



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.09.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.794 of 2016

and

CMP(MD)No.7661 of 2016

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M/s.National Insurance Company Limited,
Karur through its Manager,
Branch Office Rasi Plaza,
No.63, West Pradhakshnam Road,
Karur.

: Appellant/2nd Respondent

Vs.

1.K.Ammaiyappan
2.K.P.Thamilsevan

: 1st Respondent/Petitioner
: 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 11.01.2016 made in MCOP No.109 of 2014 on the file of Motor Accident Claims Tribunal (Additional Sub Court), Karur.

For Appellant	: Mr.J.S.Murali
For 1 st Respondent	: Mr.V.Balaji
For 2 nd Respondent	: No appearance

J U D G M E N T

Challenge made in this appeal is to the award, dated 11.01.2016 made in MCOP No.109 of 2014 on the file of Motor Accident Claims Tribunal (Additional Sub Court), Karur.

2.The short facts of the case is that on 17.10.2013, the claimant being the owner of the Lorry TN-28-K-5547 visited the Lorry Carriage by name S.Shanmugam Lorry Labour Works Carriage at Ezhil Nagar, Covai Road, Karur and at about 15.00 hours, when the claimant was standing near the Tools Box of the said Lorry, at that time, the driver of the above Lorry on duty without noticing the claimant, suddenly, negligently and carelessly had driven the Lorry and as a result of which, the said Lorry dashed upon the claimant and the claimant fell down and had sustained severe injury on his left thigh and immediately, he was taken to Appolo Loga Hospital, Karur and after first aid, he was referred to Ganga Medical Centre Hospital (P) Limited, Coimbatore, for better treatment. A claim petition was filed by the claimant, seeking compensation of Rs.3,50,000/- for the injuries sustained by him in the accident.

3.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay



compensation.

4.The Tribunal, upon consideration of the oral and documentary evidence, came to the conclusion that the driver of the offending vehicle caused the accident and awarded compensation of Rs.3,55,600/- together with interest @ 7.5% p.a

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.The learned counsel appearing for the appellant/2nd respondent argued that the accident had occurred in a workshop and the workshop is not a public place and further, the claimant is the owner of the vehicle and he is not a 3rd party and hence, the Insurance Company is not liable to pay the compensation.

7.On the other hand, the learned counsel appearing for the 1st respondent/claimant argued that the claimant left his Lorry in the workshop and being the owner of the Lorry, he visited the said carriage and was supervising the work being done in the said Lorry and when the claimant was standing near the backside of the Lorry, at that time, the driver of the offending vehicle negligently and careless had driven the Lorry and as a result of which, the said Lorry hit against the claimant and he sustained injuries and the workshop is a public place, since the public have access to it and the claimant is a 3rd party and hence, the Insurance Company is liable to pay the compensation. For that, the learned counsel appearing for the 1st respondent/claimant submitted the following decisions:-

(1)(1997)1 ALT 475 (Chinna Gangappa Vs.B.Sanjeeva Reddy);

(2)(1991)1 RLW (Raj)242 (United India Insurance Company Limited Vs. Smt.Roop Kanwar);

(3)(2013)3 AIR (Kar) (R) 666 (K.Ramesh Vs. B.Amarnath & another); and

(4)(2020)0 ACJ 2202 (United India Insurance Company Limited and others Vs. Vaneeta and others).

8.Further, the learned counsel appearing for the 1st respondent/claimant by quoting the decision reported in **(1997)1 ALT 475 (Chinna Gangappa Vs.B.Sanjeeva Reddy)** argued that in the said decision in para 6 to 8, the Andhra Pradesh High Court held as follows:-

"6.Section 2(24) of the Motor Vehicles Act, 1939 defines 'public place'. It reads:-

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"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."

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7. Our High Court in *Lanka Sarma v. Rejendra Singh and Ors.*, held that:-

"Where the coolies were hired for loading and unloading stones to be delivered at dam site and accident occurred near the dam site, the place of accident would have to be considered as one falling within the definition of "public place" though it belonged to the Public Works Department as the workmen constituted public and as such, the place was a "public place".

The words "other place which is not a thoroughfare" cannot be interpreted according to ejusdem generis rule, because they are negative in nature. A place over which a vehicle can pass and which is yet not a thoroughfare can only refer to a private place made fit for plying of the motor vehicle."

It was further held that:

A reading of Section 95 would clearly show that it is within the contemplation of the Statute that a third party insurance should cover a liability that might arise out of Workmen's Compensation Act. Under the Workmen's Compensation Act, a liability might arise even though the accident took place in a so called private place so long that accident took place in the course of employment. This part of Section 95 clearly shows that it would not be a correct interpretation of Section 95 to hold that third party compulsory insurance need not cover an accident that occurred on a factory premises. This clear implication of an express provision of law cannot be denied by reference to the Explanation appended to Section 95. The purpose of a legal explanation is not to enact but to explain. It is merely clarificatory of the provisions.

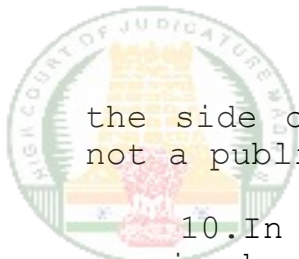
Claims for compensation made against the insurance companies by the dependents of the workmen killed or injured within the premises of a factory cannot be defeated by the insurance



companies on the ground that the general public have no right of access to such factory premises."

8.A Full Bench of Bombay High Court in Pandurang Chimaji Agale and Anr. v. New India Life Insurance Company Ltd. and Ors., (F.B.) relying on the above decision of this Court and also some other decisions held that "The term 'public place', is a term of art, the same having been defined specifically by Sub-clause (24) of Section 2 of the Act. The first thing to remember with regard to the definition is that it is an inclusive one. Secondly, it in terms makes it clear that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or set down by a stage carriage, is a public place, it shows that it is not so much concerned with the ownership of the place as with its user. The definition of "public place" under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purpose. Hence, all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" in Section 2(24) of the Act."

9. In this case, it is an admitted fact that the claimant left his Lorry in the workshop and the accident occurred when the claimant visited the workshop for supervising his Lorry and at that time, the driver of the Lorry drove the Lorry rashly and negligently. It is admitted that the place of occurrence is a workshop. There was no restriction for the claimant as well as the public to enter into the workshop. In this place, the members of the public have right of access. Hence, there is public access to the workshop. Hence, it is held that the place of occurrence is a public place and not a private place. Therefore, the argument put forth on



the side of the appellant stating that the place of occurrence is not a public place is not at all acceptable.

10.In this case, the official of the Insurance Company was examined as RW1. RW1 deposed that the claimant is the owner of the Lorry and hence, he is not a 3rd party and hence, they are not liable to pay the compensation. Further, it is an admitted fact that the claimant is the owner of the Lorry and hence, he is not a 3rd party in respect of the accident. On the side of the appellant Insurance Company, the copy of the Insurance Policy was produced before the tribunal and it was marked as Ex.R4. On perusal of R4, it reveals that additional premium was paid for the owner, for claiming compensation at that time of accident. In Ex.R4, for the injury, the victim is entitled to Rs.2,00,000/- as compensation. In this case, the claimant is not a 3rd party and he is the owner of the vehicle. Hence, as per Ex.R4, the claimant is entitled to Rs.2,00,000/- as compensation. But the tribunal wrongly came to the conclusion that the owner of the vehicle is a 3rd party and hence, the Insurance Company is liable to pay the compensation and awarded Rs.3,55,600/-, which is liable to be set aside.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. The impugned award, dated 11.01.2016 passed in MCOP No.109 of 2014, is set aside. The appellant Insurance Company is directed to pay a sum of Rs.2,00,000/- as compensation to the 1st respondent/claimant together with interest at the rate of 7.5% p.a. from the date of petition till realization, within a period of six weeks from the date of receipt of a copy of this order. On such compliance, the claimant is entitled to withdraw the modified compensation with accrued interest and costs. The appellant Insurance Company is entitled to get back the excess amount paid by them from the tribunal in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Motor Accident Claims Tribunal/
Additional Sub Court, Karur.

Copy to:

The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.J.S.MURALI, Advocate (SR-28258[F] dated 06/09/2021)

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RS (30.09.2021) 6P 5C