BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **12.03.2024**

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**
and
THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.287 of 2021
& CROS.OBJ.(MD)No.28 of 2021
& C.M.P.(MD)Nos.2408 & 3744 of 2021

C.M.A.(MD)No.287 of 2021:-

Divisional Manager,
Bharti AxA General Insurance Company Limited,
180, Sriram Center, Ground Floor,
Madurai. ...Appellant

Vs.

1.Vasanthakumar
2.Mohammed Yasin
3.Sathesh ...Respondents

PRAYER**:** Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 07.10.2020 passed in M.C.O.P.No.30 of 2017 on the file of the Motor Accident Claims Tribunal, Virudhunagar cum Additional District Judge, Virudhunagar.

For Appellant : Mr.V.Sakthivel

For R1 : Mr.G.Prabhu Rajadurai

For R2 & R3 : No appearance

CROS.OBJ.(MD)No.28 of 2021:-

Vasanthakumar ...Appellant

Vs.

1.Divisional Manager,
Bharathi Axa General Insurance Company Limited,
No.180, Sriram Centre, Ground Floor,
Madurai.

2.Mohammed Yasin

3.Sathish ...Respondents

PRAYER**:** Civil Miscellaneous Appeal has been filed under Order 41 Rule 22 of CPC to set aside the judgment and decree dated 07.10.2020 passed in M.C.O.P.No.30 of 2017 on the file of the Motor Accident Claims Tribunal, Virudhunagar cum Additional District Judge, Virudhunagar and enhance the compensation by allowing this cross appeal.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 : Mr.V.Sakthivel

For R2 & R3 : No appearance

COMMON JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.]**

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, Virudhunagar cum Additional District Judge, Virudhunagar in M.C.O.P.No.30 of 2017, dated 07.10.2020, the Insurance Company has filed the present appeal. Seeking enhancement of the compensation, the claimant filed the Cross Objection.

2.The appellant Insurance Company is the third respondent in M.C.O.P.No.30 of 2017 on the file of the Motor Accident Claims Tribunal, Virudhunagar cum Additional District Judge, Virudhunagar. The first respondent in the appeal herein is the claimant. He filed the claim petition in M.C.O.P.No.30 of 2017, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation for the accidental fall of the claimant. By the award, dated 07.10.2020, the Tribunal awarded a sum of Rs.20,19,500/- (Rupees Twenty Lakhs and Nineteen Thousand and Five Hundred only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the Case:-

According to the claimant, on 01.09.2016 at about 12.00 hours, when the claimant was loading vegetables in the auto bearing Reg.No.TN 72 AP 6858 at the request of the auto driver Surya, a huge chunk of load had fallen on his back, due to which, his hip and neck got severely damaged and he was admitted in Chinnamanoor, Theni and Madurai Rajaji hospital. The case was registered as 'Accidental Fall' in Crime No. 167 of 2016 in Odaipatti Police Station. Therefore, the claimant filed the claim petition, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation.

4.The appellant Insurance Company filed the counter statement and denied all the averments made in the claim petition. The appellant Insurance Company contended that the auto was used as load auto and hence, the insurance company is not liable to pay any compensation and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and 8 documents were marked as Ex.P1 to P8. On the side of the Insurance Company, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 were marked.

6. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and claimant held that using passenger auto as load auto by the owner or the driver of the auto is the mistake committed by them. Although the fault is on the driver and the owner of the auto, a third party was affected and hence, the insurance company is liable to pay compensation on behalf of the second and third respondent and directed the appellant Insurance Company, to pay a sum of Rs.20,19,500/- *(Rupees Twenty Lakhs and Nineteen Thousand and Five Hundred only)* as compensation under the various heads along with 7.5% interest from the date of filing of the claim petition and recover the same from the second and third respondents.

Sl. No.	***Heads***	***Amount in Rupees***
1	Loss of income	Rs.18,14,400/-
2	Loss of pain and suffering	Rs. 50,000/-
3	Assistance Expenses	Rs. 1,00,000/-
4	Future Medical Expenses and Loss of Nourishment	Rs. 50,000/-
5	Transport Expenses	Rs. 5,000/-
	Total	**Rs.20,19,400/-**

7.Aggrieved against the said award dated 07.10.2020, the appellant Insurance Company has filed the present appeal and the claimant filed cross objection seeking enhancement of the award dated 07.10.2020.

8. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant Insurance Company submits that falling of vegetables bag did not happen while the auto was in motion and hence, the claim petition filed before the Motor Accidents Claims Tribunal is not maintainable.

9.Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the claimant submits that only after considering all the documents, the Tribunal has granted the compensation and therefore, he seeks for dismissal of this appeal. He further submits that the Tribunal has awarded meagre sum for 100% disability and hence, he seeks enhancement of the award.

10.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the claimant and also perused all the materials available on record.

11.The following points arise for consideration of this appeal:

11.1.whether the contention of the learned counsel for the insurance company that the claim petition is not maintainable on account of the fact that the insured auto was not in motion and injured sustained injuries due to the accident fall of the vegetables bag from the auto is acceptable or not?

11.2.Whether the compensation granted is in accordance with law?

12.Discussion on the liability:

According to the claimant, on 01.09.2016 at about 12.00 hours, when the injured was loading the vegetables in the auto bearing Reg.No.TN 72 AP 6858 at request of the auto driver Surya, a huge chunk of load had fallen on his back, due to which, he sustained severe injury in his hip and neck and he was admitted in Chinnamanoor Hospital and thereafter, Theni Government Hospital and finally, Madurai Rajaji hospital. On perusal of the materials available on record, it is seen that the injured was loading the vegetables bags in the auto. At that time, one of the bags from the said auto had fallen heavily on the injured and hence, he sustained injuries in his hip and neck. His specific case is that the auto driver requested to load the vegetables in the auto and so, he loaded the vegetables in the auto. At that time, one of the bags from the auto slumped on him. Therefore, due to the carelessness of the auto driver, the injured sustained injuries. In the said circumstances, this Court is unable to accept the argument of the learned counsel for the insurance company that the claim is not maintainable before the Motor Accident Claims Tribunal.

13.This Court is unable to accept the said contention for the reason that the accident happened due to the negligent act of the driver, when loading vegetables in the auto.

13.1.It is well settled under Section 165 of the Motor Vehicle Act, 1988, the Motor Accidents Claims Tribunal, has jurisdiction to decide the case of this nature by giving wide interpretation to the word "*arising out of **use** of motor vehicle*". The Hon'ble Supreme Court in the case of S***hivaji Dayanu Patil Vs.Vatschala Uttam More*** reported in ***1991 3 SCC 530***, has construed the use of motor vehicle in wide manner and relevant portion is as follows:

> *The word 'use' has a wider connotationas to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehi-cle having been rendered immobile on account of a break-down or mechanical defect or accident.*

13.2.In similar circumstances, the Division Bench of the High Court of Orissa in the case of ***Kanhei Rana and another vs. Gangadhar Swain and others*** has fixed liability for the death of the deceased/labour after loading the truck. In that case, the death was on account fall of log, when the truck was being loaded with logs. The Division Bench reversed the decision of the learned single Judge that the insurance company was not liable to pay compensation amount under the Motor Vehicle Act, 1988. The said Division Bench decision had been considered by the three judges bench of the Hon'ble Supreme Court in the case of ***Kalim Khan and others Vs. Fimidabee and others*** reported in ***2018 7 SCC 687*** and approved the said decision and held as follows:-

> ***25.*** *From the aforesaid authorities, it is limpid that the expression "use of the vehicle"*

under certain circumstances can be attracted when the vehicle is stationary or static. A Single Judge Bench of the High Court of Orissa in Kanhei Rana v. Gangadhar Swain [Kanhei Rana v. Gangadhar Swain, 1992 SCC OnLine Ori 30 : AIR 1993 Ori 89] while dealing with a situation where the deceased labourer after loading the truck with logs lost his life. The Tribunal had categorically found that death was on the account of fall of a log, when the truck was being loaded with logs. The learned Single Judge, in appeal, had concurred with the view of the Tribunal by opining that the fall of the log had no nexus with the use of the vehicle not even remotely, and there was no material to show that the fall of the log was occasioned due to use of the vehicle. He had further held that the careless handling of goods being loaded on or unloaded from a vehicle had no connection to the vehicle itself. Reversing the conclusion of the learned Single Judge, the Division Bench opined that the concept of movement being not intrinsically or inherently connected with the use and the term "use" *having been connotatively expanded, there can be no doubt that the same can also be extended to the arena/sphere of a claim advanced under Section 110 of the 1939 Act. Heavy onus is cast on the driver to avoid negligence while the vehicle is in use. If the term "use" in its conceptual sweep engulfs no motion or no movement or stationariness, then by logical corollary it is made essential that the driver or for that matter any agent of the owner should be careful and non-negligent. Negligence in driving is regarded as a fact that the vehicle is in motion. But the definition of "use" having been expanded in its broader canvas, it has to clothe in its sweep other categories of negligence. To elaborate, when a vehicle remains static, it cannot constitute that the driver is negligent because of his rash and negligent driving. On the contrary, it has to embody some other different types of negligence. Of course that would depend upon the facts and circumstances of each case. The Division Bench of the High Court went on to say that the Apex Court in Patil [Shivaji Dayanu*

Patil v. Vatschala Uttam More, (1991) 3 SCC 530 : 1991 SCC (Cri) 865] was dealing with the negligence so far as it was concerned with Section 92 of the Act, but as the language of Section 92-A and Section 110 of the old Act used the same phraseology and there is absence of any etymological distinction, the same meaning should be given to the expression under Section 110 of the old Act. The appellate Bench held that there was causal relationship with the accident which had resulted in the death of the claimant.

26. *We entirely agree with the aforesaid analysis, for it is in accord with the view of the decisions of this Court.*

27. *It may be reiterated here that the causal relationship should exist between violation and the accident caused. There has to be some act done by the person concerned in causing the accident. The commission or omission must have some nexus with the accident. The word "use" as has been explained by the authorities of this Court need not have an intimate and direct nexus with the accident. The Court has to bear in mind that* *the phraseology used by the legislature is "accident arising out of use of the motor vehicle". The scope has been enlarged by such use of the phraseology and this Court taking note of the beneficial provision has placed a wider meaning on the same. There has to be some causal relation or the incident must relate to it. It should not be totally unconnected. Therefore, in each case what is required to be seen is whether there has been some causal relation or the event is related to the act.*

14.In this case while loading the vegetables bags in the auto and one of the bags slumped from the said auto and the injured sustained injuries. In the situation, the submission of the learned counsel for the appellant/Insurance Company that the 'use' of the vehicle does not cover immobile vehicle under the Motor Vehicles Act, 1988, is not acceptable. Therefore, the learned Tribunal Judge has correctly held that the driver of the second respondent alone is responsible for the accident.

15.Therefore, the contention of the learned counsel for the appellant that this petition under Motor Vehicle Act is not maintainable cannot be accepted. This Court finds no reason to interfere with the said findings. Therefore, this Court concurs with the finding of the learned Tribunal Judge that the driver of the auto of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.

16.The insurance company is liable to pay compensation on behalf of the second and third respondents and at the same time, the Tribunal has permitted the appellant insurance company to recover the award amount from the second and third respondents. Hence, there is no infirmity in the finding rendered by the Tribunal on this aspect. Hence, this Court concurs with the findings of the Tribunal.

<u>17.Discussion on quantum:</u>

At the time of accident, the claimant was aged about 18 years. The claimant stated he is working as coolie and earning a monthly income as Rs.12,000/-, but no evidence was produced on the side of the claimant.

The Tribunal fixed the monthly income of the injured claimant as Rs.6,000/-. Since his disability being 100% after the accident, 40% for future prospects and applying the multiplier 18 to calculate the loss of income and the same is computed as follows:-

17.1.Calculation of the amount:

Rs.6,000 + 40% (2400) = Rs. 8,400/-
Rs.8,400 X 12 X 18 = Rs.18,14,400/-
Loss of Income = Rs.18,14,400/-

17.2.Considering the injury and nature of treatment, the non pecuniary damages is calculated as follows:

Sl. No.	*Heads*	*Amount in Rupees*
1	Loss of pain and suffering	Rs. 50,000/-
2	Assistance Expenses	Rs. 1,00,000/-
3	Future Medical Expenses and Loss of Nourishment	Rs. 50,000/-
4	Transport Expenses	Rs. 5,000/-

18.Conclusion:

The Tribunal awarded compensation of Rs.20,19,400/- to the claimant under the heads as given below. For the forgoing reasons and considering the nature of the injuries sustained by the appellant, this

Court is of the view that there is no infirmity in the award passed by the Tribunal and the same does not warrant any interference. The Tribunal awarded the compensation under the various heads, which are as follows:-

Sl. No.	*Heads*	*Amount in Rupees*
1	Loss of income	Rs.18,14,400/-
2	Loss of pain and suffering	Rs. 50,000/-
3	Assistance Expenses	Rs. 1,00,000/-
4	Future Medical Expenses and Loss of Nourishment	Rs. 50,000/-
5	Transport Expenses	Rs. 5,000/-
	Total	**Rs.20,19,400/-**

Accordingly, the questions are decided against the insurance company.

19. Accordingly, this Civil Miscellaneous Appeal is dismissed and the Cross Objection (MD)No.28 of 2021 is also dismissed. The judgment and award passed by the Motor Accident Claims Tribunal, Virudhunagar cum Additional District Judge, Virudhunagar in M.C.O.P.No.30 of 2017, dated 07.10.2020 is hereby confirmed. The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a

period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount as directed by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

(V.B.S.J.,) (K.K.R.K.J.,)
12.03.2024

Index:Yes/No
Internet:Yes/No
sm/sbn

To

1.The Motor Accident Claims Tribunal, Virudhunagar
cum Additional District Judge,
Virudhunagar.
2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

V.BHAVANI SUBBAROYAN, J.
and
K.K. RAMAKRISHNAN, J.

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