

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 08.02.2019]

[PRONOUNCED ON : 15.07.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.550 of 2011

and

M.P.No.1 of 2011

The New India Assurance Co. Ltd.,
Ram Complex, No.29, Paramathi Road,
Namakkal. Appellant/2nd Respondent

.. Vs ..

1. Palanisamy 1st Respondent/Petitioner
2. Palaniappan 2nd Respondent/1st Respondent

3. K.Mani

4. United India Insurance Co. Ltd.,
No.53, North Raja Street,
Tiruvellur - 602 001.
... 3 & 4th Respondents/III & IV Respondents

[The above OP was dismissed as against
respondents 3 and 4 herein, hence,
notice to them is dispensed with]

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles
Act, 1988 against the Judgment and Decree dated 21.10.2010 made
in M.C.O.P.No.88 of 2007 on the file of the Motor Accidents
Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.S.Jayasankar
For R-1 : Mr.Ma.P.Thangavel

JUDGMENT

The Insurance Company is the appellant herein challenging
the Judgment and Decree dated 21.10.2010 passed by the learned
Chief Judicial Magistrate, Motor Accidents Claims Tribunal,
Namakkal, in M.C.O.P.No.88 of 2007.

2. The first respondent herein is the claimant and he has

filed a claim petition in M.C.O.P.No.88 of 2007 before the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Namakkal, claiming a sum of Rs.9,00,000/- as compensation alleging that on 08.04.2006 at about 10.00 p.m., opposite to Kelapalayam Sathya Hotel at Elavanasurkottai in Ulundurpettai to Kallakurichi main road, while the claimant was traveling as a load man in a TATA 407 Van bearing Registration No.TN-28-5905, the driver of the above said TATA 407 Van drove the same in a rash and negligent manner and without noticing the traffic, suddenly dashed the said vehicle behind a Lorry bearing Registration No.TN-31-1706 which was parked on the left side of the road. Due to the above accident, the claimant sustained multiple grievous injuries in both hands, both legs, shoulder, head and some other injuries all over the body. The accident had occurred only due to the rash and negligent driving on the part of the driver of the TATA 407 Van bearing Registration No.TN-28-5905.

3. The appellant herein / insurer of the Van, in which the claim petitioner has travelled as a load man, has filed a counter statement before the Tribunal disputing the rash and negligent driving of the driver of the offending vehicle and also the quantum of compensation. In the additional counter affidavit, the appellant herein / insurance company has denied its liability because the policy taken by the first respondent before the Tribunal / owner of the Van is only a Basic policy and he has not paid any additional premium for the employees and hence, the compensation claimed by the claimant stating that he has travelled as a load man does not arise and he has to claim compensation only from his owner namely, Palaniappan / second respondent herein.

4. Though the owner of the Lorry bearing Registration No.TN-31-1706 and its insurer were arrayed as R.3 and R.4 before the Tribunal, the claim petition was dismissed as against them.

5. Before the Tribunal, the injured examined himself as P.W.1, Dr.Mani, who has given treatment to the claimant, was examined as P.W.2 and one Ramasamy, who is the Manager of the lorry service in which the claimant was working, was examined as P.W.3 and documents Exs.P.1 to P.14 were marked on the side of the claimant. On behalf of the insurance company, one witness was examined as R.W.1 and policy copy was marked as Ex.R.1.

6. The Tribunal, after considering both oral and documentary evidence adduced on both sides, has held that the driver of the TATA 407 Van bearing Registration No.TN-28-5905 in which the claimant has travelled as a load man is at fault and due to the rash and negligent driving of the driver of the second respondent herein, the accident has occurred and awarded a sum

of Rs.10,39,427/- as compensation. As against the said award passed by the Tribunal, the Insurance Company had preferred this appeal before this Court.

7. Learned counsel appearing for the appellant/insurance company would contend that the Tribunal has committed an error in awarding compensation under the provisions of the Motor Vehicles Act, in the absence of payment of premium for covering the risk of the load man. It is further contended that the Tribunal has committed an error in treating the injured as an occupant in the goods vehicle as a third party and hence, the award of compensation is bad in law.

8. This Court heard the submissions made by the learned counsel appearing for the first respondent/claimant and perused the records.

9. On a perusal of the document Ex.R.1-policy copy, it is seen that it is only an 'Act policy' and the schedule of premium under the said policy is as follows:-

B : T.P. - BASIC	:	3,280.00
Gross (B)	:	3,280
Gross OD & TP	:	3,280
Loading on TP Premium	:	984.00
Gross (A) : Net Premium	:	4,264
Service Tax 10.2%	:	435
Minimum Premium : Rs.100		
Net Amount Payable (Rounded)	:	4,699

10. Accordingly, this Court holds that Ex.R.1-policy, under which the second respondent's TATA 407 Van bearing Registration No.TN-28-5905 was insured, is only an 'Act policy' covering third party only and no additional premium has been paid for any occupant as a load man. On a perusal of the evidence of P.W.1 and P.W.3, it is clear that the injured has travelled in the TATA 407 Van bearing Registration No.TN-28-5905 as a load man and in the absence of any premium that has been paid covering the insurance to the load man, the order of the Tribunal in fastening the liability on the part of the appellant / insurance company is not sustainable in law and accordingly, the liability fixed upon the insurance company under the Motor Vehicles Act is hereby vacated.

11. From the medical evidence of the Doctor-P.W.2, it is seen that after the injury, the claimant was taking treatment for 206 days as an inpatient at Arvinth Hospital, Namakkal, since his entire left leg bone was crushed and the blush was removed, L.R. Orthofix method was adopted to fix the steel rod and screw and skin Grafting has been done on the left leg and thereafter, he has taken treatment for 13 days. Taking into

consideration the evidence of P.W.2 and also taking note of the fact that the claimant has taken treatment in Apollo Hospital, Chennai, for about 8 months and underwent six surgeries, I am of the considered view that due to the impact of the accident, the claimant's functional disability has been reduced and consequently, the loss of earning capacity is fixed at 70%. In view of the crush injury of the left leg and also for the re-construction of the left leg and considering the probability of performance as before the accident, the loss of earning capacity is fixed at 70%.

12. In view of the specific evidence of P.W.3, which remains unchallenged in the cross examination, this Court holds that P.W.1-the injured/claimant has travelled as a load man in the Tata 407 Van on the date of the accident and hence, there exists a employer-employee relationship between the owner with that of the owner of the vehicle and hence, taking into consideration the benevolent legislation of the Motor Vehicles Act and also the object of the Workmen Compensation Act, this Court is of the considered view that the appellant/insurance company is liable only to the limited extent of compensation that can be awarded under the Workmen Compensation Act.

13. On a perusal of the records, it is seen that the injured/claimant was aged about 28 years at the time of the accident and hence, the multiplier factor, as per the schedule to the Workmen Compensation Act, being 211.79 and since the claimant is coming under injured category, taking note of the evidence of P.W.3-Manager of the Lorry service and also Ex.P.13-Salary Certificate, the income of the injured/claimant is fixed at Rs.4,500/- per month and hence, the compensation under the Workmen Compensation Act is arrived at as follows:-

$$\text{Rs.4,500} \times 60/100 \times 70/100 \times 211.79 = \text{Rs.4,00,283/-}$$

14. Accordingly, the amount of Rs.4,75,200/- awarded by the Tribunal under the head of loss of income is modified to Rs.4,00,283/-. Further, the Tribunal has awarded a sum of Rs.40,000/- towards pain and sufferings, a sum of Rs.20,000/- towards extra nourishment, a sum of Rs.20,000/- towards transportation charges, a sum of Rs.4,64,427/- towards medical expenses and a sum of Rs.20,000/- towards loss of amenities and the same are confirmed.

15. In view of the above discussion, the liability of the appellant / insurance company is hereby modified to that of Rs.4,00,283/-. Out of the award amount of Rs.10,39,627/-, the balance amount of Rs.5,64,427/- being medical expenses and the amount awarded under the other heads are concerned, it is open to the first respondent herein / claimant to recover the same

from the owner of the vehicle namely, Palaniappan, the second respondent herein.

16. In the result,

I. This Civil Miscellaneous Appeal is partly allowed and the liability of the appellant / insurance company is hereby modified to that of Rs.4,00,283/-.

II. As per the order of this Court dated 20.06.2011, since the entire award amount has been deposited by the appellant / insurance company and the claimant was also permitted to withdraw a sum of Rs.2,80,000/-, the first respondent herein / claimant is permitted to withdraw the modified amount fixed on the appellant / insurance company, less the amount already withdrawn.

III. The first respondent herein / claimant is permitted to recover the balance amount of Rs.5,64,427/- from the owner of the vehicle namely, Palaniappan, the second respondent herein.

IV. The interest granted by the Tribunal at 7.5% stands confirmed.

V. No order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Namakkal.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 59895

C.M.A.No.550 of 2011

CA(CO)

GN(14/12/2020)