



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.06.2019
Delivered on : 02.07.2019

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The HON'BLE MR. JUSTICE R.MAHADEVAN

C.M.A.No.2594 of 2006
and
MP.No.1 of 2006

The National Insurance Company
Sowcarpet Branch Office
No.738, Mint Street,
Sowcarpet.

..Appellant / 3rd Respondent

..vs..

1.M.Sengotan	..1st Respondent / Petitioner
2.P.V.Poulouse	..2nd Respondent / 1st Respondent
3.A.Singu	..3rd Respondent / 2nd Respondent
4.The Oriental Insurance Company Ltd. Ernakulam Branch, Ernakulam, Kerala State.	..4th Respondent / 4th respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.04.2006 passed by the Motor Accidents Claims Tribunal, Sub Judge, Sankari in MACT.OP.No.64 of 2000.

For Appellant : Mrs.N.B.Surekha

For R1 to R3 : No appearance

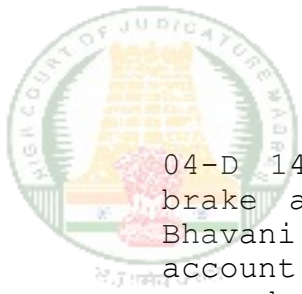
For R4 : Mr.S.Manohar

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 04.04.2006 passed by the Motor Accidents Claims Tribunal, Sub Judge, Sankari (for brevity, 'the Tribunal') in MACT.OP.No.64 of 2000.

2.Shorn of the minute details, the facts, which are germane and necessary for the disposal of this appeal, are as follows:

2.1 On 24.11.1999, about 02.30 hours, the third respondent drove the second respondent's tanker lorry bearing Regn.No.TN-



04-D 1427 in a rash and negligent manner and applied sudden brake at M.V Tyre Retreading Company on NH 47 Salem to Bhavani Main Road, due to which, the vehicle capsized. On account of the said incident, the laden chemicals came out and caused fire accident, as a result of which, the first respondent/claimant's residential house totally got burnt and heavy loss was caused to the properties in the said premises. Hence, the first respondent filed a petition seeking compensation of Rs.10,00,000/- for the damage caused to the properties.

2.2 Denying and disputing the claim made by the first respondent/claimant, the Appellant Insurance Company filed a detailed counter affidavit, wherein, it was stated that the fire accident had taken place, due to burning of dangerous and hazardous chemical viz., acetone weighing 9.5 tonnes in the tanker lorry, which caught fire, after the vehicle capsized; this claim will come under the Public Liability Insurance Act, 1991 and not under the Motor Vehicles Act, 1988 (for brevity, "the Act"); there was no collision of the vehicle insured with the appellant against the thatched house of the first respondent; the driver of the lorry was not having a valid endorsement in the driving licence authorizing him to drive a goods carriage carrying dangerous or hazardous nature to the human life, as required under Rule 9(3) of the Central Motor Vehicle Rules, as amended with effect from 26.03.1993; the damages claimed by the first respondent for the properties were highly exaggerated in order to make an unlawful gain and hence, the claim petition may be dismissed.

2.3 Before the Tribunal, the first respondent/claimant was examined as PW1 and Exs.P1 to P8 documents were marked on his side. On the side of the appellant insurance company, R.W.1 and R.W.2 were examined and Exs.R1 to R3 were marked. The driving licenses of the driver of the lorry were marked as Exs.W1 and W2.

2.4 The Tribunal, after examining all the materials placed before it, came to a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the tanker lorry. Having held so, the Tribunal quantified the compensation at Rs.1,00,000/- along with interest at 7.5% per annum, to the first respondent/claimant and accordingly, directed the appellant insurance company to pay the compensation and recover the same from the owner of the tanker lorry. However, the Tribunal exonerated the fourth respondent/insurer of the material, which was loaded in the lorry, from liability. Aggrieved over the same, the present appeal has been filed by the appellant insurance company.



3.The learned counsel for the appellant insurance company emphatically contended by raising the following grounds:

(i)The Tribunal had misdirected itself in relying upon the evidence of PW1/first respondent/claimant and Exs.P1 to P7 and fixing the entire negligence on the driver of the tanker lorry belonging to the second respondent and insured with the appellant insurance company.

(ii)The Tribunal ought to have rejected the claim petition for want of jurisdiction, as the lorry, which was loaded with dangerous and hazardous material viz., Acetone, had not collided with the properties of the first respondent/claimant, whereas it got spilled over the house, which resulted in the house catching fire.

(iii)The Tribunal had committed error in fixing the liability on the appellant insurance company, when the driver of the lorry, on the accident day, was not holding valid permit to carry such dangerous and hazardous material.

(iv)The Tribunal had grossly erred in awarding a sum of Rs.1,00,000/- as compensation to the damage caused to the properties, merely on assumption that the first respondent/claimant would have been possessing article worth Rs.50,000/- in his house and they would have got destroyed in fire, besides awarding Rs.50,000/- towards destruction of the thatched hut.

Contending so, the learned counsel prayed for allowing this appeal by setting aside the judgment and decree passed by the Tribunal.

4.Despite service of notice and the name of the respondents 1 to 3 having been printed in the cause list, there is no representation on their behalf.

5.The learned counsel for the fourth respondent insurer of the material loaded in the tanker lorry submitted that the Tribunal, after considering all the oral and documentary evidence, fixed the negligence on the part of the driver of the tanker lorry and awarded the compensation of Rs.1,00,000/- to the first respondent/claimant and exonerated the fourth respondent/insurer of the chemicals from liability; and hence, the judgment of the Tribunal does not call for any interference by this Court.

6.Heard the parties and perused the records.

7.There is no dispute that the second respondent is the owner of tanker lorry bearing No.TN04 D 1427 which was driven by the third respondent and insured with the appellant insurance company. On the date of accident i.e., on 24.11.1999, there was a valid insurance policy with respect to the vehicle in question.



8. Having regard to the aforesaid pleadings, submissions and admitted position, the points to be determined in this appeal are (i) whether the Tribunal has jurisdiction to entertain the claim petition seeking damages for the properties, on account of the fire accident caused due to the leakage of chemical from the tanker lorry, which happened due to sudden application of brake by its driver; (ii) whether the accident had occurred due to the rash and negligent driving of the driver of the tanker lorry; (iii) whether the Tribunal was right in exonerating the fourth respondent/insurer of the chemicals from liability; and (iv) the compensation of Rs.1,00,000/- awarded by the Tribunal towards damages to the properties is fair, just and reasonable.

Point No.(i):-

9. According to the appellant insurance company, the damage was not caused as a direct result of the motor accident and it was caused due to the leakage of the chemicals from the tanker lorry and hence, the Tribunal has no jurisdiction to entertain the claim petition arising out of such nature of accident.

10. Before delving into this point, it is necessary to have a bird's eye view at the provisions of law in this regard. The expression 'Ubi jus ibi remedium' means where there is a right there is a remedy and this is a fundamental principle of law. The claim for compensation in this type of case is a matter to be adjudicated upon by the Tribunal as provided in Section 165 of the Act. Obviously, the intention of the legislature was to provide for quick disposal of motor accidents claims by the Tribunals. According to the said Section, the Constitution of the Tribunal shall be for the purpose of adjudicating upon claims for compensation in respect of the accidents involving the death of or bodily injury to persons arising out of the use of the motor vehicles or damages to any property of a third party so arising or both.

11. What is 'damage to any property' of a third party arising out of the use of the motor vehicle as contemplated under Section 165? Whether it is a direct damage arising out of the accident or whether it takes in indirect or remote damage within its compass. In this context, it is apt to refer to Section 166 of the Act, which specifies the persons who are entitled to file application for compensation. The said provision reads as follows:

"166. Application for compensation.—

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—



or

(a) by the person who has sustained the injury;

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be."

Therefore, the person of the property is competent to file the application under Section 166 of the Act before the Tribunal, provided direct or proximate damage is caused to any property arising out of the accident.

12. In this context, it is noteworthy to rely on the decision of the Supreme Court in Shivaji Dayanu Patil, (1991) 3 SCC 530 : (AIR 1991 SC 1769). There, compensation was claimed under Section 92-A(1) of the Motor Vehicles Act, 1939 for the death resulting from the accident arising out of 'use of a motor vehicle'. The basic facts involved in that case are thus: A collision between a petrol tanker and a truck took place on a National Highway about 3 a.m., as a result of which, the tanker went off the road and fell on its left side at a distance of about 20 feet from the Highway. Due to overturning of the tanker, the petrol contained in it leaked out and got collected nearby. About 7.15 a.m., an explosion took place in the tanker causing burn injuries to those assembled near it, including the deceased. In the above factual premise, the Supreme Court observed thus:

"In our opinion, the word 'use' has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck."

The facts in the above case are similar to the facts involved in the present case.

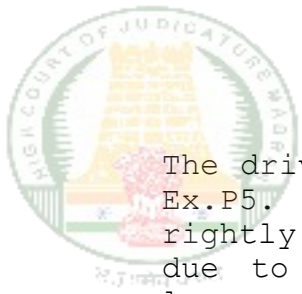
13. Thus, it is manifest that the Tribunal has jurisdiction to decide the compensation to be awarded in relation to damage to the property; Section 165 of the Act says that compensation can be claimed for damages to any property of a third party so arising out of the use of motor vehicle; and the owner has been



14. In the present case, the damage caused to the properties are not as a direct result of the use of the tanker lorry carrying Acetone. The said vehicle capsized on 24.11.1999, as a result of which it had some breaches, which resulted in the escape of Acetone and caused fire accident to the house belonging to the first respondent/claimant and therefore, the properties found therein were completely damaged. The damages claimed herein have proximate connection with the use of tanker lorry, in which case, the jurisdiction of the Tribunal under Section 165 will be attracted for adjudication and the first respondent/claimant/owner of the property is entitled to claim damages for the same. In such view of the matter, this point is decided against the appellant insurance company.

15. According to the learned counsel for the appellant insurance company, the driver of the lorry, at the time of accident, was not having a valid licence to drive the lorry carrying dangerous or hazardous goods and thus, the second respondent/owner has violated the conditions of the policy and the rules framed under the Motor Vehicles Act, 1988. She further submitted that the fire accident had happened due to leakage of chemicals loaded in the tanker lorry and hence, the fourth respondent /insurer of the chemicals is liable to pay compensation to the first respondent/claimant, whereas the Tribunal erred in exonerating them from liability and directing the appellant insurance company to pay compensation for the fault on the part of the driver of the lorry and recover the same from the owner.

17.To prove the accident, the first respondent/claimant was examined as P.W.1; Ex.P1-FIR, Ex.P2-Rough sketch, Ex.P3-Motor Vehicle Inspector's report and Ex.P4-charge sheet were marked.



The driver of the lorry admitted his guilt and paid fine through Ex.P5. The Tribunal, based on those materials and evidence, has rightly come to the conclusion that the accident had happened due to the rash and negligent driving of the driver of the lorry. By holding so, the Tribunal ultimately directed the appellant insurance company to pay the compensation to the first respondent/claimant and thereafter, recover the same from the second respondent/owner of the lorry and exonerated the fourth respondent/insurer of the chemicals from liability. In the absence of any contra evidence to rebut the same, the finding so arrived at by the Tribunal calls for no interference at the hands of this Court. Hence, the point Nos.(ii) and (iii) are accordingly answered against the appellant.

Point No.(iv):-

18.With regard to quantum of compensation, the Tribunal found that there was no classification about the damage caused to the properties and no particulars were made available about cash and jewels kept in the Bureau. It is stated in Ex.P1 FIR that the house said to have been damaged, was a thatched house. Though PW1 asserted in his evidence about the damage viz., Rs.50,000/- for rice and groundnut bags, Rs.50,000/- towards clothes and jewels of about 63 sovereigns, no document was produced to substantiate the same. The Tribunal, after examining the oral and documentary adduced by the first respondent/claimant, has rightly estimated a sum of Rs.50,000/- towards loss of house, Rs.10,000/- towards jewels, Rs.10,000/- towards food items, Rs.25,000/- towards loss of electrical items and gas stove and Rs.5,000/- towards loss of cash and in total, awarded Rs.1,00,000/- as compensation with interest at 7.5%p.a. Further, considering the paucity of time and reduction in value of money, the compensation so awarded, in the considered opinion of this Court, is just, fair and reasonable and it is not intended to be a bonanza or largesses, warranting interference. Therefore, this point is answered accordingly.

19.For the foregoing discussions made above, this Court does not find any reason to interfere with the well merited judgment and decree so passed by the Tribunal and hence, the same is hereby confirmed.

20.Resultantly, this Civil Miscellaneous Appeal is dismissed. The appellant insurance company is directed to deposit the entire compensation amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. It is open to them to recover the same from the owner of the lorry in the manner known to law. On such deposit being made, the Tribunal is directed to transfer the same to the savings bank account of the first respondent/claimant through



RTGS within a period of one week thereafter. No costs.
Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CO)

Sub Assistant Registrar

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To

- 1) The Motor Accidents Claims Tribunal,
Sub Judge, Sankari
- 2) The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.N.B.Surekha, Advocate, S.R.No.55199

+1 cc to Mr.S.Manohar, Advocate, S.R.No.55042

C.M.A.No.2594 of 2006

PM(CO)
SSM(27/08/2019)