IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:	Delivered on:
05.07.2021	06.08.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.Nos.1255 of 2012 & 1470 of 2013
and
M.P.No.1 of 2013

C.M.A.No.1255 of 2012:

Dhanasekar @ Dhanasekaran .. Appellant

Vs.

1.R.Kannan

(R1 was set exparte in the Tribunal)

2.United India Insurance Company Limited,
No.171/E.R.K.S. Complex,
Nehruji Road,
Villupuram. .. Respondents

C.M.A.No.1470 of 2013:

United India Insurance Company Limited,
No.171/E.R.K.S. Complex,
Nehruji Road,
Villupuram. .. Appellant

Vs.

1.Dhanasekar @ Dhanasekaran

2.R.Kannan .. Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.09.2011 made in M.C.O.P.No.843 of 2005 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Villupuram.

In C.M.A.No.1255 of 2012:

For Appellant	:	Ms.A.Subadra for Ms.M.Malar
For R2	:	Mr.D.Bhaskaran

In C.M.A.No.1470 of 2013:

For Appellant	:	Mr.D.Bhaskaran
For R1	:	Ms.A.Subadra for Ms.M.Malar
For R2	:	No appearance

COMMON JUDGMENT

(The matter is heard through "Video Conferencing/Hybrid mode".)

These Civil Miscellaneous Appeals have been filed against the award of the Tribunal dated 20.09.2011 made in M.C.O.P.No.843 of 2005 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Villupuram.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed the above said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.10.2005 against the respondents, being the owner and insurer of the tractor respectively.

4.According to the claimant, on 17.10.2005 at about 09.00 P.M., while he was travelling as Loadman in the tractor bearing Registration No.TN 32 U 4449 near Vadamambakkam Village, Ulundurpet Taluk, the driver of the tractor drove the same in a rash and negligent manner and due to the same, the claimant was thrown away from the tractor, fell on the road and the tyres of the tractor ran over his right leg and caused the accident. In the accident, the claimant sustained fracture and injuries in his hip and also grievous injuries all over the body. Immediately after the accident, the claimant was taken to Jipmer Hospital, Pondy and then he was referred to Government

General Hospital, Chennai for further treatment. Therefore, he filed the above said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the tractor respectively.

5.The 1st respondent-owner of the tractor remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimant. The 2nd respondent denied the manner of accident as alleged by the claimant. According to the 2nd respondent, they have not received any claim form and vehicular particulars from the 1st respondent in respect of 1st respondent's vehicle bearing Registration No.TN 32 U 4449 which was involved in the accident. The claimant has to prove that there is no violation of policy and permit conditions at the time of accident and also the driver of the tractor belonging to 1st respondent was possessing valid driving license at the time of accident. The claimant was travelling in the tractor belonging to 1st respondent only as un unauthorized passenger at the time of accident and hence, he is not entitled to claim any compensation at all, as the policy does not cover a passenger travelling in the goods vehicle. As per the policy, only the driver is authorised to travel and hence, there is clear violation of policy and permit conditions by the 1st respondent. The 2nd respondent denied the fact that at the time of accident, the claimant was travelling as loadman in the 1st respondent's tractor. Hence, the 2nd respondent is not liable to pay any compensation to the claimant. The 2nd respondent denied the age, avocation, income, nature of injuries, medical expenses, transportation and disability suffered by the claimant. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition as against the 2nd respondent.

7.Before the Tribunal, the claimant examined himself as P.W.1, Dr.Raveendar was examined as P.W.2 and 14 documents were marked as Exs.P1 to P14. The 2nd respondent-Insurance Company examined one Rajendiran as R.W.1 and marked the Insurance Policy as Ex.R1.

8.The Tribunal considering the pleadings, oral and documentary evidene, held that the accident has occurred only due to rash and negligent driving by the driver of the tractor belonging to 1st respondent and directed the respondents jointly and severally to pay a sum of Rs.1,09,822/- as compensation to the claimant.

9.To set aside the said award dated 20.09.2011 made in M.C.O.P.No.843 of 2005, the 2nd respondent has come out with an appeal in C.M.A.No.1470 of 2013 and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.1255 of 2012.

10.The learned counsel appearing for the 2nd respondent contended that the Tribunal failed to consider the evidence of R.W.1 and Ex.R1/Insurance Policy that the policy does not cover the liability to the claimant and the Insurance Company has no liability to pay the compensation. The liability can be determined only if the premium is collected. The Tribunal ought to have held that the unauthorized passenger can claim compensation only from the owner of the vehicle. As per Ex.P10/R.C.Book, the seating capacity of the vehicle is one and the same is meant only for the driver and hence even for the owner or representative of the owner of the goods, the Insurance Company is not liable to pay the compensation. The Tribunal ought to have considered the judgment of the Hon'ble Apex Court reported in ***2008 ACJ***

1741, [United India Insurance Co.Ltd vs Suresh K.K.& Anr], the judgment of this Court dated **15.02.2011** made in **C.M.A.No.2919 of 2007** in the case of **[National Insurance Company Limited, Gopichettypalayam Vs. Gurusamy and others]** and held that the owner alone is liable to pay the compensation to the claimant and prayed for setting aside the award passed by the Tribunal and also for dismissal of C.M.A.No.1255 of 2012 filed by the claimant.

11.Per contra, the learned counsel appearing for the claimant contended that in the accident, the claimant sustained fracture and injuries in his hip and also grievous injuries all over the body. P.W.2/Doctor examined the claimant and certified that the claimant suffered 60% disability and issued Ex.P13/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability from 60% to 40% and awarded compensation only for 40% disability. A sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is meagre. At the time of accident, the claimant was aged 20 years, was a Loadman and was earning a sum of Rs.7,500/- per month. But, the Tribunal has fixed a meagre sum of Rs.4,500/- per month as notional income of the claimant and awarded a meagre sum of Rs.11,250/- as compensation towards loss of income for 2 ½ months. The claimant has taken treatment as inpatient at Jipmer Hospital, Pondicherry and at Government General Hospital, Chennai from 18.10.2005 to 12.01.2006 for a period of 87 days and the compensation awarded by the Tribunal for loss of income for 2 ½ months is meagre. The amounts awarded by the Tribunal for pain and sufferings, transportation, extra nourishment and attendant charges are meagre and prayed for enhancement of compensation and also for dismissal of C.M.A.No.1470 of 2013 filed by the 2nd respondent-Insurance Company.

12.Though notice has been served on the 2nd respondent in C.M.A.No.1470 of 2013 (1st respondent in claim petition) and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

13.Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

14.From the claim petition filed by the claimant, it is seen that it is the case of the claimant that on 17.10.2005 at about 09.00 P.M., while he was travelling as Loadman in the tractor bearing Registration No.TN 32 U 4449 near Vadamambakkam Village, Ulundurpet Taluk, the driver of the tractor drove the same in a rash and negligent manner and due to the same, the claimant was thrown away from the tractor and fell on the road and the tyres of the tractor ran over his right leg and thus, the accident occurred. The main contention of the learned counsel appearing for the 2nd respondent-Insurance Company is that the claimant traveled in the tractor belonging to 1st respondent as an unauthorized passenger and hence, the 2nd respondent-Insurance Company is not liable to pay any compensation to the claimant. A perusal of Ex.P10/R.C.Book shows that the seating capacity of the tractor is 'one' which is meant only for the driver of the tractor. Further, Ex.R1/Insurance Policy also shows that the tractor can be used only for agricultural purpose. The learned counsel appearing for the 2nd respondent also contended that as per Ex.R1/Insurance Policy, the Insurance Company is not liable to pay any compensation to the claimant, who is an unauthorized passenger at the time of accident. The Hon'ble Apex Court has considered the said issue in the judgment reported in ***(2003(2) SCC 223), [New India Assurance Company Limited Vs. Asha Rani and others]***, held as follows:

> *“"25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of*

or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'. "

14(i)The Hon'ble Apex Court has again considered the said issue in the judgment reported in ***(2004 (8) SCC 697), [National Insurance Co. Ltd., v. Chinnamma & Others],*** further held as follows:

"Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods" whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle". A tractor fitted with a

trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment. For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. This appeal *is allowed. In the facts and circumstances of this case, there shall be no order as to costs."*

14(ii)Further, a Division Bench of this Court also considered the similar issue in the judgment reported in ***2018 (2) TNMAC 731 DB, [Bharati AXA General Insurance Co. Ltd., v. Aandi and others]***, wherein the Division Bench of this Court held as follows:

> *"50. In fact, we find that in none of the judgments referred to viz.,* ***National Insurance Co. Ltd. Vs.Swaran Singh & Ors.*** *reported in* ***(2004) 3 SCC 297,Mangla Ram Vs. Oriental Insurance Co. Ltd.*** *reported in* ***(2018) 5 SCC 656, Rani & Ors. Vs.National Insurance Co. Ltd. & Ors.*** *reported in* ***2018 (9) Scale 310*** *and* ***Manuara Khatun andOthers Vs. Rajesh Kumar Singh And Others*** *reported in* ***(2017) 4 SCC 796,*** *the question regardingt he 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 Vs. 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*

*unauthorized 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 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.

52. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs.

Consequently,the connected Miscellaneous Petitions are closed."

14(iii)This Court again considered the said issued in the order dated **21.09.2020** made in **C.M.A.No.2147 of 2016** in the case of **[The New India Assurance Company Limited Vs. Murugammal and others]**, at paragraph No.24, held as follows:

> *"24.In the instant case, the victim having travelled in a mud guard of the Tractor contrary to the policy condition as well as the permit condition, is not covered under the insurance policy. The mud guard of the tractor is not meant for carrying the passenger. Having violated the policy condition, the Insurance Company cannot be mulcted with the responsibility to pay and then recover from the owner of the vehicle."*

15.From the award of the Tribunal, it is seen that the claimant traveled only as gratuitous passenger in the 1st respondent's tractor. Therefore, in view of the findings rendered in the above judgments, this Court is of the considered view that the portion of the award directing the 2nd respondent-Insurance Company to pay the compensation to the claimant is liable to be set aside and it is hereby set aside. Only the 1st respondent-owner of the Tractor is liable to pay the compensation to the claimant. It is made clear that if any amount was deposited by the 2nd respondent and the same was withdrawn by the claimant, the 2nd respondent is not entitled to recover the same from the claimant, but the same shall be recovered from the 1st respondent.

16.As far as quantum of compensation is concerned, it is the claim of the claimant in the claim petition that in the accident he sustained sustained fracture and injuries in his hip and also grievous injuries all over the body. To prove the nature of injuries and disability suffered by him, he examined himself as P.W.1 and examined Dr.Raveendar as P.W.2. P.W.2/Doctor examined the claimant and certified that the claimant suffered 60% disability and issued Ex.P13/disability certificate to that effect. The Tribunal reduced the percentage of disability from 60% to 40% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability from 60% to 40% is not correct. The 2nd respondent-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P13/disability certificate. Therefore, the appellant is entitled to compensation for 60% of disability. The accident occurred in the year 2005 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is proper. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,20,000/- [Rs.2,000/- X 60% of disability].

17.It is the further contention of the claimant that at the time of accident, he was aged 20 years, was a Loadman and was earning a sum of Rs.7,500/- per month. Except oral evidence, the claimant has not produced any documentary proof like salary certificate or wage register to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the year of accident, age and nature of work done by the claimant, fixed a sum of Rs.4,500/- per month as notional income of the claimant and the same is not meagre. The claimant has taken treatment as inpatient at Jipmer Hospital, Pondicherry and at Government General Hospital, Chennai from 18.10.2005 to 12.01.2006 for a period of 87 days. Considering the nature of injuries and period of treatment taken by the claimant, he would not have attended his work atleast for a period of six months. Thus, the compensation awarded by the Tribunal for loss of income is modified to Rs.27,000/- (Rs.4,500/- X 6 months). Considering the nature of injuries, disability suffered and period of treatment taken by the claimant, the amounts awarded by the Tribunal for pain and sufferings, extra nourishment, transportation and attendant charges are meagre and hence, the same are hereby enhanced to Rs.30,000/-, Rs.5,000/-, Rs.5,000/- and Rs.5,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the claimant, he would have suffered inconvenience and would be facing discomfort in his life. Hence a sum of Rs.10,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal towards medical expenses and damages to clothes are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	80,000/-	1,20,000/-	Enhanced
2.	Pain and sufferings	10,000/-	30,000/-	Confirmed
3.	Loss of income	11,250/-	27,000/-	Enhanced
4.	Extra nourishment	1,000/-	5,000/-	Enhanced
5.	Medical expenses	3,072/-	3,072/-	Confirmed
6.	Transportation	2,000/-	5,000/-	Enhanced
7.	Attendant charges	2,000/-	5,000/-	Enhanced
8.	Damages to clothes	500/-	500/-	Confirmed
9.	Loss of amenities	-	10,000/-	Granted
	Total	**Rs.1,09,822/-**	**Rs.2,05,572/-**	**Enhanced by**

				Rs.95,750/-

18.The compensation awarded by the Tribunal at Rs.1,09,822/- is hereby enhanced to Rs.2,05,572/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent is directed to deposit the award amount now determined by this Court along with interest and costs within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.843 of 2005 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Villupuram. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw the amount lying in the credit of M.C.O.P.No.843 of 2005, if the award amount has already been deposited by them.

19.In the result, C.M.A.No.1255 of 2012 filed by the claimant is partly allowed and C.M.A.No.1470 of 2013 filed by the 2nd respondent-Insurance Company is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

06.08.2021

krk

Index : Yes / No
Internet : Yes / No

To

1.The I Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Villupuram.

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

S.KANNAMMAL, J.
krk

C.M.A.Nos.1255 of 2012 & 1470 of 2013

06.08.2021