
(2015) 03 MAD CK 0630

In the Madras High Court

Case No : CMA(MD) No. 917 of 2005 and CMP(MD) No. 5745 of 2005

Branch Manager, National Insurance Co. Ltd.

APPELLANT

Vs

M. Balasubramani and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Workmens Compensation Act, 1923 — Section 30

Citation : (2015) 03 MAD CK 0630

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant

Final Decision : Allowed

Judgement

D. Hari Paranthaman, J—The accident took place on 02.10.2003 and the 1st respondent got injured while he was working as loadman in the tractor and trailer owned by the 2nd respondent. On 02.10.2003, the tractor and trailer went to the workshop for some repair work. The 1st respondent travelled in the tractor and due to the rash and negligent driving of the tractor driver, the tractor got capsized and the 1st respondent sustained injuries. The nature of injuries and the percentage of loss of earning capacity are not relevant for the disposal of this case as those issues are not in dispute.

2. The 1st respondent filed W.C. No. 211 of 2003 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour, Dindigul, claiming compensation of Rs. 4,00,000/-. The 2nd respondent did not file any counter statement and he remained ex parte.

3. The appellant filed counter statement stating that the 1st respondent/claimant travelled in the tractor by sitting on the mudguard of the tractor at the time of accident. According to the appellant, no one can travel on the mudguard of the tractor and since he was thrown out from the mudguard, he is not entitled to

compensation.

4. Before the Deputy Commissioner of Labour, the claimant got himself examined as a witness and Exs.P1 to P9 were marked. He also examined the Doctor to prove the disability. The appellant insurance company examined two of its officials as witnesses and Exs.R1 to R5 were marked.

5. The Deputy Commissioner of Labour passed an order dated 31.01.2005 holding that the injury was caused due to the capsize of the tractor and directed the appellant insurance company to pay Rs. 2,55,457/- as compensation. The appellant has filed this appeal under Section 30 of the Workmen Compensation Act and the appeal was admitted on the following substantial questions of law:-

"(i) Whether the lower court has grossly erred in failing to note that the risk to no other person than a driver carried in a tractor was required to be covered under Section 147 MV Act 1988 and not covered under Ex.R1-Policy of Insurance?

(ii) Whether the lower court ought to have seen that Ex.R2-Registration Certificate, there is no provision even for seating capacity for such workman on a tractor?"

6. The learned counsel for the appellant insurance company vehemently contended that as per Ex.R1-Insurance Policy, no one other than the driver is covered. Hence, the 1st respondent is not entitled to any compensation. If at all any compensation he could claim, the same could be claimed only from the 2nd respondent. The learned counsel has also submitted that there is no provision for seating capacity as per Ex.R2-Registration Certificate other than the seat of the driver. Hence, he submitted that the 1st respondent, who travelled on the mudguard of the tractor at the time of accident and suffered injuries, is not entitled to compensation.

7. There is no representation for the 1st respondent. As far as 2nd respondent is concerned, notice is yet to be served on the 2nd respondent. However, I am not waiting for the service of notice on the 2nd respondent, in view of the order going to be passed after hearing the learned counsel for the appellant. Further, I have come to this conclusion because the appellant did not take steps to effect service on the 2nd respondent.

8. I have perused the records. Batta was not filed for the 2nd respondent. When the matter came up on 25.03.2015, simply an adjournment was sought for.

9. Today, it is stated that batta is filed today for the 2nd respondent and adjournment was sought for the service on the 2nd respondent. For more than two years, no batta was filed for the 2nd respondent. Hence, for not filing batta for two years, this Court can dismiss the appeal. However, I am not inclined to do so, as I am going to decide the appeal on its merits.

10. Taking me through Exs.R3-Accident intimation to police, R4-161(3) statement of the claimant and R5-161(3) statement of the claimant's wife,

learned counsel for the appellant has submitted that as per those documents, the trailer was not attached with the tractor at the time of accident and the 1st respondent travelled only in the tractor. Hence, the order of the Deputy Commissioner of Labour has to be reversed.

11. I am not inclined to agree with the submission made by the learned counsel for the appellant. The clear case of the 1st respondent in his application before the Deputy Commissioner of Labour was that he was a loadman in the tractor attached with trailer and the accident took place due to the rash and negligent driving of the driver of the tractor and trailer. He never stated in the application that he was sitting on the mudguard of the tractor. It is true that the appellant took a specific plea that the 1st respondent was travelling in the mudguard. Before the Commissioner, the 1st respondent/claimant gave evidence.

12. In the cross-examination by the appellant, he denied that he was travelling on the mudguard of the tractor. The relevant portion in the cross-examination of the claimant is extracted hereunder:-

13. He denied the statement made to the police about the version of the accident. Before the Deputy Commissioner of Labour, he deposed that the tractor along with trailer capsized and he received injuries. The first witness examined on the side of the appellant is an official. Through him, Exs.R1 to R5 were marked. But he was not a person who investigated the accident.

14. Mr. Balakrishnan, who was the investigator, was examined as the second witness on the side of the appellant. He spoke based on the investigation done by him. Through him, Ex.R6 was marked. During cross-examination, RW2-Balakrishnan stated that he did not see the accident and he only investigated the same. He enquired the persons who were near to the site of the accident. But he did not know the names of those persons and he also did not obtain any statements from those persons. He also stated that he did not even enquire the tractor owner.

15. In these circumstances, the Deputy Commissioner of Labour recorded a factual finding accepting the version of the claimant. Hence, I do not find any merit in the submission made by the learned counsel for the appellant that the claimant travelled only in the mudguard and not in the trailer. Secondly, the learned counsel for the appellant sought to argue that as per the insurance policy, the driver of the tractor alone is covered. However, perusal of the insurance policy-Ex.R1 shows that it is only in respect of the tractor and it is not the case of the insurance company that nothing is stated about the policy of the trailer. The insurance company should have taken steps to produce the policy of the trailer also. In any event, the policy of the tractor states that premium was collected for the third party. Hence, I am of the view, the 1st respondent is a third party and he may not be treated as neither the owner nor the driver. He was a third party. Hence, I am of the view that the appellant cannot escape from their liability to pay compensation.

16. The learned counsel has relied on a judgment of this Court in Iffco-Tokio General Insurance Co. Ltd. Vs. Smt. Sulochana and Others, (2010) ACJ 1522 : (2009) 1 MLJ 453 : (2011) 1 TAC 953 , wherein, this Court came to the conclusion that the deceased was sitting in the tractor at the time of accident and the insurance policy does not cover any workman, loadman or coolie. In this case, the 1st respondent did not travel on the mudguard and he travelled only in the trailer. Furthermore, the policy of the tractor covers the third party. In my view, the 1st respondent is a third party. Hence, the aforesaid judgment would not lend any support to the facts of this case.

17. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The 1st respondent/claimant is permitted to withdraw the entire amount lying in the credit of the claim petition. Consequently, CMP(MD) No. 5745 of 2005 is closed.

Note: Registry is directed to communicate this order to the 1st respondent/claimant.