
(1989) 07 MAD CK 0017
In the Madras High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Lakshmi and others

RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(1)

Citation : (1990) ACJ 390

Hon'ble Judges : S. Nainar Sundaram, J;Bellie, J

Bench : Division Bench

Advocate : K.S. Narasimhan, for the Appellant; K.S. Narasimhan, for the Respondent

Judgement

Nainar Sundaram, J.—This civil miscellaneous appeal by the insurance company, with which the vehicle involved in the accident had has

been insured and against the driver of which vehicle the culpability of being rash and negligent has been found by the Motor Accidents Claims

Tribunal, Erode, has got to be allowed on one short and at the same time a very pertinent legal point taken by Mr. K. S. Narasimhan, learned

counsel appearing for the insurance company.

2. There was an accident on May 11, 1980. In that accident, two lorries were involved. One lorry bore the registration number MED 4639. It was

owned by one N. Ramasami. It was insured with the appellate-insurance company. It was driven at the time of the accident by one S. Ramasami,

who was made the first-respondent before the Tribunal and who is the third respondent herein. The other lorry involved in the accident bore the

registration number KPE 9368. The finding of the Tribunal was that it was only on account of the rash and negligent driving of lorry MED 4639

that the accident occurred. Unfortunately, the owner of that lorry MED 4639 N.

Ramasami, who was travelling in his lorry, died in that accident.

His widow and his minor child preferred a claim petition before the Tribunal. The Tribunal mulcted the liability on the insurance company, and this

has made the insurance company prefer this civil miscellaneous appeal.

3. Mr. K. S. Narasimhan, learned for the insurance company, appellant herein, urges that the insured, namely, the deceased N. Ramasami, was

himself the victim of the fatal accident caused by an act of his own driver and so the legal representatives of the deceased insured cannot make a

claim for compensation against the insurance company, since the policy of insurance covered only liability to be incurred by the insured against third

parties, in terms of section 95(1)(b)(i) of the Motor Vehicles Act, 1939 (4 of 1939), hereinafter referred to as the Act. Learned counsel bases his

argument on the terms of the policy issued in the present case and marked as exhibit P-1, which we find is in accordance with section 95(1)(b)(i)

of the ACT. That section stands extracted as follows :

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

(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 :....

4. As we could see from the expressions used in the section, if required a policy of insurance to cover any liability which may be incurred by the

insured in respect of death 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. There ought to have been a liability incurred by the insured to a third party. The terms of the policy of insurance issued,

namely, exhibit P-1, being in accord with section 95(1)(b)(i) of the Act, the policy of insurance could cover only the liability of the insured to a third

party. The purpose of the provision is to protect the interests of third insurance company, the liability must be first established against the insured. It

is only in such a case that the liability of the insurance company would arise. The insurance company or the insurer is one party to the contract, the

insured or the policy-holder is another and the claims made by others in respect

of negligent use of a vehicle would be claims by third parties. Thus, it is obvious that if any liability has been incurred by the owner or the insured towards the third party, then that is intended to be covered by the policy of insurance issued as per this provision. The language of the provision being what it is, plain in terms, the implications flowing therefrom are also plain and as such admit of no ambiguity. If there is no liability on the part of the owner of the vehicle or in other words the insured, nothing could be passed on to the insurance company to meet any such liability. The owner of the vehicle or in other words the insured must first be found to be liable to a third party, so that liability could be passed on to the insurance company.

5. In the present case, fortunately for the insurance company, the terms of the policy of insurance issued, namely, exhibit P-1, being in accord with section 95(1)(b)(i) of the Act, come to its rescue, and that disables the claimants who are none else than the legal representatives of the deceased owner of the lorry MED 4639 and which lorry was insured with the insurance company from making the claim. The owner of the lorry or in other words the insured having himself died in the accident, caused by his own driver, and there being no liability on his part or on the part of his legal representatives towards any third party, the insurance company's liability does not at all arise. This being the legal position, we have to accept the contention put forward by learned counsel for the appellant and allow this civil miscellaneous appeal. We are making it clear that we have not dealt with a case where the policy of insurance by its terms has extended the benefit of indemnity to the legal representatives of the insured, who may die in the accident.

6. Though no direct decision has been brought to our notice, our attention has been drawn to pronouncement of the Supreme Court of India in *Minu B. Mehta v. Balkrishna Ramachandra Nayan*, 1977 ACJ 118, where there is a discussion of the implications of section 95(1) (b)(i) of the Act. Equally so, in *Mallika and Others Vs. S.V. Alagarsami (Died) and Others*, A Bench of this court has adverted to the scope of section 95(1) (b)(i) of the Act though the facts of that case were different and while doing so, there is a reference to the pronouncement of the Supreme Court in *Minu B. Mehta v. Balkrishna Ramachandra Nayan*, 1977 ACJ 118. The award

passed by the Tribunal is set aside. In the circumstances of the case, we direct the parties to bear their costs throughout.