
(1996) 07 MAD CK 0101
In the Madras High Court
Case No : C.M.A. No. 90 of 1986

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Angammal and Others

RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 2, 3
Penal Code, 1860 (IPC) — Section 304A

Citation : (1996) 07 MAD CK 0101

Hon'ble Judges : C.V. Govardhan, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

C.V. Govardhan, J.—The respondent No. 2 is the appellant.

2. The petitioner No. 1 is the mother, the petitioner No. 2 is the wife and the petitioner Nos. 3 and 4 are the children of the deceased Perumal

who, on 21.5.1983, was knocked down by a car bearing registration No. TNE 6323 owned by the respondent No. 1 and insured with the

respondent No. 2 which came in a rash and negligent manner. The deceased sustained head and bodily injuries and was taken to Pallapatti

Government Hospital where the doctors advised him to be removed to Government Hospital, Madurai. On his way to Madurai, he succumbed to

the injuries. A case u/s 304A of the Indian Penal Code is pending against the respondent No. 1. The deceased was an agriculturist owning more

than 15 acres of nanja lands with well and motor pumpset. He owned a house and big herd of cattle. His average income from the agricultural

produce and raising cattle would be about Rs. 24,000/- per annum. The

petitioners are the dependants of the deceased for everything. On account of the death of the deceased, the petitioners have lost the financial help and petitioner No. 2 has lost her marital life and there is none to look after the petitioner Nos. 3 and 4 who are minors. The petitioners, therefore, make a claim for a sum of Rs. 1,00,000/- as compensation.

3. The respondent No. 2 has contended as follows: The accident was not due to the rash and negligent driving of the car by its driver, respondent

No. 1. The vehicle involved in the accident is a tourist taxi and the person who drove the vehicle had no licence to drive a tourist taxi and he was

not authorised by the authorities to drive a tourist taxi and, therefore, the respondent cannot be made liable. The respondent has also disputed the age, income and other details in the petition.

4. On the above pleadings, the Motor Accidents Claims Tribunal, Karur, after enquiry has held that the accident was due to the rash and negligent

driving of the car by its driver, viz, the respondent No. 1. It was also held that at the time of the accident, there was no passenger and the vehicle

was not used as a tourist taxi and on that ground, directed the compensation awarded, viz, Rs. 35,000/- to the petitioner No. 2 and Rs. 10,000/-

to each of the petitioner Nos. 1, 3 and 4 payable by the respondent Nos. 1 and 2 jointly and severally.

5. It is against this order of the Motor Accidents Claims Tribunal, the respondent No. 2 has come forward with this appeal.

6. The learned Counsel appearing for the appellant has argued that insofar as this appeal is concerned, he is restricting his arguments only with

regard to the liability of the respondent No. 2 to pay compensation to the petitioners and he is not adducing any arguments on the question of

negligence. According to the learned Counsel appearing for the appellant, the mere user of the vehicle which is a tourist taxi for some other

purpose does not change the character of the vehicle and the question whether the vehicle was used as a taxi or not need not be considered and

suffice it to observe that the driver of the vehicle had no licence to drive the tourist taxi and it is sufficient to hold that the insurance company is not

liable. The learned Counsel appearing for the appellant has relied upon the decision in United India Insurance Company Ltd. Vs. Palaniammal and

others, wherein the learned Judge has considered the entire authorities on this

question as to whether the defence that the insurance company is not liable on the ground that when the accident was caused, vehicle was not being used as a tourist taxi and has held that mere user of the tourist taxi for the purpose other than that for which it could be used would not affect the character of the vehicle and on that ground, the defence of the insurance company has to be accepted. His lordship V. Ratnam, J. as he then was, has followed the decisions in *National Insurance Co. Ltd. v. Mahadevayya* (1981) TNLJ 170 and *E. Enjanadevi v. Arumugham* 1983 ACJ 625 (Mad) and has distinguished the case in *Canara Motor & Genl. Ins. Co. Ltd. v. Abdul Hamid Khan Saheb* 1984 ACJ 467 (Bom) and has ultimately held that the mere user of the tourist taxi for the purpose other than that for which it could be used, would not affect the character of the vehicle. During the course of his discussion, the learned Judge has also taken into consideration that the accident was caused by a tourist taxi in the reported case driven by a person having the licence to drive a light motor vehicle as in the present case and has held that where the driver had a valid driving licence to drive a light motor vehicle the mere use of the tourist taxi, by him, for a purpose other than that for which it could be used is sufficient to hold that the insurance company is not liable. The learned Judge has also taken into consideration Section 3(1) of the Motor Vehicles Act, Section 2(33) of the Act wherein the "transport vehicle" has been defined, Section 2(25) which defines a "public service vehicle" as a motor vehicle used or adopted to be used for the carriage of passengers for hire or reward and includes a motor cab, contract carriage and a stage carriage and has come to the conclusion that where a vehicle had been driven by a driver in contravention of Section 3 of the Motor Vehicles Act, which contemplates an effective driving licence to drive a motor vehicle and if the vehicle happens to be a tourist vehicle, the driving licence should contain a special endorsement and ultimately held that the mere user of the tourist taxi for a purpose other than that for which it could be used, would not affect the character of the vehicle and has allowed the claim of the insurance company. In the present case also, the respondent No. 1, the owner of the vehicle had no licence with an endorsement to drive a tourist taxi and, therefore, it cannot be stated that the character of the vehicle cannot be changed on that

ground. In that view, I am of opinion that the Motor Accidents Claims Tribunal has erred in directing the respondent No. 2 also to pay the

compensation awarded to the petitioners jointly and severally along with the respondent No. 1. I am of opinion that portion of the order alone is to

be set aside since the appellant has not challenged the finding of the Tribunal that the accident was due to the rash and negligent driving of the

vehicle by the respondent No. 1, the owner.

7. In the result, the appeal is allowed setting aside the direction given by the Motor Accidents Claims Tribunal, Karur, directing the respondent No.

2 to deposit the compensation along with the respondent No. 1 jointly and severally with interest at 9 per cent per annum and direction is given to

the respondent No. 1 alone to deposit the compensation awarded to be deposited with interest at 12 per cent per annum from the date of petition

till the date of deposit. In other respects, the appeal is dismissed. No costs.