

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.11.2016

Judgment Pronounced on : 03.03.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2779 of 2009

P.Prakash

... Appellant

Vs.

1. Thandivelu

2. United India Insurance Co. Ltd.,
No.146-N. Kumar Complex,
Tiruchengode.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree dated 16.09.2008 made in MCOP.No.141 of 2006 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court) Erode and to set aside the same and fix the liability on the insurance company and to enhance the award.

For Appellant : Mr.Ma.Pa.Thangavel
For Respondents : Mr.C.Kulanthaivel [R1]
Mr.S.Arun Kumar [R2]

JUDGMENT

The claimant in MCOP No.141 of 2006 before the MACT has come forward with this appeal impugning the award to the extent it has absolved insurance company of its liability entirely. He also seeks an enhancement of compensation alongside.

2. The brief facts relevant for the purpose are that on 20-09-2005, at about 5.30 am., the claimant was traveling in a mini door auto rickshaw, a goods vehicle, delivering the goods he had earlier accompanied at the destination. The driver of the said vehicle drove it rashly and negligently as a result the vehicle capsized. The claimants suffered multiple fractures that included compound fracture of his left rib, hip, pelvic bone, cheek and head and also suffered amputation of his left leg. He was barely 21 years at that time and he approached the Tribunal with a claim of Rs.7,00,000/- and applying a multiplier

of 15 on a notional income of Rs.2,500/-, the Tribunal awarded a sum of Rs.4,50,000/- towards loss of future earning capacity. Including it with other heads of damages, the Tribunal passed an award for a total sum of Rs.5,52,745/- payable with interest at 7.5% p.a. and mulcted the liability entirely on the owner of the vehicle.

3. Before the Tribunal, the second respondent, the insurance company of the vehicle in question, has pleaded :

- That the claimant was a gratuitous passenger of a goods vehicle and the contract of insurance between the owner of the vehicle and the insurance company did not cover death of or injury to any such passengers.
- That the driver of the offending vehicle did not possess a valid driving licence.
- That the claimant had already filed a claim before Deputy Commissioner of Labour under Workmen Compensation Act in W.C.No.705/2005.

4. During enquiry the last two of the aforesaid three grounds on which the insurance company rested its defence were not appeared to have been pressed into service much. So far as objection as to absence of a valid driving licence is concerned the insurance company has not adduced any evidence. So far as the allegation that the claimant has elected to proceed under Workmen Compensation Act is concerned, the complainant in his deposition as P.W.1 has testified that he withdrew W.C.No.702/2005 that he had earlier filed. What therefore, remained for the consideration of the Tribunal was the contention of the insurance company that it was not liable to indemnify the owner of the vehicle of the latter's liability to pay the compensation.

5. This objection of the insurance company has found favour with the Tribunal. The admitted case before it was that the claimant was returning in an empty goods carrier after delivering the goods that he had earlier accompanied. The Tribunal held that at the relevant time when the accident took place, the goods carrier was empty and therefore, the claimant could not be stated to be accompanying the goods on behalf of the owner of the goods and hence he did not fall under the category of those whose injury and death are required to be insured under Sec.146 & 147 of the MV Act. Consequently, the Tribunal absolved the insurance company of the liability to pay compensation and held that the second respondent/owner of the vehicle alone was liable.

6.1. The learned counsel for the appellant would contend that the Tribunal has taken a hyper technical view of the matter and that given the Indian conditions to which the law is to be administered, a load-man returning in an empty vehicle after delivering the goods should be presumed to be one traveling with

the goods and his status should not be relegated to that of a gratuitous passenger. He relied on the authorities in Ramesh Vs. Dhakshnamoorthy and others [2011(2) TN MAC 384]; Oriental Insurance Co. Ltd., Vs. Hazara & Ors. [AIR 2012 DELHI 26]; National Insurance Co. Ltd., Vs. Sarojamma & Ors. [AIR 2008 (NOC) (KAR) = 2008 (2) AIR KAR R 75]; National Insurance Co. Ltd., Vs. Sarojamma & Others [CDJ 2008 Kar HC 163]; National Insurance Co. Ltd., Vs. Urmila and Others [2008 ACJ 1381]. Supporting him on this point, the counsel for the second respondent/owner of the vehicle, placed before this Court the following authorities : National Insurance Co. Ltd., Vs. Sakthivel and another [2011(1) TN MAC 580]; New India Assurance Company Limited, Cuddalore Vs, Thilliammal and Others [2005(1) TN MAC 485 (DB)]; The Divisional Manager, United India Insurance Co. Ltd., Vs. Dhamayanthi and Others [2012 (1) TN MAC 541].

6.2 Focusing on the compensation awarded by the Tribunal, the learned counsel argued that the Tribunal had lowly fixed the notional income of the claimant at Rs.2,500/- per month and that it ought to have fixed it at Rs.5,000/-.

7. Per contra, the learned counsel for the second respondent/insurance company contended that under Sec. 147 of M.V. Act, only owner of the goods or his authorized representatives will have a mandatory insurance cover provided they accompanied the goods. In the absence of any goods in the carrier it is legally impermissible to stretch the definition of third party to include a load-man of an empty goods vehicle as one falling within that category. To fortify this submission he relied on the authority in Sanjeev Kumar Samrat Vs. National Insurance Co. Ltd., & Others [2013 (1) TN MAC 15 (SC)].

On liability of the insurance company :

8. Is a load-man travelling in an empty goods vehicle after delivering the goods that he accompanied is a gratuitous passenger, is the moot question in this case. It is not the first time that this question has drawn the attention of the Courts as some of the authorities cited by the appellant and the owner of the vehicle indicate. In each of those cases, a load-man or a coolie who travelled in an empty goods vehicle either before taking delivery of the goods or after delivering the goods were considered as one falling under the definition of third parties within the meaning of Sec.147 of the M.V. Act. The foundational justification for this is the benevolent objective behind the M.V. Act.

9.1 This justification is significant and unassailable. The benefit which the statute aspires to advance will fall short of its cherished objective if it is interpreted narrowly. It is true a contract of insurance is founded on a bilateral contract. However, whenever a question arises as to whether or not one

will fall under the category of those whose death or injury was required to be statutorily insured within the meaning of Sec.146 and 147 of the M.V. Act, a decision on it should factor in the objective behind the enactment. And, where there are two interpretations possible, one that exclude those who are almost similarly placed with those who are included within the operative ambit of the legislation should be opted. In the context of the present case, when an owner of the vehicle dispatches the goods in a goods carrier and allows his coolie/load-man to accompany the same, the latter in essence accompanies the good as his authorised representative. In every such case an implied agency or authorisation can be inferred. The point is will such load-man be deemed to accompany any good when in fact there is no goods in the vehicle. This can happen either when the load-man travels in a goods vehicle to take delivery of the goods on behalf of the owner, or while returning after delivering goods again on behalf of the owner. If a strict interpretation is put on a situation such as this it would defeat the very object and spirit behind the statutory requirement of compulsory insurance under Sec.147 of the MV Act and would be far divorced from the ordinary human experience of our society. It is therefore necessary to include them in the definition of an authorised representative of the owner of the good by a legal fiction to advance the beneficial objectives that Parliament in his wisdom has contemplated. It therefore follows that the insurance company is and will be liable in all cases where a load-man travels in an empty goods carriage either on its way to take delivery of goods, or after delivering of goods as an authorised representative of the owner of the goods becomes a victim of an accident caused due to the negligence of the driver of the vehicle he travelled. This Court finds no reasons to deviate from the rationale behind the judgments referred to by the counsel for the appellant. So far as the decision in Sanjeev Kumar Samrat Vs. National Insurance Co. Ltd., & Others [2013 (1) TN MAC 15 (SC)] is concerned, the question that arose there was whether a load-man should be treated as an employee of the hirer of a goods carrier within the meaning of Sec.147(1)(b) of the MV Act, and it is in that context the Hon'ble Supreme Court has declared that there can be varied categories of employees and all cannot be equated to one for who alone there exists a policy of insurance. In my view, the decision of the Hon'ble Supreme Court operates in a different sphere and the ratio stated therein cannot be telescoped into the facts of this case. To conclude, I find merit in the argument of the appellant and deem it necessary to set aside the finding of the Tribunal on this point.

On Quantum :

10. The Tribunal while assessing the compensation on loss of future earning capacity has treated the case of the claimant as one of cent percent functional disability on which I have a

slightly different view. Therefore, even if the notional monthly income as fixed by the Tribunal is increased from Rs.2,500/- to a higher sum, yet this Court considers that the total compensation payable may have to be discounted to an extent since the case of the appellant cannot be treated as one of total functional disability. For the above reason, I do not propose to interfere with the compensation amount awarded by the Tribunal and the same is hereby confirmed.

11. To conclude, this appeal is partially allowed and the insurance company is held liable along with the first respondent to pay the compensation amount as determined by the Tribunal. The insurance company is further directed to deposit the award amount, less if any already deposited, within four weeks from the date of receipt of a copy of this order, whereupon the claimant is permitted to withdraw the same forthwith. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1. The Motor Accident Claims Tribunal
Chief Judicial Magistrate Court
Erode.

2. The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr.Ma.Pa.Thangavel, Advocate sr 14632

+1 CC to Mr.C.Kulanthaivel, Advocate sr 14299

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