

(1973) 11 MAD CK 0014
In the Madras High Court
Case No : A.A.O. No. 289 of 1971

V. Srinivasan

APPELLANT

Vs

Rajalakshmi and Others

RESPONDENT

Date of Decision : 30-11-1973

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : AIR 1975 Mad 263

Hon'ble Judges : Maharajan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Maharajan, J.—This is an appeal filed by the owner of a lorry against the judgment of the Motor Accidents Claims Tribunal, Madras,

awarding as against him a compensation of Rs. 15,300, in respect of the death of one Venkatachala Iyer in a lorry accident, and exonerating the

Insurer of all liability. The accident took place at about 8 a. m. on 6-6-1969 in the Kathivakkam High Road opposite to the Indian Oil Company

depot near En-nore. Venkatachala Iyer was cycling along the north to south road in a southerly direction when lorry No. MDH 4939 belonging to

the appellant, coming from the opposite direction, collided with his cycle and ran over him. The victim was killed on the spot. Ex. P-2 is the sketch

drawn by the Inspector of Police, who took over the investigation soon after the accident. It shows that the highway is about 37 ft. 6 inches broad,

the middle tarred portion being 17 ft. and the mud portion on one side being 9 ft. wide, and the mud portion, on the other, 11 ft. 6 inches. The

sketch shows that the collision between the cycle and the lorry took place at a point 5 ft. to the west of the eastern edge of the tarred portion. This

means that at the time of the accident the lorry had gone beyond the midline of the tarred portion into the wrong side of the road and collided

against the cyclist. The evidence of P.W. 4, who is the only eye witness to the occurrence, is that as he was standing near a betel stall in Ennore

High Road, he found the lorry coming at a high speed from the south and dashing against the front side of the cycle, and that he saw the cyclist

falling down and one of the wheels of the lorry running over his back. It is also the case of P.W. 4, that the accident took place after the lorry had

proceeded to the wrong side of the road. In fact, his evidence, which is inherently acceptable, is also corroborated by the conduct of R.W. 1,

Ekambaram, the driver of the lorry, who, when prosecuted in the Criminal Court for rash and negligent driving, pleaded guilty and was convicted.

It is idle for him to say from the witness box now that he was not guilty of rashness or negligence. I have little hesitation in agreeing with the

Tribunal and holding that the death of the victim was the result of rashness or negligence on the part of the driver of the lorry.

2. The next question that arises for consideration is, what is the quantum of compensation payable? The deceased used to peddle textiles by going

from house to house, and according to P.W. 1. the widow, he used to pay her Rs. 100 every week. The Tribunal did not accept this evidence, as

it was evidently exaggerated, but fixed the pecuniary loss to the claimants arising from the death of Venkatachala Iyer at Rs.100 per mensem. The

Tribunal also found that the deceased should have been 55 years at the time of his death, and it estimated that he might have lived for another 15

years. Had he lived for 15 years, he would have, according to the Tribunal, paid Rs. 18,000 into the hands of the claimants; and as a lump sum

payment was being made, the Tribunal made a deduction of 15 per cent, out of this amount, and fixed the compensation at Rs. 15,300. I see no

reason to interfere with this figure, because it cannot be said to be shockingly high.

3. The last question that arises for determination is, whether the Co-operative General Insurance Society Ltd., the insurer of the lorry, is liable? The

Tribunal held that it was not, because, in its view, the policy itself was issued some hours after the accident had taken place, and without that fact

having been disclosed to the Insurance Co. In fact, the Tribunal went so far as to say that the owner of the vehicle had obtained a policy by playing

fraud upon the Insurance Co. This is a finding, which has no relation to the pleadings. Even the Insurance Co. did not contend in its counter that the policy was vitiated by any fraud or misrepresentation. In fact, the owner of the vehicle lives at Tambaram, whereas the accident itself took place near Ennore, about 28 miles away from Tambaram. The evidence of R.W. 2 (the son of the owner) is that he went to the Insurance Co. office even at 4-30 D. m. on 5-6-1969 and offered Rs. 100 odd to a clerk of the company for effecting insurance for the vehicle, that the clerk asked him to come to the office the next day, as the Manager was not available, that he returned home, and went back to the Insurance Co. at 9-45 a.m. on 6-6-1969, and that he received Ex. R-1, the insurance policy on that day. It is also his case that he was not aware of the accident that had taken place at about 8 a. m. that day near Ennore. R.W. 3, the Accountant of the Insurance Co. denies that R.W. 2 came to the office the previous day and says that he came there only at 11 a.m. on 6-6-1969, paid Rs. 124 and obtained Ex. R-3. the certificate of insurance on that occasion. I am unable to believe R.W. 2, when he says that he went to the Insurance Co. and tendered the amount even the previous day. I am prepared to assume that he went to the Insurance Co. office at 9-45 a.m. or 11 a.m. on 6-6-1969. The only question is whether at the time he received the insurance policy, he or his father could have been aware of the accident. Admittedly, the lorry had been insured with the same company for the previous year, and the policy for the previous year had expired on 31-5-1969. It is not as if the owner of the lorry was insuring the lorry for the first time on 6-6-1969. What he did was to renew the policy which he already held, and not to take out a new policy for the first time. If he had not delayed in the renewal of the policy and had taken care to renew it on 1-6-1969, there would have been no basis for the present plea of the Insurance Co. But unfortunately, he delayed renewal for five days. There is no material to justify the inference that at the time of the renewal on 6-6-1969, the owner of the vehicle or his son, was aware of the accident, if they were unaware of the accident, they could not have misled the Insurance Co. by suppression of a material fact, of which they had no knowledge. Further, the finding of the Tribunal that the policy is vitiated by fraud is based neither upon any plea raised by the insurance company, nor upon any evidence available. It is an unfair and illegitimate conjecture on

the part of the Tribunal. I shall, therefore, proceed to discuss the legal position on the basis that neither the insurance company nor the owner of the lorry was aware of the accident at the time Ex. R-3, the certificate of insurance was issued at 11 a.m. on 6-6-1969.

4. Ex. R-1, which is the Insurance policy, issued by the Insurance Company, sets out the terms of the contract between the owner of the vehicle and the insurer. Against the column "Period of Insurance, we find the words "From 6-6-1969 to 5-6-1970 (both dates inclusive). Admittedly, the premium had been paid by the lorry owner for the full period of one year, if the intention of the Insurance Co. was to cover the period of one year excluding 6th June, 1970, one would have expected the Insurance Co., to mention the period from 7-6-1969 to 6-6-1970. On the contrary, the Insurance Co. has expressly committed itself to liability for any risk from 6-6-1969 upto 5-6-1970, making it clear that both the dates were included in the period of cover. If all the 24 hours in the 6th June, 1969. were intended to be part of the period of cover, then the accident, which took place at 8 a.m. on 6-6-1969, would certainly be covered by the policy, because 6-6-1969, would commence from the midnight of 5/6th June. 1969.

5. Learned counsel for the Insurance Co., says that if the company had known that the accident had taken place at 8 a.m. on 6-6-1969, it would never have entered into this contract. That might be so. But it is not the case of the company that the owner of the vehicle had knowledge of the accident and that the contract had become void by reason of any material misrepresentation or fraud. Both parties to the contract must, therefore, be pinned down to the terms thereof. It is open to the Company to have stated that the contract would be effective from 11 a.m. on 6-6-1969 upto 11 a.m. on 6-6-1970, in which case it could certainly escape liability for an accident which had taken place a few hours before the conclusion of the contract. In Venkataramayya's Law Lexicon, "day" has been defined to be the period from midnight to midnight.

6. While interpreting Section 9 of the Indian General Clauses Act X of 1897 Courts-Trotter J. (as he then was) has in In Re: Court Fees, , speaking for the Special Bench consisting of three Judges, made certain observations, which are of some guidance in solving the problem before

me, and those observations are as follows:--

Section 9 enacts that in any Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use

the word "from" and for the purpose of including the last in a series of days or any other period of time to use the word "to". In my opinion this

case is not really affected by the consideration of whether the English Interpretation Act or the Indian General Clauses Act is to be looked to for

the guiding rule in this case. The whole argument of Mr. Srinivasa Iyengar is based on the use of the preposition "from" in the notification instead of

the mere obvious "on". To my mind no useful purpose is served by drawing distinction between particular prepositions such as "on", "from" "from

and after", and so forth and for that I have the authority of Doe v. Spence. 1805 6 East 120 and of Lindley L. 3. in Sidebotham v. Holland, 1895

1 QB 378. It appears to me that while it is true that no one general rule exists as to the computation of time..... The English common law has

evolved two perfectly clear principles and they are the principles which I conceive that the draftsman of the Indian General Clauses Act intended to

embody in the sections which I have quoted. What I conceive to emerge from the decided cases is this: that as the law in general neglects fractions

of a day, you must either exclude or include the whole of the day with which a given statute or rule or regulation deals. And the exclusion or

inclusion, I think, is clearly provided in two other rules. If you are fixing the point of time at which a certain state of things is to be called into

existence, that state of things comes in existence at midnight of the day preceding the day at which or on which or from which or from and after

which the new state of things begins. In such cases the statute or rule is only concerned in fixing the terminus a quo of a new state of law which is

enacted to continue indefinitely, in other words, until repealed by a new enactment of the legislature where, in short, you have a terminus a quo but

no terminus ad quem. This principle is well illustrated by the case of Tomlinson v. Bullock, 1879 4 QBD 230. It is one of obvious convenience for

it would be an intolerable burden upon the litigant public to require it to ascertain at which precise hour of the day a particular statute is passed or a

particular rule or regulation is promulgated. The other rule is this. When you have a period delimited by statute or rule which has both a beginning

and an end, the word "from" excludes the opening day and any words fixing the closing day includes that day. As was pointed out by Day J. any

other canon of construction would lead to an absurdity. For instance, a policy of insurance to be good for one day from 1st January might be valid

only for a few hours or even for a few minutes or conceivably not at all, unless you exclude the 1st January" from the computation. Illustrations of

the application of this principle are to be found in *Isac v. Royal Insurance Co.*, 1870 5 Ex 296. In *re Railway Sleepers Supply Co.* 1885 29 Ch

204, *South Staffordshire Tramway Co. v. Sickness & Accident Assurance Assn.*, 1891 1 QB 402, *Sheffield Corporation v. Sheffield Electric*

Light Co., 1898 1 Ch 203 and *Goldsmiths Co. v. West Metropolitan Rly.*, 1904 1 KB 1. The distinction appears to me vital and reconciles all the

cases referred to in the argument. I think the rule that emerges is this: Where a statute fixes only the terminus a quo of a state of things which is

envisaged as to last indefinitely, the common law rule obtains that you ought to neglect fractions of a day and the statute or regulation or other

order takes effect from the first moment of the day on which it is enacted or passed, that is to say, from midnight of the day preceding the day on

which it is promulgated; where on the other hand, a statute delimits a period marked both by a terminus quo and a terminus ad quem, the former is

to be excluded and the latter to be included in the reckoning.

The observations made by the learned Judge in respect of the commencement date of an Act, when the Act uses the word "from", or "from and

after" throw some light on how to interpret the commencement date recited in an instrument, such as, an insurance contract. As the insurance

contract before me speaks without ambiguity, there is no need to make any speculative inference. It is true the contract delimits a period marked

both by a terminus a quo and a terminus ad quem but then it expressly declares that the date from which it would come into effect is included within

the period of one year in the same way as the date on which it is to terminate will be included.

6-A. As has been pointed out by Chagla C. J. in *The Indian Trade and General Insurance Co. Ltd. Vs. Bhailal Maneklal Desai*, , in order to

decide whether a contract of insurance should apply to a loss which had already taken place, the court must try and gather the intention of the

parties, and the intention should be gathered primarily from the document itself, which is the repository of the terms of the contract. Here, even

learned counsel for the Insurance Co, does not contend that the contract did not intend to include the 6th June, 1969, but what he contends is that

if the company had known that an accident had occurred a few hours earlier at 8 a.m. on that day, it would not have agreed to include that date in

the period of cover. But, then, it is open to him to have attacked the contract as invalid on the ground that it has been the result of collusion or

fraud. But no such attack has been made in the counter itself, and there is no evidence in support of such an attack. It is next contended by the

learned counsel for the Insurance Co., that the contract having been concluded only at 11 a.m. on 6-6-1969, it would be wrong to hold that it

could cover an accident, which had taken place three hours before the conclusion of the contract. I am unable to agree. It was open to the

Insurance Co. to have stipulated that the contract would come into force only from 11 a.m. on that day. Instead of doing so, the Insurance Co. has

undertaken to cover any risk for the entirety of the year beginning from and inclusive of 6-6-1969, and ending with and inclusive of 5-6-1970. By

holding that the Insurance Co. is liable for the accident, which took place at 8 a.m. on 6-6-1969, I am not giving any retrospective effect to the

contract at all. If there is any retrospectivity, it is in the terms of the contract itself, because the contract, in unambiguous words, covers the risk

occurring at any hour on 6-6-1969. I, therefore, hold that the Insurance Co. by the terms of its own contract, is liable to pay compensation to the

claimants.

7. The appeal is consequently allowed, and an award is made against both the appellant and the Insurance Co. for payment of compensation of

Rupees 15,300 to the claimants. There will be no order as to costs. Time for payment two months.