

(1994) 08 MAD CK 0031
In the Madras High Court

Oriental Insurance Company Limited	APPELLANT
Vs	
Indirani and Others	RESPONDENT

Date of Decision : 04-08-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 96(2)(b)(ii)

Citation : (1995) 1 MLJ 82

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The only contention raised by learned Counsel for the appellant is that the Insurance Company is not liable in this case to pay

the compensation inasmuch as the driver of the vehicle, involved in the accident, did not have an effective licence on the date of the accident. The

accident occurred on 28.9.1992. The licence which he had, expired on 26.6.1992. That was renewed only on 26.10.1992. In between the two

dates, the accident had occurred. Hence, it is contended by learned Counsel for the appellant that the exclusion clause in the policy will come into

play.

2. The relevant clause in the insurance policy which is marked as Ex.A-9 reads thus:

Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a

licence.

Learned counsel for the appellant submits that previously such exclusion clauses in the insurance policy were differently worded and when courts

had held that even if the driver of the vehicle had no effective subsisting licence

at the time of the accident the insurance company cannot escape from this liability, the latter took care to alter the language of the clauses, with the result, the present clause reads in the manner in which it is now seen. It is contended that the clause only means that a person should have an effective driving licence at the time of the accident, and if he is disqualified from holding the licence or he is disqualified from obtaining such licence, then also the exclusion clauses will apply. We are unable to accept this construction of the clause. The clause can be divided into three parts. The first part refers to a person holding an effective driving licence at the time of the accident. The second part refers to the disqualification of such person from holding it. Even after obtaining a licence, a person may get disqualified under the provisions of the Act from holding it and such person will be governed by the second part. The third part refers to persons who are disqualified from obtaining such a licence. The first part cannot go together with the third part. In other words, if a person is having an effective driving licence he cannot be said to be disqualified from obtaining such a licence. It means if there is an effective valid licence, it could be contended by the insurance company that he is subsequently disqualified from holding it, but it is not open to the company to contend that he was disqualified from obtaining that licence.

3. A similar question arose in *National Insurance Co. Limited, Gobichettipalayam v. Thulasi* (1994) 1 L.W. 567. The clause in the insurance policy in that case was worded exactly in similar language while considering that clause the Bench to which one of us (Srinivasan, J.) was a party referred to Section 96(2)(b)(ii) of Motor Vehicles. Act and said, There are two limbs to the section and the disjunctive "or" is used. The first part deals with a case where the driver is not duly licensed. If a person had no licence at all prior to and at the time of the accident he will be covered by the first part. If the first part applies to a case, the second part will not apply. The second part will necessarily apply only to cases in which the driver had a licence some time or other and at the time of the accident it is not subsisting. The latter part of the section cannot be interpreted as meaning that even if the driver had no licence at any time, he must be shown to be disqualified to hold or obtain a licence for the purpose of excluding the liability of the insurer.

4. The Bench proceeded to refer to the earlier judgments and distinguish them on the facts of the case. In that case, the driver never had a driving

licence at any time. As there was no proof of his having a driving licence at any time, the Bench held that the exclusion will apply and it was not

necessary for the insurance company to prove that the driver was disqualified from holding or obtaining the licence.

5. Learned counsel for the appellant places reliance upon the judgment of a single Judge of this Court in *Motor Owners' Insurance Co. v. Daniel*,

84 L.W. 518. The relevant clause in the insurance policy was that:

by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of

disqualification.

While construing that clause learned Judge held that the liability of the insurance company will be excluded if (1) at the time of the accident the

driver while duly licensed is disqualified to hold such licence, and (2) when during the disqualified period he somehow seeks to obtain a driving

licence. On the facts, learned Judge held that the driver was not holding a driving licence and therefore, the insurance company was not liable. The

language of the clause in the insurance policy of the present case is different and the reasoning of the learned Judge will have no application in this

case. If at all, the reasoning will be only against the contention put forward by the appellant's counsel.

6. Learned counsel also placed reliance on *Srinivasa Roadways Vs. Saroja and Others*, A Division Bench held in that case that if the conditions

laid down in the section are not reproduced in the policy and the policy positively undertakes to cover the liability in respect of an accident caused

by a person who, though not having an effective licence at the time of accident, has not been disqualified to hold a licence, the company cannot

escape liability. This Judgment also does not hold application in any manner to this case.

7. We have no doubt that the burden is on the insurance company to prove that the driver of the vehicle is disqualified from holding or obtaining a

licence. Admittedly, on the facts of the case, it is seen that the driver had renewed the licence on 26.10.1992. That itself shows that he was not

disqualified. If in respect of the licence, the insurance company contends that the

driver was disqualified from obtaining licence, it should have let in sufficient evidence in that regard. That burden has not been discharged by the insurance company in this case.

8. In the circumstances of the case, the conclusion arrived at by the Tribunal that the insurance company is liable to pay compensation and the exclusion clause cannot save it is correct. The appeal is dismissed. No costs.