

(2012) 03 MAD CK 0173
In the Madras High Court
Case No : C.M.A. No. 128 of 2005

Chinnappan

APPELLANT

Vs

K.P. Ramraj and Another

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163(A), 166
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2012) 3 TAC 807

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : N.S. Sivakumar, for the Appellant; S. Arun Kumar, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—Being aggrieved by the decision of the Claims Tribunal, in exonerating Oriental Insurance Co. Ltd., the second respondent herein, from indemnifying the owner of the Tempo Van, bearing Registration No. TCF 5234, which met with an accident on 15th April, 1998, in which, the appellant/claimant is stated to have travelled alongwith cattle and sustained injuries, the present appeal has been filed. It is the case of the appellant/claimant that when he travelled in the abovesaid Tempo Van toward Saryamangalam, due to rash and negligent driving of the driver, the vehicle capsized and as a result, he sustained a fracture of both interior and superior Rami, rupture of posterior urethral and other injuries. He took treatment in Sri Gokulam Hospital, Salem a private hospital. For the injuries sustained, he claimed compensation of Rs. 5,00,000/-.

2. The second respondent-Insurance Company resisted the claim, by denying the manner of accident. Before the Claims Tribunal, it was their further contention that the Tempo Van, bearing Registration No. TCF 5234, was a goods vehicle, meant only to carry goods and not passengers and therefore, even assuming that the averments in the claim petition were to be true, yet, as there was a violation of policy condition by the 1st respondent, the owner of the vehicle, in

that he had allowed a gratuitous passenger to travel, in a goods vehicle, the Company is not statutorily liable to pay compensation to an unauthorised passenger. According to them, the first respondent-owner of the vehicle alone is liable to pay compensation. Without prejudice to the above, they disputed the compensation claimed under various heads.

3. Before the Claims Tribunal, the appellant/claimant examined himself as P.W. 1. Driver of the Tempo Van involved in the accident has been examined as P.W. 2. P.W. 3 is the Doctor, who examined the appellant/claimant, with reference to medical records. Ext. P-1-FIR, Ext. P-2 Motor Vehicles Inspector's Report, Ext. P-3- Criminal Court judgment, Ext. P-4- Salary Certificate, Ext. P-5 Wound Certificate, Ext. P-6 Discharge Summary, Ext. P-7- Medical Bills, Ext. P-8- Driving Licence, Ext. P-9- X-Ray and Ext. P-10-Disability Certificate have been marked, on the side of the appellant/claimant.

4. On behalf on the second respondent-Insurance Company. Legal Assistant of the Company has been examined as RW. 1 and Ext. R-1-Insurance Policy, Ext. R-2-RC Book, Ext. R-3 - Permit, Ext. R-4 - Claim Form, Ext. P-5 - Notice, Ext.s P-6 and P-7 - Acknowledgement Cards, have been marked.

5. On valuation of pleadings and evidence, the Tribunal found that the cause of accident was due to the rash and negligent driving of the driver of the tempo van, bearing Regn. No. TCF-5234 and quantified the compensation at Rs. 80,000/- with interest @ 9% per annum. However, accepting the contention of the Insurance Company that the appellant/claimant travelled as an unauthorised passenger and following the claimant travelled as an unauthorised passenger and following the judgment of the Supreme Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, , exonerated the Insurance Company, the 2nd respondent herein, from payment of compensation to the appellant/claimant and fastened the liability on the owner of the vehicle, the 1st respondent herein, who remained ex parte, to pay compensation. The above said finding is the main challenge in the Civil Miscellaneous Appeal. Enhancement of compensation has also been sought for.

6. Assailing the correct of the finding, Mr. N.S. Sivakumar, learned Counsel for the appellant/claimant, submitted that on 15th April, 1998, when the appellant/claimant was travelling in the Tempo Van bearing Regn. No. TCF-5234 alongwith buffaloes, before Sathyamangalam, an old lady, suddenly came to the road and as the driver of the Tempo Van, could not control the vehicle, it capsized, resulting in injuries to the appellant/claimant. He also submitted that immediately after the accident, the appellant/claimant was shifted to Coimbatore Government Hospital. The driver could not lodge the complaint. However, Ext. P-1, FIR, was lodged by one Murugesan, cleaner of the Tempo Van.

7. Referring to the contents of Ext. P-1 FIR, in Crime No. 140 of 1998 registered under Sections 279 and 337 of IPC, on the file of Sathyamangalam Police Station, learned Counsel for the appellant/claimant, submitted that the accident

has occurred at 9.00 a.m., in the morning and that, at 18.00 hours in the evening, on the same day, a complaint has been lodged by the Cleaner of the vehicle, stating that due to rash and negligent driving of the driver Manikandan, the Tempo Van capsized and that the appellant/claimant, Chinnappan, who was travelling in the vehicle, sustained a fracture in the left leg, injuries in the stomach and other parts of the body. Learned Counsel for the appellant/claimant also submitted that due to the injuries Chinnappan fainted, and that he was admitted in Sathyamangalam Government Hospital. He also submitted that as Chinnappan was not in a position to speak, the Cleaner had given a statement to the police, on the basis of which, a case in Crime No. 148 of 1998 under Sections 279 and 337 of IPC, has been registered against the driver of the vehicle. The information to the police regarding the damages suffered by the vehicle has also been pointed out.

8. Taking this Court through the oral testimony of P.W. 2- driver of the offending Tempo Van, learned Counsel for the appellant/claimant further submitted that the fact that the buffaloes were transported in the Van, and that the appellant/claimant travelled in the Van, has been categorically admitted by P.W. 2 driver and as regards, transportation of buffaloes, there was no cross examination. He also submitted that P.W. 2 driver examined on behalf of the appellant/claimant has also admitted that except the appellant/claimant, nobody was injured.

9. Refuting the contention of the Company that the appellant/claimant travelled as an unauthorised passenger and that therefore, the second respondent-Insurance Company is not liable to pay compensation, learned Counsel for the appellant/claimant contended that no sooner the accident occurred, the appellant/claimant became unconscious, he was taken to the Government Hospital, Sathyamangalam and merely because the Cleaner, the first informant to the police, has failed to mention in Ext. P-1, dated 15th April, 1998, FIR, that buffaloes were also transported in the Tempo Van and merely because the 1st respondent in this appeal, owner of the vehicle has failed to mention that the vehicle carried buffaloes in Ext. R-4 -Claim Form, submitted to the second respondent-Insurance Company, that would not give rise to any conclusion that the appellant/claimant did not travel in the Tempo Van at all, as the owner of buffaloes and sustained injuries. In this context, he also invited the attention of this Court to the details of the accident in Column Nos. 5 and 7 of Ext. R-4-Claim Form, wherein, the owner of the vehicle has categorically mentioned that when the vehicle was proceeding from Madurai to Sathyamangalam, near Sathyamangalam, to avoid hitting a lady, who suddenly crossed the road, the driver has applied the brakes and due to which, the vehicle capsized and that one person, seriously injured, was admitted to the Government Hospital, Salem.

10. He further submitted that the vehicle was insured with Oriental Insurance Co. Ltd., and that a sum of Rs. 50/- has also been paid to cover a non-fare paying non-employee No. 1, it is not open to the Insurance Company to avoid their liability to pay compensation. In this context, he took this Court, through the

policy details. Transportation of animals in Tempo van is not uncommon. Judicial notice can also be taken that hundreds of buffaloes are being transported to other States by lorries and vans.

11. Learned Counsel for the appellant further submitted that contents in the Claim Form submitted by the owner, stating that the vehicle was empty, should not be given any credence, insofar as it does not contain the details of transportation of buffaloes, as the owner of the vehicle would be concerned only with damages caused to his vehicle and that there is no obligation for him, to claim compensation for the injured. In such circumstances, he submitted that non-mentioning of the details regarding transportation of buffaloes in the Claim Form, is not fatal to the claim and no inference can be made that the appellant was only a gratuitous passenger.

12. On the quantum, of compensation, learned Counsel for the appellant submitted that the Tribunal has erred in awarding a lesser compensation, disregarding the medical evidence, Ext. A-6 Discharge Summary, and the cal testimony of P.W. 3, Doctor, and Ext. A-10 Disability Certificate. He also submitted that the appellant is entitled to the actual medical expenses of Rs. 47,648/- incurred by him, duly supported by Ext. A-7 series and that the Tribunal has erred in awarding a lesser compensation. He also submitted that having regard to the benevolent provisions of the Motor Vehicles Act, the compensation awarded under other heads also requires reconsideration and suitable enhancement, For the abovesaid reasons, he prayed for setting aside the award, exonerating the Insurance Company from payment of compensation to the appellant/injured and prayed for enhancement.

13. Per contra, learned Counsel for the respondent-Insurance Company submitted that the appellant, who travelled as an-unauthorised passenger in a goods carrying vehicle, is not entitled to be covered under B Policy. Referring to IMT No. 13, as it stood then, he submitted that the appellant is not a workman or any other person carried for hire or reward in the capacity of a charterer or representative of the charterer of the truck or any other person, directly connected to the journey in one form or the other being carried in the Motor Vehicle, subject to the terms and conditions of the policy and that no passenger is permitted to travel in goods carrying vehicle and in the abovesaid circumstances, the finding of the Claims Tribunal, exonerating the company from payment of compensation cannot be found fault with.

14. Learned Counsel for the respondent-Insurance Company-further submitted that the details of the Claim Form submitted by the owner would also support the case of the Insurance Company that no goods were carried in the vehicle, on the fateful day of the accident and that only the appellant, who travelled as an unauthorised passenger above was hurt. In this context, he took this Court through the contents of Ext. R-4, Claims Form. Without prejudice to the same, on the quantum of compensation, he submitted that the award is just and reasonable and does not require any enhancement.

Heard the learned Counsel for the parties and perused the material on record.

15. Before advertng to the issue, as to whether appellant is entitled to any enhanced compensation, this Court deems it fit to address the issue, as to whether the Insurance Company can seek for avoidance of payment of compensation to the appellant, as per the policy conditions. Perusal of Ext. R-1 Certificate-cum-Policy Schedule, commercial vehicle-goods carrying "B" Policy. The owner of the vehicle has sought for coverage for any legal liability for non-fare paying non-employee No. 1 and also paid Rs. 50/-.

16. As per in Ext. P-1- FIR, lodged by the cleaner of the vehicle to Satyamangalam Police, due to rash and negligent driver of the driver of the vehicle, bearing Registration No. TCF 5234, insured with the Company, the vehicle capsized and that the appellant sustained injuries in the hip, leg, stomach and other parts of the body. Due to the injuries (sic) and shock, he lost his consciousness. He has also fainted. After intimating the details of the accident, due to which, there was also damage to the vehicle to the owner of the vehicle, the injured has been first admitted in Sathyamangalam Government Hospital. The cleaner, who has lodged the complaint to the police in Ext. P-1 FIR, has also stated that Chinnappan, the appellant herein, could not speak, and therefore, he had given the statement. As per Ext. P-1-FIR, the accident occurred at 13.00 Hours, and that the same has been reported to the Police at 18.00 Hours. A case in Cr. No. 140 of 1998, under Sections 279 and 337 of IPC, has been registered against the driver of the Van, bearing Registration No. TC 5234.

17. P.W. 1, appellant has deposed that he has travelled in the offending vehicle with buffaloes alongwith the driver. He has also narrated the manner of accident, nature of injuries sustained by him in the accident. P.W. 2, driver of the offending vehicle has categorically deposed that on 15th April, 1998, about 10 a.m., the appellant-Chinappan, wanted to hire the vehicle for transporting buffaloes from Pallipatti to Sathyamangalam and that the same were transported. He also deposed that the appellant sustained injuries in the accident.

18. In Column Nos. 4 and 10 of the Claim Petition, the appellant has categorically stated that he was cattle merchant and on 15th April, 1998, he was travelling in the Van, with cattle. The oral testimony of P.W. 2, driver of the offending vehicle that the appellant engaged the vehicle for transportation of buffaloes and that when the same were transported, the untoward incident occurred, has not been discredited by any cross-examination. Thus, it could be seen that the testimony of P.W.-1, regarding the transportation of the buffaloes on 15th April, 1998, is duly supported by P.W. 2. Admittedly, the appellant was not in a position to speak and merely because the cleaner of the vehicle had failed to mention about the transportation of buffaloes in the First Information Report, the oral testimony of P.Ws. 1 and 2 regarding transportation of buffaloes, cannot be discarded.

19. As observed earlier, there is not even a suggestion by the Insurance

Company, discrediting the testimony of P.W. 2, Driver. The complaint has been lodged on 15th April, 1998. Ext. R-4, Claim Form, has been preferred on 22th April, 1998, wherein, there is a reference that a person, severely injured has been admitted in Government Hospital, Salem. In the Claim Form, the owner has sought for indemnification in respect of the damages suffered by the vehicle. As per the policy, there are separate columns indicating claim for third party injury/property damage/injury to driver/occupant. Merely because the owner of the vehicle has failed to claim compensation for the occupant of the vehicle, despite the fact that he knew that a person has been seriously injured, the claim preferred by the appellant cannot be thrown out. When he has paid Rs. 50/- as premium to cover legal liability, for a non-fare paying passenger, he could have even thought it fit, to leave it to the injured to make a claim, as the injured has to necessarily prove the nature of injuries, extent of disablement, if any, loss of pecuniary and non-pecuniary damages. It is also not the practice that the owner of any goods vehicle, to claim for compensation in respect of any injury or in the event of death, to any authorised passenger. The person injured or the legal representatives, prefer the claim depending upon the cause for the accident, either u/s 163(A) or Section 166 of the Motor Vehicles Act. As discussed in the foregoing paragraphs, sufficient evidence has been let in by P.Ws. 1 and 2 that the vehicle was carrying buffaloes.

20. In the light of the above discussion, this Court is not inclined to subscribe to the contentions of the Insurance Company that the appellant travelled as a gratuitous passenger. Even otherwise, the owner of the vehicle has paid Rs. 50/- to cover a non-fare paying passenger in case of legal liability.

21. The issue as to whether the respondent-Insurance Company has to pay compensation to a non-fare paying passenger covered under insurance policy, when no additional premium was paid by the owner, has been considered by a Division Bench of this Court in Divisional Manager, United India Insurance Co. Ltd. v. C. Ramesh 2005 (2) T.N.M.A.C. (D.B.) 116 : LNIND 2005 Mad. 683, wherein, at Paragraphs 8 to 12, held as follows:

8. Even assuming that such submission of the appellant is correct, we do not think that the conclusion of the Tribunal regarding liability of the Insurance Company can be said to be illegal or erroneous in view of the clear finding of the Tribunal that the claimant was travelling in the lorry as a representative of the owner of the goods.

9. Chapter XI of the Motor Vehicles Act relates to the insurance of motor vehicles against third party risks. Section 147 lays down the requirement of the policies and limits of liability. The relevant provision of such Section 147, for the present purpose, is extracted hereunder:

147. Requirement of Policies and limits of liability:--(1) In order to comply with the requirements of this Chapter a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to extent specified in sub-section (2)-

(1) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) ...

10. The aforesaid provision contains an important change brought in by way of amendment by Act 54 of 1994 with effect from 14th November, 1994. After the said amendment, the insurer is required to insure the liability in respect of the death or bodily injury to the owner of the goods or his authorised representative carried in the vehicle. This being the statutory requirement, it cannot be said that the Insurance Company has no liability in respect of the claimant, who is found to be the authorised representative of the goods travelling in the vehicle alongwith the goods.

11. Learned Counsel for the appellant has also contended that there is no evidence on record to show that additional premium had been paid to cover the liability in respect of the owner of the goods or in respect of the representative of the owner of the goods.

12. We do not think that such submission made by the appellant can be countenanced. Whether any additional premium is paid to cover the liability in respect of the owner of the vehicle or the authorised representative is immaterial in view of the specific requirement contained in Section 147. Every Insurance Policy is to satisfy the requirement indicated in Section 147. Whether premium is payable or not is a matter between the Insurance Company and the owner of the vehicle. In order to comply with the requirement of Chapter XI, such condition has to be or deemed to have been incorporated the conditions indicated in Section 147. Therefore, whether any additional premium has been paid or not, is immaterial.

22. In *National Insurance Co. Ltd. v. S. Ibrahim*, 2011 (1) TNMAC 587 : LNIND 2011 Mad 3511, it was the contention of the father of the deceased, that his son was a +2 student and only during vacation, he was doing business. P.W. 2, the other coolie, examined in the above reported case, has also deposed that the deceased was travelling in the vehicle, as owner or person accompanying the goods. Premium of Rs. 75/- has been received under the heading "Non-fare paying passenger-1". Adverting to the question as to whether the Insurance Company is liable to pay compensation on the ground that the deceased ought not to have travelled in the goods vehicle, as an employee of the owner of the goods and therefore, cannot be fastened with liability, taking note of the IMT-37, dealing with non-fare paying passenger, similar to IMT-13, as in the instant case a learned single Judge, at Paragraph No. 15, held as follows:

The fact remains that this person was accompanying the goods, namely, the chick and hen. When we analyse this aspect, the learned Counsel for the Respondents/Claimants pointed out that under the Policy a sum of Rs. 75/- has been received as premium under the head NFPP-1 which means Non-Fare Paying Passenger-1.

After extracting IMT-37, this Court, at Paragraph 17, held as follows:

17. From the reading of the condition, it is very clear that the Insurance Company has agreed to indemnify on the death or injury to any person either directly connected with the journey in one form or the other being carried in or upon or entering or mounting or alighting from vehicle or also the charterer or representative of the charterer of the truck. This category does not include the owner, coolie nor include the employee. But, any representative of the owner or any other person travelling alongwith the goods would also covered under this policy.

23. In the light of the legal pronouncements stated supra, coupled with the testimony of P.Ws. 1 and 2, the appellant cannot be denied payment of compensation by the insurer. As stated supra, there is also evidence to the effect that he travelled alongwith the buffaloes.

24. The next question to be considered is whether the quantum of compensation awarded to the appellant requires any enhancement, Perusal of the testimony of P.W. 1 shows that in the accident, he sustained a fracture in the left femur. Immediately thereafter, he has been provided First Aid in Sathyamangalam Government Hospital and thereafter, referred to Government Hospital, Salem. To prove the nature of injuries, he has produced Ext. P-5- Wound Certificate.

25. Upon perusal of the same, the Claims Tribunal has noticed that the appellant has sustained fractures in the hip, left femur and other injuries, for which, he has been treated in Government Hospitals. The appellant has also taken treatment in Gokulam Hospital, a private hospital. He has produced Ext. P-6-Discharge Summary.

26. P.W. 3, Orthopedic Surgeon, who examined the appellant/claimant with reference to the medical records and upon scrutiny of Ext. P-9-X-Ray, has deposed that the appellant has sustained fracture on both sides pubic rami, femur in the left thigh and that they were mal-united. He also deposed that the appellant would find it difficult to sit, squat and do work, as before. Considering the nature of injuries difficulties expressed by the appellant, he has assessed the disability at 40% and issued Ext. P-10- Disability Certificate.

27. The fractures on both sides of the hip, thigh, which were found to be malunited would certainly cause lot of inconvenience, discomfort, as the upper portion of the body rests on the hip. Loss of strength in the thigh would also affect any person. Perusal of the award also shows that after initial treatment, of five days in Government Private Hospital, a surgery has been performed, by

which, plates and screws have been used to fuse the fractured bones.

28. Though the appellant has occurred a sum of Rs. 47,684/- and produced, Ext. P-7 (series) - Medical Bills, the Claims Tribunal has awarded only a sum of Rs. 23,000/- on the ground that in some of the bills produced before the Tribunal, there were no signatures. The reason assigned by the Claims Tribunal for rejecting the medical claim, is not proper, as it is not the practice of any pharmacist to sign the bills. In the absence of any concrete evidence, the genuineness of the medical bills cannot be doubted, on the sole ground that it did not contain the signatures. In the case, on hand, the appellant has sustained fractures, for which, there was also a surgery. Therefore, this Court is of the view that the appellant is entitled to claim the entire amount made under medical expenses. Hence, a sum of Rs. 47,684/- is awarded.

29. According to the appellant, he was a cattle merchant. For the abovesaid avocation, one cannot expect documentary proof. The injuries are certainly grievous in nature. Surgery and convalescence, would have certainly immobilized him for atleast three months. One cannot expect an injured person who (sic) underwent a surgery, to jump out of the bed and do work, immediately after discharge from the hospital.

30. In view of the Full Bench decision of this Court in Cholan Roadways Corporation's case (supra), the Tribunal should have awarded the compensation, itemised. The compensation of Rs. 7,000/- for the loss of income and transportation is inadequate. The accident has occurred in the year 1998. Considering the avocation pleaded, coupled with the testimony of P.W. 2 that buffaloes were transported on the date of accident this Court deems it fit to fix the monthly salary of the appellant/claimant at Rs. 3,000/-. Taking into consideration, the period of treatment and convalescence, this Court deems it fit to award Rs. 12,000/- (Rs. 3,000/- for four months) under the head loss of earning.

31. The appellant would have incurred expenses for transportation to visit the hospitals. Considering the year of the accident, a sum of Rs. 2,000/- is awarded. Nutrition is required for speedy recovery. Considering the surgery, a sum of Rs. 3,000/- is awarded.

32. A person, who has suffered a fracture of femur and fracture on both sides of the hip assessed with 40% disability, would find it difficult to walk, climb staircase and do work, as before. In such view of the matter, this Court is inclined to award compensation under the head loss of amenities, explained in Cholan Roadways Corporation's case. A sum of Rs. 10,000/- is awarded under the head, loss of amenities.

33. On the aspect as to whether the appellant has to be awarded compensation towards loss of earning capacity, this Court is of the view that considering the avocation pleaded still, he can engage in the same trade and even the medical evidence does not support the contention that he has to remain idle for the rest

of his lifetime. Therefore, considering the age of the appellant and that the mal-union noticed by P.W. 3, Doctor, it would be appropriate to award a sum of Rs. 2,000/- for every percentage of disability assessed by P.W. 2, Doctor. Therefore, sum of Rs. 80,000/- is awarded. An award of Rs. 10,000/- for pain and suffering is enhanced to Rs. 15,000/-. A conventional damage of Rs. 500/- is awarded towards damage to clothes. However, it is made clear that the enhanced compensation shall/carry interest at the rate of 7.5% per annum. Apportionment of the compensation, now determined by this Court, is detailed below:

In the result, finding exonerating the respondent-Insurance Company from payment of compensation to the accident victim, is set aside. Hence, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, there shall be a direction to deposit the enhanced sum of Rs. 90,184/- with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation to the credit of M.C.O.P. No. 1397 of 1999 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai, within four weeks from the date of receipt of a copy of this order.