



C.M.A.(MD) No.1128 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	21.10.2024
Pronounced on	29.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1128 of 2018

and

C.M.P.(MD) No.11518 of 2018

Arumuga Nainar,
S/o.Ramasamy

... Appellant

Vs.

1.Karthick @ Avudaiyappan
S/o.Karuthapadi

2.Minor K.Subaashiri
D/o.Karthick @ Avudaiyappan

3.Ponnammal
W/o.Sankaranarayanan

4.Sankaranarayanan
S/o.Shanmugam

5.United India Insurance Company Limited,
Branch Office 560 X,
Kanthan Complex, 2nd Floor,
New Bus Stand Opposite,
Valliyoor,
Tirunelveli District.

... Respondents



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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to aside the judgment and decree in M.C.O.P.No.138 of 2017 on the file of the Motor Accident Claim Tribunal/Chief Judicial Magistrate Court, Tirunelveli dated 06.08.2018.

For Appellant : Mr.R.T.Arivu Kumar
for Mr.N.GA.Nataraj

For R1, R3, & R4 : No appearance

For R2 : M/s.J.Balameenakshi
Legal Aid Counsel

For R5 : Mr.C.Jawahar Raveendran

J U D G M E N T

The owner of the insured vehicle has preferred the instant appeal challenging the direction issued by the Tribunal to the Insurance Company to pay the compensation at the first instance and recover the same from him.

2. Since the quantum of compensation and the finding on negligence are not under challenge, the facts leading to the filing of the claim petition are unnecessary for the disposal of this appeal.

3. The appellant is the owner of the transport vehicle involved in



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the accident and has admittedly operated the vehicle in violation of the route permit.

4. The learned counsel for the appellant submitted that, among the defences available to the Insurance Company for exoneration of liability, the breach of the route permit would not fall within Section 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988, as the language of the provision makes it clear that only if the vehicle is used for the purpose not allowed by the permit, that would be considered a breach of permit.

5. The learned counsel for the appellant relied upon the judgment of this Court in the case of *National Insurance Company Limited Vs. T.Elumalai and another*, reported in *CDJ 1989 MHC 224*, and the decision of the Himachal Pradesh High Court in the case of *Ketal Singh Vs. Narinder Kumar and others*, reported in *CDJ 2015 HPHC 249*, in support of his submission. The learned counsel, therefore, submitted that the direction to recover the compensation from the appellant is liable to be set aside.

6. The learned counsel for the fifth respondent, Insurance Company,



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per contra, submitted that the insurer is entitled to take a defence, since, admittedly, the appellant had violated the conditions of the route permit by plying the vehicle in a different route, which is an offence, and therefore would be a valid defence under Section 149(2)(a)(i)(c) of the Act. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of *Rani and others Vs. National Insurance Company Limited and others*, reported in **2018 (2) TN MAC 278 (SC)**.

7. The only point for consideration in the instant appeal is whether the breach of route permit would be a valid defence for the Insurance Company and would fall within the meaning of the words “for a purpose not allowed by the permit”.

8. Section 149(2) of the Motor Vehicles Act, 1988 reads as follows:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—

(1)

(2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be,



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the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions



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of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

9. This is in *pari materia* with Section 96(2) of the Motor Vehicles Act, 1939.

10. Amongst the grounds on which the insurer can defend the action, the ground that is relevant for the instant case is contained in Section 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988. As per the said clause, if the insured transport vehicle is used “for a purpose not allowed by the permit”, it would be a valid defence. The question is, therefore, whether the contravention of a route permit would amount to using the vehicle “for a purpose not allowed by the permit”.

11. The Himachal Pradesh High Court, in the judgment in ***Oriental Insurance Company Ltd. Palampur Vs. Bishan Dass and others***, reported in ***AIR 1988 HP 26***, held that the breach of conditions of the permit is not the same thing as breach of the purpose for which the permit



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was issued and that the act being the beneficial legislation has to be construed strictly, and therefore, the insurer cannot be allowed to take a defence, which is not provided under the statute. The relevant portion of the said judgment reads as follows:

“2. In the present case, the use of the insured vehicle in question on a route for which there was no permit does not attract Clause (c) of Sub-section (2) of Section 96 of the Act which has been pressed into service to deny the statutory liability. At the highest, it is a case of breach of the condition of the permit which is not the same thing as breach of the purpose for which it was issued. The decision of the Bombay High Court in Raghunath Eknath Hivale v. Shardabai Karbhari Kale, 1986 ACC CJ 460 : (AIR 1986 Bom 386) and those of some of the other High Courts which are referred to in para 10 of the said decision lend support to the above view. Even if such use amounts to the breach of statutory rules then also the defences allowed by Sub-section (2) are not attracted. The decision of the Gujarat High Court in Bomanji Rustomji Ginwala v. Ibrahim Vali Master, AIR 1982 Guj 112, supports this view. The contrary view expressed in New India Assurance Co. Ltd. v. Samundari Roadways Co. (P) Ltd., 1985 Ace CJ 239 (Punj & Har.) is, with respect, not correct.”

12. This Court, in the judgment in **T.Elumalai's** cited *supra*, while interpreting the provisions of Section 96(2) of the Motor Vehicles Act, 1939, reiterated that the provisions have to be strictly construed and that



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violation of the terms relating to plying in certain geographical areas

would not fall within the defences available in Section 96(2) of the Motor

Vehicles Act, 1939. The relevant portion of the said judgment reads as

follows:

“17. It is, therefore, clear that an insurer is not entitled to take a defence, which is not specified in Section 96(2) of the Act. These provisions have to be construed strictly. As stated earlier, it is not the breach of any conditions of the policy of insurance, that would provide the insurer a defence under Section 96 (2) of the Act. The policy of insurance may permit the insurer to avoid its liability under various circumstances. However, as against the liability of the insurer to third parties, the terms the policy of insurance are subject to the provisions of Section 96(2) of the Act. If there is a breach of the contract on the part of the insured the insure could proceed against the insured, but as far as the third party risks are concerned, the liability having been created by the statute, cannot be over-ridden by the terms of the contract of insurance between the parties. Section 96(2) of the Act, does not include violation of the terms of the permit relating to plying in certain geographical areas. Hence, the plea that the autorickshaw was found plying in the city of Madras contrary to its permit, even if established factually, cannot be a ground since the same does not fall within the ambit of Section 96(2) of the Act. It is not, therefore, open to the appellant to plead that the auto-rickshaw was found plying in the City of Madras, in contravention of a condition in its permit restricting the geographical area wherein the vehicle could be plied.”



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13. From the above two judgments, it would be clear that if the vehicle is used “for a purpose not allowed by the permit”, it cannot be equated with the contravention of the conditions of the permit relating to the route or area for which the vehicle should be used. Section 192A of the Motor Vehicles Act, 1988, confirms that the interpretation in the above two judgments is justified. Section 192A(1) of the Act reads as follows:

192A. Using vehicle without permit-- (1)
Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with imprisonment for a term which may extend to six months and a fine of ten thousand rupees, or with both and for any subsequent offence with imprisonment which may extend to one year but shall not be less than six months or with fine of ten thousand rupees or with both:

14. Section 192A makes three types of contraventions as an offence, which are as follows:

- (a) relating to the route;
- (b) relating to the area; and



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(c) relating to the purpose for which the vehicle may be used.

15. Section 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988, provides that only the third type of contravention mentioned above is a valid defence. Neither the contravention relating to the route permit or area permit have been included as valid defences.

16. Therefore, this Court is of the view that contravention relating to the route or area would not be the same as breach of the purpose for which the permit was issued and hence would not be a valid defence. The Act being a beneficial legislation has to be construed strictly. If the argument that since contravention of the route permit is an offence, the insurer would not be liable to indemnify the insured is accepted, then the courts cannot hold the insurer liable even in the case where the insured has committed an offence of criminal negligence. Hence, such an argument cannot hold water.

17. In the judgment in **Rani's** case, which was relied upon by the learned counsel for the Insurance Company, the Hon'ble Supreme Court



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was dealing with the case where the permit issued by the State of Maharashtra was to operate the vehicle in the State of Maharashtra and the vehicle had plied in the State of Karnataka. In such circumstances, the Hon'ble Supreme Court held that the offending vehicle did not have a valid permit to operate in the State of Karnataka and therefore, the insurer can pay the compensation and recover it from the owner. The relevant portions of the judgment reads as follows:

6. Against this common Award passed by the Tribunal, the Respondent No.1-Insurance Company carried the matter in Appeal before the High Court being M.F.A. No.5874 of 2011 (MV) & M.F.A. No. 5876 of 2011 (MV), respectively. The principal issue raised by the Insurance Company was that the Tribunal could not have fastened the liability on the Insurer as the offending vehicle did not possess a valid permit to operate in the State of Karnataka in view of Section 149(2)(a)(i)(a) of the Motor Vehicles Act, 1988. For, the Permit was limited to the State of Maharashtra.

.....

14. We are of the view that the High Court has already granted more than Just Compensation amount to the Legal Representatives of the deceased (Satish). In that, even if the claim of the Appellants regarding Future Prospects, additional Medical Expenses and Additional Interest amount was to be accepted, on the basis of the Notional Income of Rs. 5000/- (Rupees five thousand) per month, the



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*question of awarding additional or further Compensation amount to the Appellants in M.F.A. No.5874 of 2011 does not arise. The appeal, however, would succeed to the limited extent that the amount of Compensation determined by the High Court shall be first paid by the Respondent No.1-Insurance Company with liberty to recover the same from the Owner of the offending vehicle (Respondent No.2 herein). We are inclined to allow the Appeal to this limited extent, keeping in mind the exposition in **Singh Ram v. Nirmala and others**, 2018 (1) TN MAC 704 (SC) : 2018 (3) SCC 800 and **Pappu and others v. Vinod Kumar Lamba and another**, 2018 (1) TN MAC 148 (SC) : 2018 (2) CTC 232 (SC) : 2018 (3) SCC 208.*

The above judgment would therefore not be applicable to the facts of the instant case, as not having a valid permit to ply in a State is different from the breach of the conditions of a permit relating to the area or route within the same State.

18. Therefore, this Court is of the view that the contravention, which has been established by the learned counsel for the fifth respondent, Insurance Company, relates to the route permit, and that would not be a valid defence within the meaning of Section 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988. Thus, the direction of the Tribunal permitting the fifth respondent, Insurance Company, to recover the compensation from



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the appellant cannot be sustained. The fifth respondent, Insurance Company, would be liable to satisfy the award. Hence, this appeal filed by the appellant, the owner of the vehicle, deserves to be allowed.

19. The fifth respondent, Insurance Company, is directed to deposit the compensation of Rs.10,90,600/- awarded by the Tribunal together with interest at 7.5% per annum from the date of the claim petition till the date of realization and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

20. The first to fourth respondents are entitled to compensation as per the apportionment fixed by the Tribunal.

21. The first, third, and fourth respondents are permitted to withdraw their shares along with the proportionate interests and costs, less the amount already withdrawn, if any, by filing suitable application before the Tribunal.



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22. Since the second respondent is a minor, her share is directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until she attains majority. The first respondent, who is her father, is permitted to withdraw the accrued interest once every six months.

23. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.10.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tirunelveli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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SUNDER MOHAN, J.

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Pre-Delivery Judgment made
in
C.M.A.(MD) No.1128 of 2018
and
C.M.P.(MD) No.11518 of 2018

29.10.2024