



C.M.A. (MD) No. 667 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.08.2023

Pronounced on : 29.09.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.667 of 2018

Manikandan

... Appellant/
Petitioner

Vs.

1. V.Uthirapathi

2. United India Insurance Company Ltd.,
Divisional Office,
No.4, Promenade Road,
Cantonment, Trichy – 620 001.

... Respondents/
Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow this appeal, set aside the award and decree made in M.C.O.P.No.1418 of 2015 dated 07.02.2018 passed by the Motor Vehicle Accident Claims Tribunal/Special Subordinate Judge, Tiruchirappalli.



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For Appellant : Mr.D.Boopal
For R1 : No appearance
For R2 : Mr.I.Suthakaran

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in M.C.O.P.No.1418 of 2015 dated 07.02.2018 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Tiruchirappalli, dismissing the claim petition.

2. The case of the appellant/claimant is that on 13.05.2015 at about 11.00 hours, when he was driving a lorry bearing Registration No.TN-36-X-8376 on Keelanatham – Gunamangalam main road, unexpectedly high voltage wire of electricity got contact with the top of the lorry and due to the said impact, he suffered electrical shock and was thrown away, that he sustained burn injuries on his upper limbs, right elbow, left hand fingers and both legs, that he was immediately taken to Government Hospital, Ariyalur and was referred to Kauvery Hospital, Trichy, that a case came to be registered in Crime No.78 of 2015 on the file of Vikkiramangalam



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Police Station for the offences under Sections 279 and 337 IPC against the driver of the lorry and that the accident was occurred arising out of use of motor vehicle and during the course of employment.

3. It is the further case of the appellant/claimant that he had taken inpatient treatment for 19 days, that he underwent surgery and skins were harvested from both thighs and implanted on both legs below knee, that he had spent more than Rs.4 lakhs towards medical expenses, that he has sustained permanent disability and he is not in a position to sit, stand, walk and drive the vehicles, that he was aged 24 years at the time of accident and that he was working as a driver and was getting monthly income at Rs.20,000/- prior to the accident.

4. The defence of the second respondent/insurer is that the appellant/claimant himself was riding the vehicle negligently without seeing the electricity wire and invited the accident, that the accident was occurred due to touching of heavy voltage electrical wire, that the petition is bad for non-joinder of necessary party i.e., Tamil Nadu Electricity Board, that the criminal case was registered only against the appellant/



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claimant by Vikkiramangalam Police and that therefore, the second respondent/insurer is not liable for the claim.

5. During trial, the appellant/claimant has examined himself as P.W.1 and one Dr.Ravi as P.W.2 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The first respondent/owner of the lorry had remained *ex parte*. The second respondent/insurer has adduced neither oral nor documentary evidence.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 07.02.2018 by holding that the electrocution accident was occurred due to the negligence of the appellant/claimant and as such, the appellant/claimant is the tortfeasor and that therefore, the claim petition itself is not maintainable, dismissed the petition. Aggrieved by the dismissal of the claim petition, the claimant has preferred the present appeal.

7. The learned counsel appearing for the appellant/claimant would submit that the Tribunal ought to have considered the employer –



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employee relationship of the appellant/claimant and the first respondent/owner of the lorry, that the Tribunal ought to have considered the evidence let in by the appellant/claimant with regard to the compliance under Sections 166 and 167 of the Motor Vehicles Act, that the Tribunal erred in not considering the involvement of the vehicle in the accident, that the Tribunal erred in holding that the appellant/claimant cannot file the claim petition under the Motor Vehicles Act and that the Tribunal erred in not considering the records and the evidence let in by the appellant/claimant.

8. The points that arise for consideration are :

- 1) *Whether the Tribunal erred in holding that the appellant/claimant is the tortfeasor and as such, the claim petition itself is not maintainable, despite showing that the accident was the outcome of the use of motor vehicle and the same was resulted in electrocution of the appellant/claimant?*
- 2) *Whether the appellant/claimant is entitled to get any compensation, if so, up to what extent?*
- 3) *To what other reliefs, the appellant/claimant is entitled to?*

9. It is the specific case of the appellant/claimant that when he was driving a lorry belonging to the first respondent on 13.05.2015 at about 11.00 hours on Keelanatham – Gunamangalam main road, a high voltage



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wire got conduct with the top of the lorry and due to that, the appellant/claimant has suffered electrical shock and sustained burn injuries on his body.

10. As rightly contended by the learned counsel appearing for the appellant/claimant, on the basis of the statement taken from him at Kauvery Hospital, Trichy, FIR came to be registered in Crime No.78 of 2015 for the offences under Sections 279 and 337 IPC as “Accidental fire”. In the FIR, it has been stated that when the appellant/claimant-P.W.1 was travelling at 11.00 a.m. on 13.05.2015 for loading the wooden logs, live wire got touched with the top of the vehicle and immediately, the appellant/claimant was thrown out and sustained injuries all over his body.

11. But according to the second respondent/insurer, the appellant/claimant is the tortfeasor. It is their further contention that the accident had happened due to the touch of heavy voltage electric wire, that the heavy voltage electric wire was not properly maintained by Tamil Nadu Electricity Board, that the Electricity Board is a necessary party to the above proceedings and that the petition is liable to be dismissed for non-joinder of a necessary party.



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12. As already pointed out, P.W.1 has deposed about the way in which the accident was occurred as stated in Ex.P.1-FIR. As rightly contended by the learned counsel appearing for the appellant/claimant, the contents of the FIR with regard to the mode of accident has been corroborated by the evidence of the appellant/claimant. Admittedly, the second respondent/insurer has not adduced any evidence. There is absolutely no contra evidence from the second respondent/insurer to the effect that the accident was not occurred as stated by the appellant/claimant and that the appellant/claimant is the tortfeasor.

13. In *Tami Nadu State Transport Corporation Vs. Alavandar* reported in **2006 (2) TN MAC 94**, it has been held that when the use of the motor vehicle on the date of accident has not been disputed, the compensation awarded has to be sustained. The Hon'ble Supreme Court in *Kaushnuma Begum Vs. New India Assurance Co. Ltd.*, reported in **2001 ACJ 428 (SC)** has held that the principle of strict liability propounded in *Rylands Vs. Fletcher, (1868) LR 3 HL 330*, held applicable in claims for compensation made in respect of motor accident. In that case, the front wheel of the motor vehicle burst, when the vehicle was in motion resulting



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in driver losing balance of the vehicle which in turn killing the person on the road and the Hon'ble Supreme Court has held that even if there was no negligence on the part of the driver, the accident was occurred while vehicle was in use.

14. Sections 165 and 166 of the Motor Vehicles Act, 1988 deals with accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles. In the case of ***United India Insurance Co. Ltd. Vs. Devi Chhetri and others*** reported in ***2014 (3) TAC 736***, the accident was occurred, when the vehicle being driven by the third respondent had hit the electric cable, as a result of which, the same got cut off and fell down on the deceased, that the live wire, which fell on the deceased due to the accident was as a result of the vehicle having hit the cable and that it was an accident arising out of driving of the vehicle and thus the incident was the outcome of use of a motor vehicle. The Aizawal Bench of Gauhati High Court has held that the insurance company cannot escape from its liability to pay compensation as the vehicle was insured with it and it cannot shift the liability to the Power/Electric Department, as the said department of its own was not responsible for the accident.



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15. In the case of ***Sharlet Augustine Vs. K.K.Raveendran*** reported in ***1992 ACJ 1131***, a bus dashed against a wayside electric post and then fell into paddy field on the right side and it also hit a wire of an electric transformer, with the result the live wire came in contact with the bus, that a passenger came out of the bus and when he attempted to save the driver came in contact with the live wire, was electrocuted and died. A Division Bench of Kerala High Court has held that the accident arose out of the use of motor vehicle and awarded compensation. The Bombay High Court in ***Maqbul Hussain Kitabullah Vs. Kulvinder Sriram Kapoor*** reported in ***1995 ACJ 989 (Bom)*** has held that the expression “arise out of” had a wider connotation and it is not necessary that there should be direct and proximate action between the use of the motor vehicle and the accident resulting in death or permanent disablement and that Section 92-A of the Act enlarged the field of protection made available to the victims of an accident and was in consonance with the beneficial object underlying the enactment.

16. In a case of the murder of the driver of an auto rickshaw in the course of stealing the auto, the Hon'ble Apex Court in ***Smt.Rita Devi and***



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others Vs. New India Assurance Co. Ltd. and another reported in ***AIR***

2000 SCC 1930 has concluded that the murder of the driver in the process of stealing of the auto rickshaw was only incidental to the act of stealing and it has to be considered as due to an accident arising out of the use of the motor vehicle. The Hon'ble Supreme Court has further observed that since the Motor Vehicles Act 1988 is a beneficial legislation, the approach of the Courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose.

17. At this juncture, it is necessary to refer the decision of the Andhra Pradesh High Court in ***Sama Suryanarayana Vs. Allu Veeraraghavulu and others*** reported in ***2012 ACJ 2434*** and the relevant passage is extracted hereunder:-

“20. The direct precedent is of great persuasive value and even otherwise, the interpretation of the relevant expressions by the Apex Court in the widest possible terms makes the injuries suffered by the Appellant due to fall of a live electric wire on him while the tractor and trailer driven by him was in motion liable to be construed as arising out



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of the use of the motor vehicle. Such factual conclusion can be based on not only in the evidence of the injured himself as P.W.1, but even the Investigator appointed by the insurer who deposed as R.W.1. While the owner of the tractor did not contradict the claims of the injured Appellant by any pleading or evidence and the owner never denied the employment of the Appellant with him or his being on duty while driving the tractor at the relevant time, the Tribunal itself found that the Investigator's Report cannot be considered at all in the absence of any relevant evidence and supporting material or personal knowledge. The Tribunal also concluded that it was obvious that the Appellant/claimant sustained injuries during the course of his employment while driving the tractor and trailer due to the live electric wire falling on him. On such conclusion, the injuries suffered and the consequences that ensued should have to be construed as giving a cause of action for the Appellant to make a claim for compensation against the owner of the vehicle and its insurer. The ownership of the vehicle with the first Respondent and its subsisting insurance with the second Respondent were not disputed and the insurer did not claim the claim to have not been otherwise covered by the terms and conditions of the insurance. Referring the Appellant to a claim under the Workmen's Compensation Act, 1923, or a suit for damages will be, therefore, unjust and unreasonable and the



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Appellant has to be concluded to be entitled to the compensation he claimed.”

18. In the case on hand, as already pointed out, the appellant/claimant sustained injuries during the course of his employment while driving the lorry and due to the touching of electric wire with the top of the lorry and the injuries suffered by the appellant/claimant should have been construed as a cause of action to the appellant/claimant to make a claim for compensation against the owner of the vehicle and its insurer.

19. It is not in dispute that the lorry involved in the accident was owned by the first respondent and the same was insured with the second respondent/insurer. It is also not in dispute that the policy was in force at that time. Considering the above, the dismissal of the claim petition by the Tribunal on the grounds that the appellant/claimant was the tortfeasor and that the electricity board was not impleaded, is not proper and is not in accordance with law. Hence, this Court has no hesitation to hold that the impugned order dismissing the claim petition is liable to be set aside.

20. Now turning to the quantum of compensation, it is the specific case of the appellant/claimant that he suffered burn injuries on his upper



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limbs of both feet and injuries on chest, right elbow and left hand fingers and both legs. The appellant/claimant has produced the wound certificate, discharge summary, medical bills and medical prescriptions under Ex.P.2 to Ex.P.6 and also the disability certificate and X-rays under Ex.P.9 and Ex.P.10 respectively. It is evident from Ex.P.3-Discharge Summary that the appellant/claimant was admitted in Kauvery Hospital on 13.05.2015 and was discharged on 22.05.2015 and again was admitted on 27.05.2015 and was discharged on 04.06.2015. It is further evident from the medical records that the total burns surface area is shown at 15%. The appellant/claimant has also examined Dr.Ravi as P.W.2 and he would say that after examining the appellant/claimant, has issued the disability certificate and he would further say that he had not treated the appellant/claimant, but he examined the appellant/claimant for the purpose of issuing disability certificate. P.W.2 in his report has stated that folding power of left elbow was reduced i.e., 0-140° (No-160°) and that he has fixed the disability at 28%. Considering the medical evidence available, there is absolutely no evidence to show that the appellant/claimant has suffered permanent disability nor functional disability. Considering the nature of the injuries suffered and the consequent disability, this Court is inclined to adopt



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percentage method and as such, the appellant/claimant is entitled to get disability compensation at Rs.1,12,000/- (Rs.4,000/- x 28).

21. The appellant/claimant has produced the medical bills under Ex.P.4 and Ex.P.5. In Ex.P.4, the appellant/claimant had paid Rs.91,890/- for the inpatient treatment for the period between 13.05.2015 and 22.05.2015 and again Rs.45,790/- for the inpatient treatment period between 28.05.2015 and 04.06.2015 to Kauvery Hospital. In Ex.P.5, he had spent Rs.52,148.50/- for medical expenses. The second respondent/insurer has not specifically disputed the genuineness and the contents of the medical bills produced under Ex.P.4 and Ex.P.5. Except making a suggestion, P.W.1 was not at all cross-examined with respect to Ex.P.4 and Ex.P.5. Considering the above, the appellant/claimant is entitled to get Rs.1,89,828/- towards medical expenses.

22. According to the appellant/claimant, he was working as a driver and was getting Rs.20,000/- per month. The appellant/claimant's contention that he was working as a driver has not been specifically disputed by the other side. But, the appellant/claimant has not produced any materials to prove his income. Admittedly, the accident was occurred



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on 13.05.2015. In Ex.P.7-Driver's Licence, the date of birth of the appellant/claimant is shown as 10.06.1993. Hence, the age of the appellant/claimant is fixed at 22 years on the date of accident. Considering the nature of the job and the date of accident, this Court fixes the notional monthly income of the appellant/claimant at Rs.7,000/-. Considering the period of treatment, this Court is inclined to grant loss of income for 3 months at Rs.21,000/- (Rs.7,000/- x 3). Considering the nature of the injuries, period of inpatient treatment, consequent disability sustained and other attending circumstances, this Court is inclined to grant Rs.30,000/- for pain and suffering, Rs.20,000/- for extra nourishment, Rs.25,000/- for loss of convenience and amenities, Rs.10,000/- for transport expenses and Rs.10,000/- for attendant charges. Hence, this Court concludes that the appellant/claimant is entitled to get total compensation of Rs.4,17,828/-.

23. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

24. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order passed in M.C.O.P.No.1418 of 2015 dated 07.02.2018 is



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hereby set aside. The appellant/claimant is entitled to get **Rs.4,17,828/-**

(Rupees Four Lakhs Seventeen Thousand Eight Hundred and Twenty

Eight only) as compensation. The second respondent/insurer is directed to

deposit the compensation amount with interest at 7.5% per annum to the

credit of M.C.O.P.No.1418 of 2015 on the file of the Motor Accident

Claims Tribunal/Special Subordinate Court, Tiruchirappalli, within a

period of four weeks from the date of receipt of a copy of this judgment.

On such deposit being made, the appellant/claimant is permitted to

withdraw the award amount with interest and costs, on due application

before the Tribunal. Parties are directed to bear their own costs. The

appellant/claimant is directed to pay the court fee for the compensation, if

any, and the Registry is directed to draft the decree only after the payment

of court fee.

29.09.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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To:

1. The Motor Accidents Claims Tribunal/
Special Subordinate Court, Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.667 of 2018

Dated : 29.09.2023