BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.02.2024

CORAM
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A(MD)No.116 of 2021
and
C.M.P(MD).Nos.1010 of 2021 and 4635 of 2023

The Branch Manager,
National Insurance Company Limited,
Malaikottai,
Fort Station Road,
Trichy. : Appellant / Respondent No.2

Vs.

1.M.Kannagi

2.M.Maheswari

3.M.Selvaraj

4.V.Udayammai

5.Maideen

6.The Assistant Executive Engineer (Rural),
Tamil Nadu Electricity Board,
Karaikudi.

7.The Assistant Engineer,
Tamil Nadu Electricity Board,
Puduvayal, Karaikudi Taluk,
Sivagangai District.

8.The Superintending Engineer,
Sivagangai Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Sivagangai. : Respondents /Respondents

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Devakottai, in M.C.O.P.No.177 of 2014, dated 08.10.2018.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.D.Venkatesh (for R1 to R3)
: Mr.M.Mohan Babu (for R6 to R8)
: No appearance (for R5)

JUDGMENT

The Insurance Company has filed this Civil Miscellaneous Appeal, challenging the award passed in M.C.O.P.No.177 of 2014, dated 08.10.2018, by the Motor Accident Claims Tribunal, Sub Court, Devakottai.

2.The claimants are the dependents of the deceased/Mayandi. On 23.08.2012 at about 12.30 p.m., the tipper lorry bearing registration No. TN 63 U 2049 insured with the appellant Insurance Company, was driven by its driver and the driver of the lorry by using hydraulic gear emptied the sand and the lorry driver drove the vehicle without reclining the carrier in a rash and negligent manner and hit the live electric wires, which were passing through the claimants house, due to which, the live wires got snapped and fell on the road. The deceased stepped on the live wire and got electrocuted and died on the spot. Therefore, FIR was registered in Crime No.289 of 2012 for the offence under Section 174 of Cr.P.C., against the lorry driver. After investigation, it was found out that the lorry driver drove the vehicle without reclining the carrier in a rash and negligent manner hit the electric live wires, thereby, the live wires got snapped and fell on the road. Therefore, the investigating officer altered the offence under Section 304(A) of IPC. The deceased was working as a mason and earned more than Rs.500/- per day. Due to the death of the deceased, the claimants namely wife, children and his mother filed a petition as claimants claiming compensation of Rs.5,00,000/- under Sections 140, 141, 142, 153B, 166 and 182A and

3(1) of the Motor Vehicles Act,1988.

3.The Insurance company/appellant filed a counter and specifically denied the allegation that there is no question of granting compensation for the reason that there was no accident at all. There was improper maintenance of the electricity wire which resulted in snapping of the live electric wire and fell on the top of the insured vehicle and the same was the root cause for the accident. Therefore, there was no direct nexus between the death and the negligence of driver of the vehicle and hence the claimant is not entitled to compensation without proof of rash and negligence on the part of the driver of the insured vehicle to maintain the claim under Section 166 and 182A and 3(1) of the Motor Vehicles Act, 1988 and it is duty of the claimants to prove that the use of the vehicle in a rash and negligent manner which resultantly caused death. In this case, there was no proof for the same. Hence, he seeks for dismissal of the petition.

4.On the side of the claimants to prove their claim, P.W.1 and P.W.2 were examined and exhibited 6 documents as Ex.P.1 to Ex.P.6. On the side of the insurance company, D.W.1 and D.W.2 were examined and exhibited 2 documents as Ex.D.1 and Ex.D.2.

5.In the said circumstances, the learned trial judge considered all the documents and specifically held that the snapping of the live wires has happened, due to the rash and negligent driving of the lorry driver. It is the duty of the lorry driver, after emptying the sand before moving the vehicle, to recline the carrier of the lorry. Hence the learned trial Judge fixed the negligence upon the appellant insurance company vehicle and granted compensation of Rs.22,78,000/- with interest at the rate of 7.5% per annum under the heads are as follows:-

Sl.No.	***Heads***	***Amount in Rupees***
1	Loss of Income	Rs.22,08,000/-
2	Loss of consortium to the wife	Rs. 40,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Transport Expenses	Rs. 15,000/-
	Total	**Rs.22,78,000/-**

Assailing the said award, the appellant Insurance Company has filed the present appeal.

6.**The learned counsel for the appellant/insurance company made the following submissions**;

6.1.From the FIR, it is clear that the claim petition under Sections 140, 141, 142, 153B, 166 and 182A and 3(1) of the Motor Vehicles Act, 1988, is not maintainable. In this case, even as per pleading, the driver drove the lorry in a rash and negligent manner without reclining the carrier and hit the electric wire and it got snapped. In the said circumstances, it is the duty of the electricity board to repair the weak electric wire, as per the electricity rules. It is the duty of the electricity board to maintain the live wires regularly. For which, he relied the relevant rules of the electricity regulations. On the basis of that, he stated that there was no accident and there was no nexus between the act of the driver and cause of death.

6.2.The learned counsel further submitted that under Sections 140, 141, 142, 153B, 166 and 182A and 3(1) of the Motor Vehicles Act,1988, the claimants himself has to prove that the accident happened due to negligent driving of the lorry driver. In this case, it is not the case of the claimants that he sustained injury, when the lorry was driven rashly and negligently and hit the deceased. After the lorry was taken away from the place, the deceased carelessly stepped on the live wire which was lying on the ground and died on the spot. In the said circumstances, there is no use of vehicle and hence, there was no motor accident. If at all any compensation is to be claimed, the electricity department is to be sued on the ground that they have failed to take steps to repair the weak wire.

7.Submission of the learned counsel for the respondents :

The learned counsel for the respondents/claimants 1 to 5 submitted that the word “use” in the section is to be interpreted liberally as per the judgment of the Hon'ble Supreme Court in the case of ***Shivaji Dayanu Patil and another v. Vatschala Uttam More (SMT)***, reported in ***1991 (3) SCC 530*** has held that the word “use” should be interpreted liberally in order to achieve the intention of the social welfare legislature by avoiding construction to disown the liability. Without act of the driver of the lorry the snapping of the live wire would not be happened. Hence, there is a “*causa causans*”. In this case, because lorry driver drove the vehicle in a rash and negligent manner without dismounting the carrier, resulted, in snapping of the wire, live electric and the accident has happened. But for the negligent driving of the lorry, the live wire would not have snapped. If the live wire had not snapped, the death would not have happened. In the said circumstances, applying principle rule of "*causa causa*" and also the principle of res ipso loquitur, the learned trial judge correctly fixed the negligence on the lorry driver and granted compensation.

8.This Court perused the submission made on either side and also perused the records and the precedents relied upon by them.

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

9.1.Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

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

10. On 23.08.2012 at about 12.30 p.m., the insured tipper lorry bearing registration No. TN 63 U 2049, was driven by its driver namely Jawahar Ali, with the sand and after unloading the sand without reclining the carrier, he drove the lorry in a rash and negligent manner and hit the

live electric wire. In the result, the live electricity wire got snapped and fell on the road and the deceased mason stepped on the live wire while he was working on the road. It is the duty of the driver to move the vehicle after reclining the carrier of the lorry. Inaction on the part of the driver to dismount the carrier of the lorry before moving is the cause for the snapping of live electricity wire and consequential fall on the road and ultimate cause for the death of the mason working on the road. The driver failed to lower the raised carrier and hence, the raised carrier hit the live wire and it got snapped and fell on the road and the deceased accidentally stepped on the same and hence it is beyond doubt that the principle of "*Causa Causans*" is applicable in this case.

11.At the cost of repetition, in order to appreciate the plea of the appellant that the word "use" to be given restricted meaning and it is not applicable to the present case namely there was no proximity with the act of the lorry driver and death of the deceased, this Court inclines to delve into the principles laid down by the various courts in this aspect:-

11.1. The Hon'ble Supreme Court in the case of ***Shivaji Dayanu Patil and another v. Vatschala Uttam More (SMT)***, reported in ***1991 (3)***

SCC 530 has considered at length and answered affirmatively to the question whether fire and explosion of petrol tanker in which the victim lost his life would be said to have resulted from an accident arising out of use of motor vehicle namely petrol tanker and the relevant paragraph are as follows :-

> ***12.*** *It is thus evident that Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of 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. The same approach has been adopted by this Court while construing the provisions of the Act. [See : Motors Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi [(1981) 4 SCC 660 : 1982 SCC (Cri) 28 : (1982) 1 SCR 860] and Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan [(1987) 2 SCC*

654 : (1987) 2 SCR 752] .]

13. *The expression "arising out of the use of motor vehicles" was also used by Parliament in sub-section (1) of Section 110 of the Act wherein provision was made for constitution of Motor Accidents Claims Tribunals for speedy and expeditious adjudication of claims of compensation in respect of accidents involving death or bodily injuries to persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both. Furthermore, by sub-section (1) of Section 94 of the Act an obligation was imposed that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII of the Act. Section 95 prescribed the requirements of such insurance policies as well as limits of liability. In clause (b) of sub-section (1) of Section 95, it was laid down that the policy of insurance required must be a policy which insures the person or classes of persons specified in the policy to the* *extent specified in sub-section (2) against (i) any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place and (ii) the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. While construing the expression "arising out of the use of a motor vehicle" in sub-section (1) of Section 92-A of the Act, regard will have to be had to the fact that expressions to the same effect were also contained in Sections 95 and 110 of the Act.*

26. *These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the abovementioned decisions, the appellate bench of the High Court has held that the expression "use of a motor vehicle" in Section 92-A covers accidents which occur both when the vehicle is in motion and when* *it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation 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 vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck.*

***27.** The only other question which remains to be considered is whether the explosion and fire which caused injuries to the deceased son of the respondent can be said to have taken place due to an accident arising out of the use of a motor vehicle viz. the petrol tanker. Shri Sanghi has urged that the expression 'arising out of the use of* *a motor vehicle' implies a causal relationship between the user of the motor vehicle and the accident which has resulted in death or disablement and that in the present case it cannot be said that the explosion and fire which took place in the petrol tanker four and half hours after the collision and after the tanker had turned turtle was an accident arising out of the use of the petrol tanker. In this regard, Shri Sanghi has emphasised that the persons who sustained injuries as a result of the explosion and fire in the petrol tanker were pilfering petrol which had leaked out from the petrol tanker and the explosion and fire was the result of the said unlawful activity of those persons and that it was not on account of the user of the petrol tanker. Shri Sanghi, in this connection, has placed reliance on the decision in Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mahommed Issak [(1969) 2 SCC 607 : (1970) 1 SCR 869 : (1970) 1 LLJ 16] , wherein this Court has construed the expression 'arising out of employment' appearing in Section 3 of the Workmen's Compensation Act, 1923 and has laid down that there must be a causal relationship between the accident and the employment. Shri*

Sanghi has urged that similarly there must be a causal relationship between the accident and the user of the motor vehicle for the purpose of maintainability of a claim under Section 92-A of the Act.

36. *This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying* *the enactment.*

11.2. Similarly, in the case of ***New India Assurance Company Ltd., Vs Yadu Sambhaji More and others*** reported in ***2011 (2) SCC 416*** the Hon'ble Apex Court has interpreted the words "accident arising out of the use of motor vehicle". The facts of that case in brief were that a petrol tanker was got hit by a truck due to which petrol started leaking from the tanker. At day break the local people started collecting the petrol leaking out from the tanker. In the melee the petrol caught fire and there was a big explosion in which 46 persons lost their lives. The legal heirs filed the claim petition. The owner and insurer contested the claim petition on the ground that the fire and the explosion causing the death of those who had assembled at the accident site could not be said to be an accident arising out of the use of a motor vehicle.

11.3. The Hon'ble Supreme Court in the case of ***Kalim Khan Vs Fimindabee and others*** reported in ***2018 (8) Scale 484***. After scanning the earlier judgments has held that insurance company is liable to pay compensation under the motor vehicle Act to the death of the bystander in a blast operation carried out for digging the well with the assistance of a tractor.

11.4. Similarly, in the case of ***Rita Devi and others Vs New India Assurance Co Ltd., and another*** reported in ***2000 (5) SCC 113***. The Hon'ble Supreme Court has not accepted the plea of the insurance company that the vehicle was stolen by the hirer after committing the murder of the driver and hence the legal heirs of the driver are not entitled to compensation under the motor vehicle act 1988.

11.5. The division bench of this court in C.M.A.No.1544 of 2018 has also discussed the similar issues of liability of the insurance compay to pay the compensation to the death of the employee of the Tamil Nadu electricity board who climbed on the top of the bus and made attempt to cut the branches of the tree which had fallen down on the live electricity wire which resulted into the electrocution of the employee and answered affirmatively by accepting the claim of the legal heirs of the deceased under the motor vehicle Act.

11.6. In the case of Sharlei 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. It also hit a wire of an electric transformer with the result, the live wire came in contact with the bus. A passenger came out of the bus and when he attempted to save the driver came in contact with the live wire, electrocuted and died. The division Bench of the Kerala High Court has held that the accident arose out of the use of motor vehicle and awarded compensation.

11.7. The Division Bench of the case Karnataka High Court in Gouri Bi (Smt) and others Vs V.Khemraj reported in 1992 ACJ 623, has held that the expression “arising out of the vehicle cannot be equated to the phrases” arising under” or “caused by” and arising out of. The court further held that “arising out of has wide meaning and it means “connected with” and must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle that is required to satisfy the words “caused by”. Casual relationship to the injury may be enough to satisfy the words of the expression “arisen out of” as used in the Act and in the policy.

12. In this case as discussed above the driver of the insured vehicle without reclining the carrier, he drove the lorry in a rash and negligent manner and hit the live wire. In the result, the live electricity wire was snapped and fell down on the road on which the deceased mason was carrying out his work of construction and the deceased died out of

electrocution. The driver was negligent in moving the lorry without reclining the carrier. Hence, there is a close proximity and casual relationship between the act of the driver and the cause of the death. Therefore, the submission of the learned counsel for the appellant insurance company that there was no use of vehicle cannot be accepted.

13. Another submission of the learned counsel for the insurance company that there was improper maintenance of the live electricity wire by the electricity department and hence the electricity wire was snapped and consequently the claim can be made only against them cannot be accepted on the ground that in view of the specific finding of this court and the learned tribunal judge has held that the electricity wire had been snapped due to the negligence act of the insured vehicle by not reclining the carrier of the lorry. There was no evidence adduced on the side of the appellant insurance company to prove the fact either the electricity wire was already hanging without proper maintenance or the electricity wire got snapped accidently. In view of the above discussion, this court concurs with the finding of the learned tribunal judge that the appellant insured company is liable to pay compensation.

14.**Discussion on quantum:**

The appellant insurance has no dispute over the quantum.

The deceased was working as a mason and earning Rs.15,000/- per month and there are four dependents to the deceased. The age of the deceased was 32 years at the time of accident. No contra evidence was let on the side of the appellant insurance company. Hence, the Tribunal fixed the monthly income of the deceased as Rs.10,000/-. As per the ***Sarala verma case***, deduction 1/4 for his personal expenditure and adding 40% future prospects and fixing multiplier as 16 and calculating the loss of income of the deceased the loss of income is as follows:-

14.1.Calculation of the amount:

10000 - 2500 (1/4) = Rs. 7,500/-
7500 + 4000 (40%) = Rs. 11,500/-
11500 X 12 X 16 = Rs.22,08,000/-
Loss of income = Rs.22,08,000/-

The non pecuniary damages as per the Pranay Sethi case is calculated as follows:

Heads	*Amount in Rupees*
Loss of consortium to the wife	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Transport Expenses	Rs.15,000/-

14.3. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

15.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants under various heads are enumerated hereunder:

Sl.No.	*Heads*	*Amount awarded by the Tribunal*
1	Loss of Income	Rs.22,08,000/-
2	Loss of consortium to the wife	Rs. 40,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Transport Expenses	Rs. 15,000/-
	Total	**Rs.22,78,000/-**

Hence, this Court finds no merit in this Civil Miscellaneous Appeal filed by the appellant insurance company.

16.Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal, Sub Judge, Devakottai in M.C.O.P.No.177 of 2014, dated 08.10.2018, is hereby confirmed. The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, less any amount if already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit under the cumulative deposit scheme, till the minors attains majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the bank. The minor claimants on attaining majority are permitted to withdraw their shares. There shall be no order as to costs. Consequently, connected miscellaneous petition are closed.

(V.B.S.J.,) (K.K.R.K.J.,)
22.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accident Claims Tribunal,
Sub Court,
Devakottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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

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