

(1992) 03 MAD CK 0051

In the Madras High Court

Case No : L.P.A. No's. 73 and 74 of 1988

Ramadoss Motor Transport

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 13-03-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : (1993) ACJ 1060 : (1993) 1 LW 586

Hon'ble Judges : P.S. Mishra, J;K. Swamidurai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.S. Mishra, J.—The owner of a lorry which met with an accident and caused the death of two persons, who were travelling with their goods carried in the lorry, has appealed against the judgment of a learned single Judge of this court holding it liable to compensate and pay the amount fixed as compensation by the Motor Accidents Claims Tribunal in the applications filed u/s 110-A of the Motor Vehicles Act.

2. Facts which have been found to be established and are not disputed before us are as follows:

A lorry bearing registration No. MSN 6072 collided with a stationary lorry on 3.7.1979 at about 3.00 a.m. in Krishnagiri on the Krishnagiri-Madras Trunk Road. One Velmurugan and another Nagendran, who were travelling in the lorry along with their goods, died. The widow and mother of the deceased Velmurugan and the mother and the father of the deceased Nagendran filed their respective claim petitions before the Tribunal. They alleged that the accident took place due to rashness, and negligence on the part of the driver of the lorry.

3. The driver of the lorry filed a counter, which the owner/appellant before us adopted as return to the allegations. The insurance company filed a separate counter. It appeals, however, that the Tribunal found that the accident took place

due to rash and negligent driving of the lorry by the lorry driver, Mohammed Moosa. It, however, held that the insurer was liable to pay the entire amount of compensation. The insurer appealed.

4. A learned single Judge of this court found that the victims were not covered by the insurance and that the insurer had no liability u/s 95 of the Motor Vehicles Act, 1939. He, however, found that since the victims suffered death in the accident that was caused on account of the rash and negligent driving of the lorry by the driver, the claimants were entitled to compensation and owner/appellant was liable to compensate and pay the amounts fixed as compensation by the Tribunal.

5. The fact that the accident occurred as a result of rash and negligent driving has not been questioned before us. A serious contention, however, has been raised on the ground that compensation has been awarded for the death of persons, who travelled without authority in the lorry and sustained injuries due to the negligence of the driver. Reliance has been placed on the judgment of a learned single Judge of this court in the case of Commonwealth Assurance Co. Ltd. v. V.P. Rahim Khan Sahib 1971 ACJ 295 (Mad) and a Division Bench judgment of this court in the case of C. Narayanan v. Madras State Palm Gur Sammelan 191A ACJ 479 (Mad), to suggest that Section 95 of the Motor Vehicles Act, 1939 would not cover the case of a person, who was not in employment or a passenger and it is asserted that the person, who was travelling without authorisation and was not in employment, is not entitled to any compensation and if the victim accordingly would not be entitled to any compensation, the claimants are not entitled to claim either from the insurer or the owner of the lorry any compensation for the death of persons, who were travelling without authority in the lorry and sustained injuries due to the negligence of the driver.

6. The sheet-anchor shows the two aforementioned judgments of this court, however, not more than the well understood principle that a passenger carried by a lorry will not be covered by the insurance policy and thus the insurer will have no liability and there is no provision in the Act to protect a person, who is not in employment and who travelled without authorisation in a lorry.

7. This court in several cases and the Supreme Court in the case of Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt 1966 ACJ 89 (SC) and Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343, adopted the rule expressed by Lord Justice Denning in Young v. Edward Box and Co. (1951) 1 TLR 789, on the question as to whether the owner of the lorry is liable for the unauthorised carrying of a passenger in a lorry by its driver. The observations of Lord Denning are as follows:

The next question is how far the employers are liable for their servant's conduct. In order to make the employers liable to the passenger it is not sufficient that they should be liable for their servant's negligence in driving. They must also be responsible for his conduct in giving the man a lift. If the servant had been

forbidden, or is unauthorised, to give anyone a lift, then no doubt the passenger is a trespasser on the lorry so far as the owners are concerned; but that is not of itself an answer to the claim. In my opinion, when the owner of a lorry sends his servant on a journey with it, thereby putting the servant in a position not only to drive it, but also to give people a lift in it, then he is answerable for the manner in which the servant conducts himself on the journey, not only in the driving of it, but also in giving lift in it, provided, of course, that in so doing the servant is acting in the course of his employment.

8. In *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.* 1977 ACJ 343, the Supreme Court has examined the expression "in the course of the employment" and said:

the master is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment but also when the driver is, with the master's consent, driving the vehicle on the master's business or for the master's purposes.

The Supreme Court has further said:

...the recent trend in law is to make the master liable for acts which do not strictly fall within the term "in the course of the employment" as ordinarily understood. We have referred to *Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt* 1966 ACJ 89, where this court accepted the law laid down by Lord Denning in *Ormrod v. Crosville Motor Services Ltd.* (1953) 2 All ER 753, that the owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment but also when the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes. This extension has been accepted by this court. The law as laid down by Lord Denning in *Young v. Edward Box and Co.* (1951) 1 TLR 789, already referred to, i.e., the first question is to see whether the servant is liable and if the answer is yes, the second question is to see whether the employer must shoulder the servant's liability, has been uniformly accepted as stated in *Salmond: Law of Torts*, 15th Edn., page 606, in *Crown Proceedings Act, 1947* and approved by the House of Lords in *Staveley Iron and Chemical Co. Ltd. v. Jones* 1956 AC 627 and *Imperial Chemical Industries v. Shatwell* 1965 AC 656.

9. In a series of judgments reported in *Vanguard Insurance Co. Ltd. v. Chinnammal* 1969 ACJ 226 (Mad), *Commonwealth Assurance Co. Ltd. v. V.P. Rahim Khan Sahib* 1971 ACJ 295 (Mai) and *South India Insurance Co. Ltd. v. P. Subramaniam* 1972 ACJ 439 (Mad), this court has taken the view that the owner cannot (Sic. be saddled with) award liability when the passenger travelling in the lorry in pursuance of a contract of employment with himself as the owner of the goods carried met with an accident (Sic. resulting in his) death or injury. The court has uniformly held that a contract of employment referred to in Section 95(2)(b) of the Motor Vehicles Act need not necessarily be with the owner of the insured vehicle and that it can also be with the owner of the goods transported in

the vehicle.

10. In Abdul Jabbar Vs. Muniammal, a Division Bench of this court, after taking into consideration the various judgments of the courts in India including the Supreme Court and the courts in England, has held:

Thus following the decision of the Supreme Court above referred to which in turn approves the decision in *Young v. Edward Box and Co.* (1951) 1 TLR 789, we have to hold that the owner of the lorry is vicariously liable for the injuries caused to the appellant-claimant who had travelled in the lorry with the permission of the driver of the lorry. As pointed out by Lord Justice Denning in *Young v. Edward Box and Co.* (1951) 1 TLR 789, if the servant had been forbidden or is unauthorised to give anyone a lift, then no doubt the passenger is a trespasser on the lorry so far as the owners are concerned. But that is not by itself an answer to the claim.

11. In the case of *G. Dhyanand v. Zaamni Bi* 1982 ACJ 399 (Mad), a Bench of this court has said:

Lord Justice Denning concluded by observing that the passenger was, therefore, a trespasser, so far as the employers were concerned but nevertheless the driver was acting in the course of his employment and that is sufficient to make the employer liable. Relying on the decision and on the ostensible authority of the manager as a licensee to permit the deceased to travel with him, the Supreme Court held that the manager was acting in the course of his employment in giving leave to the deceased to travel with him and that the owner of the vehicle is liable. In deciding the liability of the insurance company, the Supreme Court after referring to Section 95 of the Motor Vehicles Act, as amended by Act 56 of 1969, held that the insurance cover is not available to passengers in a case like the present one and that the proviso to Sub-section (2) provides that a policy shall not be required except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises. In the case reported in *K.R. Sivagami v. Mahaboob Nisa Bi* 1981 ACJ 399 Madr, a Division Bench of this court, to which one of us was a party, in dealing with a case of a driver of a taxi carrying more than the permitted load of passengers which is contrary to the conditions of permit under which the vehicle was allowed to be used as a tourist taxi, held that the non-observance of the rules relating to the number of passengers to be carried can only be said to be an improper performance of the driver's duty. Even assuming that the permit conditions not to take more than the permitted number of passengers are taken as a prohibition, limitation or restriction, that relates only to the manner of performance of the driver's duties in the course of his employment and that cannot in any way limit the sphere of his employment. Therefore, the carrying of two excess passengers by the driver of the taxi will only amount to an improper

performance of his duties as a driver of the taxi and, therefore, it cannot be taken to be outside the sphere of his employment and held that the owner of the taxi is vicariously liable for the tort committed by the driver of his taxi. In *United India Fire & Genl. Ins. Co. Ltd., Madurai v. M.S. Durairaj* 1982 ACJ 261 (Mad), this Bench had the occasion to consider a case where a senior clerk of the State Bank of India, Kodaikanal, while he was returning from Madurai to Kodaikanal in a car MDA 1194, met with an accident resulting in injuries to the said clerk. In regard to the claim for compensation by the injured clerk an objection was taken by the insurance company that the injured was carried for hire which is against the terms of the insurance policy and as such the insurer was not liable. Following the judgment of the Supreme Court reported in *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co.* 1977 ACJ 343 (SC), referred to supra, this court negated the liability of the insurance company.

12. The above view has been reiterated once again in *M. Kandaswamy Pillai v. Chinnaswamy* 1985 ACJ 232 (Mad), by a Division Bench of this court. This judgment is relevant, for it has referred to the case of *C. Narayanan v. Madras State Palm Gur Sammelan* 1974 ACJ 479 (Mad), the judgment upon which learned counsel for the appellant has relied heavily. The Bench has ruled:

The immediate question is whether either the injured or the deceased who travelled in the lorry along with their goods can be said to be employed by a person insured by the policy and either the injury or death arose out of and in the course of his employment. On the evidence in this case, it is not possible to hold that either the injured or the deceased was an employee of the appellant lorry owner who had insured his lorry with the insurance company and that the injury or the death arose out of and in the course of his employment. We shall emphasise here that on the evidence it is established that both the injured and the deceased got into the lorry.. On the above evidence, it is too difficult to infer even an implied contract of employment between the appellant owner of the lorry and either of the injured or the deceased. Section 95(1)(b)(i) refers to cases where the accident involves the death or bodily injury of any person or damage to any property of a third party and is also caused by or arising out of the use of the vehicle in a public place; it is needless to state that the vehicle may be a generic term and will include all types of vehicles visualised under the Act inclusive of goods vehicle or lorry and public service vehicle. The said provision does not cover the death of a person travelling in the vehicle, itself. A reference to Section 95(1)(b)(ii) will justify our above view. The same specifically refers to death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Thus, we find that the provisions in the Act do not by themselves support the contention advanced by the learned counsel for the appellant...Quite rightly, therefore, the Tribunal held both in law and under the policy of insurance, the insurance company is not liable to the claim made in these proceedings.

13. It is useful, however, to extract the observations of the learned single Judge

in the impugned judgment. He has said:

In the instant case, it is common ground that the owner of the goods was travelling in the lorry along with his goods. As seen from the ratio decidendi this view has been taken that since the owner of the goods is not covered by the provisions of Section 95 of the Motor Vehicles Act, on his death, during the transit along with the goods, his legal representatives cannot claim any compensation and as such, the insurance company is not liable. In the instant case, Mr. G. Venkataraman, the learned counsel for the owner of the vehicle, also contends that the owner of the vehicle is not liable. Then is the owner of the goods, who was under the bona fide impression that he should protect the goods travelling in the very same goods vehicle in which his goods are being transported, to be considered as one which is not at all contemplated by the provisions of the Act at the time when he met with the death in such circumstances? Certainly not. The Motor Vehicles Act, 1939, cannot be said to be bereft of any provision relating to the death of the owner of the goods travelling along with the goods in a goods vehicle and the plight of the legal representatives of such owner. When can be considered as one which comprehensively deals with the claims of the legal representatives of others travelling in a goods vehicle why not the same benefit be given to the legal representatives of the owner of the goods who meets his death while accompanying his own goods in a goods transporting vehicle, is the question, which can be legitimately asked by the legal representatives of such owner of the goods. There is no prohibition in law for the owner of the goods accompanying his own goods during the time of the transit by the goods vehicle. Perhaps, he may be over-enthusiastic in his attempt to protect the goods that are being transported and accompanying the goods either sitting in the cabin or even along with the goods by keeping hold of the same during the time of transit.

14. We do not think that any further elucidation of the legal position is necessary. It is not a case in which it can be said that the driver was not authorised or the owner of the vehicle had forbidden the owner of the goods to travel with the goods. It is a case, in our opinion, in which the insurer may not have any liability, but the owner's vicarious liability cannot be doubted. The learned appellate Judge has taken the correct view Appeals dismissed. of the law, which needs no interference. No question as to the quantum of compensation has been raised before us. There is no merit in the appeals. The appeals are accordingly dismissed. No costs.