

(1993) 07 MAD CK 0027

In the Madras High Court

Case No : A.A.O. No's. 1050 to 1054 of 1990 and C.R.P. No's. 3055 to 3057 of 1990

Oriental Insurance Company Ltd.

APPELLANT

Vs

Venkidasamy and others

RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Citation : (1994) 80 CompCas 136

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Judgement

Ratnam, J.—In these appeals and revision petitions at the instance of the Oriental Insurance Co. (hereinafter referred to as "the insurance

company"), against a common award of the Motor Accidents Claim Tribunal (Fourth Additional Subordinate Judge's Court), Madurai, in

M.C.O.P. Nos. 273, 274, 276, 278 and 409 of 1988 and M.C.O.P. Nos. 275, 277 and 279 of 1988 respectively, the only question that arises

for consideration is whether the Tribunal was justified in fastening liability on the appellant-insurance company for payment of compensation. There

is no dispute now that on April 7, 1988, the tractor bearing registration No. TMW-7273 belonging to one K. S. Krishnamurthy was involved in an

accident. At the time of the accident, a trailer was attached to the tractor, in which the deceased and others, who had sustained injuries, were

travelling. Alleging that the accident took place only on account of the rash and negligent driving of the tractor and its trailer, the claimants prayed

that compensation should be awarded to them in different amounts as claimed by them in their respective claim petitions. The insurance company

put forward the plea that only the tractor TMW-7273 had been insured with it

and the trailer had not been covered under any policy of insurance and, therefore, no liability could attach to it for payment of compensation in respect of either the death or sustaining of bodily injuries by those, who travelled in the trailer. The Tribunal did not accept the plea so put forward by the insurance company taking the view that but for the rash and negligent driving of the tractor, insured by the insurance company, the accident would not have happened and, therefore, the insurance company was also liable to pay compensation for the amounts determined by the Tribunal as payable to the several claimants. It is the correctness of the common award so passed, in so far as liability for payment of compensation by the appellant-insurance company was imposed on it, the appeals and the revision petitions have been preferred.

2. Learned counsel for the insurance company strenuously contended that under the policy marked as exhibit P-21, only the tractor TMW-7273 had been insured and not any trailer and, therefore, in the absence of the insurance cover in respect of the trailer, no liability could be fastened on the insurance company for payment of compensation to the claimants. On the other hand, counsel appearing for the claimants submitted that but for the rash and negligent driving of the tractor which was insured, the accident to the trailer would not have taken place and the liability for payment of compensation, owing to the rash and negligent driving of a vehicle covered by the insurance policy, cannot be denied. Reliance in this connection was also placed upon the decisions in *Sajid Mian v. Ganga* [1990] 1 ACJ 54 (Raj); *Agro Engineering Service Co-operative Centre Ltd. v. Govindammal* [1988] 1 ACJ 482 and *New India Assurance Co. Ltd. v. Ansuya* [1989] 1 ACJ 400.

3. There is no dispute now that the tractor TMW-7273 alone had been insured by the appellant-insurance company and not any trailer. The persons who had sustained injuries and another who had lost his life were all travelling only in the trailer and not in the tractor. The conclusion of the Tribunal that the rash and negligent driving of the tractor by its driver had caused the accident was also not questioned before this court. The question that, therefore, arises for consideration is whether the insurance company can be made liable for payment of compensation in a situation like this. It has to be borne in mind that though the trailer had not been insured

by the insurance company, the tractor had been insured by it and the rash and negligent driving of the tractor by its driver and its involvement in an accident had caused the accident to the trailer and its occupants resulting in the sustaining of injuries by several persons and one of them dying as well. In other words, the cause of the accident is the rash and negligent driving of the tractor, which has been insured with the insurance company and its effect had been visited upon the occupants of the trailer, though the trailer had not been insured. It is in this context that the decision in Sajid Mian's case [1990] 1 ACJ 54 is relevant. In that case also, a trolley was not registered while the tractor was and a contention was put forward that the trolley not being registered separately under the Act, no liability can be fixed on the insurance company. This was repelled by Kasliwal J. in the following terms (at page 57) :

The trolley or trailer can only move with the help of the tractor. The tractor in question is already insured and the driver of the tractor in the present case is held to have driven the tractor at a high speed and negligently on account of which the trolley overturned and three persons died in the accident. Justice P. C. Jain also held in *New India Assurance Co. Ltd. v. Kusum Jaluria* (S.B. Civil Miscellaneous No. 342 of 1985 by judgment dated March 24, 1987) that even if the accident may be said to have been caused by a trolley fixed with the tractor it will not make any difference. One of the contentions raised in the above case was that the accident was in fact caused by the trolley which was fixed with the tractor and the trolley was not insured with the insurance company. The above contention was not accepted by P. C. Jain J. and it was negatived as mentioned above.

4. The above observations would be a complete answer to the contention put forward by learned counsel for the appellant-insurance company. In addition, it may also be pointed out that in *Agro Engineering Service Co-operative Centre Ltd.*'s case [1988] 1 ACJ 482, while considering the question of liability of the insurance company with reference to the use of a trailer other than the one mentioned in the policy, it was pointed out that it was only the main lorry that drags and not the trailer and that the tail cannot wag the head. In *Ansuya*'s case [1989] 1 ACJ 400 relied on by learned counsel for the respondents-claimants, the question dealt with her did

not arise and, therefore, it is unnecessary to notice the decision in detail. On the facts and circumstances of this case, the principle laid down in Sajid Mian's case [1990] 1 ACJ 54 would squarely stand attracted and the insurance company cannot succeed in its attempt to avoid its liability for payment of compensation to the representatives of the deceased and other injured persons on the ground that the trailer had not been insured by it. Consequently, the civil miscellaneous appeals and the revision petitions are all dismissed. There will be no order as to costs.