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CMA.No.2715 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2025

PRONOUNCED ON :27.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.2715 of 2023

Manikandaraj

... Appellant

Vs.

1.Edward Devanathan

2.National Insurance Company Limited,
751, Anna Salai, Third Party Cell,
Chennai – 2.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the claim in MCOP.No.6407 of 2013, dated 19.02.2021, on the file of the Motor Accident Claims Tribunal, (Small Causes Court, Special Subordinate Court No.I) Chennai.

For Appellant : Mr.K.Varadhakamaraj
for M/s.P.Selvaraj

For Respondents : Mrs.R.Sree Vidhya
for Mr. R.Ravichandran



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed challenging the order passed by the Motor Accident Claims Tribunal, dismissing the claim petition.

2. According to the appellant/claimant on 11.09.2012, when he was waiting for unloading the scrap materials at Sivan Street, Ganapathy Nagar, Maduravoil, a crane belongs to the first respondent insured with the second respondent was driven by its driver in a rash and negligent manner and as a result of the same, the Iron bars unloaded by the crane had fallen down on the petitioner. Hence, the petitioner suffered grievous injuries and therefore the claim petition was filed seeking compensation of Rs.8,00,000/- .

3. The first respondent owner of the crane remained ex-parte. The second respondent insurer of the vehicle filed counter and denied the manner of accident as averred in the claim petition. It was the case of the second respondent that the crane belonged to the first respondent was not at all involved in the accident. It was also claimed that the said crane was sold



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to one Karthikeyan and the claim petition filed without impleading said Karthikeyan, who was also driver of the vehicle at the relevant point of time was bad for non-joinder of necessary parties.

4. Before the claims Tribunal, the appellant/injured claimant was examined as PW.1 and seven documents were marked on the side of the claimant as Exs.P1 to P7. On behalf of the second respondent, its investigator was examined as RW.1 and Assistant Manager was examined as RW.2. Four documents were marked on the side of the second respondent as Exs.R1 to R4. The disability certificate issued by the Medical Board was marked as Ex.C1.

5. The Tribunal based on the evidence available on record came to the conclusion that the claimant did not sustain any injury in an accident occurred on road and hence claim petition before the claims Tribunal was not maintainable. The Tribunal also found that at the time of accident, the crane belonged to one Karthikeyan, who was also driver of the vehicle on the date of occurrence and hence it was for the claimant to initiate appropriate proceedings against him for recovery of damages. With



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these findings, the claim petition was dismissed by the Tribunal. Aggrieved by the same, the claimant has come before this Court.

6. The learned counsel appearing for the appellant by taking this Court to the evidence available on record submitted that the accident had occurred at Sivan Street, Ganapathy Nagar, Maduravoil and therefore, the Tribunal committed an error in coming to the conclusion that the accident did not occur on road. The learned counsel further submitted that even assuming the accident did not occur in a public road and it occurred in a godown as contended by the respondents, still it can be treated as a public place for the purpose of the Motor Vehicles Act and hence the claim petition was maintainable before the Tribunal.

7. In support of the said contention, the learned counsel relied on the judgment passed by the Full Bench of this Court in ***United India Insurance Company Limited, Vs. Parvathi Devi and Others*** reported in ***1999 ACJ 1520*** and ***New India Assurance Company Limited Vs. Srinivasan and others*** reported in ***2021 (1) TNMAC 73***.



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8. The learned counsel appearing for the second respondent/Insurance Company would submit that in Ex.P2-Discharge summary, it was clearly mentioned that the accident was caused by an unknown lorry and the FIR was filed nearly after nine months from the date of occurrence and therefore, the Tribunal was justified in coming to the conclusion that the claim petition was liable to be dismissed.

9. The learned counsel further submitted that as per investigation report filed by the second respondent marked as EX.R2, the accident had occurred in a godown which cannot be treated as a public place and hence the claim petition was not maintainable before the claims Tribunal.

10. The learned counsel further submitted that the first respondent sold the vehicle to one Karthikeyan who also acted as a driver on the date of occurrence and hence without impleading the present owner of the vehicle, the claim petition is bad for non-joinder of necessary parties.



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11. In order to prove the accident, the claimant deposed as PW.1 and his evidence is in accordance with the averments contained in the claim petition. He clearly asserted in his evidence that the accident had occurred in Sivan Street, Ganapathy Nagar, Maduravoil. The evidence of PW.1 also very well corroborated by the findings of the Investigation Officer of the second respondent Insurance Company, which was marked as Ex.R2. In Ex.R2, he recorded his findings and opinions which read as follows:

“On 11th September 2012 at about 11.30 A.M., the TN-20 L-7958 Escort Crane hit a Man and thereafter the iron Axel fell down on the man at Near Number 70/1, Sivan Koil Street, Gannapathy Nagar, Chennai.

Due to this accident the man P.Manikandaraja S/o.Pasumponpandian sustained grievous injuries.

The accident was reported to Poonamallee Traffic Investigation Police Station on 11.06.2013 at 11.30 A.M and was registered vide FIR 815/PH3/2013 under Section 279 and 337 of IPC.



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The TN-20 L-7958 Escort Crane had insurance cover under the National Insurance Company Limited, Poonamallee Office on the date of accident.

The TN-20 L-7958 Escort Crane driver at the time of accident named K.Karthikeyan, S/o.Krishnamurthy as verified police records and he had valid and current driving license at the time of accident.

The Poonamallee Traffic Investigation Police filed Charge Sheet. The Court fined the accused he was remitted the fine amount hence the Poonamallee Traffic Investigation Police closed the above said Criminal Case.”

12. A perusal of the findings of the investigator would reveal that the accident had occurred near Door No.70/1, Sivan Koil Street, Ganapathy Nagar, Chennai and crane belonged to the first respondent with Registration No.TN-20L-7958 was involved in the accident. Though in the bottom of the very same page, he had written by his hand to the effect that the accident had occurred in private godown, the investigation officer in his



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report also enclosed the affidavit filed by one Karthikeyan, who is said to have acted as driver. The notarized affidavit of said Karthikeyan clearly proves that the crane in question had involved in the accident. However, he claims that the injured claimant was at fault and he suddenly came near the vehicle and hence Iron rods fell down on him. In his affidavit, he also mentioned that the accident occurred in a godown situated in Door No.70/1, Sivan Street, Ganapathy Nagar, Chennai. However, there is no clarity in his affidavit, whether accident occurred inside the godown or in Sivan Street in front of godown. The possibility of crane entering godown is also remote. Though the affidavit of driver of crane was enclosed along with investigation report, he did not enter the witness box before the Tribunal for giving evidence inspite of service of summons on him. However, the claimant entered box and deposed that the accident had occurred at Sivan Street and his evidence is corroborated by findings of Investigation Officer also. In these circumstances, this Court comes to the conclusion that the accident had occurred at Sivan Street, which is a public place.

13. In *United India Insurance Company Limited, Vs. Parvathi Devi and Others*, a Full Bench of this Court, while explaining



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expression public purpose, for the purpose of Motor Vehicles Act observed as follows:

“16. The definition of 'public place' is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word 'public place', wherever used as a right or controlled in any manner whatsoever, would attract Section 2(24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a 'public place'.”

14. A perusal of the above judgment would make it clear, for the purpose of Motor Vehicles Act, even a private place used with permission or restriction can also be treated as public place .

15. In the ***New India Assurance Company Limited Vs. Srinivasan and others*** reported in ***2021 (1) TNMAC 73***, this Court held that



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a private agriculture field which can be accessed without restriction can be treated as a public place for the purpose of Motor Vehicles Act. Therefore, it is clear private places where public are allowed with permission or with some kind of restriction can also be treated as a public place for the purpose of Motor Vehicles Act. The main object of the Motor Vehicles Act is to provide compensation to the unfortunate Motor Vehicle Accident victims. Therefore, the word 'public place' as defined under Section 2(34) of Motor Vehicles Act shall be interpreted widely so as to achieve the object of the enactment. The definition in the Section 2(34) reads as follows:

“2(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. Therefore, it is clear, even if a place is not a thoroughfare, if public have access to that place, it can be treated as a public place. In the Full Bench judgment cited supra, it was held that even if public is allowed to visit the private place with restriction or with permission it can be treated as a public place. Even assuming that the accident occurred in front of the



godown where vehicles are allowed to load and unload the goods, we can safely presume that any private place in front of the godown where vehicles are allowed to load or unload the goods can be treated as a place to which public will have restricted or permitted access. Therefore, we can safely come to a conclusion that the accident in this case had occurred in a public place, even assuming it occurred in a private place i.e., in front of the godown. However, factually this Court already came to the conclusion that the accident had occurred in Sivan Street, which is a public place. Therefore, the finding of the Tribunal with regard to this aspect is set aside.

17. It is not in dispute that the first respondent herein is the registered owner of the Motor Vehicle. The said fact is admitted by the second respondent in investigation report marked as Ex.R2, wherein the owner of the vehicle was mentioned as Edward Devananthan, the first respondent herein. It was also admitted that a valid policy was issued in favour of first respondent's vehicle involved in the accident. Though it was claimed that the vehicle was sold to one Karthikeyan who also acted as a driver at the time of occurrence, in the absence of any concrete evidence to show that vehicle was legally transferred in the name of Karthikeyan, the



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liability of the registered owner continues. Therefore, I hold the first respondent is liable to meet the claim in his capacity as the registered owner of the vehicle and the second respondent being the insurer is also jointly and severally liable to meet the claim.

18. It was averred in the claim petition that the deceased was a load man cum cleaner and was earning a sum of Rs.7,000/- per month. A perusal of discharge summary marked as Ex.P2 would indicate the claimant suffered fracture of bilateral body of mandible, fracture of superior and inferior public rami bilateral, fracture of L3 spine/fracture of 1,2,3,4,5 right ribs. The disability certificate issued to the claimant marked as Ex.C1 would establish that the claimant suffered a disability at 20%. However, there is no positive evidence available on record to show that the injury suffered by the claimant interfered with his avocation.

19. A perusal of discharge summary issued to the claimant would indicate that at the time of discharge, the claimant was conscious and oriented. The surgical wound was also noted as healed. In the absence of any positive evidence to suggest that by virtue of injury suffered



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by him, the claimant is disabled from continuing his avocation, this Court is inclined to award compensation on percentage basis, under the head disability. The accident had occurred in the year 2012 and therefore Rs.3,000/- is fixed as compensation per percentage of disability. Therefore, the claimant is entitled to Rs.60,000/- under the head disability. Ex.P4 is the medical bills produced by the claimant. A perusal of the same would indicate that the claimant incurred an expenditure of Rs.1,94,766.50/- towards medical expenses, the same is rounded off to Rs.1,94,800/-.

20. In addition to the above said sum, the claimant is entitled to Rs.10,000/- (each) towards pain and suffering and loss of amenities. The discharge summary would indicate the claimant was in hospital for nearly 18 days (i.e, 12.09.2012 to 29.09.2012). Therefore, the claimant is entitled to Rs.5,000/- (each)towards extra nourishment and attender charges. In all claimant is entitled to Rs.2,84,800/-. The award passed by the Tribunal is set aside and the following amount is awarded by this Court towards compensation:



S.No	Description	Amount awarded by this Court (Rs)
1.	Medical expenses	1,94,800/-
2.	Loss of amenities	10,000/-
3.	Pain and suffering	10,000/-
4.	Attender charges	5,000/-
5.	Extra Nourishment	5,000/-
6.	Disability	60,000/-
	Total	Rs.2,84,800/-

21. In view of the discussions made earlier, the claimant is entitled to a sum of Rs.2,84,800/- with interest at the rate of 7.5% on the enhanced award. The respondents 1 and 2 are liable to pay the amount of Rs.2,84,800/- to the appellant as compensation to the injury suffered by him. The second respondent is directed to deposit the above mentioned amount to the credit of MCOP.No.6407 of 2013, on the file of the Motor Accident Claims Tribunal, (Small Causes Court, Special Subordinate Court No.I) Chennai, within six weeks from the date of receipt of judgment. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, by making formal application before the Tribunal.



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22. Accordingly, this Civil Miscellaneous Appeal is allowed.

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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To
1.The Motor Accident Claims Tribunal,
Small Causes Court, Special Subordinate Court No.1, Chennai.

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



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S.SOUNTHAR, J.

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