
(1990) 06 MAD CK 0034
In the Madras High Court
Case No : C.M.A. No. 578 of 1984

United India Insurance Co. Ltd.

APPELLANT

Vs

K. Subramaniam and Others

RESPONDENT

Date of Decision : 13-06-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 125, 2, 3, 7, 8

Citation : (1991) 2 ACC 520 : (1991) ACJ 625

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Advocate : S. Sadasivam, for the Appellant; S. Udhayakumar, for the Respondent

Final Decision : Allowed

Judgement

V. Ratnam, J.—This appeal at the instance of United India Insurance Co. Ltd. is directed against the award of the Motor Accidents Claims Tribunal (II Additional Sub Court), Chengalpattu, in M.O.P. No. 206 of 1981. The first respondent herein filed M.O.P. No. 206 of 1981 against the appellant and respondent Nos. 2 and 3 herein praying for the award of compensation in a sum of Rs. 17,040/- in respect of the injuries sustained by him in an accident that took place on 24.12.1980 involving a tempo bearing registration No. TMU 2154, which stood registered in the name of the second respondent herein and in respect of which the appellant had issued a policy of insurance in the name of the third respondent herein. Though several defences were raised by the appellant and respondent Nos. 2 and 3, having regard to the limited scope of the appeal in which the appellant insurance company seeks to disclaim its liability for the payment of a sum of Rs. 4,900/- determined as compensation payable by it to the first respondent, it would suffice to set out the twin defences raised by the appellant. It may be immediately stated that the findings of the Tribunal that the accident took place as a result of the conjoint negligence of the first respondent and the driver of the tempo and that the first respondent is entitled to be paid compensation in a sum

of Rs. 4,900/- were not challenged before this court. In its counter before the Tribunal, the appellant had raised two substantial defences, which were also repeated before this court. The first was, the driver of the vehicle was not possessed of a valid driving licence to drive a three-wheeler at the time of the accident and, therefore, no liability could be fastened upon the appellant. The second contention raised by the appellant was that the insurance cover had been issued by the appellant in the name of the third respondent herein as an individual and he had also submitted a claim, but the vehicle stood registered as per the registration certificate in the name of the second respondent and there was, therefore, no privity of contract between the appellant and the second respondent and as such, no liability could be fastened upon the appellant for the payment of compensation. The Tribunal, on a consideration of the endorsements in the licence marked as Exh. B-1, found that on the date of the accident, the driver was holding a valid licence to drive that vehicle and the appellant cannot, therefore, claim that it is not liable to pay the compensation determined. On the other defence raised by the appellant, the Tribunal took the view that under the provisions of the Motor Vehicles Act (hereinafter referred to as "the Act"), not only the registered owner of the vehicle can take out a policy but that a person using the vehicle can also do so and under those circumstances, the fact that the vehicle stood registered in the name of the second respondent in respect of which the third respondent had taken out a policy with the appellant in his individual name would not make any difference to the liability of the appellant. Thus, overruling the defences raised by the appellant, the Tribunal directed the appellant to pay the first respondent a sum of Rs. 4,900/- towards compensation in respect of the injuries sustained by him in the accident that took place on 24.12.1980, the correctness of which is questioned by the appellant on the very same grounds as were urged by it before the Tribunal.

2. Referring to the entries in Exh. B-I, the licence held by the driver of the vehicle at the time of the accident, learned counsel for the appellant submitted that originally the driver was licensed to drive a light motor vehicle and was also authorised to drive as a paid employee a transport vehicle, but only on 16.8.1981, long after the accident took place, the driver had been authorised to drive a transport vehicle by a special endorsement on the licence and, therefore, the driver of the vehicle cannot be considered to have been duly licensed to drive a tempo on the date when the accident took place on 24.12.1980. Reliance in this connection was also placed upon the decision reported in National Insurance Co. Ltd. v. Mahadevayya (1981) TLNJ 170 In answer to this, learned counsel appearing for the respondents pointed out, adopting the reasoning of the Tribunal in para 8 of its order, that the driver had been authorised even prior to 16.8.1981 to drive a transport vehicle as a paid employee and that the licence was valid for the period of 11.8.1979 to 13.8.1982 and therefore, on 24.12.1980, when the accident took place, the driver held a valid driving licence for driving a tempo and the Tribunal was quite right in its conclusion in that regard.

3. In order to appreciate the contention so raised, it would be first necessary to make a brief reference to the licence and its contents. It is seen from Exh. B-1 that the holder of the licence had been licensed to drive throughout the State vehicles of the following description: "shown as item (c)". The further writing found is to the effect that the licence is confined to item (c) only. There is also a further endorsement to the effect that "the driver is authorised to drive as a paid employee a transport vehicle". The validity of the licence is also stated to be from 11.8.1979 to 13.8.1982. On 16.8.1981, under the head "Authorisation to drive a transport vehicle", the holder of the licence had been authorised to drive transport vehicle LMV only and that authorisation is dated 16.8.1981. There is also an endorsement to the effect that the driver is authorised to drive, as paid employee, a transport vehicle. It is in the light of the aforesaid endorsements found in the licence Exh. B-1 and the relevant provisions of the Act, the question whether the driver of the vehicle, at the time of the accident, had a valid driving licence to drive a tempo involved in the accident, has to be considered. Section 2(5-A) of the Act states that "driving licence" means the document issued by a competent authority under Chapter II authorizing the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description. Section 2(8) of the Act defines a "goods vehicle" as any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers. u/s 2(13) of the Act, "light motor vehicle" means a transport vehicle or omnibus the registered laden weight of which, or a motor car or tractor the unladen weight of which, does not exceed 4,000 kilograms. A "public service vehicle" is defined u/s 2(25) of the Act as any motor vehicle used or adapted to be so used for the carriage of passengers for hire or reward and includes a motor cab, contract carriage and stage carriage. Section 2(33) of the Act defines a "transport vehicle" as meaning a public service vehicle or a goods vehicle. Section 3(1) of the Act states that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to himself authorizing him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a transport vehicle, unless his driving licence specifically entitles him so to do. Section 7 of the Act outlines the procedure for the grant of driving licence and Section 8(2) of the Act provides that a driving licence shall specify whether the holder is entitled to drive as a paid employee and whether he is entitled to drive a transport vehicle and further shall express whether the holder is entitled to drive a motor vehicle of one or more of the categories enumerated under clauses (a) to (g) therein. Clause (c) so enumerated refers to a light motor vehicle. Section 8-A(1) makes provision for addition of any other class of motor vehicles to the licence, according to the procedure prescribed thereunder. In the background of the aforesaid statutory provisions and the endorsements found in the licence already referred to, it has to be considered whether the driver of the vehicle held a valid driving licence to drive the tempo, a three-wheeler goods vehicle, at the time of the accident. The reasoning of the Tribunal in this regard, as seen from para 8 of the award, is to

the effect that as there was an endorsement that the driver was authorised to drive as a paid employee a transport vehicle, that would suffice to hold that the driver was validly licensed to drive the tempo and as the licence was also valid from 11.8.1979 to 13.8.1982 and the accident took place on 24.12.1980, the endorsement dated 16.8.1981 cannot be construed as enabling him to drive the tempo only on and from that date as he had even been earlier licensed to do so. That line of reasoning of the Tribunal is not quite correct. The licence originally issued was for the purpose of driving a light motor vehicle, which meant a transport vehicle or omnibus or motor car or tractor, the unladen weight of which was below a particular weight. In this case, even according to the registration certificate Exh. B-9 and the claim submitted to the appellant under Exh. B-10, the vehicle in question was a goods vehicle falling within Section 2(8) of the Act and u/s 2(14) of the Act, a "medium goods vehicle" means any goods vehicle, other than a light motor vehicle, heavy goods vehicle or road-roller and this would fall u/s 8(2)(d) of the Act under the description "medium goods vehicle". Therefore, the initial authorisation to drive a light motor vehicle cannot be construed as one enabling the holder of that licence to drive a medium goods vehicle as defined in Section 2(14) of the Act. u/s 3(1) of the Act, in order to enable a person to drive a motor vehicle in any public place, he should hold an effective driving licence issued to him authorising him to drive the vehicle. This category obviously refers to owners driving motor vehicles. The latter part of Section 3(1) of the Act provides for paid employees driving motor vehicles as distinguished from owners driving motor vehicles. In such a case, a person shall not drive a motor vehicle as a paid employee or drive a transport vehicle, unless the driving licence specifically entitles him so to do. In this case, the endorsements found in the licence authorizing the holder of the licence to drive as a paid employee is only in compliance with the second part of Section 3(1) of the Act and the licence issued authorised its holder to drive only a light motor vehicle and not a medium goods vehicle, like a tempo, as a paid employee. It was precisely on account of this that the holder of the licence was obliged to obtain a further endorsement on 16.8.1981 to the effect that the holder was authorised to drive a transport vehicle LMV. A transport vehicle u/s 2(33) of the Act included a goods vehicle of the type involved in the accident, as such vehicle would not fall within the category of a public service vehicle intended mainly for the carriage of passengers falling u/s 2(25) of the Act. Thus, on a consideration of the endorsement in the licence and also the relevant statutory provisions, it is clearly made out that the driver of the tempo was authorised to drive that vehicle as a goods vehicle only by reason of the endorsement made on 16.8.1981, long subsequent to the accident. It would be useful in this connection to make a reference to the decision reported in *National Insurance Co. Ltd. v. Mahadevayya* (1981) TLNJ 170 There the question was, whether a mere licence to drive a light motor vehicle, which includes an auto-rickshaw, will not enable the holder of the licence to drive an auto-rickshaw as a public carrier and it was held that in the absence of a special authorisation, it is not possible to conclude that on the strength of the holding of a licence to drive an auto-rickshaw, such a

vehicle could also be driven as a public carrier. Though in that case the terms of the licence were not available, such conclusion was arrived at. However, in the instant case, as noticed earlier, the endorsements clearly show that on and from 16.8.1981, the holder of the licence was authorised to drive the tempo as a goods vehicle, as it is not disputed before this court that the vehicle was used only for the carriage of goods. It, therefore, follows that at the time when the accident took place on 24.12.1980, the driver of the vehicle did not hold a valid licence to drive the tempo and under the terms of the policy of insurance, Exh. B-2, the appellant cannot be made liable to pay compensation.

4. Learned counsel for the appellant next submitted that registration certificate in respect of the vehicle stood in the name of the second respondent, but the policy had been taken out by the third respondent in his individual name and, therefore, there was no privity of contract between the appellant and the second respondent and no liability could, therefore, be fastened on the appellant on the basis of a contract of insurance. In answer to this, learned counsel for the respondents submitted that though the vehicle stood registered in the name of the second respondent, it was open to the third respondent, who was the managing partner of the second respondent and as one who was using the vehicle, to take out a policy of insurance in his own name in order to cover the risks that may arise out of the use of the vehicle.

5. It is seen from Exh. B-9 that the tempo in question stood registered in the name of the second respondent. The proposal form Exh. B-II had been signed by the third respondent herein and under Exh. B-12, the policy of insurance covering the period 19.2.1979 to 18.2.1980 had also been issued only in the name of the third respondent. Under Exh. B-2, a similar policy had also been issued in the name of the third respondent for the subsequent period, viz., 19.2.1980 to 18.2.1981. It is only subsequently, under Exh. B-13, the third respondent had asked for the transfer of the insurance policy in favour of the second respondent and that had been accepted and the transfer effected under Exh. B-14, effective from 26.5.1981. Therefore, on the date on which the accident took place, the vehicle stood registered in the name of the second respondent and the appellant had issued a policy of insurance in favour of the third respondent in his individual name. Whether the appellant can be heard to repudiate its liability on the ground that there was no privity of contract between it and the second respondent, the registered owner of the vehicle, is the question. It is in this connection that Section 94 of the Act becomes relevant. Section 94(1) of the Act enacts that 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 Chapter VIII. From the aforesaid provision, it is clear that the requirement of a policy is essential for the use of a motor vehicle in a public place, be it at the instance of the owner or at the instance of other persons, who are allowed to use a motor vehicle in a public place. The condition to be satisfied

is a policy of insurance with reference to the user of the motor vehicle in a public place either by the person who owns it or by the person who uses it, in a public place. In this case, though the appellant had issued the cover in favour of the third respondent as an individual, it is seen from the very proposal form referred to earlier that the third respondent is none other than the managing partner of the second respondent and as such entitled to use the vehicle of the firm and in relation to such user, he had taken out a policy of insurance in his name in compliance with Section 94(1) of the Act. That it is not always incumbent upon the registered owner of the vehicle alone to take out a policy in order to fasten liability on the insurance company with reference to the risk covered under that policy, has been laid down in two decisions, to which a reference may be usefully made. In *Northern India General Ins. Co. Ltd. v. Kanwarjit Singh* 1973 ACJ 119 (All) it was pointed out that a conjoint reading of Sections 94 and 125 of the Act shows that a person who drives any motor vehicle or causes or allows a motor vehicle to be driven in a public place, is under a duty to find out whether such a vehicle is insured and if he finds out that it is not, he must get it insured before driving it or allowing it to be driven in a public place and that there is nothing in Section 94 of the Act that it is only the owner of the motor vehicle, in the sense of one who has proprietary rights in the material of the vehicle, who can effect the insurance and that any person who uses it or allows any other person to use it, can also get the insurance effected. It was also further observed that the use by a person of motor vehicle in a public place or driving the vehicle in a public place or allowing the use of the vehicle in a public place or allowing it to be driven in a public place is sufficient for the purpose of effecting insurance and that would also amount to an insurable interest for the purpose of effecting third party insurance complying with the requirements of Chapter VIII of the Act. Again, in *Automobile Transport (Rajasthan) P. Ltd. v. Dewalal* 1977 ACJ 150 (Raj) it was held that u/s 94 of the Act not only a real owner of the vehicle can effect an insurance in compliance with the provisions of Chapter VIII of the Act, but any other person, who uses a motor vehicle or allows it to be used in a public place can also effect an insurance. In this case, though the vehicle stood registered in the name of the second respondent firm, the third respondent, as the managing partner thereof, certainly was entitled to use or allow the user of the vehicle in a public place and in that sense, the third respondent was quite competent to effect an insurance policy in respect of the vehicle. There is, therefore, no substance in this contention of learned counsel for the appellant. However, in view of the conclusion already arrived at that the driver of the vehicle did not hold a valid driving licence at the time of the accident, the appellant insurance company cannot be saddled with any liability. No other point was urged. The Civil Miscellaneous Appeal is, therefore, allowed and the award of the Tribunal in so far as it directed the appellant to pay a sum of Rs. 4,900/- to the first respondent is set aside and the first respondent will be entitled to recover the compensation amount of Rs. 4,900/- from respondent Nos. 2 and 3 and the award of the Tribunal will stand modified accordingly. There will be, however, no order as to costs.

6. During the pendency of the appeal, by order dated 10.9.1984 in CMP. No. 12009 of 1984, the appellant was asked to deposit the amount awarded within six weeks from that date and by a subsequent order dated 20.3.1985 in C.M.P. No. 3597 of 1985, the first respondent was permitted to withdraw half the amount deposited without furnishing security and the other half on furnishing security. Inasmuch as it has now been held that the appellant insurance company cannot be made liable for the payment of compensation to the first respondent, it follows that the appellant will be entitled to get restituted to the amount deposited by it and paid out to the first respondent during the pendency of the appeal.