

(1978) 09 MAD CK 0011
In the Madras High Court

C. Abdul Salam

APPELLANT

Vs

A.A. Jaleel and Others

RESPONDENT

Date of Decision : 22-09-1978

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1979) 1 MLJ 330

Hon'ble Judges : V. Sethuraman, J

Bench : Division Bench

Judgement

V. Sethuraman, J.—This appeal has been filed by the first respondent in M.C.O.P. No. 74 of 1973 before the Motor Accidents Claims

Tribunal, Coimbatore. The petitioner before the Tribunal by name Jaleel was employed as a cleaner in a lorry bearing No. M.D.U. 256 belonging

to the appellant. On 29th May, 1972, he was travelling in the lorry with a load of sugarcane from Karur to Manapparai. On account of the alleged

rash and negligent driving of the vehicle by the 2nd respondent before the Tribunal, the driver, the vehicle is said to have capsized at Malakoil near

Tachanur village. The first respondent's legs got underneath the lorry causing grievous injuries to him. He was in the Coimbatore Medical College

Hospital as an in-patients from 29th September, 1972, to 21st November, 1972, during which period his left leg was amputated on 4th October,

1972. He claimed to have been undergoing treatment even later, and had also an artificial limb fixed after the wound was completely healed. He

claimed Rs. 50,000 as compensation out of which Rs. 40,000 was for loss of earning power and for permanent disability, RS. 5,000 towards

artificial limb and for medical expenses, Rs. 4,000 for pain and suffering and Rs. 1,000 for loss of earning. The owner and the driver admitted that

the first respondent herein was employed as a cleaner of the lorry on an income of Rs. 170 per month. They also admitted that as a result of the accident his legs had been amputated. They contended that the vehicle had been insured to cover the risk of the cleaner and, that therefore, they were not liable to pay any compensation. The 2nd and 3rd respondents herein are the insurance companies. They disputed the question of rashness and negligence on the part of the driver. They also contended that they were not liable. The 3rd respondent insurance company herein contended that the liability arising out of the accident had to be borne only by the 2nd respondent herein and that it was not a necessary party to the action. The quantum of damage was also disputed.

2. The Tribunal held that the accident was due to the rashness and negligence on the part of the driver of the lorry and awarded Rs. 4,900 as damages payable under the Workmen's Compensation Act and Rs. 15,100 as damages under the general law. The damages payable under the Workmen's Compensation Act was decreed as against respondents 2 and 3 herein, the insurance companies, while the damages payable under the general law was decreed as against the appellant the owner of the vehicle. The appellant contends in the present appeal that even as regards the amount due as compensation under the general law, the amount would have to be paid by the insurance companies and not by him. Therefore, the only point that requires consideration in the present appeal is, whether the liability of the insurance companies could be restricted, only to the sum payable under the Workmen's Compensation Act.

3. In this connection three decisions were brought to my notice, two of them being the decisions of this Court and one being of the Allahabad High Court. In Venkataraman v. Abdul Munaf Sahib (1971) A.C.J. 77 the cleaner of a lorry died in an accident on account of the negligence of the driver of the lorry. His dependants filed an application for compensation before the Tribunal. The contention urged on behalf of the insurance company was that it was not liable to pay any compensation in respect of an employee of the insured and that even assuming that it was liable to pay compensation its liability had to be restricted to the amount payable under the Workmen's Compensation Act. There was also the plea that the amount due under the Workmen's Compensation Act, had to be pursued

only before the authorities contemplated by that Act and not before the Tribunal. It was held by Maharajan, J., that Section 95 of the Motor Vehicles Act provided for a statutory duty on the insurance company to indemnify the insured against any liability to pay compensation to his employees under the Workmen's Compensation Act, that the insurance company could not contend that it was absolved of its liability to pay compensation, merely because the proceedings had been initiated before the Tribunal constituted under the Motor Vehicles Act, and that it was open to the Tribunal appointed under the Motor Vehicles Act to determine the liability under the Workmen's Compensation Act and award the amount so determined against the insurance company. In the course of his judgment, the learned Judge extracted the relevant clause of the contract of insurance between the parties, and pointed out that on the facts of that particular case, the stipulation was that the insurance company undertook to indemnify the insured to the extent necessary to meet the requirements of Section 95 of the Motor Vehicles Act only in relation to the liability under the Workmen's Compensation Act. The compensation was then restricted to that amount. In *The General Assurance Society Ltd. Vs. Jayalakhmi Ammal and Others*, this decision was followed by Paul, J.:

4. The effect of these two decisions is to hold that where the liability of the Insurance Company is restricted under the contractual terms to the amount due under the Workmen's Compensation Act, then the amount due under the Workmen's Compensation Act alone could be awarded and this could be done even by the Tribunal constituted under the Motor Vehicles Act and not necessarily by the authority constituted under the Workmen's Compensation Act.

5. In *Babu Singh v. Champa Devi and Ors.* (1974) A.C.J. 163, the Allahabad High Court had to deal with a slightly different question, namely whether the maximum fixed u/s 95(2) could only be the liability of the insurance company even though the vehicle may have been insured for a larger amount. In that case, the vehicle had been insured for a sum of Rs. 40,000. The maximum statutory liability u/s 95(2) in respect of goods vehicle was only Rs. 20,000. It was held that the amount due as and by way of statutory liability would alone have to be paid by the insurance company. The terms of the policy in that case are not available. It is unnecessary

to consider whether the construction placed on Section 55(2) of the Act in the Allahabad decision was proper. It is arguable that in a policy issued in accordance with the provisions of the Motor Vehicles Act, minimum liability is what is provided by the statute and a larger liability can also be agreed to be paid under the contract between the parties. In other words, nothing in Section 55(2) of the Act can be taken as preventing the parties from entering into a contract for payment of a larger amount in case they considered fit to do so. The freedom of contract is restricted u/s 95 of the Act only to see that the liability contemplated by the statute is not avoided by providing for a smaller sum as a liability under the contract of insurance.

6. There can be no dispute about the fact that the Tribunal constituted under the Motor Vehicles Act is competent to award the appropriate

amount as compensation or damages, even in excess of what has been contemplated by the Workmen's Compensation Act. This follows from the

two Madras decisions. So long as the insurance policy did not restrict the liability to what is contemplated by the Workmen's Compensation Act,

the insurance company will have to bear the larger liability also i.e., the liability in excess of what is due under the Workmen's Compensation Act.

In the present case, there is no dispute about the right of the Tribunal to award Rs. 15,100 as damages. The insurance policies have not been

produced in order to enable me to find out whether the amount undertaken to be paid is restricted to the amount due under the Workmen's

Compensation Act. The insurance companies must have copies of the insurance policies with them and therefore if they wanted to reduce their

liability they could have produced the copies. There is nothing to show that the appellant was called upon to and did not produce the policy. In the

absence of their production, it is not possible to restrict their liability only to the sum of Rs. 4,500. The sum of Rs. 15,100 would also have to be

paid by the insurance companies. The appeal is allowed accordingly with costs.