

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1686 of 2013  
and M.P. No.1 of 2013

The Divisional Manager,  
The New India Assurance Co. Ltd.,  
No.42, Big Street, Tiruvannamalai. ... Appellant/Respondent

Vs.

Chandrasekaran ... Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2011, made in M.C.O.P. No.100 of 2010, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai.

For Appellant : Mr. M. Krishnamoorthy  
For Respondent : Mr. K. Suryanarayanan  
for Mr. S. Sounthar

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 29.10.2011, made in M.C.O.P. No.100 of 2010, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai.

2. The appellant is the respondent in M.C.O.P. No.100 of 2010, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai. The respondent/claimant filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.04.2007.

3. According to the respondent, he is the owner cum driver of the Lorry bearing Registration No. TN-28-6327 insured with the appellant. On the date of accident, he traveled in the said Lorry, driven by one Meganathan, as Agent of owner of paddy belonging to one G. Sampath Rice Mandy. The accident occurred due to rash and negligent driving by the driver of the Lorry. In

the accident he suffered multiple injuries and fracture. For the injuries suffered by him, the respondent claimed compensation against the appellant as insurer of the said Lorry.

4.The appellant-Insurance Company filed counter statement and additional counter statement and denied that the respondent traveled as Agent of owner of goods or as additional driver. On the other hand, the respondent traveled only as an unauthorized passenger. The respondent as owner of the Lorry being insured, cannot claim compensation against his own insurer.

5.Before the Tribunal, the respondent examined himself as P.W.1, examined one Doctor as P.W.2 and one Clerk of G. Sampath Rice Mandy as P.W.3 and marked 17 documents as Exs.P1 to P17. The appellant examined one Saravanan as R.W.1 and marked one document as Ex.R1.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry and the respondent traveled only as Agent of owner of the paddy belonging to G. Sampath and directed the appellant as insurer of the Lorry to pay a sum of Rs.12,00,650/- as compensation to the respondent.

7.Against the said award dated 29.10.2011, made in M.C.O.P. No.100 of 2010, the appellant - Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant-Insurance Company contended that the respondent is owner of the Lorry bearing Registration No. TN-28-6327. The contract of insurance is only to indemnify the insured against the third party claim. The respondent is not entitled to claim compensation, except under personal accident coverage as owner cum driver, only up to the amount specified in the policy. As per Section 147 of the Motor Vehicles Act, the risk of third parties is only covered and the respondent owner of the Lorry insured with the appellant is not entitled to claim any compensation. The manner of alleged accident is suspicious in nature, as the respondent alone suffered grievous injury and the driver of the Lorry did not suffer any injury. The Tribunal ought to have rejected the evidence of P.W.3. In any event, the amount of Rs.12,00,650/- awarded by the Tribunal as compensation while the claim itself is Rs.10,00,000/- is excessive. The learned counsel appearing for the appellant further submitted that the liability of insurer is only to indemnify the third party and the respondent/insured cannot claim compensation against his own insurer and prayed for dismissal of the claim petition and allowing the appeal.

9. Per contra, the learned counsel appearing for the respondent submitted that on the date of accident, the respondent traveled as Agent of paddy belonging to one G. Sampath. The said G. Sampath requested the respondent to accompany the paddy as his Agent. The respondent examined the Clerk working in the Sampath Rice Mandy of the said G. Sampath and proved that the respondent traveled only as Agent of owner of the goods belonging to G. Sampath. The appellant failed to prove that the respondent traveled as unauthorized passenger. The respondent traveled only as owner of the paddy. The judgment of the Andhra Pradesh High Court reported in 1998 ACJ 952 (New India Assurance Co. Ltd., Vs. Doredla Satyanarayana and others), relied on by the Tribunal is squarely applicable to the facts of the present case and prayed for dismissal of the appeal.

10. Heard learned counsel appearing for the appellant-Insurance Company as well as the respondent and perused the materials available on record.

11. The issue to be decided in the appeal is whether the respondent traveled in the Lorry at the time of accident as owner of the Lorry or Agent of owner of the goods transported in the Lorry.

12. According to the respondent, he is owner of the Lorry, he traveled at the time of accident as Agent of owner of paddy belonging to one G. Sampath. The accident occurred due to rash and negligent driving by the driver of the Lorry viz., Meganathan. To prove the said submission, the respondent examined himself as P.W.1 and examined P.W.3 - Clerk of G. Sampath Rice Mandy, whose paddy were transported in the Lorry belonging to the respondent. The evidence of respondent as P.W.1 and P.W.3 clearly prove that the respondent traveled only as Agent of goods belonging to the G. Sampath Rice Mandy. The appellant did not let in any evidence to show that there were paddy boxes at the time of accident and paddy boxes belonging to G. Sampath Rice Mandy were not transported in the Lorry at the time of accident. The appellant has not elucidated anything favourable to the appellant by cross-examining the respondent as P.W.1 or by cross-examining P.W.3. The appellant failed to prove that P.W.3 is not a Clerk in G. Sampath Rice Mandy. In the Motor Vehicle Act, there is no prohibition for the owner of the Lorry to travel in the Lorry as Agent of goods transported in the said Lorry. As per Section 147 of the Motor Vehicles Act, the Insurance Company is liable to pay compensation for the persons who travel along with the goods or Agent of the goods transported in the Lorry. In the present case, the respondent has proved that he traveled only as Agent of owner of the goods. The appellant has not produced any evidence to disprove the contention of the respondent. In the judgment reported in 1998

ACJ 952 (cited supra) relied on by the Tribunal, it has been held that owner of the Lorry can travel as Agent of the owner of the goods transported in the said Lorry and in such circumstances he can claim compensation against his own Insurance Company. The ratio in the said judgment is squarely applicable to the facts of the present case. In the present case, the respondent has proved that he traveled as Agent of owner of the goods belonging to the G. Sampath Rice Mandy. As per Section 147 of the Motor Vehicles Act, the Insurance Company is liable to pay compensation to the owner of the goods or authorized representative of the owner of the goods, traveling along with the goods at the time of accident. The Tribunal considering all the above materials, has rightly held that the respondent has traveled as Agent of owner of the paddy belonging to G. Sampath Rice Mandy and appellant is liable to pay compensation.

13.As far as the quantum of compensation is concerned, the Tribunal considering the nature of injuries, amputation, treatment taken and disability suffered by the respondent, awarded compensation under different heads which are not excessive warranting interference by this Court. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Hence, the contention of the appellant that the Tribunal ought not to have awarded more compensation than the amount claimed by the respondent is erroneous.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.12,00,650/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.100 of 2010. On such deposit, the respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional Subordinate Judge,  
(Motor Accident Claims Tribunal),  
Tiruvannamalai.

Copy To:The Section Officer,  
V.R Section,  
High Court, Madras.

+1 cc to M/s.M.Krishnamoorthy, Advocate Sr.No. 34539

C.M.A. No.1686 of 2013

VBA (CO)  
RMP (10/05/2021)



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