



CMA(MD).No.174 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.06.2023

PRONOUNCED ON : 21.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.174 of 2010

M/s.National Insurance Company Limited
Through its Branch Manager
Anguvilas Building
P.B.No.112, North Car Street
Nagervoil, Agasteeswarar Taluk
Kanyakumari District

....Appellant

VS.

1.V.Vinukumar

2.Rajakumar

3.Chinnayan

4.Kannammal

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1998, to set aside the judgement and decree dated 13.02.2009 in MCOP.No.107 of 2003 on the file of the Principal Subordinate Judge/Principal Motor Accident Claims Tribunal, Nagercoil.



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For Appellant : Mrs.P.Malini
For R1 : Mr.C.Mayilvahana Rajendran
For R2 to R4 : Mr.C.K.M.Appaji

JUDGMENT

The above appeal has been filed by the insurance company challenging the award passed by the Principal Motor Claims Tribunal, Nagercoil in MCOP.No.107 of 2003 on the ground of non involvement of vehicle, liability and quantum.

2.According to the injured claimant, he is a tapper in a rubber estate and when he was walking towards Karavilagam at 7.40 a.m on 12.01.2003, a JCB driven by the first respondent, owned by the second respondent and insured with the third respondent had dashed against him on his back and he sustained serious injuries.

3.According to the claimant, he was admitted as an inpatient from 12.01.2003 to 26.01.2003 and a major surgery was conducted over his right thigh by fixing plates and he was constrained to be on bed rest for three months. He had spent a sum of Rs.5,90,000/- towards medical expenses. According to the claimant, his right leg is shortened by 4 c.m and he is unable to walk freely and his disability is more than 50%. The



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claimant had further contended that the police officials have registered an F.I.R in Crime No.29 of 2003. The claimant had prayed for a sum of Rs.3,00,000/- as compensation.

4.The driver and owner of the alleged offending vehicle have remained exparte and the insurance company has filed a counter contending as follows:

(a).The second respondent in the claim petition is the owner of three JCBs. Out of which, two of them alone are insured. The uninsured vehicle met with an accident. However, it was set up as if the insured vehicle was involved in the accident.

(b).The injured claimant was not a pedestrian but he was travelling on the side of the driver as a cleaner. The seating capacity of the JCB is just one and therefore, the injured claimant was an un-authorised occupant of the JCB and therefore, he had jumped out of the JCB which has resulted for the injuries. Therefore, the insurance company is not liable to pay any compensation.

(c).The JCB is a heavy vehicle and the driver of the JCB namely the first respondent was only having an LMV licence with a badge and therefore, it is a case of clear violation of the policy condition.



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(d).The JCB is a slow moving vehicle and therefore, the allegation of rash and negligent driving on the part of the JCB driver is not legally sustainable.

4A. The injured claimant had examined himself as PW1 and the rubber estate owner as PW2 and the doctor who had treated him as PW3. On the side of the respondent, the insurance company official was examined as RW1, the investigating officer appointed by the insurance company was examined as RW2 and the motor vehicle inspector was examined as RW3. The claimant had filed Exhibits P1 to P14 to establish his injuries and the manner of accident. The respondent had filed Exhibits R1 to R7 in order to establish the investigation report, driving licence of the JCB driver and the insurance policy.

5.The Tribunal after considering the oral and documentary evidence on the side of both the parties, had arrived at a finding that the JCB with Registration No.TN-74-Y-5369 alone was involved in the accident on the ground that the insurance company has not produced any material to establish the fact that some other vehicle was involved in the said accident. The Tribunal further found that the FIR which was



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registered without any delay, indicates the number of the offending vehicle.

6.The Tribunal further found that the unladen weight of the JCB is 6910 kgs and therefore, it could be classified only as a light motor vehicle and the driver of the vehicle was having an effective driving licence to drive the light mother vehicle at that point of time and rejected the said condition of the insurance company that the driver is not having effective driving licence. The Tribunal further rejected the contention of the insurance company that some other vehicle was involved in the said accident and fake claim has been prepared. The Tribunal proceeded to hold that the injured claimant was drawing a monthly income of Rs.3,000/- and loss of income was fixed at Rs.9,000/-. Thereafter, a sum of Rs.500/- was awarded towards transportation. A sum of Rs.1000/- was awarded towards extra nourishment, Rs.500/- towards damages to clothing and a sum of Rs.54,500/- was awarded towards medical expenses. Another sum of Rs.25,000/- was awarded towards pain and suffering. Considering the fact that the claimant has suffered 25% permanent disability, the compensation was fixed at Rs.15,000/- towards



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permanent disability. Totally a sum of Rs.1,05,500/- was awarded. The said award is under challenge in the present appeal.

7. According to the learned counsel for the appellant, the JCB was involved in the accident was a different one which was not insured. After the accident, the JCB has been changed and an attempt is being made to claim compensation. This aspect has been proved by the insurance company through their investigation report which is marked as Exhibit R5 and the examination of investigator as RW2. When a different vehicle was involved in the accident, the question of payment of compensation for the accident does not arise.

8. The learned counsel had further contended that the injured claimant was not a pedestrian but he was a cleaner sitting inside the JCB and in his attempt to jump from the JCB, he had sustained injuries. Therefore, there is a clear violation of policy condition by accommodating un-authorised person inside the JCB. He had further contended that the JCB is a heavy vehicle. At the relevant point of time, the driver of the JCB is not having a valid driving licence as could be seen from Exhibit R7. Therefore, the driver was not having an effective



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driving licence at the time of accident which is clearly in violation of the policy condition. Hence, he prayed for allowing the appeal.

9.Per contra, the learned counsel for the respondent/claimant had contended that the investigator's report cannot be relied upon without examining the person who has made complaint about the change of the vehicle. He had further contended that the police authorities had specified the involvement of this vehicle and they have charge sheeted. Therefore, the involvement of the vehicle cannot be questioned now. He had further contended that the unladen weight of the vehicle is 6910 kgs and therefore, it is a light motor vehicle which does not warrant a heavy vehicle licence. He had further pointed out that the injured claimant has examined his employer as PW2 and the salary certificate has been marked as Exhibit P5. Therefore, it is clear that he was not the cleaner in the said JCB, but working as a tapper in the rubber estate. Hence, the contention that the injured claimant was an authorized occupant sitting inside the cabin of JCB is not legally sustainable. Hence, he prayed for sustaining the award passed by the Tribunal.

10.I have considered the submissions made on either side and perused the materials available on record.



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11. According to the claimant, he was a pedestrian and he was injured by hitting of the JCB at 7.40 a.m on 12.01.2003 and an F.I.R was registered at 10.45 a.m by the brother of the injured claimant alleging that the JCB dashed against the injured claimant. The police officials have investigated the spot at 2.30 p.m on the same day and prepared a rough sketch and observation mahazer. In the said observation mahazer, it is specifically pointed out that the capsized JCB is still available on the spot. If really some other vehicle was involved in the accident, the police authorities would have specifically noted down the said fact. In the F.I.R, the vehicle number namely TN-54-Y-5369 has been mentioned. Therefore, if some other vehicle is found in the capsized position at about 2.30 p.m, the police officials would have certainly recorded the same.

12. The sheet-anchor of the contention of the insurance company is based upon the investigation report which is marked as Exhibit R5 and the deposition of the inspector as RW2. A perusal of the investigation report indicates that the investigator solely relies upon the statement of one Thangappan. However, the said Thangappan has not been examined as one of the witnesses on the side of the insurance company. While cross examining PW1, the learned counsel for the insurance company has



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put a suggestion to the injured claimant that he had knowingly crossed the JCB vehicle and the vehicle was stopped by the driver.

13.In paragraph No.2 of the counter, the insurance company had contended that the damaged JCB was repaired by M/s. Jeya Raj Automobiles Agency, Thiruvananthapuram Road, Parvathipuram, Nagercoil. However, no one connected with the service station has been examined to establish that some other vehicle was subjected to service due to the accident. On the other hand, the F.I.R that was registered within few hours from the time of the accident and the observation that was prepared at about 2.30 p.m would clearly establish that TN 74-Y-5369 JCB alone was involved in the said accident. Therefore, the contention of the learned counsel appearing for the insurance company relating to non-involvement of the said vehicle are not legally sustainable.

14.It was further contended by the appellant, though the injured claimant was a cleaner, he was sitting as an un-authorized occupant inside the JCB and sustained injuries due to jumping off from the cabin. However, during the cross examining the injured claimant, he has been



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suggested by the insurance company that the injured knowing fully well had crossed the moving JCB.

15.It is the specific case of the claimant that he is the tapper in a rubber estate and he has examined his employer as PW2 and marked the salary certificate as Exhibit P5. During the cross examination of the injured claimant, the insurance company has put various questions relating to tapping of the rubber trees which were eloquently answered by the claimant. Any question put to him alleging that he was a cleaner was emphatically negatived by the claimant. Therefore, the claimant had established that he was only a pedestrian at the time of accident and he was not an occupant of the JCB,

16.It was further contended that on the side of the appellant, the driver of the JCB was holding only a LMV driving licence with badge, whereas the JCB is a heavy vehicle and therefore, at the time of the accident, the petitioner was not having any valid and effective driving licence. A perusal of Section 2(21) of the Motor Vehicles Act discloses that any vehicle with unladen weight of less than 7500 kgs is classified as a light motor vehicle. A perusal of R.C. Book of the vehicle which is enclosed as part of Exhibit R5-investigation report reveals that the



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unladen weight of JCB is 6910 kgs. Therefore, it is clear that it is only a light motor vehicle. A perusal of Exhibit R7 which is the driving licence of the driver of the JCB indicates that the driving was having a LMV driving licence along with badge on the date of the accident. The JCB being a light weight motor vehicle, the contention of the learned counsel for the appellant that the driver should have a heavy vehicle licence is not legally sustainable.

17.The Tribunal after considering Exhibit PW1-discharge summary, Exhibits P2 to P4 receipts, Exhibit P12-disability certificate, Exhibits P13 and P14 -X-rays, had arrived at a finding that the claimant had sustained grievous injuries and had proceeded to award a total compensation of Rs.1,05,500/-. This Court does not find any reason to interfere in the quantum of award.

18.In view of the above said deliberations, this Civil Miscellaneous Appeal stands dismissed. No costs.

21.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
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- 1.The Principal Subordinate Judge
/Principal Motor Accident Claims Tribunal,
Nagercoil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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