

(1980) 02 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No. 195 of 1977

United India Fire and Genl. Ins. Co. Ltd.	APPELLANT
Vs	
Raj Krishna Mital and Others	RESPONDENT

Date of Decision : 25-02-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 B, 110 B, 96 (2), 96 (2) (b)

Citation : (1982) ACJ 129

Hon'ble Judges : Patil, J;G.N. Sabhahit, J

Bench : Division Bench

Advocate : Chinappa K. Kembeyanda, for the Appellant; B.V. Acharya, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Sabhahit, J.—This appeal by the insurer is directed against the judgment and award dated 4.11.1976 passed by the Motor Accidents Claims Tribunal, Bangalore, in M.C. (MVC) No. 82 of 1976 on its file awarding compensation of Rs. 15.000 to the injured-Petitioner, Raj Krishna Mital, along with interest and costs from Respondents 1 to 3.

2. The only point raised by the insurer in this appeal is that the vehicle in question, viz., MYE 3433, a lorry, had no permit to ply on the road as a lorry on the date of accident, i.e., 13.1.1976 and hence the learned Counsel for the Appellant-insurer submitted that the Tribunal was not justified in holding that the company is liable to pay compensation u/s 110 B of the Motor Vehicles Act (hereinafter referred to as "the Act").

3. As against that, the learned Counsel for the claimant, argued supporting the judgment and award of the Tribunal, making the company also liable to pay compensation.

4. The sole point, therefore, that arises for our consideration in this appeal is, whether the Tribunal was justified in fixing the liability on the insurance company,

to pay compensation u/s 110-B of the Act.

5. It is not in dispute that the claimant was injured on a public way in an accident caused by the driver of the lorry bearing No. MYE 3433 due to rash and negligent driving. Normally, therefore, the insurance company, which issued the policy covering the use of the vehicle by the owner, would be bound to indemnify the owner as the policy Ex. R. 3 covered the risk from 21.10.1975 to 20.12.1976. The learned Counsel for the Appellant, however, submitted that the evidence of R.W. 1, a clerk in the R.T.O. office would make it clear that the lorry had no permit on 13.1.1976 on which date, the accident occurred. Hence, he strenuously urged that the company is not legally liable to indemnify the owner for the compensation he is bound to pay.

6. This submission was resisted by the learned Counsel for the claimant by submitting that the contention does not fall within the purview of Section 96(2) of the Act and that the company is permitted only to raise contentions which are covered u/s 96(2) of the Act.

7. The law is now well settled by the Supreme Court of India in the case of British India General Insurance Co Ltd. v. Captain Itbar Singh 1958 A.C.J. 1 (S.C.). His Lordship A.K. Sarkar who delivered the judgment for the Bench has ruled that "apart from the statute an insurer has no right to be made a party to the action by the injured causing the injury. Sub-section, (2) of Section 96 however, gives him the right to be made a party to the suit and to defend it. The right therefore is created by statute and its content necessarily depends on the provisions of the statute. Sub-section (2), clearly provides that an insurer made a Defendant to the action is not entitled to take any defence which is not specified in it. When the grounds of defence have been specified, they cannot be added to. The only manner of avoiding liability provided for in Sub-section (2) is through the defences therein mentioned. Therefore, when Sub-section (6) talks of avoiding liability in the manner provided in Sub-section (2), it necessarily refers to these defences. It cannot be said that in enacting Sub-section (2) the legislature was contemplating only those defences which were based on the conditions of the policy.

8. The learned Counsel for the Appellant invited our attention to the provisions u/s 96(2)(b)(i)(c) of the Act, which reads thus:

96(2)(b) : That there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle:

(a) x x

(b) x x

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle.

Thus, it is obvious that the company may include in the policy that the insurer would not be liable if there has been a breach of a condition excluding the use of the vehicle for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle. Section 96(2) nowhere states that the company can include in its policy the defence that the company would not be liable if there has been no valid permit existing on the date of the accident with regard to the use of the vehicle. As the Supreme Court has ruled in the aforesaid case, it is not for the Court to add anything which is not there in the section. That would amount to legislating under the guise of interpretation. Hence we are unable to agree with the learned Counsel for the Appellant that Section 96(2)(b)(i)(c) would necessarily indicate that the company can add a clause that the company is not liable if there is no valid permit on the date of accident to ply the vehicle.

8a. In the case of *New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani* 1958 A.C.J. 559 (S.C.), the Supreme Court has laid down thus:

Chapter-VIII of the Act, it appears from I the heading, makes provision for insurance of the vehicle against third party risks, that is to say, its provisions ensure that third parties who suffer on account of the user of the motor vehicle would be able to get damages for injuries suffered and that their ability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment.

The policy therefore should be so construed as to advance the object of the enactment. Section 94 of the Act states:

(1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the Chapter.

So it is obvious that all that Section 94 (1) of the Act says is that before a motor vehicle is used in a public place, it shall have a policy issued by the insurance company. Section 110 of the Act speaks about the accidents of motor vehicles. It does not say that the section is confined only to use of the motor vehicle on issue of a proper permit. The words used are very wide to cover the use of the motor vehicle. To further say, that it should refer to the use of the motor vehicles with valid permit would be saying something which is not there in the section. Such a course is not open to the Court. Therefore, reading Sections 94(1) and 110 of the Act, it becomes clear that whenever an accident occurs by the use of the motor vehicle in a public place resulting in injuries to a person or death of a person, both the owner and the insurer would be liable to pay compensation. It is for that reason that the legislature in its wisdom has not added a clause allowing the company to repudiate the policy in case there was no permit with regard to the use of the vehicle on the date of the accident.

9. The learned Counsel for the Appellant invited our attention to a clause in the policy Ex. R. 3 which under the rubric "Public Carrier" states:

Use only under a public carrier's permit within the meaning of the Motor Vehicles Act, 1939. The Policy does not cover:

- (1) Use for organised racing, pace making, reliability trial or speed testing.
- (2) Use whilst drawing a trailer except the towing (other than for reward) of anyone disabled mechanically propelled vehicle.
- (3) Use for conveyance of passengers for hire or reward.

All these come under the caption "Limitations as to use". Relying on "Use only under a public carrier's permit within the meaning of the Motor Vehicles Act, 1939", the learned Counsel submitted that there is a clear condition in the Policy that the vehicle should not be used without a permit. Hence he submitted that the company was not liable.

10. The Supreme Court of India in the aforecited case of *New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani* 1958 A.C.J. 559 (S.C.), has ruled *inter alia* thus:

Considering this aspect of the terms of the policy, it is reasonable to conclude that Proviso (a) to para 3 of Section II of the Policy is a mere condition affecting the rights of the insured and the persons to whom the cover of the policy was extended by the Company, and does not come in the way of third parties' claim against the Company.

(Emphasis added).

We are in this case concerned with the claim of the third party and not with a dispute between the insurer and the insured. As already pointed out above, the defence that the vehicle was not having a valid permit on the date of accident is not available to the company against the third party u/s 96(2) of the Act.

11. Moreover, the company has not shown by cogent and reliable evidence that the vehicle required a permit to ply on the date on which the accident occurred. We state so because Section 42 of the Act provides several exceptions, though normally that section contemplates that the vehicles should not run without a permit. Section 42(1) says thus:

42 (1). No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, whether or not such vehicle is actually carrying any passenger or goods, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority authorising the use of the vehicle in the place in the manner in which the vehicle is being used.

Sub-section (3) of Section 42 states:

Sub-section (1) shall not apply:

(i) except as may otherwise be prescribed, to any goods vehicle which is a light motor vehicle and does not ply for hire or reward, or to any two wheeled trailer with a registered laden weight not exceeding 800 kilograms drawn by a motor car;

(ii) to any transport vehicle while proceeding empty to any place for purpose of repair.

That being so, it becomes obvious that if the company wants to rely on the contention, if at all it can, it has to further establish that the vehicle in question required a permit for running on a public road at the time when the accident occurred.

12. It may further be mentioned that even R.W. 1 has stated in his evidence that the vehicle had permit from 23.10.1975 to 31.10.1975 and from 22.1.1976 to 29.2.1976 to run as goods vehicle. That makes it clear that the owner has not committed any breach in using the vehicle for purposes not mentioned in the permit. It is also in the evidence of R.W. 1 that the tax for the quarter ending with 31.3.1976 was recovered by the R.T.O. So if there was no permit covered from 31.10.1975 to 22.1.1976, it is merely a case of criminal liability, if at all; it would not come in the way of a third party from recovering damages both from the owner and the insurer.

13. There is another aspect of this question. Ex. P.3, in the policy, wherein, u/s II "Liability to third parties", it is stated thus:

Subject to the Limits of Liability the company will indemnify the insured against all sums including claimant's cost and expenses such as the insured shall become legally liable to pay in respect of:

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle;

(ii) damage to property caused by the use (including the loading and/or unloading) of the motor vehicle.

It is obvious in the present case, the owner is legally liable to pay compensation. That being so, u/s II of the Policy, the company is liable to indemnify the owner including the costs and interest. It is not stated therein that the company would be liable if only the vehicle in question was being used under a valid permit. Thus, considering all the aspects of the case, we are satisfied that the Tribunal was justified in making the insurance company liable to indemnify the owner for the compensation as he was legally liable to pay it.

14. In the result therefore, the appeal fails and is dismissed. On the peculiar facts of this case, we make no order as to costs of this appeal.