

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2275 of 2013

Dhanakotti

... Appellant/Claimant

Vs.

1. Manickam

2. The New India Assurance Co., Ltd.,  
Branch Office,  
Thiru-vi-ka-road,  
Villupuram

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Motor Accident Claims Tribunal (Learned II Additional Subordinate Judge) Villupuram made in M.C.O.P.No.553 of 2006 dated 06.07.2010.

For Appellant : Mr.N.Suresh

For Respondents: M/s. M.Sudha for  
Mr.C.Munusamy for R1  
Mr.J.Chandran for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 06.07.2010 made in M.C.O.P.No.553 of 2006 on the file of Motor Accident Claims Tribunal (Learned II Additional Subordinate Judge), Villupuram.

2. According to the appellant / claimant, she was working as Load Woman in the tractor bearing Regn. No.TN32U5457 attached with unnamed Tractor and earning Rs.150/- per day. On 26.06.2006, the appellant was travelling in the said tractor as Load Woman from Eranchi to Valavanthakuppam, at about 5.00 p.m., between Sorriyadur Village and Sembimadevi village, the said tractor capsized and in that accident, the appellant sustained severe and grievous injuries. She was immediately taken to Jipmer hospital, Pondicherry and she got treatment for nearly ten days, thereafter, she took treatment in a private hospital, Kallakurichi. She sustained injuries on her left foot, right

thigh and fracture of Tibia (left leg). Further, she was not able to perform her job for atleast one year and she finds difficult to do her normal duties. Moreover, the accident had happened only due to the rash and negligent driving of the driver. Therefore, claiming compensation of Rs.5,61,000/- against the 1<sup>st</sup> and 2<sup>nd</sup> respondents, who are the owner and insurer of the said tractor respectively, the appellant has approached the Tribunal.

3. Per contra, the 2<sup>nd</sup> respondent / Insurance Company has filed a detailed counter affidavit denying all the averments and pleadings of the appellant, viz., age, income and avocation. Further, in the counter affidavit, the 2<sup>nd</sup> respondent has stated that the appellant has not produced any documentary evidences, viz., copy of accident register, wound certificate, disability certificate and medical bills and that the injuries are simple in nature. Also, there is no disablement suffered by the appellant and she has got free treatment in Government hospital as out-patient. Therefore, seeks to dismiss the claim petition.

4. After considering the pleadings, counter averments, submission on either sides, witnesses and marked exhibits, the Tribunal has awarded a sum of Rs.58,300/- with interest at the rate of 7.5% per annum and the said amount was directed to be deposited by the 1<sup>st</sup> respondent alone.

5. Not being satisfied with the said award passed by the Tribunal, the appellant / claimant has preferred this present Civil Miscellaneous Appeal.

6. The learned counsel for the appellant submits that the vehicle was insured and the same was subsisting at the time of accident, therefore, the 2<sup>nd</sup> respondent ought to have been made liable to pay the compensation. That apart, the amount awarded by the Tribunal is very low and the appellant had suffered grievous injury and sustained permanent disability. Moreover, the Tribunal, in any event, ought to have directed the Insurance company to pay the compensation and subsequently, directed to recover from the insured / owner. Therefore, he seeks to set aside the award passed by the Tribunal and to enhance the compensation.

7. The learned counsel for the appellant in support of his contention relies on the following decisions held by the Hon'ble Apex Court:

(i) Manuara Khatun and Others V. Rajesh Kumar Singh and Others reported in (2017) 4 Supreme Court Cases 796

(ii) Oriental Insurance Co., Ltd., Vs. Brij Mohan & Others

(iii) Hon'ble Full Bench Judgment of the High Court of Jharkhand reported in 2005(2) TN MAC 65 (FB) [Giriraj Prasad Agrawal V. Parwati Devi & Others]

8. In contrary, the learned counsel for the 1<sup>st</sup> respondent / owner of the vehicle submitted that though the 2<sup>nd</sup> respondent is the insurer of the vehicle and that the insurance policy is in existence, the Tribunal erred in not directing the Insurance company to pay the compensation, which needs interference in the hands of this Court.

9. In reply to the contention, the learned counsel for the 2<sup>nd</sup> respondent / Insurance Company submitted that only the tractor is insured and not the trailer. The trailer is an unregistered one and is not used for agriculture purpose at the time of accident. Further, if the accident had occurred while the tractor was used for agriculture purpose, the insurance company is held liable to pay the compensation, therefore, order passed by the Tribunal is correct and reasonable and the Tribunal has rightly exonerated them from paying any compensation, he pleaded.

10. Heard the learned counsel for the appellant, 1<sup>st</sup> and 2<sup>nd</sup> respondents and perused the documents placed on record.

11. A perusal of the order passed by the Tribunal shows that as per Ex.P.1, FIR and the oral evidence of P.W.1, appellant, the Tribunal has rightly assessed that the tractor of the driver is responsible for the accident and to disprove the same, neither the tractor driver nor the owner of the tractor (1<sup>st</sup> respondent) appeared before the Tribunal to give evidence. Hence the Tribunal had stated that the claimant is entitled for compensation and the 1<sup>st</sup> respondent, owner of the tractor is liable to compensate the appellant, which cannot be found fault with.

12. Admittedly, at the time of accident, the tractor alone stood insured with the 2<sup>nd</sup> respondent and the trailer was not insured with either the 2<sup>nd</sup> respondent or any other insurance company. From the original policy, Ex.P.6, it is seen that there was no insurance of the risk of any passengers carried in the vehicle. According to the claimant, she travelled in the tractor as a load woman, carrying load, but she failed to describe what kind of load. During cross examination also, she was not able to answer what kind of load was in the tractor at the time of accident. Section 147 of the Act does not make it mandatory to have a policy covering the risk involved to any person carried in the tractor, unless it is covered by a contractual clause in the contract of insurance, by holding so,

the Tribunal has rightly exonerated the Insurance Company, which also cannot be found fault with.

13. At this juncture, it is pertinent to point out the decision of Hon'ble Division Bench of this Court in C.M.A.Nos.1529 to 1533 of 2015 dated 24.10.2018 [Bharathi Axa General Insurance Company Limited V. Anandi and Others], wherein it is held as follows:

'50. In fact, we find that in none of the Judgments referred to viz., National Insurance Co. Ltd., V. Swarn Singh & Ors. Reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co., Ltd., reported in (2018) 5 SCC 656, Rani & Ors. V. National Insurance Co., Ltd., & Ors. Reported in 2018 (9) Scale 310 and Manuara Khatun and Others V. Rajesh Kumar Singh and Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the Judgment of the two Judge bench in Shivaraj V. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorised passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt, it is true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.'

14. Considering the facts and circumstances of the present case in hand and this Court being bound by the Judgment of the Hon'ble Division Bench of this Court cited supra in C.M.A.Nos.1529 to 1533 of 2015 dated 24.10.2018 [Bharathi Axa General Insurance Company Limited V. Anandi and Others], which squarely applies to the case on hand and coupled with the fact that Insurance policy does not cover the trailer, is of the view that the order passed by the Tribunal is perfectly valid in the eye of law and the same does not need any interference.

Accordingly, the present Civil Miscellaneous Appeal is dismissed and the order passed by the Tribunal in M.C.O.P.No.553 of 2006 dated 06.07.2010 is confirmed. No costs.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd  
To

1. The Motor Accident Claims Tribunal  
(II Additional Subordinate Judge)  
Villupuram.
2. The Section Officer, VR Section, High Court, Madras.

C.M.A.No.2275 of 2013

VBA (CO)  
SP(18/09/2020)



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