

(1971) 01 MAD CK 0006
In the Madras High Court
Case No : A.A.O. No. 207 of 1968

The Common Wealth Assurance Co. Ltd., Bombay	APPELLANT
Vs	
V.P. Rahim Khan Sahib and Others	RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 95, 95(1)
Workmens Compensation Act, 1923 — Section 11, 11(1), 2

Citation : (1971) ACJ 295 : AIR 1971 Mad 415 : (1971) 41 CompCas 727 :
(1971) 84 LW 387

Hon'ble Judges : Ganesan, J

Bench : Single Bench

Judgement

Ganesan, J.

1. The Common Wealth Assurance Co, Ltd. Bombay, has preferred this appeal against the order passed by the learned Motor Accidents Claims

Tribunal, Chingleput, in M.O.P. No. 46 of 1966 directing the appellant to pay a sum of Rs.15,000/- as compensation to the respondents who are

the legal representatives of the deceased Shamsir Khan.

2. On 17-5-1966 the lorry involved in the accident and which belonged to one Nagarathinam the first respondent before the Claims Tribunal was

engaged by Shamsir Khan for transporting mangoes from Vellore to Madras. On the way at about 2 or 3 A. M. on 18-5-1966 the lorry capsized

due to the rash and negligent driving of the driver who is said to have slept away while he was driving the vehicle at good speed. As a result

Shamsir Khan was thrown out and was killed.

3. The respondents who are the legal representatives of the deceased have filed the application in question u/s 110-A of the Motor Vehicles Act

claiming compensation of the sum of Rs. 15,000, against the owner of the lorry, Sri. P. Nagarathinam and the appellant Insurance Company. The

Tribunal has found that the accident was due to the rash and negligent driving of the driver and this finding is not now challenged in appeal.

4. The learned counsel for the Insurance company contends that the insurance company is not bound under law or under the policy to compensate

the legal representatives of Shamsir Khan as the Insurance Company had not covered such a risk. On a consideration of the relevant Section 95 of

the Motor Vehicles Act and of the relevant clauses of the Insurance Policies, I am inclined to uphold the contention of the learned counsel for the

appellant.

5. Under proviso (1)(c) to sub-section (1) of Section 95 of the Act, a policy shall not be required to cover liability in respect of the death of a

person or passenger being carried in the vehicle if it is a goods vehicle except so far as is necessary to meet the requirements in relation to liability

under the Workmen's Compensation Act, 1923. Under proviso (ii) to Section 95, the passengers who were carried in the lorry by reason of or in

pursuance of a contract for employment will however be entitled to compensation.

6. Turning to the Insurance Policy, we find that Section 11 deals with the liability of third parties. Section 11(1) provides that subject to the limits of

liability the company will indemnify the insured against all sums including claimant's costs and expenses which the Insured shall become legally

liable to pay in respect of (i) death or bodily injury to any person caused by or arising out of the use of the Motor Vehicle, provided always that (c)

Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to the liability under the

Workmen's Compensation Act, 1939, in relation to the liability under the Workmen's Compensation Act, 1923, the company shall not be liable in

respect of death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of the contract of employment) being

carried in or upon or entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim

arises.

7. The net result is that the legal representatives of Shamsir Khan will be entitled

to a compensation only if it is shown that he was a passenger travelling in the lorry by reason of or in pursuance of a contract of employment between him and the first respondent the owner of the lorry. I have already pointed out and it is not disputed that Shamsir Khan had only hired the vehicle from the first respondent, the owner and was but transporting mangoes from Vellore to Madras at the time of the occurrence. This does not show that he was under any contract of employment with the first respondent the owner of the vehicle.

8. The learned counsel for the respondents faintly contends that the contract of employment does not necessarily mean the employment of Shamsir Khan by the first respondent but would include the hiring of the vehicle by Shamsir Khan. I am afraid that the construction sought to be put upon the words by the learned counsel for the respondents cannot be lightly upheld.

9. In *South India Insurance Co, Ltd. v. Heerabai*, 1967 A C. J. 65 (M P.) a Division Bench of the Madhya Pradesh High Court has held that a person who hired a truck for carrying some load and accompanied the same and met with a fatal accident on the way cannot be said to be a passenger carried by reason of or in pursuance of a contract of employment.

10. In *Parkash Vati v. Delhi Dayalbagh Dairy Ltd.*, 1967 A. C. J. 82 (Punj) a Division Bench of the Punjab High Court had taken the same view in respect of a commission agent who carried goods in a goods vehicle for supplying the same to the owner of the vehicle on commission basis. It was contended on behalf of the claimant in that case that the deceased should be deemed to be travelling in the vehicle by virtue of a contract of employment with himself and that the contract of employment need not necessarily be with the owner of the vehicle. The learned Judges while observing that the contract of employment need not necessarily be with the owner of the vehicle, held that the Insurance company cannot be made liable because the deceased was not shown to have been on the vehicle by reason of or in pursuance of any contract of employment.

11. To the same effect is the case of *Oriental Fire and General Insurance Co. v. Kasturilal*, 1968 A.C. J. 227 (P &H.) where Sharma, J. of the High Court for the States of Punjab and Haryana at Chandigarh had ruled that an owner of goods accompanying the goods in a truck cannot be said to be a passenger carried by reason of or in pursuance of a contract of

employment.

12. The authorities are overwhelming in support of the contention of the learned counsel for the appellant and I respectfully agree with those

decisions. I have already pointed out that the legitimate construction which can be placed upon the provisions of Section 95 of the Motor Vehicles

Act and upon the provisions of Section 2 in the Insurance Policy relating to liability to third parties can lead to only one conclusion that is, a

passenger carried by a lorry will not be covered by the Insurance policy unless he is proved to be a passenger travelling by reason of or in

pursuance of a contract of employment. I am clear that Shamsir Khan's case will not fall within this category.

13. In the result, the appeal filed by the appellant Insurance Company is allowed but under the circumstances without costs. The result is that the

respondents 1 and 2 will be entitled to recover the compensation awarded by the Tribunal only from the third respondent, Sri Nagarathnam, the

owner of the lorry. The sum of Rs.15,000 deposited by the appellant Insurance company in the Tribunal will be withdrawn by it without any

condition.

14. Appeal allowed.