



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.10.2021
PRONOUNCED ON : 25.10.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2180 of 2015

M/s.Bajaj Allianz General Insurance Company Limited,
No.25, Prince Tower, Ground Floor,
College Road, Nungambakkam,
Chennai - 6.

...Appellant/2nd respondent

Vs

1. P.Kothandam

...1st respondent/Petitioner

2. M/s.Navalmar Shipping (India) Pvt. Limited,
No.48, II Floor, Wavoo Mansion,
Rajaji Salai,
Chennai - 1

...Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.10.2014 in MCOP.No.998 of 2007 on the file of the Motor Accident Claims Tribunal (II court of Small Causes), Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondent 1 : Mr.V.G.Anbarasu

JUDGMENT

This appeal has been filed challenging the award dated 14.10.2014 passed by the Motor Accident Claims Tribunal (IInd Court of Small Causes, Chennai) in MCOP.No.998 of 2007.

2. The Appellant Insurance Company has challenged the impugned award questioning its liability to pay compensation on the ground that under a contractors plant and machinery policy, they are not liable to pay compensation to the first respondent/claimant as he is an employee of a contractor engaged by the second respondent (insured). They have also questioned their liability to pay compensation on the ground that the insured vehicle being a Fork lift, which is operated not in a public place and was operated inside a ship when the first



respondent/claimant sustained injuries. It is also the contention of the Appellant insurance company that the maximum liability of the Appellant under the insurance policy is only Rs.4,00,000/-, but the Tribunal has erroneously awarded a huge compensation of Rs.7,69,600/-.

3. The Tribunal under the impugned award directed the Appellant Insurance Company to pay the first respondent/claimant a compensation of Rs.7,69,600/- for the injuries sustained by him as a result of an accident which happened on 09.04.2006 when the first respondent was doing the work of loading stone into the ship by name BSLE Energy Ship at JD-3, Chennai Harbour. According to the first respondent/claimant, due to the rash and negligent operation of the Fork lift by its driver belonging to the second respondent (insured), he sustained injuries which resulted in the motor accident claim in MCOP.No.998 of 2007.

4. The details of the compensation awarded by the Tribunal are as follows:

Heads	Award amount (Rs.)
Loss of income for 4 months	28,000/-
Transportation	10,000/-
Extra nourishment	15,000/-
Damage to clothes	1,000/-
Medical expenses	15,000/-
Attender charges	15,000/-
Loss of amenities of life	35,000/-
Pain and suffering	50,000/-
Loss of earning capacity	6,00,600/- (7000 x 12 x 13 x 55%)
Total	7,69,600/-

5. Heard Mr.J.Michael Visuvasam, learned counsel for the Appellant and Mr.V.G.Anbarasu, learned counsel for the first respondent. The second respondent has remained ex-parte both before the Tribunal as well as this Court.

6. The points for consideration in this appeal are (a) whether the motor accident claim for compensation can be



instituted for an accident caused by a Fork lift; (b) whether the contractors Plant and Machinery Policy (Ex.R1) gives coverage for an accident victim who had sustained injuries in a ship when the Fork lift (insured vehicle) was allegedly operated by its driver in a rash and negligent manner and whether the ship can be termed as a public place to enable the first respondent/claimant to claim compensation under the Motor Vehicles Act; and (c) Whether the quantum of compensation awarded by the Tribunal is excessive.

7. Before proceeding with the merits of the matter, it is an undisputed fact that during the pendency of this appeal, the first respondent was permitted to withdraw 50% of the award amount which was deposited by the Appellant Insurance Company before the Tribunal as seen from the order dated 25.09.2015 passed in M.P.No.1 of 2015 in CMA.No.2180 of 2015. As seen from the order dated 25.09.2015 no serious objection was raised by the Appellant insurance Company for the withdrawal of the said amount by the first respondent/claimant.

8. Learned counsel for the first respondent/claimant has also submitted before this Court that pursuant to the aforementioned order dated 25.09.2015, the first respondent/claimant has withdrawn 50% of the award amount lying to the credit of MCOP.No.998 of 2007.

9. A Motor vehicle is defined under section 2(28) of the Motor Vehicles Act, 1988 and it reads as follows:

"(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimetres;"

Admittedly, the Fork lift is registered under the Motor Vehicles Act, 1988.

10. Under section 146 of the Motor Vehicles Act, 1988, no person shall use a motor vehicle in a public place without a valid insurance policy. Section 146 of the Motor Vehicles Act, 1988 reads as follows:



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"146.Necessity for insurance against thirty party risk.- (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry. Dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991.

(2) The provisions of sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes not connected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1), any vehicle owned by any of the following authorities, namely:-

(a) the Central Government or a State Government, if the vehicle is used for purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking;

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in such manner as may be prescribed by appropriate Government."

Admittedly, the second respondent is not having a separate insurance policy for their Fork lift to give insurance coverage for third party accident victims to satisfy the statutory requirements of Section 147 of the Motor Vehicles Act.

11. The notification issued by the Central Government under section 41(4) of the Motor Vehicles Act in S.O.1248(E) dated 05.11.2004 also makes it clear that a Fork lift is a non-transport vehicle under section 41 of the Motor Vehicles Act which deals with the procedure for registration of Motor vehicles. The Fork lift (insured vehicle) is of 25 tonnes capacity. In the insurance policy (Ex.R1), the description of



the Fork lift including its tonnage, registration No.TN04-P-7248, Engine and Chasis number is mentioned. There is also no reference to ant plant or machinery in the insurance policy (EX.R1). Just by the nomenclature, the Appellant insurance company cannot escape from its liability. The actual intent of the policy (EX.R1) must be seen. As seen from the insurance police (Ex.R1), the intent of the Appellant insurance company has to give coverage for third party accident victims under the Motor Vehicles Act. Being a motor vehicle registered under the provisions of the Motor Vehicles Act, 1988, that too, when there is no other insurance policy, the Appellant cannot escape its liability to pay compensation to the first respondent/claimant.

12. The exceptions referred to by the learned counsel for the Appellant under the insurance policy (Ex.R1) does not also apply to the first respondent/claimant as there is no evidence to show that he was an employee of the contractor engaged by the insured. Ex.R3, a letter dated 08.02.2010 of M/s.Galaxy (Tuticorin) Agencies to the Appellant referred to by the learned counsel for the Appellant does not disclose that the first respondent was an employee of M/s.Galaxy (Tuticorin) Agencies, but it only discloses that the first respondent/claimant was engaged by M/s.Galaxy (Tuticorin) Agencies on 09.04.2006 for cargo handling operations for the vessel MV BSLE Energy. Infact, for the specific information sought for by the Appellant by its letter dated 11.12.2009 (Ex.R2) as to whether the first respondent/claimant was an employee of M/s.Galaxy (Tuticorin) Agencies, the said M/s.Galaxy (Tuticorin) Agencies have replied that they have only engaged the first respondent/claimant for the cargo handling operations for the vessel MV BSLE Energy. The exceptions contained in the Contractors Plant and Machinery Policy (Ex.R1) reads as follows:

" EXCLUSIONS UNDER THE TPL EXTENSION -

a)...

b)...

c) Liability consequent upon -

i) Bodily injury to or illness of employees/workmen/members of the families of the insured or of the owners of the works / site / premises / location or of any other firm / contractors connected with any other work at the works / site / premises / location.

ii)...

iii)...

iv)..."

13. As seen from the aforementioned exceptions, only when the accident victim is an employee of the insured or is the owner of the worksite or is a contractor of the insured, the



insurance company can claim exemption from payment of compensation. In the case on hand, when there is no evidence to prove that the first respondent/claimant was an employee of the contractor engaged by the insured(second respondent), the appellant cannot escape from its liability to pay compensation for the injuries sustained by the first respondent/claimant caused due to the rash and negligent driving of the Fork lift (insured vehicle) by its driver.

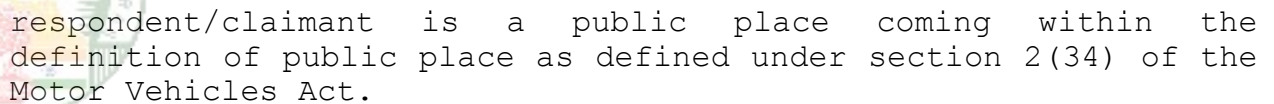
14. An FIR has also been registered only against the driver of the Fork lift (insured vehicle) which has been marked as Ex.P1 before the Tribunal. The Rough Sketch (Ex.P2) and the charge sheet (Ex.P3) conclusively prove that only due to the rash and negligent driving by the driver of the Fork lift (insured vehicle), the first respondent/claimant sustained injuries. The Fork lift can be operated anywhere both in public places as well as in non-public places. It has wheels and therefore, it can be operated at any place.

15. A public place is defined under section 2(34) of the Motor Vehicles Act and it reads as follows:

" (34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"

16. As seen from the definition, it has got wide meaning as the term "or other place" is also included in definition. The definition also includes "whether a thoroughfare or not". Therefore, even if there is no thoroughfare, a place can be treated as a public place coming within the definition of section 2(34) of the Motor vehicles Act, 1988, subject to the satisfaction of other conditions which depends on the facts and circumstances of each case. In the case on hand, admittedly, third party contractors were engaged by the second respondent (insured) for stevedoring operations in a ship where the Fork lift (insured vehicle) was being operated.

17. As seen from the nature of operation carried in the ship, several persons are involved in the loading and unloading operations. This being the case, the place where the Fork lift (insured vehicle) was being operated i.e., inside the ship cannot be construed to be not a public place. When so many persons are involved in the loading and unloading operations and third party contractors were engaged by the second respondent (insured), this court is of the considered view that the place of operation of the Fork lift (insured vehicle) which caused the accident resulting in the injuries sustained by the first



"(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;"

19. Section 146 of the Motor Vehicles Act extracted supra also makes it clear that the second respondent shall use a motor vehicle in a public place, only if it is insured in accordance with the provisions of the Motor Vehicles Act, 1988. Since the Fork lift (insured vehicle) is a motor vehicle registered under the provisions of the Motor Vehicles Act, 1988 and is a public service vehicle operated in a public place and when there is no other separate insurance policy for the said Fork lift to satisfy the statutory requirement of section 147 of the Motor Vehicles Act, this Court is of the considered view that the Appellant Insurance company is liable to compensate the first respondent/claimant for the injuries sustained by him due to the rash and negligent driving by the driver of the Fork lift (insured vehicle). Further as seen from the Insurance policy (Ex.R1), the description of the Forklift (Insured vehicle) alone is mentioned and there is no mention of description of any other plant or machinery. After giving due consideration to all the aforementioned factors, this court is of the considered view that the Tribunal has rightly held the Appellant liable to pay compensation to the first respondent/claimant.

20. Insofar as the quantum of compensation awarded by the Tribunal at Rs.7,69,600/- as detailed supra is concerned, this court does not find any infirmity with regard to the said assessment and the contention of the Appellant Insurance Company that the quantum of compensation awarded by the Tribunal to the first respondent/claimant is excessive is rejected by this Court for the following reasons:

(a) The accident happened on 09.04.2006. The first respondent/claimant has suffered crush injuries in his right



foot. Admittedly, the first respondent/claimant was hospitalised for a period of 47 days as seen from the discharge summary issued by the hospital (Ex.P15). The medical bills towards the first respondent/claimant's medical treatment which have been marked as Ex.P11 for a sum of Rs.8,923.19/- and Ex.P16 for a sum of Rs.1,35,612.55/- would reveal that the first respondent/claimant has sustained grievous injuries. As seen from the deposition of PW1 during his cross examination, it is clear that M/s.Galaxy (Tuticorin) Agencies has paid Rs.1,50,000/- towards medical expenses of the first respondent/claimant to Bharani Hospital in which the first respondent/claimant took treatment. After giving due consideration to the injuries sustained by the first respondent/claimant, the Tribunal has awarded a compensation of Rs.15,000/- towards medical expenses of the first respondent/claimant.

(b) The first respondent/claimant in his claim petition has pleaded that he was earning Rs.9,000/- per month as a labourer when the accident happened on 09.04.2006. The Tribunal has fixed his notional monthly income at Rs.7,000/-. This court is of the considered view that the notional monthly income fixed by the Tribunal at Rs.7,000/- cannot be considered to be excessive as alleged by the Appellant Insurance Company. The Tribunal only based on the injuries sustained by the first respondent/claimant and based on the disability certificate (Ex.P17) issued by the Doctor as well as the oral evidence of the Doctor PW2 has come to the conclusion that the first respondent/claimant has sustained partial and permanent disability at 55%. This court does not find any fault in the said assessment, after giving due consideration to the nature of injuries sustained by the first respondent/claimant which is grievous in nature for which he had to undergo long period of hospitalisation and had to regularly and continuously take medical treatment as seen from the evidence available on record. Only after giving due consideration to the same, the Tribunal has adopted the multiplier method for the purpose of assessing the first respondent/claimant's loss of earning capacity by rightly adopting 13 multiplier as the first respondent was aged 47 years at the time of the accident and assessed the compensation towards the same at Rs.6,00,600/- (7,000 x 12 x 13 x 55%).

(c) The Tribunal has also awarded a compensation of Rs.28,000/- towards loss of income to the first respondent/claimant for a period of four months calculated at Rs.7,000/- per month which is a correct assessment as the first respondent/claimant certainly would have been unable to do his regular avocation as labourer at least for a period of four months.



(d) The compensation awarded by the Tribunal under various other heads namely transportation at Rs.10,000/-, towards extra nourishment at Rs.15,000/-, towards damages to clothes at Rs.1,000/-, attender charges at Rs.15,000/-, loss of amenities of life at Rs.35,000/- and pain and suffering at Rs.50,000/- cannot be considered to be excessive as alleged by the Appellant Insurance Company.

(e) The total compensation of Rs.7,69,600/- awarded by the Tribunal to the first respondent/claimant cannot be considered to be excessive as alleged by the Appellant.

(f) The limitation of liability to the extent of Rs.4,00,000/- pleaded by the Appellant as per the Insurance Policy (Ex.R1) is concerned, the same cannot be accepted by this Court, in view of the fact that having provided insurance coverage for the Fork lift (insured vehicle) to cover third party claims and the first respondent, being a third party, the Appellant Insurance Company is statutorily liable to pay a compensation of Rs.7,69,600/-, even though it exceeds the prescribed limit under the insurance policy (Ex.R1). There is a statutory liability casts upon the Appellant Insurance Company to pay the determined compensation amount as per section 147 of the Motor Vehicles Act.

21. For the foregoing reasons, there is no merit in any of the contentions raised by the Appellant Insurance Company and all the contentions raised by them in this Appeal are rejected by this Court.

22. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The Appellant Insurance company is directed to deposit the amount awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount already deposited if any, to the credit of MCOP.No.998 of 2007 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.998 of 2007 to the bank account of the first respondent/claimant through RTGS within a period of one week thereafter. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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To

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1. The II court of Small Causes,
Chennai
2. The Section Officer,
V.R.Section, High Court of Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.54462

+1cc to Mr.V.G.Anbarasu, Advocate, S.R.No.54397

C.M.A.No.2180 of 2015

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NSK 01/12/2021