



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3344 of 2011

WEB COPY B.Dharmalingam

...Appellant/Claimant

vs.

1.M.Mohanasundaram

2.V.Parthasarathi

3.Iffco-Tokio General Insurance Co. Ltd.,

Tulsi Chambers 3rd Floor,

195, T.V.Swamy Road (West),

P.S.Puram,

Coimbatore - 2

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, appeal to fix the liability to pay the compensation on the 3rd respondent also in the judgment and decree dated 04.01.2011 made in MCOP No.176 of 2010 on the file of the Second Additional Sub Court, Erode (MCOP No.499 of 2007 District Court, Erode).

For Appellant : Mr.Suganthan
for M/s.N.Manokaran

For Respondents : R1 - No such person

Mr.E.Rajadurai
for M/s.N.Vijaya Raghavan
for R3

R2 : No Appearance

JUDGMENT

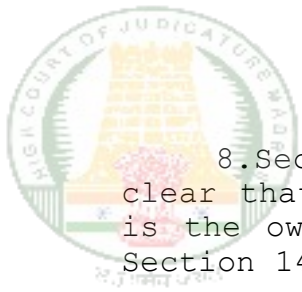
(This case was heard through Video Conferencing)

This appeal has been filed by the claimant challenging the impugned judgment and decree dated 04.01.2011 passed by the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Erode in MACT.OP.No.176 of 2010.

2.Heard Mr.Suganthan, learned counsel for the Appellant and Mr.E.Rajadurai, learned counsel for the third respondent.

3.The Appellant/claimant aggrieved by the findings of the Tribunal under the impugned award exonerating the liability of the third respondent Insurance Company has preferred this appeal.

4.The Tribunal under the impugned award has held that the respondents 1 and 2 alone are liable to compensate the Appellant/claimant and has exonerated the third respondent insurance company from any liability.



8. Section 147 (1)(b)(i) of the Motor Vehicles Act makes it clear that the insured is liable to compensate the claimant if he is the owner of the goods or he is an authorized representative. Section 147(1)(b)(i) of the Motor Vehicles Act reads as follows:

"147. Requirements of policies and limits of liability:

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a)...

(b) insurers the person or classes of persons specified in the policy to the extent specified in sub-section (2) - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."

9. In the case on hand, it has been the consistent stand of the Appellant/claimant that he is the owner of the goods which was proposed to be picked up by a mini door auto (insured vehicle) from Sengunthapuram. The Appellant/claimant has unambiguously also deposed before the Tribunal that the goods vehicle was empty at the time of the accident, since it was proceeding to Sengunthapuram to pick up the goods from there.

10. The FIR which was marked as Ex.A1 also supports the contention of the Appellant/claimant and there is no contradiction whatsoever. It is obvious that either in the onward or return journey, a hired goods vehicle will always be empty. A categorical stand has been taken by the Appellant/claimant that the goods vehicle was proceeding to Sengunthapuram to pick up the goods from a factory there. No contra evidence has been produced by the third respondent insurance company to disprove the said contention of the Appellant/claimant. However, the Tribunal erroneously by total non application of mind and without any evidence to the contrary has exonerated the third respondent insurance company from any liability on the ground that at the time of the accident, there were no goods in the vehicle and therefore, the Appellant/claimant was treated as a gratuitous passenger. This finding in the considered view of this Court is an erroneous finding for the aforementioned reasons.

11. The learned counsel for the third respondent Insurance Company drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of Shivawwa and another vs. The Branch Manager, National India Insurance Co. Ltd. and another reported in (2018) 5 SCC 762 and an unreported decision of a learned Single Judge of this Court dated 21.07.2020 passed in CMA No.531 of 2011 in the case of New India Assurance Co. Ltd., Vs. Mohamudha Fajila and Others. Relying upon the aforesaid

learned counsel for the third respondent would submit that in an identical matter involving a goods vehicle which



did not carry goods at the time of the accident, the Insurance Company was exonerated from any liability.

12. This Court has perused and examined the aforesaid decisions relied upon by the learned counsel for the third respondent. The judgment rendered by the Hon'ble Supreme Court referred to supra in Shivawwa's case, in fact supports the case of the Appellant/claimant rather than the third respondent insurance company. Even in that case, the accident had happened while the goods vehicle was not carrying the goods as it was returning back after unloading the goods. The Hon'ble Supreme Court in Shivawwa's case has in fact reversed the finding of the High Court exonerating the Insurance Company from any liability and held the insurance company liable.

13. In the case on hand also, a consistent stand has been taken by the Appellant/claimant that the insured vehicle was proceeding to sengunthapuram to pick up the goods from there. In the case on hand, the hired goods vehicle was empty because it was proceeding to pick up the goods from another place. In Shivawwa's case rendered by the Hon'ble Supreme Court, the insured goods vehicle was empty because it was returning back after unloading the goods. Therefore, the decision of the Hon'ble Supreme Court in Shivawwa's case squarely applies to the facts of the instant case. Therefore, Sivawwa's case does not assist the submission made by the third respondent insurance company before this Court.

14. Insofar as the second decision relied upon by the learned counsel for the third respondent namely an unreported decision of a learned Single Judge of this Court dated 21.07.2020 passed in C.M.A.No.571 of 2011 referred to supra, the same will also not come to the aid the third respondent for the following reasons. In that case, the learned Single Judge has categorically observed in paragraph No.14 of the said judgment that the deceased had neither contracted the vehicle nor travelled in the vehicle as owner of the goods. However, in the case on hand, it has been the consistent stand of the Appellant/claimant that he had hired the goods vehicle (insured vehicle) and was travelling in the same and the said vehicle was proceeding to Sengunthapuram for the purpose of picking up the goods from there. Therefore, the facts of the case in CMA.No.571 of 2011 are different from the facts of the instant case. Therefore, the said decision will also not apply to the facts of the instant appeal as it is distinguishable on facts.

15. For the foregoing reasons, Section 147(1)(b)(i) of the Motor Vehicles Act gets attracted and the third respondent insurance company is liable to compensate the appellant/claimant, since the Appellant/claimant is not a gratuitous passenger.

16. Insofar as the quantum of compensation awarded by the Tribunal is concerned, the Appellant sustained hip fracture and has sustained amputation of three toes in his left leg. The nature of injuries sustained by the Appellant/claimant has not been disputed by the third respondent before the Tribunal as seen from the evidence available on record.



17.The Appellant was a power loom owner. No contra evidence has also been produced by the respondents before the Tribunal to disprove the avocation of the Appellant/claimant. The Appellant/claimant was 42 years at the time of the accident and in his claim petition he has pleaded that he was earning Rs.10,000/- per month. Before the Tribunal, he had made a claim of Rs.6,00,000/- which was restricted to Rs.4,00,000/-. However, the Tribunal has awarded only a sum of Rs.3,60,200/- as compensation as detailed in the fifth paragraph of this judgment.

18.Considering the nature of injuries sustained by the Appellant/claimant, his age, his avocation and the year of the accident, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation.

19.The Tribunal has exonerated the liability of the third respondent Insurance Company also on the ground that the driver of the insured vehicle did not possess the badge endorsement in his driving license. Admittedly, the unladen weight of the insured vehicle is less than 7500 Kgs. It is also an admitted fact that the driver of the insured vehicle was having a valid LMV driving licence which was marked as Ex.B1 before the Tribunal. As regards non possession of badge endorsement in the driving licence, the law is now well settled as held by the Hon'ble Supreme Court in Mukund Dewangan's case reported in (2016) 4 SCC 298 that it is sufficient that the driver of the insured vehicle possess a valid LMV driving license even for a transport vehicle when the unladen weight of the transport vehicle is less than 7500 kgs. Since this issue has now been well settled, the defence raised by the third respondent Insurance Company with regard to the non possession of badge endorsement in the driving licence also goes.

20.The Appellant/claimant has also not asked for any enhancement of compensation in this appeal. His only grievance is that the Tribunal has erroneously exonerated the liability of the third respondent. For the foregoing reasons, as rightly contended by the Appellant who was not a gratuitous passenger at the time of the accident, the Tribunal has erroneously exonerated the third respondent insurance company from any liability.

21.Accordingly, the findings of the Tribunal under the impugned award exonerating the liability of the third respondent is hereby set aside by this Court and the third respondent is held to be liable by this Court. Insofar as the finding given by the Tribunal, that the respondents 1 and 2 are liable to compensate the appellant/claimant is concerned, the same is confirmed by this Court.

22.In the result, the Appeal is allowed by directing the respondents 1 to 3 are jointly and severally directed to deposit the amount awarded by the Tribunal after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Erode,



within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the bank account of claimant/appellant, through RTGS, within a period of two weeks thereafter. No costs.

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Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

pam

To

1.The Motor Accident Claims Tribunal,
II Additional Subordinate Judge, Erode.

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

+1 cc to Mr.N.Manokaran Advocate sr27211/2020

C.M.A.No.3344 of 2011

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