
(1993) 08 MAD CK 0002

In the Madras High Court

Case No : C.M.A. No"s. 875 and 876 of 1992

B.C. Balachandran and another

APPELLANT

Vs

Parthasarathy and three others

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Citation : (1993) 08 MAD CK 0002

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : S. Venkataraman, for the Appellant; Bhagirathi Narayanan, for the Respondent

Judgement

Ratnam, J.—These appeals have been preferred by the insured person and the owner of the vehicle P.L-A. 3867 against the common

award of the Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai, in M.C.O.Ps. 71 and 28 of 1980. On 24/01/1988 the

appellant in C.M.A. No. 875 of 1992 was travelling in the car KLA 3887 belonging to the appellant in C.M.A. No. 876 of 1992 from Kodai

Road to Madurai and at that time, an accident took place between that vehicle and another tourist taxi bearing registration number TNA 6116

driven by one Parthasarathy and owned by Alli and insured with National Insurance Company. In that accident the appellant in C.M.A. 875 of

1992 sustained injuries and the vehicle belonging to the appellant in C.M.A. 875 of 1992 suffered damage. According to the case of the appellant

in these appeals, their accident was the outcome of the rash and negligent driving of the tourist taxi TNA 6116 by its driver and that in respect of

the injuries sustained by the appellant in C.M.A. No. 875 of 1992 and the damage to the car belonging to the appellant in C.M.A. No. 876 of

1992, compensation in a sum of Rs. 50,000/- each should be awarded. The claim so made was registered on the ground that the accident did not take place as a result of the rash and negligent driving of TNA 6116 and that the compensation claimed was also excessive. The sustaining of damage by the vehicle KLA 3387 was also denied. The insurer of the vehicle TNA 6116 also put forward the plea that at the time of the accident the driver was not duly licensed and therefore, no liability could be fastened on it for payment of compensation. Since both the claims arose out of the same accident, the claim petitions were disposed of on common evidence under a common award. On a consideration of the oral as well as the documentary evidence, the Tribunal found that the accident which took place on 24/1/1988 was only on account of the rash and negligent driving of the tourist taxi. TNA 6116 by its driver, considering the claim of the appellant in C.M.A. 875 of 1992 for payment of compensation in respect of the injuries sustained by him, the Tribunal awarded Rs.22,200/- together with interest at 12% from the date of the claim petition till the date of payment. In regard to the claim of the appellant in C.M.A. No. 876 of 1992 for recovery of the expenses to set right the damages to the vehicle KLA 3887, the Tribunal determined that amount at Rs.32,000/- and directed payment thereof together with interest at 12% from the date of the claim petition till the date of payment. In these appeals, the appellants have prayed that the disallowed portion of the compensation should also be awarded to them. Learned counsel for the appellant in C.M.A. 876 of 1992 first contended that the vehicle KLA 3887 had sustained extensive damage and the award of the Tribunal is that it made available only a sum of Rs.32,000/- towards repair charges; requires to be modified and higher amount awarded on the basis of the available materials. The argument, however, cannot be accepted. The appellant in C.M.A. 875 of 1992 is one other than the son of the appellant in C.M.A. 876 of 1992 and he has given evidence as P.W.1. In the course of his evidence, he had stated that the car KLA 3887 had sustained extensive damage. From Ex.P.5 it is seen that the front portion of the car KLA 3887 had been damaged. The nature and the extent of damage to that vehicle are also brought out clearly in the photographs marked as Exs. P.8 to P.12. Exs. P.13 to P.24 establish that the damaged vehicle was examined by Madurai Ambika Motor Works and a sum of Rs. 32,327.58 (sic) had also been incurred. No

contra evidence had been placed before the Tribunal to discredit either Ex.P.5 or Ex.P.8 to P.12 or even Exs.P.13 to P.21. Though normally the appellant in C.M.A. 876 of 1992 would be entitled to recover the entire amount of Rs.33,597-58. It is seen that the Tribunal had taken into account the value of the replaced parts also and had made a notional deduction of Rs.1,597-58 towards the same and had arrived at the compensation of Rs 32,000/-. In so doing the Tribunal cannot be stated to have committed any error. The replaced parts, though they will not be used as such, could at least be regarded as scrap and a value put thereon and that had been done by the Tribunal. It is also significant that no evidence was placed before the Court to show that there is any scope for further enhancement in the amount awardable with reference to the damage sustained by the vehicles KLA 3887. Under these circumstances, the Tribunal was justified in awarding to the appellant in C.M.A. 876 of 1992 compensation in a sum of Rs. 32,000/-.

2. In regard to the compensation awardable to the appellant in C.M.A. 875 of 1992 for the injuries sustained by him in the accident, it is seen from Ex. P.4 that he had sustained a different kind of injuries and the one sustained in the nose had been described to be grievous. P.W.1 had also referred to the sustaining of the injuries, though he had not referred to any disability or disfigurement as such. Considering the nature of the injuries sustained by the appellant in C.M.A. 875 of 1992, the Tribunal proceeded to award compensation in a sum of Rs.22,200/- comprised of Rs.5,000/- towards transport, medical and extra nourishment charges Rs.200/- towards loss of clothing, Rs.6000/- towards pain and suffering Rs.8,000/- towards permanent disability and Rs.3,000/- towards loss of earnings. Though learned counsel for the appellants strenuously contended that the compensation, thus, awarded cannot be characterized as adequate. Yet, he is not in a position to draw the attention of the Court to any clinching evidence in support of an increase the amount of compensation awardable to the appellant in C.M.A.875 of 1992. A faint attempt was however, made by learned Counsel for the appellant to contend that there is a scar on the nose of the appellant in C.M.A. 875 of 1992 and that has caused disfigurement of the face and that should have been taken into account, while awarding compensation. It is significant that no

doctor has been examined to establish. Whether there is any permanent scar left on the nose of the appellant. Even the appellant in C.M.A. 875 of

1992 examined as P.W.1 has not adverted to the presence of any scar on his nose. It cannot therefore, be taken that there is any disfigurement as

such and that deserves to be compensated for. The Tribunal had considered the different heads under which compensation has been claimed and

had awarded amounts as stated earlier and it had not been established by any evidence that higher amounts are awardable under those heads are

that the amounts already awarded are inadequate and meager. Under these circumstances, the Tribunal was justified in awarding to the appellant in

C.M.A. 875 of 1992 compensation in a sum of Rs.22,200/-.

3. Lastly, learned counsel for the appellant contended that the insurer of the vehicle TNA 6116 should have been made liable for payment of

compensation the appellants in those appeals. However, according to learned counsel for the Insurance Company, on the date of the accident viz.

24/1/1982, the driver of the vehicle TNA 6116 did not have a valid driving licence for the purpose of driving a tourist taxi and under the terms and

conditions of the policy, there had been a violation of one of its terms and therefore, no liability for payment of compensation could be fastened on

the Insurance Company.

4. Ex. R.3 is the policy covering the vehicle TNA 6116 involved in the accident. Therefrom it is seen that with reference persons or class of

persons entitled to drive, it had been stated that the insured or any other person in the employment of the insured or driving the vehicles on his

order and with his permission can drive, provided the person driving take a valid license to drive the vehicle or has held a permanent driving license

and is not disqualified from holding or obtaining such a licence. In this case, from Ex.R.2, it is seen that the driver Parthasarathy who was driving

the vehicle TNA 6116 on the date of the accident, had been licenced to drive a light motor vehicle between 27/8/1987 and 26/8/1990. R.W.2

working as Junior Assistant in the Regional Transport Office, Dindigul has given evidence to the effect that the driver of TNA 6116 on the date of

the accident, i.e. 24/1/1980, had not been issued any licence for driving tourist taxi. He further stated that the driver had the licence only for driving

a light motor vehicle and that for driving a tourist taxi, an endorsement was

required. Nothing had been stated to discredit the testimony of R.W.2 or the contents of Ex.R.2. In United India Insurance Company Ltd. Vs. Palaniammal and others, it was pointed out that there is a nexus between the classification of the vehicles into different categories and the issue of driving licence to persons belonging to different categories and that it is not as if a person holding a licence under the Act to drive a particular category of vehicle can be permitted to drive a totally different category of vehicle altogether merely on the basis of a licence to drive vehicles belonging to one category. It was further pointed out that to say that the issue of a licence for driving alight motor vehicle would be sufficient to drive a motor vehicle for a different category and classification is opposed to the concept of statutory classification of the vehicles into different categories and the issue of licence and the fulfillment of different capacity requirements in respect of the driving of the vehicles belonging to each one of the categories. In view of this decision, it follows that merely on the strength of a licence for driving a light motor vehicle, the driver of the vehicle TNA 6116 on the date of the accident could not be taken to have driven that tourist taxi with a valid driving licence obtained for that purpose. Under those circumstances, the Tribunal was right in holding that there is a violation of the conditions of the policy and no liability could, therefore, be fastened on it. No other point was urged. The Civil Miscellaneous appeals are therefore, dismissed. There will be no order as no costs.