
(1991) 08 MAD CK 0033
In the Madras High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

V. Paul Sridharan and Others

RESPONDENT

Date of Decision : 05-08-1991

Acts Referred:

Citation : (1992) 2 ACC 569 : (1991) 2 MLJ 283

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Judgement

Ratnam, J.—In this appeal at the instance of the New India Assurance Company against the award of the motor Accidents Claims Tribunal

(Additional Sub Court II), Chingleput, the main question that arises for consideration is whether the Tribunal was right in fastening liability on the

part of the Insurance Company for the payment of compensation in a sum of Rs. 33,600 to the 1st respondent herein.

2. There is no dispute now that in an accident that took place on 20.2.1980 involving the lorry bearing MDH 3003, the wife of the 1st respondent

sustained injuries and later died. According to the 1st respondent, the lorry MDH 3003 was driven rashly and negligently and that has caused the

accident to his wife, and in respect of that, he was entitled to be paid compensation in a sum of Rs. 1,50,000. The 2nd respondent was the driver

of the vehicle at the time of the accident. The 3rd respondent is stated to have purchased the vehicle from the owner the 4th respondent on

24.12.1979. The Insurance Company raised a plea that though the insurance policy issued by it in favour of the 4th respondent was in force

between 26.9.1979 and 25.9.1980, yet by reason of the transfer of the vehicle by the 4th respondent in favour of the 3rd respondent on

24.12.1979, the policy lapsed and the subsequent policy issued by the appellant in favour of the 3rd respondent was effective only from

29.2.1980, after the accident, and the before, no liability could be fastened with the appellant Insurance Company.

3. On a consideration of the oral as well as the documentary evidence, the Tribunal found that the rash and negligent driving of the lorry by its

driver had caused the accident and that in respect thereof, the 1st respondent was entitled to be paid compensation in a sum of Rs. 33,600.

Dealing with the objection raised by the appellant-Insurance Company, the Tribunal proceeded to hold that as there was an insurance policy under

Ex. B-1 on the date when the accident took place, the transfer would not matter, and also would not take away the rights of third parties claiming

compensation, and in that view, directed the appellant-Insurance Company to pay the compensation amount awarded.

4. The 3rd respondent in the appeal had been served by substituted service by virtue of the order passed in C.M.P. No. 13022 of 1989, and the

service effected is declared to be sufficient.

5. In this appeal, learned Counsel for the appellant relying upon the decision reported in *The Oriental Insurance Co. Ltd. Vs. Rajamani and*

Others, , contended that though under Ex. B-1, a policy in respect of the vehicle involved in the accident has been issued by the appellant in favour

of the 4th respondent effective from 26.9.1979 till 25.9.1990, yet by reason of the admitted transfer of the vehicle by the 4th respondent in favour

of the 3rd respondent in this appeal on 24.12.1979, the policy lapsed, and thereafter, there was no liability cast on the Insurance Company to

make good any loss in respect of that period. It was also further pointed out that the subsequent policy issued by the appellant on 29.2.1980 was

effective only from 29.2.1980 and not earlier, and the before, on the date when the accident took place on 20.2.1980, there was no policy at all

covering the vehicle to make the Insurance Company liable. Learned Counsel for the appellant is certainly well-founded in this contention. It is seen

from Ex. B-1 Insurance Policy that it was effective between 26.9.1979 and 25.9.1980. In paragraph 7 of the award of the Tribunal, it is stated

that on 24.12.1979, the vehicle involved in the accident had been transferred by the 4th respondent in whose favour Ex. B-1 had been issued, to

the 3rd respondent. However, this transfer was not notified to the appellant-Insurance Company till 29.2.1980 i.e., about nine days after the accident had taken place. Thus, on the date on which the accident took place, possession of the lorry was with the 4th respondent had already been transferred to the 3rd respondent and neither the 4th respondent, nor the 3rd respondent had intimated the insurance Company about the transfer of the vehicle involved in the accident and made a request for the transfer of the Insurance Policy also, in favour of the 3rd respondent.

Under these circumstances, the principle laid down in the decision reported in *Oriental Insurance Co. Ltd. Vs. Rajamani and Others*, would clearly stand attracted so that the appellant-Insurance Company is well within its right in contending that the policy had lapsed, and the before, no liability could be fastened upon it for payment of compensation to the 1st respondent in respect of the accident.

6. No objection was taken by any of the parties to the quantum of compensation awarded.

7. The result is this C.M.A. is allowed, and the award of the Tribunal in so far as it is against the appellant-Insurance Company is set aside and there will be a modified award in favour of the 1st respondent against respondents 3 and 4 and the 1st respondent will be entitled to recover a sum of Rs. 33,600 from the respondents 3 and 4. There will be no order as to costs.

8. If, during the pendency of the appeal the appellant-Insurance Company had deposited the amount pursuant to the award of the Tribunal, to the credit of M.O.P. No. 190 of 1980, or if this amount had also been withdrawn by the 1st respondent, in view of the order now passed, the appellant-Insurance Company will be entitled to get back the amount if deposited or paid out.