

Universal Enterprises Vs. Padmavathi and ors.

Universal Enterprises Vs. Padmavathi and ors.

SooperKanoon Citation : sooperkanoon.com/774142

Court : Chennai

Decided On : Jan-03-1989

Reported in : [1992]75CompCas399(Mad)

Judge : Padmini Jesudurai, J.

Acts : Motor Vehicles Act - Sections 110A

Appeal No. : Civil Miscellaneous Appeal No. 774 of 1981

Appellant : Universal Enterprises

Respondent : Padmavathi and ors.

Advocate for Def. : K. Padmanabhan, ;Devanathan and ;M.V. Chandran, Advs.

Advocate for Pet/Ap. : R. Karunakaran, Adv.

Judgement :

Padmini Jesudurai, J.

1. The owner of the motor cycle against whom the Motor Accidents Claims Tribunal had passed an award for a sum of Rs. 27,950, has filed the present appeal challenging the finding exonerating the insurance company.

2. Facts briefly are : The motor cycle bearing Registration No. MDO 7949 belonging to the appellant, on December 21, 1975, being driven in a rash and

negligent manner by one Sekar Jayaraman, hit the deceased husband of the first respondent, who sustained serious injuries and later died. The first respondent, therefore, filed O.P. No. 422 of 1976 under section 110A of the Motor Vehicles Act, before the Motor Accidents Claims Tribunal (Chief Judge), Madras, claiming a total compensation of Rs. 30,000. Since it was alleged that, before the fatal impact, the motor cycle first hit the left front side of a car MDT 6582 belonging to the third respondent and insured with the fourth respondent, respondents 3 and 4 were made parties in the claim petition.

3. The appellant contested the claim alleging that he had given the motor cycle to a mechanic, Arockiaswamy, for repairs with strict instructions that the same should not be used. Later, he learnt that despite his instructions, the vehicle had been taken by Sekar, son of Arockiaswamy, when the accident had occurred. The appellant had neither authorised nor permitted Sekar to use the vehicle. The claim also was excessive.

4. The second respondent herein resisted the claim contending that the accident was not due to the negligent driving of the motor cycle and, at any rate, since Sekar did not have any valid licence to drive, it was not liable.

5. Respondents Nos. 3 and 4 contended that the accident was solely due to the negligent driving of Sekar and they were not in any way liable to pay compensation.

6. Before the Tribunal, the first respondent examined herself as PW-1 and examined an eye witness to the occurrence as PW-4, the medical officer who treated the deceased as PW-1 and the Police Officer who investigated into the case as PW-2. She had exhibits P-1 and P-2 marked on her side. On behalf of the appellant, one of the partners of the firm was examined as RW-1. The copy of the insurance policy issued by the second respondent was marked as exhibit R-1. On the above evidence, the Tribunal found that the vehicle had been entrusted by the appellant to his mechanic, Arockiaswamy, and that his son, Sekar, who did not have any licence to drive it had taken the vehicle and the accident had occurred due to his rash and negligent driving. The Tribunal held that the second respondent, the insurance company, was not liable to indemnify the appellant,

since the vehicle had been driven by one who did not hold any licence to drive. The compensation was assessed at Rs. 27,950 and the appellant was directed to pay the entire amount. Challenging the finding absolving the insurance company of its liability to indemnify under the policy, the present appeal has been filed by the owner of the motor-cycle.

7. The only point that was urged before me by Thiru R. Karunakaran, learned counsel for me the appellant, was that, even on the finding of the Tribunal, the second respondent would be liable, in view of the fact that the appellant had entrusted the vehicle to his mechanic for the purpose of carrying out repairs and the subsequent driving of the vehicle by Sekar without the knowledge and without the consent of the appellant, would not constitute breach of any of the terms of the policy of insurance to absolve the second respondent. Learned counsel placed reliance upon two decisions of the Supreme Court., viz., *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* [1987] 62 Comp Cas 138 : [1987] ACJ 411 and *Guru Govekar v. Filomena F. Lobo* [1988] 64 Comp Cas 630; [1988] ACJ 485.

8. Thiru K. Padmanabhan, learned counsel for the first respondent, Thiru A. Devanathan, learned counsel for the second respondent, and Thiru M. V. Chandran, learned counsel for the third respondent, were also heard.

9. The only question that arises for consideration is whether the driving of the motor cycle by Sekar who did not have a licence to drive would constitute breach of any of the terms of the policy of insurance, thereby absolving the second respondent of its liability

10. I shall first refer to the two decisions of the Supreme Court relied on by learned counsel for the appellant. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* [1987] 62 Comp Cas 138 ; [1987] CJ 411 a truck had been entrusted to the regular driver and had been taken from Barejadi to Baroda. At Baroda, it was unloaded and leaving the vehicle with the engine running and with the ignition key in the ignition lock, the driver of the truck left the vehicle in charge of the cleaner and went to the opposite shop for some snacks. The cleaner drove the vehicle and caused the accident. Before the Claims Tribunal, the insurance company disclaimed liability resting on the exclusion clause in the policy of

insurance extending immunity, if a breach is committed of the conditions of the policy by permitting a person who did not have a licence to drive the vehicle. The Tribunal held the owner of the truck, the driver and the cleaner liable to pay compensation and upheld the contention of the insurance company. The High Court held that the owner of the truck, never gave permission to the cleaner to drive the vehicle and could not, therefore, be held guilty of the breach of the contractual conditions embodied in the policy of insurance. The insurer, therefore, was held liable. In the appeal before the Supreme Court, the insurance company challenged this finding. The Supreme Court went elaborately into the provisions of the Act and rejected the defence build by the insurance company on the exclusion clause. The court gave the following three reasons for rejecting the same (page 145) :

'(1) On a true interpretation of the relevant clause which interpretation is at peace with the conscience of section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach.

(2) Even if it is treated as an absolute promise, there is substantial compliance therewith, upon an express or implied mandate being given to the licensed driver, not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.

(3) The exclusion clause has to be 'read down' in order that it is not at war with the 'main purpose' of the provisions enacted for the protection of victims of accidents, so that the promisor is exculpated when he does everything in his power to keep the promise.'

Finally, the court observed (page 147) :

'It is, therefore, abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression 'breach' carried within

itself induces an inference, that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and he has not done anything he should not have done or is not amiss in any respect, how can it be conscientiously posited that he has committed a breach It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach, the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance.'

11. In a more recent decision in *Guru Govekar v. Filomena F. Lobo* [1988] 64 Comp Cas 630 ; [1988] ACJ 585 (SC) where a car had been entrusted to the electrical repairer for carrying out electrical repairs and an employee of the electrical repairer, a mechanic, drove the vehicle and caused an accident, the Supreme Court held that the insurer would be liable to pay compensation by virtue of section 94 of the Motor Vehicles Act. The court also observed that taking any other view would expose innocent third parties to go without compensation when they suffer injury on account of such motor accidents and will defeat the very object of introducing the necessity for taking out insurance policy under the Act.

12. From the above two decisions, it is clear that the exclusion clause in the policy of insurance extending immunity to the insurance company, if the vehicle is driven by one who has no licence to drive the vehicle is not absolute. The exclusion, in the context of the Motor Vehicles Act, would not afford immunity to the insurance company, in every case where a vehicle has been driven by one who does not hold a licence to drive. The circumstances in which such a contingency has occurred would determine whether or not the insurer is liable. If the insured himself has done all that is within his power to keep, honour and fulfil the promise of the policy of insurance, he cannot be held guilty of having committed breach of the

terms of the policy of insurance. It is on this principle that in Skandia Insurance Co. Ltd.'s case [1987] 62 Comp Cas 138 the Supreme Court observed that when the owner of the truck had engaged a licensed driver and had placed the vehicle in charge of a licensed driver with an express or implied mandate to drive the vehicle himself, the insured was not guilty of any breach. It was only in the case of breach or violation of the terms on the part of the insured that the insurer could seek shelter under the exclusion clause.

13. Coming to the facts of the instant case even in the counter filed by the appellant, he has clearly stated that he entrusted the motor cycle to the mechanic Arockiaswamy for carrying out repairs, with strict instructions that the vehicle should not be used. It is also stated that Sekhar had obtained the vehicle from Arockiaswamy and had driven the vehicle when the accident occurred and that the appellant was not aware of the use of the vehicle by Sekar and had also not authorised Sekar to use the vehicle. In fact, even in the counter filed by the second respondent, it is not stated that the appellant had handed over the vehicle to Sekar. RW-1, one of the partners of the appellant has also given evidence that he had given instructions to Arockiaswamy not to use the vehicle. In fact, the finding of the Tribunal is also to the effect that the appellant had entrusted the vehicle to Arockiaswamy for effecting repairs and that the vehicle was driven by Sekar who is connected with the workshop. The appellant had not handed over the vehicle to Sekar, nor had he permitted Sekar to drive the vehicle. Applying the law laid down by the Supreme Court in the two decisions referred to above, it is clear that the appellant had not committed breach of any of the terms of the policy of insurance. The exclusion clause, therefore, cannot operate. The second respondent is bound to pay the first respondent the entire compensation awarded to her.

14. In the result, the appeal is allowed and the second respondent, the insurance company is directed to pay the compensation awarded by the Tribunal, viz., Rs. 27,950 together with interest at 6% per annum from the date of the filing of the claim petition before the Motor Accidents Claims Tribunal till the date of deposit. No costs.