
(1987) 08 MAD CK 0040
In the Madras High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Dhanalakshmi and Others

RESPONDENT

Date of Decision : 31-08-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1987) 2 ACC 538 : (1987) 100 LW 1021

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Judgement

Swamikkannu, J.—United India Insurance Company, Trichy, third respondent before the Tribunal is the appellant in this appeal. Petitioners 1 to 4 are respondents 1 to 4 in this appeal. Nizam Tobacco Company-first respondent before the Tribunal is the fifth respondent herein S. Kumarasamy-sixth respondent before the Tribunal is the sixth respondent herein. This appeal has been preferred against the award dated 10-9-1981 in M.A.C.O.P. No. 349 of 1980 on the file of the Motor Accidents Claims Tribunal, Madurai, in a petition filed by respondents 1 to 4 herein for the death of the deceased Raju in a motor vehicle accident on 8-4-1980 at about 5.30 p.m.

2. The case of the petitioners/respondents 1 to 4 herein before the Tribunal is as follows: The first respondent herein is the widow and the second respondent herein is the minor child of the deceased Raju. Respondents 3 and 4 herein are the parents of the deceased. The deceased Raju was doing business and was a sale agent for the chewing tobacco of the fifth respondent's company at Pudukottai in Vadipatti and Alanganallur area. He was aged 34 years at the time of his death in the accident. The deceased was earning Rs. 500/- per month from his grocery shop at Vadipatti and Anr. sum of Rs. 500/- as a sale agent on commission basis for Nizam Tobacco--his monthly earning being Rs. 1,000/-. On 8-4-1980 at about 5-30 p m., the deceased was going in the van bearing registration No. MDA 8051 belonging to the fifth respondent herein and insured with the sixth respondent herein as, the sale agent for distribution of chewing

tobacco in Vadipatti and Alanganallur area. They were proceeding in Senthamangalam--Pentbukampatti Road at about 5-30 p.m., and due to rash and negligent driving of the said vehicle by the sixth respondent, the accident occurred in which the deceased died. The deceased was the sole earning member of his family. On the death, the petitioners are put to great suffering. At the time of his death, the first respondent herein was pregnant and the second respondent herein was born on 2-7-1980 and he is only aged about one year and 3 months at the time of filing the claim petition before the Tribunal. The fourth respondent herein who is the father of the deceased has an amputated leg and is lame. On the death of the deceased, the respondents 1 to 4 herein are put to very great hardship. Hence they claim a compensation of Rs. 1,00,000/-.

3. Respondents 5 and 6 herein remained ex parte before the Tribunal.

4. The third respondent-appellant herein in its counter statement before the Tribunal, inter alia, contended as follows: The manner of accident as stated in the claim petition is not correct. The accident was not due to any rash or negligent driving of the vehicle MDA 8051 belonging to the fifth respondent herein and driven by the sixth respondent herein and insured with the appellant herein. The age, occupation and the monthly income of the deceased Raju as stated in the claim petition is not admitted. The other particulars regarding the age of respondents 1 to 4 herein and that the deceased was the only earning member of the family are all denied. The claim of Rs. 1,00,000/- as compensation is very high. The liability of the appellant herein with whom the goods vehicle belonging to the fifth respondent herein is insured is only upto the limit of Rs. 10,000/-. The claim petition is, therefore, liable to be dismissed with costs.

5. On the above pleadings, the following points were framed by the Tribunal for consideration:

1. Whether the accident resulting in the death of the deceased Raju was due to rash and negligent driving of the goods vehicle belonging to the first respondent, driven by the second respondent and insured with the third respondent ?

2. If so, what is the quantum of compensation to which the petitioners are entitled and payable by which of the respondents ?

3. What is the liability of the third respondent Insurance Company ?

4. To what relief ?

6. Dhanalakshmi --first respondent herein examined herself as P.W.I. P.W.2 Vellaichamy and P.W. 3. Anantha Narayanan were also examined before the Tribunal on the side of the claimants and Ex. PI to Ex. PI 8 were also marked on the side of the claimants/respondents 1 to 4 herein. RW 1 Dharmaraj was on the side of the respondents 5 and 6 and the appellant herein and Ex. R. 1 copy of insurance policy No. 12701/25/1/07035 dated 19-12-1979 was also marked on their behalf before the Tribunal. On the consideration of the above evidence available on record, both oral and documentary, the Tribunal found that in the

absence of any contra evidence and also because of the non-examination of the driver of the vehicle, it is clearly established by the petitioners/respondents 1 to 4 herein by the evidence of PW 2 Vellaichamy as also from Ex. P8 certified copy of judgment in C.C. No. 876 of 1980 on the file of the learned Sub Divisional Judicial Magistrate, Dindigul, dated 24-4-1980 that the accident resulting in the death of the deceased Raju was only due to rash and negligent driving of the goods vehicle belonging to the first respondent/fifth respondent herein and driven by the second respondent/sixth respondent herein and insured with the third respondent/appellant herein. As regards the quantum of compensation, the Tribunal arrived at the total compensation at Rs. 46,500/- and passed an award for Rs. 46,500/- and that the first respondent herein is entitled to withdraw the accrued interest periodically for the maintenance of the second respondent herein. Respondents 1 to 4 herein are entitled to interest at 6% per annum from the date of default. Aggrieved by the above decision of the Tribunal, United India Insurance Company Limited-third respondent/appellant herein has come forward with this appeal.

7. Mr. K.S. Narasimhan, learned Counsel for the appellant herein, has, inter alia, concended that in the instant case the Insurance Company cannot be said to be liable unless it is proved that the deceased Raju died during the time of the existence of relationship which can come under any of the requirements of the proviso to Section 95 of the Motor Vehicles Act, 1939.

8. Section 39 of the Motor Vehicles Act, 1939 reads as follows:

39. Registration of Vehicles, the Property of the Central Government.--(1) The authority specified in Part B of the Fourth Schedule may register any motor vehicle which is the property or for the time being under the exclusive control of the Central Government and any vehicle so registered shall not, so long as it remains the property or under the exclusive control of the Central Government; require to be registered otherwise under this Act.

(2) A transport vehicle registered under this section shall carry a certificate to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder issued by the authority referred to in Sub-section (1).

(3) An authority registering a vehicle under Sub-section (1) shall assign a registration mark in accordance with the provisions contained in the Fourth Schedule and shall issue a certificate in respect of the vehicle that the vehicle has been registered under this section.

(4) If a vehicle registered under this section ceases to be the property or under the exclusive control of the Central Government, the provisions of Section. 23 shall thereupon apply.

(5) The authority registering a vehicle under Sub-section (1) shall furnish to any State Government all such information regarding the general nature, overall

dimensions, and axle weights of the vehicle as the State Government may at any time require.

9. Section 95 of the Motor Vehicles Act, 1939 reads as follows:

95 Requirements of Policies and Limits of Liability--

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer or by a cooperative society allowed u/s 108 to transact the business of an insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a Policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle,

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

Explanation--For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident,

if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely,--

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923(8 of 1923), in respect of the death of, or bodily injury to, employees other than the driver, not exceeding six in number, being carried in the vehicle;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment--

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;

(c) save as provided in Clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees six thousand in all in respect of damage to any property of a third party.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

O-A) Where a cover note issued by the insurer under the provisions of this Chapter or rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the case of that person or those classes of person.

10. It is relevant in this connection to note that we are concerned with the compensation that is payable under Clause (2) of Section 95 of the Motor Vehicles Act, 1939, which came into effect on 1-10-1982. The amount of compensation payable is only Rs. 50,000 as per the amendment to this section which was introduced on 2-3-1970, On the date of the accident, as in the instant

case, only a sum of Rs. 50,000 is payable to the person or persons concerned since the vehicle involved in the accident is a goods vehicle. A careful reading of Section 95 of the Motor Vehicles Act makes it clear that in case a goods vehicle gets itself involved in an accident, a limit of Rs. 50,000 in all including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, to employees, other than the driver, not exceeding six in number, being carried in the vehicle should be paid by the Insurance Company if the said contract of insurance is in existence at the time of the accident. So, with respect to six persons which becomes the subject-matter of the accident are covered by a policy of insurance that may come into existence between the owner of the vehicle and the Insurance Company. It is a statutory provision for the benefit of the persons who got themselves involved in an accident to the maximum of six persons who are travelling in the said vehicle, as either persons who are engaged for loading or unloading or even for the safety of the goods or the vehicle or both. Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, the persons who are engaged to take care of the goods that are consigned in a goods vehicle, the risk is covered, viz., with respect to the life or with respect to the injuries sustained by such a person or persons and there can be a valid contract of insurance between the parties. But a reading of the provision of Section 95 of the Motor Vehicles Act, 1939 exhibits a position that in such cases, if the owner of the goods accompanies the goods and got involved in an accident, then he is not covered and he cannot be covered by a policy. But, of course, this aspect can also be covered by the vehicle owner getting into a contract of insurance and taking a policy of insurance by paying an additional premium, which also involves the Insurance Company to pay the compensation, and in fact, the said contract is not prohibited by the provisions of the Motor Vehicles Act. But, in the instant case, there is no such coverage by the owner of the vehicle by paying any additional premium. In this view, the provisions of Section 2-A, Section 2(23), Section 2(25) and Section 2(8) of the Motor Vehicles Act, 1939, which defines a "goods vehicle" were also brought to the notice of this Court by the learned Counsel for the appellant. There is no contractual liability which will be fall on the insurer since there is no extra coverage to cover the risk that are governed by Section 95 of the Motor Vehicles Act.

11. The provisions of Section 2 have been understood in decided cases as comprehending the liability to persons employed not merely by the owner of the vehicle, but also others. For instance, if in the present case the person accompanying the goods was the employee of the owner of the goods, then he would be covered by the provisions of Section 95(2) of the Act. See *Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others*, . This case was followed by *Alagiriswami J.*, as he then was, in *Vanguard Insurance Co. Ltd., Madras v. Chinnammal and Ors.* A I R. 1970 Mad. 236. The Kerala High Court in *State Insurance Department, State Insurance Officer, Trivandrum v. Sosamma*

Mani and Ors. 1978 A.C.J. 504, and the Gujarat High Court in Ambaben and Ors. v. Usmanbhai Amirmiya Sheikh and Ors. AIR 1979 Guj 9, have taken the same view.

12. The above view taken by this Court and incorporated at pages 13 and 14 in the judgment in A A.O. No. 398 of 1979 dated 20-7-1981 by a Bench of this Court can usefully be looked into and followed. It is relevant in this connection to note that in Section 95 (2) (b) of the Motor Vehicles Act, 1939, if the words "including the owners of the goods" are introduced in the said Section 95(2)(b) of the Act, the position would be made clear which will also cover the risk that may befall the owner of the vehicle accompanying the goods in a goods vehicle and if the said words "including the owners of the goods" are added to this Section 95(2)(b) of the Motor Vehicles Act, it may read like this:

where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, "including owner of goods", then the Insurance Company would be liable irrespective of the fact whether the said risk is covered so far as the owner of the goods accompanying the vehicle for safe-guarding the goods.

13. It is also brought to the notice of this Court by the learned Counsel for the appellant that there is no similar provision of Rule 261 of Karnataka Motor Vehicles Rules in the Tamil Nadu Motor Vehicles Rule. Rule 261 of the Karnataka Motor Vehicles Rules reads as follows:

No person shall be carried in the cab of the goods vehicle beyond the number of which there is seating accommodation at the rate of 38 centimetres measured along the seat excluding the space reserved for the driver, for each person and not more than six persons in all in addition to the driver shall be carried in any goods vehicle.

In this regard, the decision in 1981 A.C. 507 and the decision in 1982 Supp. ACJ 256 are relied on by the learned Counsel for the appellant.

14. The contract of employment contemplated in Section 95 (2)(b) of the Motor Vehicles Act, according to the learned Counsel for the appellant, may be a contract of employment with the owner of the goods as well as the owner of the goods vehicle. This aspect is also not specifically incorporated in the provision; but a reading of the provision leads to such a kind of interpretation, according to the learned Counsel for the appellant. This submission of the learned Counsel for the appellant herein cannot be rejected as wholly unsustainable. It is seen that there is no specific contract which may include this risk also. On the other hand, a careful reading of the provisions of Section 95 of Motor Vehicles Act, 1939 together with the evidence of P.W. 3 which is not specifically pleaded, yet an irresistible conclusion can be arrived at on the basis of the evidence of P.W. 3 that the deceased had been travelling in the vehicle in pursuance of contract of employment as a sole agent. P.W. 3 is the Agency Manager of the Nizam Tobacco Company. When once that conclusion has been arrived at by this Court, the

irresistible conclusion that can be arrived at in the instant appeal before us is that the deceased is also covered by Section 95 of the Motor Vehicles Act, 1939 as per Ex. R. 1 policy of insurance. The above conclusion has been arrived at on the basis of the ratio decidendi in M. Kanda Swamy Pillai Vs. Chinnaswamy and Another, as well as G. Dhyanand and Another Vs. Zaamni Bi and Others, . Nothing has been elicited in the cross examination of P.W 3 so as to deprive the deceased from giving him the legal position of an "employee" who was travelling in the vehicle in question during the time of the accident as a sole agent. Under the circumstances, we hold that the Insurance Company--the appellant herein is liable.

15. So far as the question of negligence is concerned, it is seen that the Tribunal has come to the correct conclusion that there was rash and negligent driving of the van in question by its driver during the time of the accident. The said conclusion arrived at by the Tribunal is on the basis of the evidence available on record which has been discussed in detail and a decision arrived at by the Tribunal in accordance with law. Therefore, this Court confirms the said finding of the Tribunal.

16. So far as the quantum of compensation that has been awarded by the Tribunal is concerned, it is strange that the Tribunal awarded a sum of Rs. 3,000 towards loss of future happiness. This is one of the constituents of the characteristics of loss of consortium for which the Tribunal has granted a sum of Rs 7,500. Hence the claim of Rs. 3,000 awarded by the Tribunal for loss of future happiness is hereby rejected. Anyhow, even with respect to loss of consortium this Court has to approach the same on its own appreciation of the evidence available on record. In this view, this Court is of the opinion that when once the monthly income of the deceased was fixed at Rs. 300, the monthly dependency for the family by the deceased should be determined only at the rate of Rs. 200. So, the annual dependency would come to Rs. 2,400. By adopting the 19 years multiplier, the amount comes to Rs. 45,600. Towards lumpsum payment, a sum of Rs. 9,000 has to be deducted. Thus, deducted, towards loss of pecuniary benefit, respondents 1 to 4 herein can be awarded a compensation of Rs. 36,600.

17. Towards loss of consortium, the amount of Rs. 7,500 awarded by the Tribunal is on the low side and this Court feels that it has to be enhanced. Therefore, towards loss of consortium, this Court awards a compensation of Rs. 9,900.

18. In all, respondents 1 to 4 herein are entitled to a compensation of Rs. 46,500. Therefore, the quantum of compensation arrived at by the Tribunal is confirmed, but of course, adopting the correct particulars so far as the consortium is concerned and also with respect to the monthly income of the deceased.

19. Before parting with this appeal, this Court is of the opinion that if the Legislature considers that it would be in the interest of general public, the words "including owner of goods" can be included by way of amendment to Section 95

(2) (b) of the Motor Vehicles Act, 1939, Rule 261 of the Tamil Nadu Motor Vehicles Rules may also be suitably amended so as to fall in line with Rule 261 of the Karnataka Motor Vehicles Rules which is quite in accordance with the provisions of the main enactment, namely, Motor Vehicles Act, 1939.

20. Under the circumstances, the appeal is ordered accordingly, confirming the award of the Tribunal and the other directions given by it. In the circumstances of the case, there is no order as to costs.