

(1990) 04 MAD CK 0023

In the Madras High Court

Case No : Civil Miscellaneous Appeal No's. 98 to 100 of 1984

United India Insurance Company Ltd.

APPELLANT

Vs

Palaniammal and others

RESPONDENT

Date of Decision : 16-04-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 2, 3, 5, 8, 96

Citation : (1991) ACJ 434 : (1993) 77 CompCas 223

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Judgement

Ratnam, J.—These appeals at the instance of Messrs. United India Insurance Company Ltd. have been preferred against the common

award of the Motor Accidents Claims Tribunal, Erode, in M.A.C.T.O.P. Nos. 61, 60 and 59 of 1982, respectively, under the following

circumstances :

On May 19, 1981, at about 8 a.m. on the Erode-Karur Road at a distance of about 15 km. from Erode, one Chellammal was walking along the

road and two others, namely, Ganapathi Gounder and Palani Gounder, were proceeding on cycles. At that time, a tourist taxi, bearing registration

No. MDG 3133, belonging to one Ramasami was driven rashly and negligently by its driver, Narayanan alias Narayanasami, and an accident took

place in which Chellammal sustained grievous injuries and Ganapathi Gounder and Palani Gounder lost their lives. Chellammal (first respondent in

C.M.A. No. 100 of 1984 claimed compensation in a sum of Rs. 30,000. Likewise, the heirs of the deceased, Palani Gounder (respondents Nos.

1 and 2), in C.M.A. No. 99 of 1984 and Ganapathi Gounder (respondents Nos. 1 and 2) in C.M.A. No. 99 of 1984, prayed that compensation

should be awarded to them also in an amount of Rs. 55,000 and Rs. 1,00,000, respectively. In his counter, the driver of the vehicle contended that the car was driven carefully and at a reasonable speed and that as the cyclists suddenly crossed the road, the accident took place and that there was no negligence or rashness on his part. Besides, he also disputed the quantum of compensation claimed by the injured Chellammal and the heirs of the deceased persons. In the counter filed by the appellant-insurance company, it raised a plea that the driver of the vehicle involved in the accident did not hold a valid driving licence for driving a tourist taxi and that no liability could be saddled on it.

2. Before the Tribunal, on behalf of the claimants exhibits P-1 to P-9 were marked and PWs-1 to 3 were examined, while, on behalf of the appellant as well as the driver of the vehicle, exhibits R-1 to R-3 were filed and the driver gave evidence as RW-1. On a consideration of the oral as well as the documentary evidence, the Tribunal found that the tourist taxi, bearing registration No. MDG-3133, was driven in a rash and negligent manner by its driver and that was responsible for the accident, that the insurance company cannot disown liability for the payment of the amount awarded as compensation on the ground that the driver of the vehicle did not hold a valid licence for driving a tourist taxi, as, on the day of the accident, the vehicle in question had not been used as a tourist taxi and that respondents Nos. 1 and 2 in C.M.As. Nos. 98 and 99 of 1984 and the first respondent in C.M.A. No. 100 of 1984 will be entitled to recover compensation of Rs. 30,000, Rs. 12,500 and Rs. 7,500, respectively, from the appellant-insurance company. It is the correctness of this that is questioned by the insurance company in these appeals.

3. The principal contention of learned counsel for the appellant is that, on May 19, 1981, when the accident took place, the driver of the vehicle did not have a valid licence to drive a tourist taxi and, therefore, u/s 96(2)(b)(ii) of the Motor Vehicles Act as well as under the terms and conditions of the policy, no liability could be fastened upon the appellant. Reliance in this connection was also placed upon the decisions in The National Insurance Company Vs. Sugantha Kunthalambal and Others, ; National Insurance Co. Ltd. v. Mahadevayya [1981] TLNJ 170 and Anjanadevi Vs. Arumugham and Another, . Per contra, learned counsel appearing for the owner of the vehicle submitted that, at the time of the

accident, the vehicle in question was not being used as a tourist taxi for the purpose of transporting passengers and, under those circumstances, the

vehicle should be regarded as only a light motor vehicle to drive which the driver had a valid licence and, therefore, the insurance company cannot

be permitted to escape its liability for payment of compensation. Reference in this connection was also made to the decision in Canara Motor and

General Insurance Co. Ltd Vs. Abdul Hamid Khan Saheb and another,

4. In order to appreciate the rival contentions thus raised, it would be necessary to notice a few undisputed facts. The vehicle in question, bearing

registration No. MDG-3133, had been registered as a tourist taxi and the insurance cover in respect of this vehicle was also on that footing. At the

time of the accident on May 19, 1981, the driver who drove the vehicle had a valid driving licence in respect of the light motor vehicle and it was

long subsequently, on June 21, 1982, that a licence for driving a tourist taxi was issued to him. The question that now arises for consideration is

whether, in the background of these undisputed facts, the insurance company is entitled to avoid its liability, on the terms of the policy issued by it

as well under the provisions of the Motor Vehicles Act. Considering the basis on which the insurance company sought to avoid its liability, the

Tribunal proceeded to fasten liability on the insurance company on the ground that, when the accident took place, the vehicle was on a test run and

was not used as a tourist taxi and, therefore, the licence issued to the driver for driving a light motor vehicle would suffice to hold that the vehicle, at

the time of the accident, was driven by a duly licensed driver. In other words, according to the Tribunal, though the vehicle was registered as a

tourist taxi, at the time when the accident took place, it was not used as such and, therefore, the driving of the tourist taxi by a driver duly licensed

to drive a light motor vehicle was in order and covered by the terms of the policy as well. It would be necessary at this stage to notice a few

relevant definitions in the Motor Vehicles Act (hereinafter referred to as "the Act") and also a view of its provisions. Section 2 of the Act defines

the different kinds of vehicles like articulated vehicle, goods vehicle, heavy goods vehicle, heavy passenger motor vehicle, light motor vehicle,

medium goods vehicle, medium passenger motor vehicle, motor car, motor cycle, motor vehicles, etc. It is obvious from this that the purpose of

defining the different types of motor vehicles is to describe and classify them into specific or particular categories, predominantly related to their user as well. It would be now useful to refer to section 2(5A) which defines a driving licence as meaning the document issued by a competent authority under Chapter II of the Act, authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specific class or description. Section 2(8) and (9) of the Act define goods vehicle and heavy goods vehicle. Section 2(9A) sets out the definition of a heavy passenger motor vehicle. u/s 2(13) of the Act, a 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. ""Medium goods vehicle"" and ""medium passenger motor vehicle"" are defined in section 2(14) and 2(14A), respectively. u/s 2(15) of the Act, ""motor cab"" means any motor vehicle constructed, adapted or used to carry not more than six passengers including the driver, for hire or reward. A motor vehicle, u/s 2(18) of the Act, means any mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises. Section 2(25) of the Act defining a public service vehicle states that it includes a motor cab as defined in section 2(15) of the Act. A transport vehicle, according to section 2(33) of the Act, means a public service vehicle or a goods vehicle. Section 3 of the Act prohibits a person from driving a motor vehicle in any public place, unless he holds an effective driving licence issued to him authorising him to drive the vehicle and the further provision is to the effect that 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 to do so. Section 3(3) enables a person holding an effective driving licence authorising him to drive a motor car, to drive a motor cab hired by him for his own use. Section 5 of the Act places an embargo on the owner or other person in charge of a motor vehicle from permitting any person who does not satisfy the provisions of section 3, to drive the vehicle. u/s 8 of the Act relating to the form and contents of driving licences, the different kinds of vehicles

in respect of which a driving licence may be issued, as entitling the holder to drive a motor vehicle belonging to one or other of the categories enumerated therein, is given. In the background of the above statutory provisions, it is clearly established that there is a nexus between the classification of the vehicles into different categories and also the issue of driving licences to persons to drive the vehicles belonging to different categories. It is not as if a person holding a licence under the Act to drive a particular category of vehicle can be permitted to drive a totally different category of vehicle altogether merely on the basis of a licence to drive vehicles belonging to one category. It is also necessary to bear in mind the fact that the requirement of ability for obtaining a driving licence in respect of a light motor vehicle or a heavy goods vehicle is not the same. A person licensed to drive a light motor vehicle may not be in a position even to start and drive a laden heavy goods vehicle. Therefore, merely from the circumstance that a person has been duly licensed to drive a light motor vehicle, he cannot claim that he is also entitled to drive or is capable of driving a heavy goods vehicle. Though the only thing in common between them is driving a vehicle, the requirements to be fulfilled and the capacity required are not the same. To say that the issue of a licence for driving a light motor vehicle would be sufficient to drive a motor vehicle of a different category and classification, is opposed to the very concept of statutory classification of the vehicles into different categories and the issuing of licence, and the fulfilment of different capacity requirements in respect of the driving of the vehicles belonging to each one of the categories. That would also totally nullify the classification of the vehicles under different categories as per the provisions of the Act and render sections 3 and 8 of the Act nugatory. The different user of a vehicle belonging to a specified category would not take the vehicle out of the category to which such a vehicle has been assigned, under the provisions of the Act. For instance, a light motor vehicle can be used for carrying luggage, though that would not make the vehicle a goods vehicle. It is a common sight nowadays to see lorries carrying passengers, but that would not suffice to label it a contract carriage for transport of passengers. A light motor vehicle or a goods vehicle, answering a specific description in the Act, would continue to be the same kind of vehicle, though the owner of the vehicle may attempt to put it to a different use. In this case, the

Tribunal had taken the view that at the time when the accident took place, the vehicle in question was not used for the purpose of transporting passengers and, therefore, it could not be regarded as a motor cab driven by a person who had a licence only for driving a light motor vehicle and not a tourist taxi. Earlier, it had been pointed out how a varied user of vehicles on specific or even on a few occasions would not make any difference whatever to their classification and categorisation as different kinds of vehicles under the provisions of the Act and a stray or steady different user would not also have the effect of altering or changing the statutory nomenclature conferred on the vehicle. Viewed in that light, the mere user of the tourist taxi or motor cab on the date of the accident in this case, for a purpose other than that for which it could be used would not have, in any manner, affected the character of the vehicle in question, as a motor cab or tourist taxi. In such a situation, unless the tourist taxi or motor cab was driven by a person duly licensed to drive such a vehicle, it would follow that the driving of that vehicle by a person not authorised to drive a tourist taxi or motor cab, would be by a person not duly licensed within the meaning of the provisions of the Act and also under the terms of the policy of insurance in this case.

5. A reference may now be made to some of the decisions to which my attention was drawn by counsel on both sides. In *The National Insurance Company Vs. Sugantha Kunthalambal and Others*, the argument addressed on behalf of the insurance company to the effect that though an autorickshaw may come under the definition of a light motor vehicle, still, for a person to drive the autorickshaw, his licence should specifically authorise him to drive such a vehicle and, in its absence, he cannot drive an autorickshaw as a transport vehicle, was accepted in view of section 2(23) read with section 3(1) of the Act. However, it was found on the facts in that case that the insurance company had not established that the driver of the autorickshaw had no valid licence to drive the vehicle in question. It is thus seen from the aforesaid decision that a special endorsement would be necessary to drive different kinds of vehicles and the possession of a driving licence in respect of a particular category of vehicle would not be sufficient to enable the holder of such a licence to drive another vehicle, belonging to a different category.

6. In *National Insurance Co. v. Mahadevayya* [1981] TLNJ 170 referring to section 2(13), 2(33) and section 3 of the Act, the Division Bench

reiterated that a special authorisation would be essential in order to enable the holder of a light motor vehicle like an autorickshaw, to drive it as a

public carrier. Again, in *Anjanadevi Vs. Arumugham and Another*, , the Division Bench, considering the need for a special authorisation in addition

to the usual licence to drive a motor vehicle to enable the driving of a tourist car referred to u/s 3(1) of the Act, observed thus (page 286) :

Section 3(1) of the Motor Vehicles Act contemplates an effective driving licence to drive a motor vehicle and if the vehicle happens to be a tourist

vehicle, the driving licence should contain a special endorsement. In this case though the vehicle involved is a car, it comes within the definition of a

"transport vehicle" as defined in section 2(33) of the Act, wherein the "transport vehicle" has been defined as a public service vehicle or a goods

vehicle. "Public service vehicle" is defined in section 2(25), which means any motor vehicle used or adapted to be used for the carriage of

passengers for hire or reward and includes a motor cab, contract carriage and a stage carriage. In this case, the car has been registered as a tourist

car. Thus the car having been registered as a public service vehicle, coming under the definition of "public service vehicle", which in turn comes

within the definition of "transport vehicle", it attracts the latter part of section 3(1) which says that for driving a transport vehicle a special

endorsement is necessary. In this case, as per the evidence of PW-2 there was no special endorsement as contemplated by the latter part of the

section 3(1) in the licence produced by the driver before PW-2. Since no licence has been produced before the Tribunal or before this court, we

have to fall back only on the evidence of PW-2, that the licence produced before him did not contain the endorsement contemplated by the latter

half of section 3(1). Therefore, the vehicle should be taken to have been driven by the driver in contravention of section 3 of the Motor Vehicles

Act.

7. The insurance policy in relation to the car in question has been produced and marked as exhibit P-8. That policy clearly shows that the vehicle

has been registered as a tourist taxi and it can be used only in connection with the insured's business of running as a tourist vehicle. Under the head

"driver", it says that the vehicle could be driven by the insured or by any other person in his employ holding a licence to drive the vehicle. Having

regard to the fact that the vehicle has been registered as a tourist taxi, as per the terms of the policy it should be driven by a person who held a

licence to drive a tourist taxi. As already stated, section 3 contemplated a driver of a tourist taxi having a special endorsement in his licence to drive

such a vehicle. In this case, there being no proof that the driver who drove the vehicle had the necessary endorsement in his licence as

contemplated by section 3 and for the purpose of driving the tourist taxi, he cannot be taken to have a valid licence to drive a tourist taxi.

8. The above observations would be applicable to this case as well for the licence produced under exhibit R-1 clearly establishes that on the date

on which the accident took place, namely, May 19, 1981, the holder of the licence was not authorised to drive a motor cab, but was only

authorised to drive a light motor vehicle, which is very different from a tourist taxi or motor cab. Besides, it is also seen that the insurance company

has, under the terms of the policy exhibit R-2, rendered itself liable only in respect of driving of the vehicle by a person holding a valid driving

licence. Earlier, it had been seen how, in this case, there was no dispute that, on the date when the accident took place, the driver of the vehicle did

not have a licence for driving a tourist taxi or motor cab and under those circumstances, even under the terms of the policy, no liability could be

fastened on the insurance company.

9. It only remains to refer to the decision in Canara Motor and General Insurance Co. Ltd Vs. Abdul Hamid Khan Saheb and another, to the

effect that the expression "held a licence to drive the motor vehicle" refers more to the type of vehicle, rather than the mode of its user and that,

even if a driver holding a licence for driving a light motor vehicle had broken one of the prescription of the Act that he shall not drive a motor cab

unless he holds an endorsement in that licence, yet, so far as the driving abilities are concerned, it matters little and, therefore, the insurance

company cannot be allowed to avoid its liability on that ground. This decision runs counter to the view consistently taken by this court as noticed

earlier. Apart from it, the other considerations adverted to hereinbefore in the course of this judgment have not been touched upon and there is also

no reference to any of the earlier decisions of this court and, under those circumstances, that decision cannot be pressed into service by the owner of the vehicle.

10. Thus, on a due consideration of the facts and circumstances as well as the relevant provisions of the Act and the decisions, the conclusion of

the Tribunal that the appellant-insurance company would be liable to pay the compensation cannot be sustained. It follows that respondents Nos. 1

and 2 in C.M.A. Nos. 98 and 99 of 1984 and the first respondent in C.M.A. No. 100 of 1984 would be entitled to recover the compensation

amount awarded by the Tribunal from respondents Nos. 3 and 4 in C.M.A. Nos. 98 and 99 of 1984 and respondents Nos. 2 and 3 in C.M.A.

No. 100 of 1984. These civil miscellaneous appeals are, therefore, allowed and the award passed by the Tribunal will stand modified as indicated

above. There will be, however, no order as to costs.