

(1966) 01 MAD CK 0022

In the Madras High Court

Case No : Appeal against Order No. 352 of 1963

Unique Motor and Insurance Company	APPELLANT
Vs	
Gnanambigai and Another	RESPONDENT

Date of Decision : 04-01-1966

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1966) 36 CompCas 601

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Advocate : M.R. Krishna Iyer, for the Appellant; C.S. Prakasa Rao, for the 2nd respondent, for the Respondent

Final Decision : Allowed

Judgement

Venkatadri, J.—This appeal has been preferred by the Unique Motor and Insurance Company, the second respondent in the claim petition,

O.P. No. 15 of 1962, on the file of the Motor Accidents Claims Tribunal (District Judge), South Arcot, at Cuddalore, against the award of

compensation in a sum of Rs. 5,000 to the first respondent herein whose son died as a result of an accident caused by the lorry of the second

respondent herein and which lorry has been insured with the appellant herein. As the award of compensation was directed to be paid both by the

owner of the lorry and the insurance company, the insurance company has filed this appeal against that decision of the Tribunal below.

2. The insurance company contend that they are entitled to avoid the policy, inasmuch as the policy had been obtained by the owner of the vehicle

by the non-disclosure of a material fact. The policy extended to cover third party risk. The policy was renewed on August 29, 1960, for a period

of one year, i.e., up to August 29, 1961. In the sample proposal form containing the questionnaire, there is a question, have you or your drivers ever been fined in connection with the use of the motor vehicle or had your licences been endorsed. Now the appellants contend that the owner of the lorry has suppressed a material fact of the lorry driver, Abdul Khadir, having been convicted for rash and negligent driving in 1960, and which had been endorsed on his licence. The insurance company contend that it was only after enquiry that they came to know of this accident to the insured lorry and also of the driver being penalised in respect of his rash and negligent driving.

3. I have to consider whether the owner of the lorry has violated any condition of the policy, by reason of his concealment or non-disclosure of a material fact and whether there is an obligation on the part of the owner of the motor vehicle to make a full disclosure in a contract of motor insurance.

4. The relevant provision of the Motor Vehicles Act, Section 96(2)(c), is as follows:

... . that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

5. Now the appellants want to defend the action on the ground that the owner of the lorry had suppressed a material fact of their driver being convicted for rash and negligent driving and which fact had not been disclosed in the proposal form or at the time of the renewal of the policy. In

Shawcross on the Law of Motor Insurance (second edition), at page 388, the learned authors say :

..... a contract of insurance is uberrimae fidei. It is one of those classes of contracts in which the utmost good faith is required of both parties during the making of the contract. The essential features of these contracts in which good faith is required are well known from the dicta in many authorities. ...

6. At page 445, the learned authors say that apart from the insertion of such a question as, "" have you, or any person who to your knowledge will drive, been convicted of any offence during the past five years in connection with the driving of any motor vehicle ? "", in the proposal form, the

proposer is bound to make full and accurate disclosure to the insurers of previous convictions registered against him in relation to the user of motor

vehicles, and that failure to make full and accurate answer to this question, or apart from it to disclose previous convictions, has been one of the

grounds most frequently urged with success by insurers as entitling them to repudiate liability to indemnify their assured. In *Jester-Barnes v.*

Licenses and General Insurance Co. Ltd., (1934) 49 L1.L.R. 231 the proposer had failed to disclose certain previous convictions of his chauffeur

of which he, as was found, had full knowledge, and the insurers on this, amongst other grounds, were held entitled to repudiate liability. The

authors have also cited the case of *Bond v. Commercial Assurance Co.*, (1930) 36 L1. L. R. 107 (at page 446 of the book), where the insurers

successfully repudiated liability on the ground that the proposer had failed to disclose the previous motoring convictions of his son, who to the

proposer's knowledge would drive the vehicle after the insurance had been effected. In *MacGillivray on Insurance Law* (fifth edition), volume I,

the learned author says at page 423 (paragraph 870) in regard to motor car insurance that the applicant for motor car insurance ought to make full

disclosure of any accidents in which he has been involved whether he was driving on his own account or on behalf of some other person. At page

418 (paragraph 856), certain general principles have been discussed citing the case, *Carter v. Boehm*, . (1766) 3 Burr.1905 . That case was not a

motor insurance case, but Lord Mansfield has stated the law generally as applicable to all classes of insurance. Lord Mansfield said :

Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge

of the assured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance, in his

knowledge, to mislead the underwriter into a belief that the circumstance does not exist. The keeping back such circumstance is a fraud, and,

therefore, the policy is void. Although the suppression should happen through a mistake, without any fraudulent intention, yet still the underwriter is

deceived and the policy is void, because the risque run is really different from the risque understood and intended to be run at the time of the

agreement Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the

fact, and his believing the contrary

7. Halsbury's Laws of England, volume 22 (Simonds edition), paragraphs 355 to 359, deal with non-disclosure and misrepresentation. In

paragraph 356, it is said that the duty to disclose material facts is mutual, although the occasions for disclosure by the insurers are rare since the

facts material to the insurance are not, as a general rule, known to the insurers but only to the proposer for insurance. Paragraphs 358 and 359

deal with facts affecting what are called the physical hazard and the moral hazard, and it is said that in relation to motor insurance it is important to

know that the proposer has had convictions for motoring offences recorded against him. The principles laid down by Lord Mansfield in *Carter v.*

Boehm, (1766) 3 Burr. 1905, have been confirmed in later cases. Bayley J. said in *Lindenau v. Desborough*, (1828) 8 B. & C. 586, :

I think in all cases of insurance . . . the underwriter should be informed of every material circumstance.

8. Jessel M.R. in *London Assurance v. Mansel*, (1879) 11 Ch. D. 363, 367.

As regards the general principle, I am not prepared to lay down the law as making any difference in substance between one contract of assurance

and another. Whether it is life, or fire, or marine insurance, I take it good faith is required in all cases ...

9. Lord Blackburn in *Brownlie v. Campbell*, (1880) 5 App. Cas. 925, .

In policies of insurance, whether marine insurance or life insurance, there is understanding that the contract is *uberrimae fidei*, that if you know any

circumstance at all that may influence the underwriter's opinion as to the risk he is incurring, and consequently as to whether he will take it, or what

premium he will charge if he does take it, you will state what you know. There is an obligation there to disclose what you know ; and the

concealment of a material circumstance known to you, whether you thought it material or not, avoids the policy.

10. In *Mutual Life Insurance Co. of New York v. Ontario Metal Products Co. Ltd.*, [1925] A.C. 344 the Privy Council laid down the following

test, namely:

It is a question of fact in each case whether, if the matters concealed or misrepresented had been truly disclosed, they would, on a fair

consideration of the evidence, have influenced a reasonable insurer to decline the

risk or to have stipulated for a higher premium.

11. Similarly, in *Locker and Woolf Ltd. v. Western Australian Insurance Co.*, [1936] K.B. 408 the intending assured, in a proposal for fire

insurance in respect of their premises, failed to disclose that a proposal of theirs for a policy on motor cars was declined on the grounds of

misrepresentation and nondisclosure of certain facts. Slesser L.J. at page 414 observed as follows :

It is elementary that one of the matters to be considered by an insurance company in entering into contractual relations with a proposed insurer is

the question of the moral integrity of the proposer--what has been called the moral hazard. In the present case it is quite impossible to say that the

non-disclosure by those proposing to take out a policy against fire risks that they have had an insurance on motor cars declined on the ground of

untrue answers in the proposal form is not the non-disclosure of a fact very material for the insurance company to know--a fact which if known to

the company might lead them to take the view that the proposers were undesirable persons with whom to have contractual relations. In these

circumstances there can, in my opinion, be no doubt that on the general law of insurance the company was perfectly entitled to repudiate the

contract on the ground of non-disclosure of a material fact.

12. Learned counsel for the appellants also cited the case of *Merchants and Manufacturers Insurance Company v. Davies*, [1938] 1 K.B. 196

where an action was brought by the insurance company for a declaration that they were entitled to avoid a certain policy of assurance apart from

any provision contained therein on the ground that it was obtained by non-disclosure of material facts. The policy in question was issued to Davies,

and it extended to cover, among other things, liability for injury to third parties by an accident caused by, through or in connection with a motor-

cycle described in the policy. During the currency of the policy, the defendant, Davies, while riding the motor-bicycle, was involved in an accident

which resulted in injuries to one Owen, who made a claim for damages. In those circumstances, the insurance company alleged that the policy was

obtained by non-disclosure of material facts, namely, the non-disclosure of two convictions which had been suffered by the defendant Davies and

the endorsing of the same in the driving licence, and that therefore they were

entitled to avoid the policy. It was held at page 210 as follows :

It is said that documents relating to proposals or applications for insurance of motor-car and motor-cycle risks made to the plaintiffs by persons

disclosing the fact that they have been once convicted of driving a motor-car without a licence and once convicted of driving a motor-cycle in a

dangerous manner will be material to show that such disclosures have not been deemed to be material by one insurer, at any rate, namely, the

plaintiffs. But, in my opinion, the facts contemplated to be disclosed by such discovery are essentially different from those of the present case, for in

the present case it is not suggested that there has been acceptance of policies after such disclosure, but an acceptance brought about by non-

disclosure ...;

13. But the onus of proving non-disclosure or concealment is on the insurance company, as stated in *Joel v. Law Union and Crown Insurance*

Company, [1908] 2 K.B. 863 . On a review of the case-law on the subject, I am inclined to agree with learned counsel for the appellants that the

insured had suppressed the material fact of their driver, Abdul Khader, having been convicted for a motoring offence in 1960, at the time of the

renewal of the policy. However, I do not find the driving licence in the records which would show the conviction of the driver and the necessary

endorsement made therein. So also, I do not find the question regarding the conviction and the endorsement in the insurance policy and the cover

note. For the above reasons, I propose to remit the original petition to the file of the Tribunal below for fresh disposal on this aspect of the matter.

14. The result is the appeal is allowed and the original petition remanded to the Motor Accidents Claims Tribunal (District Judge), Cuddalore. The

parties will be at liberty to adduce evidence in the matter. There will be no order as to costs.