

(1982) 01 MAD CK 0044
In the Madras High Court

United India Insurance Co., Ltd.

APPELLANT

Vs

Nagammal and Others

RESPONDENT

Date of Decision : 11-01-1982

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1983) ACJ 541 : (1983) ILR (Mad) 330 : (1983) 96 LW 201 : (1983) 2 MLJ 323

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—This is an appeal filed by the Insurance company against the award passed by the Motor Accidents Claims Tribunal, Coimbatore in M.C.O.P. No. 45 of 1978, awarding a compensation of Rs. 15,000 against the appellant Insurance Company and the 6th respondent in respect of a motor accident that took place on 22nd December, 1977.

2. On 22nd December, 1977, about 11.30 p.m. the 6th respondent herein was proceeding in his car MSQ, 7505 on the Palghat main road towards Coimbatore. The car was driven by the owner, the sixth respondent, and one Krishna pillai and one Viswanathan were the occupants of the car. The car collided with a lorry MYM 6555 which was parked on the left side of the road. As a result of the said collision, Krishna Pillai, one of the occupants of the car, died on the spot. On the ground that the car was driven by the owner of the vehicle at the time of the accident in a rash and negligent manner, the legal representatives, the wife and children of the deceased Krishna Pillai, filed the claim petition M.G.O.P. No. 45 of 1978 claiming a compensation of Rs. 76,000 both as against the owner of the vehicle as well as the Insurance Company. The said claim was opposed by the owner of the vehicle on the ground that he was not rash and negligent in driving the vehicle, that the lorry which was proceeding before the car suddenly stopped and the accident. was due to the sudden stoppage of the lorry without any signal, and that, in any event, the compensation claimed was excessive. The

Insurance Company took up the defence that the policy issued to the owner covering the vehicle excluded any liability in respect of death or bodily injury to any passenger and therefore, they are not liable to pay any compensation to the claimants as per" the terms of the policy.

3. The Tribunal after considering the contentions of the parties and after analysing the evidence adduced by them held that the accident was caused solely by the rash and negligent driving of the car MSQ 7505 by its driver and that the deceased was not a gratuitous passenger and therefore, his risk is covered by the policy. In this view, the Tribunal straightway passed an award as against the Insurance Company and the sixth respondent herein for a sum of Rs. 15,000.

4. In this appeal filed by the Insurance Company, the finding of the Tribunal on the question of rashness and negligence has not been canvassed. Similarly, the quantum of compensation as fixed by the Tribunal has also not been disputed. The only question that has been canvassed in this appeal by the appellant is as to whether the policy, Exhibit B-1, issued in respect of the vehicle in question, could make the Insurance Company liable in respect of the claim made in this case-As already stated, the substantial controversy between the parties before the Tribunal was whether the policy Exhibit B-1, will cover the risk of an occupant of the car who is a gratuitous passenger. According to the Insurance Company, the deceased Krishna Pillai being a gratuitous passenger of the car, it is not bound to cover under the terms of the policy, his risk. The claimants on the other hand, contended that as the deceased was travelling in the car in connection with the business of the owner of the car, the deceased should be taken to have been travelling in the Car by reason of his employment with the owner and therefore, the policy should be taken to cover his risk. The Tribunal, however, without considering the main dispute, held that even assuming that Krishna Pillai was travelling in the car as a gratuitous passenger, since the owner of the vehicle did not object to his travelling in the car he should be taken to have travelled in the vehicle with the consent of the owner, and in such cases, the owner cannot avoid the liability. The finding on that question has been canvassed by the appellant before us.

5. According to the learned Counsel for the appellant, the policy being an "Act policy" the risk to the occupants of the car need not be covered by the Insurance Company under a policy u/s 95 of the Motor Vehicles Act, and therefore, the deceased being an occupant of the car, he cannot be said to be a third party, whose risk is covered by the policy. However, we are not inclined to accept this contention for the reason that though the policy in this case, Exhibit B-1, is an "Act Policy", Clause 4 of the terms of the policy under the head "Liability of third parties" seems to specifically provide for the risk to a passenger carried in the vehicle by reason of or in pursuance of a contract of employment. Clause 4 is as follows

Except so far as is necessary to meet the requirements of Section 95 of the

Motor Vehicles Act, 1939, the company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises.

When the claim is made under the terms of the policy, it is unnecessary to go into the question whether the policy is an "Act Policy" or otherwise. Even while issuing an "Act Policy" the insurer has under taken a specific liability under the terms of the policy. The Insurer cannot go behind the terms of the policy and repudiate the claim on the ground that it is only an "Act Policy". Therefore, we have to consider the scope of the above Clause 4. It is not in dispute that if the deceased was a passenger carried in the vehicle by reason of or in pursuance of the contract of employment, the appellant cannot dispute its liability to pay compensation in respect of his death. Thus, the main question is as to whether the deceased is one who was carried in the vehicle by reason of or in pursuance of the contract of employment. There was some controversy between the parties as to what is meant by a contract of employment and whether the contract of employment will refer only to the contract of employment between the passenger and the owner of the vehicle or whether it related to any contract of employment which the passenger had entered into not only with the owner of the vehicle, but also with others. It is by now, well-established by decisions of this Court as well as other Courts that a contract of employment occurring in the second proviso to Section 95(1) of the Motor Vehicles Act, 1939, should receive a wider connotation and not a narrow "connotation of referring only to a contract of employment entered into between the occupant of the car and the insured. The term "contract of employment" has come up for consideration before the various Courts including the English Courts and it has been uniformly construed as a contract under which a person has travelled in the vehicle in connection with the business of the insured. Though there is no regular contract of employment, if the travel by the passenger in the vehicle has been necessitated by business considerations, then the person should be taken to have been carried by reason of or in pursuance of the contract of employment. Thus, the relevant point to be considered in this case is whether the deceased Krishna Pillai travelled in the vehicle in connection with any business of the insured the owner of the vehicle,

6. In this connection, we have the evidence of P.W. 2 and R.W. 1. P.W. 2 has deposed that on the date of accident himself and Krishna Pillai came to Coimbatore for getting advance from R.W. 1. But his evidence is not clear as to what purpose the advance is to be paid by R.W. 1. In the chief-examination P.W. 2 refers to the ownership of lands by R.W.1's mother and the help of P.W. 2 and one Krishna Pillai, being needed to convince her to sell the lands. However, in the cross-examination P.W. 2 has referred to the receipt of the advance from R.W. 1. If R.W. 1's mother is expected to be persuaded for sale of her lands, there is no question of R.W. 1 giving advance to P.W. 2 and the deceased Krishna Pillai who are said to be the brokers. R.W. 1, in his evidence has totally denied any

business connection either with P.W. 2, or Krishna Pillai. It is no doubt true that R.W. 1 has admitted that he purchased the land in the name of his mother about two years ago and the purchase was known to Krishna Pillai. The evidence of R.W. 1 which is against his own interest has to be accepted as true. R.W.1 could have easily avoided the liability to pay compensation in respect of the accident if he had said that he had business connection with the deceased and P.W. 2., and that it is only because of this business connection the deceased and P. W. 2 were carried in his vehicle. The fact that notwithstanding the benefit which will accrue to him by making a statement that the deceased and P.W. 2 were carried in the vehicle as persons having business connection with him he has chosen to deny any business connection as between him and the deceased as well as P.W. 2. Apart from this fact, the evidence of P.W. 2. which is strongly relied on by the learned Counsel for the contesting respondent is inconsistent. As already stated, he has referred to a transaction of sale by R.W. 1's mother. In the cross-examination, he refers to a sale transaction under which R. W. 1 is to give an advance as a purchaser. Even assuming that the said evidence of P.W. 2 is sufficient to establish that P.W. 2 and the deceased were acting as brokers, since R.W. 1 has completely denied his business relationship with them, it is not possible to accept the evidence of P.W. 2 which itself is insufficient to establish any particular business connection between them and R. W. 1. Thus even construing the expression "contract of employment" as including any business connection between the insured and the person travelling in the car, in this case such business connection cannot be taken to have been established. Therefore, the deceased cannot be taken to be a person travelling in the car by reason of or in pursuance of a contract of employment as contemplated u/s 95(1)(b) second proviso.

7. As already stated, the Tribunal has not gone into in detail on the question whether there is any contract of employment between the insured and the deceased by reason of which the deceased travelled in the car- The Tribunal merely says that the deceased was a gratuitous passenger and that the policy of insurance covers risks to such persons as the deceased. In view of our finding that the travel of the deceased in the car at the time of the accident was not by reason of or in pursuance of the contract of employment with the insured, the Insurance Company cannot be made liable under Clause 4 of the policy referred to above or under any other clause. Therefore, the award of the Tribunal as against the appellant, has to be set aside. Already there is an award as against the insurance company and the sixth respondent and that Portion of the award as against the sixth respondent has become final and conclusive as he has not filed any appeal. The appeal is allowed and the award as against the appellant is set aside. The award as against the 6th respondent will stand. There will be no order as to costs.