
(1990) 08 MAD CK 0001
In the Madras High Court

R. Dhanaraj and Another

APPELLANT

Vs

Rubia and Others

RESPONDENT

Date of Decision : 21-08-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 3(1)

Citation : (1992) 2 MLJ 490

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Judgement

Kanakaraj, J.—The parents of the victim in a motor accident are the appellants before this Court. The appellants filed a claim petition

M.O.P. No. 378 of 1982 on the file of the Motor Accident Claims Tribunal, Chengalpattu claiming a sum of Rs. 1 lakh as compensation, arising

out of the accident on 24.3.1982 resulting in the death of their son. The case of the appellants is that on 24.3.1982 at about 11. A.M., their son

Ethiraj had parked an Ambassador car driven by him on the left hand side of the G.S.T. Road and was standing outside the car by keeping the

right hand side door open. At that time, the Ambassador car, bearing registration No. TMV.8481 coming in the opposite direction and driven

rashly and negligently, had dashed against the deceased Ethiraj causing fatal injuries. The first respondent owner of the car TMV.8481 remained ex

parte. The second respondent insurance company filed a counter statement contending inter alia that the driver of the tourist car TMV.8481 had no

licence to drive a taxi vehicle and therefore the insurance company is not liable to pay any amount. The other particulars regarding the quantum of

compensation were also generally denied.

2. P.W.3 was examined as an eye-witness to the occurrence. He spoke to the facts as set out in the claim petition that the maroon colour

Ambassador car bearing No. 6161 was standing on the left hand side of the road near the Pakkam railway station in G.S.T. Road. The car

TMV.8481 coming in the opposite direction from Tindivanam to Madras was being driven at a high speed and in a rash and negligent manner. It

hit the driver of the parked car 6161 who was standing outside the car with the door open. The respondents did not seriously dispute the fact that

the accident was caused (sic.) TMV.8481. In fact they did not elicit any useful information in the cross-examination of P.W.1 nor did they examine

any witness to the contrary. The tribunal, therefore, rightly held that the accident was due to the rash and negligent driving of the car TMV.8481.

3. However, the second respondent sought to escape liability on the ground that the car TMV.8481 was a tourist taxi and the driver did not have

an endorsement permitting him to drive a tourist taxi. Therefore, under the insurance policy, the second respondent is absolved of liability. To

prove the above facts, R.W.2 was examined. R.W.2 is an assistant in the office of the Transport Authorities, Chepauk, Madras. He maintains the

tourist taxi register. According to the witness, TMV.8481 was permitted to run as a tourist taxi from 13.9.1978 till 13.9.1983. It was also stated

that the vehicle had been transferred to and in favour of the first respondent on 29.9.1981. He marked Exs.B-1 to B-4 in support of the above

contention. The tribunal, therefore, rightly concludes that the car TMV.8481 was a tourist taxi on the date of the accident. To prove the fact that

the driver of TMV.8481 had no endorsement the second respondent examined R.W.3 who is the motor vehicle assistant Tiruvarur. He deposed

that the driver of TMV.8481 had a licence only to drive light motor vehicles and he had no licence to drive a tourist taxi. The insurance claim

investigator was examined as the 4th witness. He deposed that he obtained the driving licence of the driver of the car, TMV.8481 at the time of the

accident and took a xerox copy of the same. The said xerox copy was marked as Ex.B-8. From these documents and the oral evidence of

Respondent's witnesses 2 to 4, the tribunal came to the conclusion that the insurance company is not liable to pay any compensation because the

driver of the insured did not have the necessary licence to drive a tourist taxi.

4. The tribunal proceeded to find that the first respondent-owner is liable. Regarding the quantum of compensation, the deceased Ethiraj was shown to have received a salary of Rs. 253 per month at the time of the accident. He was aged about 25 years. The first appellant was aged 58 years on the date of the accident and the second appellant was aged 50 years at the time of the accident. Taking 65 years as the period of longevity, the Tribunal held that the claimants were legitimately entitled to contribution from the deceased for a period of 15 years. Deducting Rs. 103 for the personal expenses, of the deceased the contribution was fixed as Rs. 150 per month. Assuming that the deceased would have remained unmarried for a period of 5 years, a sum of Rs. 9,000 was arrived at, for the balance of 10 years, the tribunal took only Rs. 50 as monthly contribution and worked out the total amount at Rs. 6,000. For the shock and mental pain, a sum of Rs. 5,000 was awarded. The total compensation was arrived at Rs. 20,000 and the claimants were awarded Rs. 10,000 each.

5. The appeal by claimants is not only for enhancing the compensation, but also for a decree against the insurance company. A similar question arose before this Court in *E. Enjanadevi Vs. Arumugham and Another*, this Court posed the following point for determination.

The substantial question that arises in this case is to determine whether a driver of a tourist car is required under the Motor Vehicles Act, to have a special authorisation in addition to the usual licence to drive a light motor vehicle to enable him to drive the tourist car as contended by the learned Counsel for the insurance company.

The insurance company in that case showed that the vehicle had been registered as a tourist taxi and it can be used only in connection with the insured's business of running it as a tourist vehicle. Further under the head "driver" the policy in that case had stated that the vehicle could be driven by the insured or by any other persons in his employ holding a licence to drive the vehicle. Relying on Section 3(1) of the Motor Vehicles Act, it was held that the driver did not have a valid licence to drive a tourist taxi. It was, therefore, held that the insurance company was not liable to meet the compensation. In the case before us, there is some proof that the driver of TMV.8481 did not have a licence to drive a tourist vehicle.

But the question that still remains is whether the policy in this case insisted on the driver having a licence to drive a tourist vehicle. It is not disputed

that the driver did have a licence to drive a light motor vehicle like the car TMV.8481. Ex.P-7 is the policy issued by the second respondent

company for the period from 28.9.1981 to 27.9.1982. As against the column, business/profession, (sic), it was left blank. Therefore, the

endorsement in the policy about usage in connection with the insured's business does not convey any meaning, because the business is not

indicated. This is a vital point of difference between the judgment in E. Enjanadevi Vs. Arumugham and Another, because in that case, it is seen

from the judgment that the insured's business was running a tourist taxi. Secondly, as against the word "driver", it is stated as follows:

(a) The insured.

(b) any other person provided he is in the insured's employ and is driving on his order or with his permission.

Provided that the person driving holds a valid driving licence at the time of the accident or had held a permanent driving licence (other than a

learner's licence) and is not disqualified from holding or obtaining such a licence.

The words "holds a driving licence at the time of the accident" are definitely satisfied in this case because the driver of TMV.8481 did have a

licence to drive a light motor vehicle. In the judgment quoted above, it is seen that as against the word "driver", it was stated that the vehicles could

be driven by the insured or by any other person in his employ, holding a licence to drive the vehicles. The reference to the vehicle is missing in the

policy before us. Further, the words "or had held a permanent driving licence (other than a learner's licence) and is not disqualified from holding or

obtaining such a licence" suggest that even if the driver had a permanent driving licence and is subsequently not disqualified from holding such a

licence, the insurance company cannot escape liability. The words seem to suggest that even if on the date of the accident, the driver did not have a

licence the fact that he had earlier a permanent licence and is not disqualified on the date of the accident is sufficient to fasten the liability on the

Insurance Company. Learned Counsel for the appellants relied on Rule 5(b) of the Motor Vehicles Rules to say that the eligibility for getting a

licence to drive a tourist vehicle is only one year experience as a driver.

6. Therefore, on facts, we are of the opinion that the judgment in E. Enjanadevi Vs. Arumugham and Another, will not apply to the present case.

To the same effect is the judgment in National Insurance Company Ltd. v. Mahadevayya and Ors. 1981 T.L.N.J. 170 On the other hand, learned

Counsel for the appellants relies on the decision in Canara Motor and General Insurance Co. Ltd Vs. Abdul Hamid Khan Saheb and another, . In

that case, it was no doubt held, that the words ""held a licence to drive the motor vehicle"" appearing in the policy refers more to the type of vehicle

rather than the mode of its user. There is thus difference of opinion between the Court and the Bombay High Court in this aspect. We do not

propose to go into the question as to which view is acceptable because, in this case on facts we are satisfied that the policy does not insist on the

driver having a licence to drive a tourist taxi. However, we may refer to Houghton v. Trafalgar Insurance Company Ltd. (1954)1 Q.B. 247. In that

case, it has been held that if there is ambiguity in the policy documents, the ambiguity will be resolved in favour of the insured.

7. In this case, we have a further difficulty because the driving licence as such was not produced. What is produced before this Court is a xerox

copy of the driving licence, said to have been obtained from the owner of TMV.8481 by the Investigator R.W.4. There is evidence to say that

Unless the original is produced, it may not be possible to correctly find out whether the driver had an endorsement for driving a tourist taxi. In this

connection, learned Counsel for the appellants relies on the decision in Savitri and Others Vs. Lakhmichand and Others, wherein it was held that

the Insurance Company failed to prove that there was any violation of the condition of policy. Similarly, in National Insurance Co. Ltd. Madras Vs.

A. Babu and others, (to which one of us was a party), it was held that the plea of the Insurance Company that accident was caused by a person

driving a vehicle with a temporary licence has to be established only by the insurance company and in the absence of proof, the insurance company

cannot escape liability. That judgment also supports the view expressed by us that on the date of the accident, the driver need not have a licence

provided it is established that he had a permanent licence and he was not disqualified on the date of the licence from holding or obtaining a licence.

8. In New India Insurance Company Ltd. v. C.B. Shankar and Ors. (1986) S.C.J. 82 the following observations support the case of the

appellants:

It is not the case of the insurance company that the nature of things is such that we can presume that the driver could not have had any licence at

all. The driver was not shown to be a minor or any other person with legal infirmity who could not hold any driving licence at all for any reason. In

the circumstances, therefore, we agree with the order of the tribunal that the insurance company is liable for the amount awarded.

9. Having regard to all the facts and circumstances of the case and on the basis of the terms of the insurance policy in this case, we are satisfied

that the insurance company cannot escape liability.

10. So far as the question of quantum of compensation is concerned, we are satisfied that the tribunal has taken note of the correct principles. The

salary of the deceased was only Rs. 253 per month. The argument is that the salary would not have remained the same for ever and the tribunal

should have taken note of the "higher salary that the deceased would have secured in course of time. We are unable to accept this contention

because there is no evidence on that aspect and we have to take note of the other uncertainties in life while determining the compensation. The

multiplier applied by the tribunal is also correct, having regard to the age of the appellants. We are, therefore, not inclined to interfere with the

quantum of compensation.

11. In the result, the appeal is partly allowed holding that the compensation as awarded by the tribunal is payable jointly and severally by both the

respondents. In other respects, the appeal is dismissed. There will be no order as to costs.