
(2012) 11 MAD CK 0029
In the Madras High Court
Case No : CMA. No. 1623 of 2011

The United India Insurance Co. Limited Nilgiris	APPELLANT
Vs	
Arukkani, Palanisamy and Thippa Gowder	RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2013) 1 MLJ 247

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : Harini for Mr. N. Vijayaraghavan, for the Appellant; Ma. P. Thangavel R1, for the Respondent

Judgement

Honourable Mrs. Justice Aruna Jagadeesan

1. This Civil Miscellaneous Appeal is filed by the United India Insurance Co. Limited, Nilgiris against the Judgement and Decree dated 8.9.2010

made in MCOP. No. 211/2008 by the learned Additional District Judge, FTC II, MACT, Gobichettipalayam. The short question that arises for

consideration in this Civil Miscellaneous Appeal is that when it has been proved that the driver of the offending vehicle had no licence to drive the

heavy motor vehicle and had licence to only drive light motor vehicle, whether the Insurance Company can claim exoneration from its liability on

the ground that the driver had no valid driving licence at the time of the accident.

2. The facts of the case are that on 2.6.2006, the deceased Sasi @ Sasikumar, son of the claimant/the 1st Respondent herein was traveling in a

mini lorry as a cleaner from Pollachi to Valparai. The driver of the mini lorry drove the mini lorry in a rash and negligent manner and hit against the

bus which was coming on the opposite direction, as a result of which, the mini

lorry rolled down, causing fatal injuries to the deceased. The

Tribunal, while dealing with the aspect of rash and negligent driving, examined the evidence placed on record and held that the accident had

occurred only due to the rash and negligent driving of the driver of the mini lorry.

3. The sole contention of Ms. Harini representing Mr. N. Vijayaraghavan, the learned counsel for the Appellant Insurance Company is that the

Tribunal erred in fastening liability of the award amount on the Appellant Insurance Company. The learned counsel contended that where the driver

of the offending vehicle is driving such class of vehicle for which he is not authorised, the Insurer has to be completely exonerated from all liabilities.

In the instant case, the learned counsel contended that the driver of the vehicle was admittedly driving the mini lorry, which was a commercial

vehicle and he had driving licence only to drive light motor vehicle and as such, the Appellant Insurance Company was not at all liable to indemnify

the Insurer.

4. Reliance was placed by the learned counsel for the Appellant in the above context upon the decision of the Honorable Supreme Court reported

in National Insurance Co. Ltd. Vs. Kusum Rai and Others,). In the said case, the person, who was driving the said vehicle at the time of the

accident, had a driving licence for driving a light motor vehicle, but the vehicle involved in the accident was Jeep which was used as a Taxi. In such

circumstances, the Honourable Supreme Court has held as under:-

It has not been disputed before us that the vehicle was being used as a taxi. It, was, therefore, a commercial vehicle. The driver of the said vehicle,

thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed

hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently,

therefore, there was a breach of condition of the contract of insurance. The Appellant, therefore, could raise the said defence.

It further held:

This court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, clearly laid down that the liability of the Insurance Company vis-a-vis the

owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a

licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-à-vis the driver being not possessed of a valid licence was considered in Swaran

Singh, stating:-

(82) Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive.

Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub

section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a)

motor cycle without gear, (b) motor cycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor

vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in

broad types mentioned in sub section (2) of section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle",

"invalid carriage", "light motor vehicle", "maxicab", "medium goods vehicle", "medium passenger motor vehicle", "motorcab", "motor cycle",

"omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for

accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person

possessing a driving licence for "motor cycle without gear", (sic may be driving a vehicle) for which he has no licence. Cases may also arise where

a holder of driving licence for "light motor vehicle", is found to be driving a "maxicab", "motorcab", or "omnibus" for which he has no licence. In

each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle

but found driving another type of vehicle, was the main or contributory cause of accident. If, on facts, it is found that the accident was caused

solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not

possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerned driving

licence.

5. The Honourable Supreme Court in the aforesaid decision concluded that the Insurance Company in the said case was not liable to pay

compensation, as the driver was not possessing a valid licence. However, keeping in view the fact that the claim was made by a third party, the

Honourable Supreme Court expressed the opinion that it may not be appropriate to push the claimants into another round of litigation, particularly,

when it may be difficult for them to secure the presence of owner of the vehicle and therefore, declined to interfere with the impugned award. The

Insurance Company was, however, enabled by a direction issued by the Honourable Supreme Court in exercise of its jurisdiction under Article

136 of the Constitution of India to recover the amount from the owner in the same manner, as was directed by the Honourable Supreme Court in

the case of Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others,

6. In the present case, as stated above, there is no manner of doubt that the driving licence of the driver of the offending vehicle, which is marked

as Ex. P2, was valid only for driving light motor vehicle. RW. 2 Sivasubramanian, the Junior Assistant from the Regional Transport Office, Ooty

unequivocally has stated that the driving licence of the driver of the vehicle was issued by the authority for driving light motor vehicle only. In view

of this position, clearly it is established by the Insurance Company that the driver of the offending vehicle was not authorised to drive a mini lorry,

which is a commercial vehicle and does not fall in the category of the light motor vehicle. But, the Tribunal, in spite of the aforesaid evidence, let in

by the Insurance Company, has held that since the vehicle has been insured with the Insurance Company, it is liable to indemnify the owner, which

cannot be sustained and is liable to be set aside and accordingly, it is set aside.

7. In view of the reasons stated above and also keeping in view the law laid down by the Honourable Supreme Court in Kusum Rai's case (cited

supra), I have no hesitation to hold that the Appellant Insurance Company must be exonerated from all liabilities, as the driving licence of driver of

the offending vehicle was not valid for driving the vehicle which caused the accident. However, in view of the earlier order of this court directing the

Appellant Insurance Company to deposit the entire award amount and further taking into consideration the fact that the claimant is the mother of

the deceased, I am of the view that the claimant can be permitted to withdraw the entire award amount with interest, with a liberty to the Appellant

Insurance Company to recover the same from the driver and owner of the offending vehicle in accordance with the decision of the Honourable

Supreme Court rendered in Nanjappan's Case (cited supra). In the result, this Civil Miscellaneous Appeal is disposed of with the following

directions:-

- (1) The Appellant Insurance Company is exonerated from all liabilities.
 - (2) The claimant is permitted to withdraw the entire award amount with interest.
 - (3) The Appellant Insurance Company is given liberty to recover the award amount from the driver and owner of the offending vehicle. For the purpose of recovering the same from the driver and owner of the offending vehicle, the insurer shall not be required to file a separate suit and it may initiate a proceedings before the concerned executing court.
- No costs. Consequently, the connected MP is closed.