit of liability so fixed. In other words, though the policy is styled as a comprehensive one,

no extra premium has been paid for the coverage of liability in excess of the requirements of the Motor Vehicles Act, 1939, and the limitation of

the liability is specified as that amount which is necessary to meet the requirements of the provisions of the Act. u/s 95(2)(a) of the Act, the amount

statutorily fixed as the liability to meet the requirements of the Act is Rs. 50,000. From this, it would follow that the liability of the insurance

company, under the terms of the policy issued by it, in respect of each of the claims made by the claimants in these appeals, cannot be in excess of

Rs. 50,000. It would be necessary at this stage to notice the decision relied on by the Tribunal Oriental Fire and General Insurance Co. Ltd. v.

Ganapathi Ramalingam [1982] Supp ACJ (Mad). In that case, there was a collision between a car and a bus in which the driver of the car died

and the occupant in the car sustained injuries and the driver of the bus also sustained injuries. The Tribunal, in its award, directed the insurance

company to pay Rs. 74,000 and Rs. 6,000 to the claimants by way of compensation and it was contended that the liability of the insurance

company u/s 95(2) of the Act was restricted to Rs. 50,000 in respect of a single accident. However, the award was eventually sustained and

indeed, the compensation was also enhanced. But, in doing so, the court proceeded on the basis of a concession made that the limitation will not

apply to a case of comprehensive insurance. We find from paragraph 9 of the judgment at page 109, that counsel for the insurance company did

not dispute the proposition that the limitation provided in section 95(2) of the Act will not apply to vehicles comprehensively insured and that it was

also conceded that the cases relied on will not apply to a case of comprehensive insurance. We are, therefore, of the view that the decision in

Oriental Fire and General Insurance Co. Ltd. v. V. Ganapathi Ramalingam [1982] Supp. ACJ 106 (Mad) cannot be applied here for, as seen

earlier, there is a restriction on the liability in respect of the amount payable by the insurance company, even under the terms of the policy. We may

also point out that, in Rajeswari Transports v. M. G. Rajan [1982] Supp. ACJ 118 (Mad) after referring to Oriental Fire and General Insurance

Co. Ltd. v. V. Ganapathi Ramalingam [1982] Supp ACJ 106 (Mad) it was laid down that the limitation of the liability of the insurance company to

Rs. 50,000 was based not only on section 95(2) of the Act, but also on the terms of the policy, though the policy was a comprehensive one. It was

also further pointed out that, even in a comprehensive policy, it was open to the insurer to limit its liability and, if the insured wanted a policy with

an unlimited liability, then he should have bargained for such a policy initially and paid the requisite premium for covering such an unlimited liability

and, as the comprehensive policy had limited the liability of the insurer to Rs. 50,000, it was not possible to fasten liability on the insurer for an

unlimited amount merely on the ground that the policy was a comprehensive one. It is thus seen that the decision in Oriental Fire and General

Insurance Co. Ltd. v. V. Ganapathi Ramalingam [1982] Supp ACJ 106 (Mad) referred to earlier proceeded upon the concessions made and

cannot, therefore, be made applicable to these cases but, on the terms of the policy in these cases, viewed in the background of the provisions of

the Act, the liability of the insurance company cannot exceed Rs. 50,000, even though the policy is styled as a comprehensive one, in view of the

decision in Rajeswari Transport v. M. G. Rajan [1982] Supp ACJ 118 (Mad). We may also, in this connection, refer to yet another decision of

the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, though u/s 95(2)(b) of the Act, in respect of a

comprehensive policy. There was a collision in that case between a three-wheeler and a bus and the driver of the three-wheeler sustained injuries,

which led to the preferring of a claim for compensation before the Tribunal and a sum of Rs. 10,000 was awarded as compensation which was

enhanced to Rs. 1,00,000 by the High Court. In the appeal by special leave, at the instance of the insurance company, it was contended that, in

view of section 95(2)(b) of the Act, as it stood on the date of the accident, prior to March 2, 1970, when the Amending Act 56 of 1969 had come

into force, no award in excess of Rs. 20,000 should have been passed against the insurance company even on the basis of a comprehensive policy

as, under its terms, there was a restriction of the liability in such cases to Rs. 20,000 and there was no payment of excess premium to cover higher

liability. Dealing with this contention, the Supreme Court pointed out that a comprehensive insurance of the vehicle and the payment of higher

premium therefore do not mean that the limit of the liability with regard to third party risks becomes unlimited or higher than the statutory limit fixed

u/s 95(2) of the Act and if, under the terms of the policy, a higher liability is to be covered, a specific agreement has to be arrived at between the

owner and the insurance company to that effect and a separate premium has to be paid on the amount of liability undertaken by the insurance

company in that behalf. It was further pointed out that, if any other risk in excess of statutory liability is sought to be covered, it has to be clearly

specified in the policy and separate premium paid therefore and that on the terms of the policy, the liability u/s II had been confined to such amount

as is necessary to meet the requirements of the Motor Vehicles Act, 1939, which, u/s 95(2)(b) of the Act, at the relevant time, was Rs. 20,000

and, therefore, against the insurance company, an award in excess of that amount, which was statutorily fixed and also payable in terms of the

policy could not have been passed. We are of the view that the principle of this decision would govern these appeals also. We had earlier pointed

out that the policy in these cases does not purport to cover any liability in excess of Rs. 50,000 u/s 95(2)(a) of the Act, as it stood at the relevant

time. Even though the policy had been styled as a comprehensive one, no extra premium had been paid to cover any liability in excess of the

liability u/s 95(2)(a) of the Act. We may now refer to the decision in *New India Assurance Co. Ltd. v. Nanak Chand Ben* [1989] ACJ 169

(MP) relied on by learned counsel for the contesting respondents. The policy in that case was not only styled as a comprehensive one, but it also

covered liability in respect of 45 passengers, on payment of extra premium. Apart from this, the endorsements found in the policy also did not

mention any limit and it was under those circumstances, that the court held that the provisions in the policy would indicate that the insurance

company had undertaken to indemnify the insured in respect of his total liability, as there was no expression of any limitation of liability as provided

u/s 95 of the Act and that the words "legal liability" occurring in the policy cannot be equated to "statutory minimum liability" u/s 95 of the Act. It is

at once clear that this decision proceeded upon the terms of the policy in that case under which the insurance company had agreed to indemnify an

unlimited liability which is not the case here. This decision cannot, therefore, be pressed into service by learned counsel for the claimants. Thus, on

a due consideration of the terms of the policy and the relevant provisions of the Act, no liability in excess of Rs. 50,000 in each one of these cases

could be fastened upon the appellant-insurance company. In other words, out of the compensation amount of Rs. 1,50,000, Rs. 1,50,000 and Rs.

75,000 awarded by the Tribunal to the claimants in C.M.A. Nos. 842, 843 and 844 of 1983, respectively, the insurance company would be liable

to pay to the claimants Rs. 50,000 in each one of the appeals with interest at 6 per cent. per annum as awarded by the Tribunal and not any higher

amount and the balance of Rs. 1,00,000 each payable to the claimants in C.M.A. Nos. 842 and 843 of 1983 should be paid by the owner of the

lorry, S. Damodaran, and its driver, S. Subramaniam, and the amount of Rs. 25,000 payable to the claimants in C.M.A. No. 844 of 1983 should

be paid by the owner of the lorry, S. Damodaran, alone, as the appeal against the driver of the lorry, S. Subramaniam, had earlier been dismissed

and the awards in M.C.O.P. Nos. 96, 97 and 80 of 1979 will stand modified accordingly.

6. During the pendency of the appeals, by an order dated December 13, 1983, in C.M.P. Nos. 17189, 17190 and 17452 of 1983, the insurance

company was granted stay on condition that it deposited Rs. 50,000 in each case before the Tribunal within six weeks from that date and again, by

orders dated July 12, 1984 in C.M.P. Nos. 17189, 17190 and 17452 of 1983 and 8438 of 1984, the deposit of Rs. 50,000 in each case by the

insurance company as per the interim orders dated December 13, 1983, was recorded and the insurance company was further directed to deposit

the balance of the amount awarded by the Tribunal to the credit of the respective petitions in M.C.O.P. Nos. 96, 97 and 80 of 1979, within a

period of eight weeks from July 12, 1984. A further direction was given that, on the deposit of the balance of the amount, the respondents in the

appeals, who were majors, will be entitled to withdraw the balance of their share, if any, and the share of the minors will be deposited with the

Bank of Tamil Nadu, Choolaimedu Branch, Madras, for a period of two years or till the disposal of the appeals, whichever is later. If the insurance

company, pursuant to the order dated July 12, 1984, had deposited further amounts, which had been withdrawn, the insurance company will be

entitled to get restituted and seek a refund of those amounts from such of those persons as had withdrawn the amounts from court.

7. We find that the appeal have been filed by the insurance company only with reference to the excess of the liability imposed on it by the awards over the above Rs. 50,000 and we, accordingly, allow the appeals modifying the awards as stated earlier. There will be no order as to costs in all the appeals.