
(1999) 04 MAD CK 0080

In the Madras High Court

Case No : A.A.O. No. 744 of 1997, Cross Objection No. 42 of 1998 and CMP No"s. 5539, 5540 and 18844 of 1998

United India Insurance Co. Ltd.

APPELLANT

Vs

A. Victoria and Others

RESPONDENT

Date of Decision : 21-04-1999

Acts Referred:

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

Motor Vehicles Act, 1988 — Section 149, 173

Citation : (2001) ACJ 196 : AIR 2000 Mad 245

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Advocate : N. Rosi Naidu, for the Appellant; P. Rathinadurai, (for Nos. 1 and 2) and V. Subramanyam, (for No. 3), for the Respondent

Judgement

S.M. Abdul Wahab, J.—This C.M.A. has been preferred against the award dated 9-12-1996 in O.P. No. 1215 of 1994 on the file of the

Motor Accidents Claims Tribunals, Chief Judge, Small Cause Court, Chennai. The matter relates to claim for Rs. 10,22,000/- for the loss of life

of one Dhanaraj caused in a motor accident on 9-10-1993. The wife and minor son have preferred the claim.

2. The 1st respondent in the said O.P. in the counter contested that there was no negligence on the part of the driver. Another important defence

was that the vehicle should not be used for any purpose other than agriculture. The vehicle should not be used for carrying goods as per condition

No. 10 in the policy. As the vehicle was used for different purpose viz. for carrying goods, the liability of the appellant is not there.

3. The Tribunal came to conclusion that the vehicle in question was a commercial vehicle meant for carrying goods. Insurance company was held

to be definitely liable. The Tribunal rejected the contention that the vehicle should be used only for agricultural purposes. As regards the quantum,

considering salary of the deceased and age of the deceased as evidence by Ex.P. 1, the Tribunal has awarded a sum of Rs. 3,40,000/-. The

United India Insurance Company has preferred the appeal.

4. The main contention urged by the learned counsel for the appellant Mr. N. Rosi Naidu is that there is a specific purpose mentioned in the policy,

that is, the vehicle should be used only for agricultural purposes. In the present case, the vehicle was used for carrying water as it was let on hire in

favour of MNWSSB. As the accident took place while the vehicle was let out to MMWSSB for carrying water, the insurance cover was not

there.

5. The appellant has also preferred C.M.P. No. 18844 of 1998 for producing the claim form lodged by the 3rd respondent as additional evidence.

The learned counsel for the respondents has filed a counter, opposing the said petition. But, considering the fact that the document is one belonging

to the 3rd respondent and it only shows that for what purpose, the vehicle was used at the time of the accident, the same can be received.

Accordingly. C.M.P. 18844 of 1998 is allowed. Further, the Tribunal itself has admitted that the accident had taken place while it was let out to

the MMWSSB for carrying water to the public.

6. The learned counsel Mr. N. Rosi Naidu, cited the following decisions in support of his contentions; New India Assurance Co. Ltd. v. S.

Ramulamma, 1989 ACJ 596 . National Insurance Company Ltd. Vs. Durdadshya Kumar Samal and Others, . Rajasthan State Road Transport

Corporation Vs. Kailash Nath Kothari and other etc., ; Rajasthan State Rd. Trpt. Corporation v. Kailash Nath Kothari and New India Assurance

Co. Ltd. v. Anil Mathew, 1994 ACJ 622 .

7. On the other hand, the learned counsel for the respondents Mr. P. Rathindurai, vehemently contended that the insurance Company is liable. The

vehicle in question is meant for carrying goods. Therefore, when water was carried, there is 110 contravention of the condition of the policy. The

learned counsel further contended that only when a condition which is inconsistent when Section 96(2) of the Motor Vehicles Act is violated, yet

still, the Insurance Company will be liable. The learned counsel made the

submissions on the cross objection which he has preferred, as according to the learned counsel, the promotion prospect of the deceased was not taken into account in fixing the income.

8. The Motor Accidents Claims Tribunal has found that the tractor which belonged to the third respondent herein was let on hire in favour of the

MMWSSB for carrying drinking water to be supplied to the people in Madras City. But, it has held that the mere description in the Policy that the

tractor is meant for agriculture purpose would not automatically absolve the Insurance Company from liability as against the third party claims.

Further, it has also found that the Insurance Company was liable.

9. From the above, it is clear that the vehicle in question viz. the tractor was let to MMWSSB and it was used for carrying water to public. The

accident has occurred during such transport of water to the public.

10. I will now take up the cases referred to by Mr. N. Rosi Naidu one by one. In C.M.A. No. 265 of 1980 State of Tamil Nadu, rep. by the

Deputy Commissioner of Police (Traffic & Licensing). Madras v. M. Vanajakshi and 5 Ors., a Bench of this Court has held as follows :--

Having regard to the fact that the vehicle involved in the accident is a lorry which will be normally used for carrying goods and not passengers, the

user of lorry for carrying passengers at the time of accident can be availed of by the insurer for avoiding liability. In this view, we are inclined to

accept the finding of the Tribunal that the insurance company is not liable to meet the claim for compensation.

11. In National Insurance Company Ltd. Vs. Durdadshya Kumar Samal and Others, a learned single Judge of the Orissa High Court has held as

follows :

insurance is a contracted guarantee to the owner of the vehicle to discharge his liability under the terms of the policy; it is not a universal guarantee

for the vehicle whosoever becomes the owner, liability during the period of requisition has been specifically excluded under the terms of the policy.

In the said case, the Collector who had requisitioned the vehicle was alone held liable for paying compensation in an accident that took place while

it was used by the Collector. Though, the earlier case is referred to this case is not much of use to the appellant.

12. Another citation viz. 1989 ACJ 596 National Insurance Company Ltd. Vs.

Durdadshya Kumar Samal and Others, , wherein the learned single

Judge of the Andhra Pradesh High Court took the view that when the requisition was for election purpose and when the requisition has been

specifically excluded, the insurance company was not liable to pay a compensation for the accident which took place during requisition.

13. United India Insurance Co. Ltd. Vs. Rajammal and Others, is, a Bench decision of our High Court. That ease relates to the maintainability of

cross objection. Hence it is not on the point. It has held as follows:--

As early as in 1960 a Division Bench of this Court in Abubacker v. Abdulrahiman, 1960 KLT 348, had taken the view that memorandum of

cross-objections, not the appellants, is not maintainable under Order 41, Rule 22. The Law is well settled that as a general rule a respondent can

file a cross-objection only against an appellant; and it is only in exceptional cases where the decree proceeds on a common ground or the interest

of the appellant is intermixed with that of the respondent that a respondent could be allowed to urge a cross-objection against a co-respondent.

14. In United India Insurance Co. Ltd. Vs. Gian Chand and others, , the Bench of the Apex Court has held that the Insurance Company was not

liable as per the exclusive clause which did not permit the owner of the vehicle to handover the vehicle for the purpose of driving to an unlicensed

driver. The learned Judge have considered the scope of Section 96 (2) of the Motor Vehicles Act. But, however, the said cause is also not helpful

to the appellant, as the facts in hand are different.

15. United India Insurance Co. Ltd. Vs. M.R. Subramanian and Another, is a Bench decision of our High Court, In the said case, the liability of

the insurance company was limited to Rs. 5,000/- only. The claim was for compensation for death of a passenger in a motor vehicle. The Tribunal

awarded Rupees 49,000/- following a decision M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, , the Bench has held in favour of the

Insurance Company and reduced the liability of the insurance company to Rs. 5,000/-.

16. 1997 TNLJ 172 : 1997 AIHC 3836 , Muthu Thangiah Thevar Rice Mill Ooranipuram, Orathanad Taluk (Thanjavur District) v. Mariyayee is

also a Bench decision of our High Court. In the said case, a Tractor and Trailer were insured for use for agricultural purpose and forestry

purposes. But, at the time of the accident, the Tractor and Trailer were not used for such purposes i.e. for taking drinking water on an emergency

basis by Karambakudi Panchayat. The learned Judges have noted that admittedly the Tractor and Trailer were used on hire for carrying water for

Karambakudi Panchayat, use of the Tractor and Trailer was not either for agricultural or forestry purposes. Therefore, the learned Judge have

exonerated the Insurance Company.

17. The next case cited by the learned counsel is Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., . In the

said case, the Apex Court has held that RSRTC was liable to pay the compensation for the accident while the vehicle was in possession of

RSRTC under agreement between the owner of the vehicle and RSRTC. The Tribunal and High Court of Rajasthan committed no error in

fastening the liability to pay the compensation to the heirs of the deceased passengers on the RSRTC. In the said case, the Apex Court has held

that person who had actual possession and control of vehicle contemporarily held liable for the negligence act of the driver under his control.

18. In this case, the learned counsel Mr. N. Rosi Naidu, wanted to hold that the liability is only on the person who has actual possession and

control of the vehicle at the time of the accident viz. MMWSSB.

19. Now, I will refer to the various contentions raised by the learned counsel for the respondents Mr. P. Rathindurai. The learned counsel firstly

contended that even as per R.W. 1 there is no condition in Ex. R. 1 that the vehicle in question should not be used for the purpose other than

agriculture. But, in the chief examination, R.W. 1 has stated that Ex. R. 1 was given covering of agricultural use only. As I have already indicated,

the Tribunal has found that the vehicle was used while it was on hire to MMWSSB for carrying water to the public. Therefore, the mere statement

by R. W. 1 is not sufficient to hold that there is no such condition. Therefore, whether the said condition is there in Rule 1 or not is to be found out.

20. As already stated the Tribunal has given a finding that the vehicle was used for carrying water on hire to MMWSSB and the accident took

place when the vehicle used for transport of drinking water. But, as the learned counsel for the respondents vehemently contended that there is no

such condition prohibiting the vehicle from using it for other purpose. It is better

to have a look at the policy itself viz. Ex. R. 1. As per the learned counsel for the respondents, the limits as to use of the vehicle is for carrying goods within the meaning of Motor Vehicles Act 1988 and the policy does not cover use of organised racing, pace-making, reliability trial or speed testing, use whilst drawing trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle except employees (other than the driver) not exceeding six in number coming under purview of Workmen's Compensation Act, 1923. The learned counsel for the appellant on the other hand pointed out that there is clear mention of the agri. purpose in the policy. A reading of the aforesaid Ex. R.1 shows, no doubt, agri.purpose is mentioned. But. nowhere it is mentioned that it must be exclusively used for that purpose only. Nothing prevented the appellant from adding a clause that the company will not be liable if the vehicle is used for other purpose than agriculture. As already found, the limitation as to use mentions the use of vehicle only for carrying goods within the meaning of Motor Vehicles Act, 1988 and, the then three clauses are there which will not be covered by the policies. These three clauses do not indicate that the vehicle should not be used for other purposes than agri. As said earlier, if the appellant was very particular, they could have added as condition No. 4 to the limitation as to use of the vehicle to the effect that the use of vehicle for other purposes than agriculture would not be covered by the policy.

21. The learned counsel for the respondents cited a number of decisions and contended that the insurance company cannot avoid its liability. The decisions are British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, , New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others, , Guru Govekar Vs. Miss Filomena F. Lobo and Others, and The Oriental Fire and General Insurance Company, Baroda Vs. Shankarbhai Punabhai and Another etc. etc., . Oriental F & G insurance Co. v. Shankarbhai. The Apex Court has held in the said cases that when the grounds of defence have been satisfied they cannot be added to. The only manner (of) avoiding liability provided in Sub-section (2) of Section 96 of the Motor Vehicles Act is through the defence therein mentioned. Therefore, the defences are contained in Sub-section (2) of Section 96 of the Motor Vehicles Act. The Policy also must

corroborate to the defences set out in the said sub-section. But, the conditions which are stipulated in the insurance policy are beyond those stipulated in sub-section (2) of Section 96 of Motor Vehicles Act.

Nowhere it is found that the use of the vehicle for carrying goods, must be only to carrying a particular kind of the goods and if some other

particular goods are carried, the liability will not be there.

22. In *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, it is a case where the Supreme Court has held as follows (at

p. 1739 of AIR) :

Chapter VIII of the Act, it appears from the heading, makes provision for insurance of the vehicle against third-party risks, that is to say, its

provision 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.

23. *The Oriental Fire and General Insurance Company, Baroda Vs. Shankarbhai Punabhai and Another etc. etc.*, is decision of a Bench of the

Gujarat High Court. The said case relates to the inter se dispute between the insurance company on the one hand and insurer on the other hand.

This will only add, the insurance company is concerned its liability as per the provisions contained in Section 96.

24. In *Guru Govekar Vs. Miss Filomena F. Lobo and Others*, , in paragraph 13, the Apex Court has held that once the insurer has issued a

certificate of insurance in accordance with Sub-section (4) of Section 95 of the Act, the insurer had to satisfy any decree which a person receiving

injuries from the use of the vehicle insured had obtained against any person insured by the policy. He was liable to satisfy the decree when he had

been served with a notice under Sub-section (2) of Section 96 of the Motor Vehicles Act about the proceedings in which the judgment was

delivered.

25. The learned counsel for the respondents relied upon various other decisions also and contended that a mere violation of a condition as one in

the present case cannot absolve the liability of the insurance company. He cited

AIR 1987 SC 1184, Skandia Ins. Co. Ltd. v. Kokilaben

Chandravadan, wherein the Apex Court has held that mere breach of clause does not absolve insurer of his liability. In paragraph 14, the learned

Judges of the Apex Court has clearly set out the object of the insurance as follows (at p. 1191 of AIR) :

The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge

in obeisance to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause"

does not cross words with the "main purpose" high lighted earlier... The effort must be to harmonize the two instead of allowing the exclusion

clause to snipe successfully at the main purpose"".

After exhaustively considering the scope of Section 96 (2) of the Motor Vehicles Act, the learned Judges of the Apex Court have observed as

mentioned above.

26. In AIR 1998 SC 588. Oriental Insurance Co. Ltd. v. Inderjit Kaur, the Apex Court has taken the view that even if the insurance company has

not received the premium, it became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of

compensation.

27. In B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, also, the Apex Court has laid down the law in paragraph 7

as follows,

The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors

existed which, by themselves, had gone to contribute to the causing of the accident.

28. In National Insurance Company Vs. T. Elumalai and anothers, , a single Judge of this Court has also emphasised that mere violation of certain

terms of the permit relating to plying in certain geographical area in terms of Section 96 (2) of the Motor Vehicles Act 1939 not absolved the

liability of the insurance, company. In fact, the learned Judge has held as follows at (p. 73 of AIR) :

The insurer only plays the role of one who has undertaken to indemnify the claim on behalf of a tortfeasor. By himself, the insurer has no place in

the proceedings instituted under the Act. It is only by virtue of Section 96 (2) of the Act that the insurer is entitled to notice through Court of the

bringing of proceedings regarding these claims and to be made a party to defined the action.

29. The aforesaid decisions are clear that the breach of conditions by itself is not a defence available to the insurance company to avoid its liability.

The conditions contained in the policy must be in consonance with the conditions in Section 96 (2) of the Motor Vehicles Act 1939.

30. As we have seen above, the carrying of a different goods is not a condition contemplated by Section 96 (2) of the Motor Vehicles Act.

Therefore, the insurance company cannot rely upon such a breach taking into advantage of the fact that the insurer has accepted the condition. In

several cases. it has been held by this Court as well as the Apex Court that conditions which are going beyond the circumstances contemplated in

Section 96 (2) of the Motor Vehicles Act are not conditions in law and can be taken note of for avoiding liability of the insurance company.

Therefore, in my view, the mere use of the vehicle in question for carrying water for drinking purposes instead of taking the very same water for

plants and trees can (not) (sic) be said to be a contravention of the condition and that should seriously taken note of to avoid liability of the

insurance company.

31. Now, I will take up the cross objection filed by the respondents. The learned counsel for the appellant contended that the cross objection is

not maintainable. The learned counsel cited United India Insurance Co. Ltd. Vs. Rajammal and Others, and contended that inasmuch as appeal

has not been preferred with reference to quantum, the remedy available to the respondents is to file a separate appeal and not a cross-objection.

32. It is true that the appellant has filed the appeal challenging only the liability. In United India Insurance Co. Ltd. Vs. Rajammal and Others, , a

Division Bench of this Court relied upon the decision quoted in State of Kerala v. K. K. Padmavathi, 1983 ACJ 707 and mainly relied on the

following passage in 1983 ACJ 707 (cited supra).

As early as in 1960 a Division Bench of this Court in Abubacker v. Abdulrahiman, 1960 KLT 348, had taken the view that memorandum of

cross-objections which Is directed solely against co-respondents, not the

appellants, is not maintainable under Order 41, Rule 22. The law is well settled that as a general rule a respondent can file a cross-objection only against an appellant; and it is only in exceptional cases where the decree proceeds on a common ground or the interest of the appellant is intermixed with that of the respondent that a respondent could be allowed to urge a cross-objection against a co-respondent.

After referring to a number of judgments, the learned Judges have rejected the cross appeal in the said case. I am in full agreement with the said

decision of the Bench of this Court. Therefore, I am not in a position to entertain the cross-objection of the respondents and hence cross objection

No. 42 of 1998 is dismissed.

33. In the end, the C.M.A. as well as the cross objection are dismissed. However, there will be no order as to costs in both. Consequently,

C.M.P. Nos. 5539 and 5540 of 1998 are dismissed.