

(2002) 02 MAD CK 0010

In the Madras High Court

Case No : Civil Miscellaneous Appeals No's. 198 and 210 of 1994

G.D. Gopal, Branch Manager, National Insurance Co.,
Ramanathapuram Branch, Coimbatore-15

APPELLANT

Vs

Kannammal, N.N. Shanmugham and United India Insurance
Co. Ltd.

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166, 168, 175

Citation : (2002) 02 MAD CK 0010

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : N. Vijayaraghavan in CMA 198/94, for the Appellant; M. Sriram for R1, R2 given up and R3 no appearance in CMA 198/94, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—Respondents 2 and 3 in MCOP No. 329 of 1991 and the petitioner on the file of Motor Accident Claims Tribunal

(Subordinate Judge's Court), Tiruppur have filed these appeals respectively aggrieved against the award dated 15.10.1993. The case in brief for

disposal of both the appeals is as follows:- The petitioner in MCOP 329 of 1991 being the owner of the lorry filed petition u/s 166 of the Motor

Vehicles Act for grant of compensation for the damages caused to the vehicle bearing No. TDE 9339 due to a motor accident which took place

on 04.11.1990. The lorry of the petitioner was parked in Avinashi to Erode NH 47 Road near Athuyur Pirivu on the left side of the mud road. The

bus bearing No. TN 37A 4671 was driven by the 1st respondent from the opposite side proceeding to Ernakulam in a rash and negligent manner,

crossed the road came to the right extreme of the road and hit the lorry on the

front side. The accident took place only due to the rash and negligent driving of the 1st respondent. The lorry sustained heavy damages. It was moved with great difficulty towed to Velmurugan Body Builders at Perundurai. From 06.11.1990 the lorry was kept idle for repairs at Perundurai. Due to the accident, there was heavy business loss to the petitioner. After the accident, Velmurugan Body Builders gave a quotation for repairs including the spare parts for Rs. 57,570/= and they engaged Sri Andavar Motors Engineering Works to rectify the damages of the entire cabin and charged Rs. 2,450/=. The lorry was taken delivery after completion of the repairs and they charged Rs. 14,050/=. The petitioner has spent more than Rs. 60,000/= towards purchase of spare parts and labour charges.

The petitioner during the course of operation of the lorry used to earn Rs. 400/= per day after deducting the expenses towards diesel, batta, etc.

Because of the accident, for a period of 80 days she would not be able to earn anything and incurred heavy business loss besides mental agony

and suffering. During the said period, she had to go to Perundurai from Coimbatore for seeing the repairs to the vehicle and incurred transport

expenses. The petitioner is entitled to claim compensation for transport charges at Rs. 5,000/=. The 2nd respondent is the owner and the 3rd

respondent is the insurer of the bus. The respondents are jointly and severally liable to pay compensation to the petitioner. Charge sheet was also

filed by the police against the 1st respondent, who admitted the offence and paid the fine. The petitioner claimed a sum of Rs. 1,00,000/= by way

of compensation.

The 3rd respondent alone filed a counter and stated that the petitioner's lorry was insured with M/s. United India Insurance Company Limited,

Divisional Office, Coimbatore-18 for the period from 11.03.1990 to 10.03.1991 for own damage and third party cover. The petitioner, in fact,

lodged an own damage claim with her insurer and the surveyor had surveyed the damages and the claimant had been settled for Rs. 22,023/=. The

cheque was given to the vehicle repairer M/s. Velmurugan Body Builders, Perundurai. The present petition for compensation is not maintainable

since the petitioner has been adequately compensated for the damages to her lorry. M/s. Velmurugan Body Builders as well as M/s. United India

Insurance Company are also necessary parties. The 3rd respondent is not liable to pay any amount and the amount claimed is also excessive. The

accident had occurred due to the carelessness of the driver of the lorry since he parked the same in the middle of the road and the parking lights

were not burning. It is false to say that the lorry remained idle for a long time.

P.W. 1 and R.Ws. 1 and 2 were examined and Exs.A-1 to A-6 and B-1 to B-3 were marked. The tribunal on the basis of the documents and

evidence, passed an award for a sum of Rs. 30,000/= against the respondents and the 3rd respondent was directed to pay the amount on behalf of

respondents 1 and 2 with interest at 15%. Aggrieved against this award only, respondents 2 and 3 preferred CMA 198 of 1994 and the claimant

filed CMA 210 of 1994 for enhancement of the amount.

2. These two appeals are filed by the parties in MCOP No. 329 of 1991. Since both appeals arise out of one and the same order, a common

judgment is pronounced and the parties will be hereinafter referred to as they were described in O.P.329 of 1991 to avoid confusion.

3. Heard the learned counsel for the parties.

4. The points that arise for consideration are

(1) Whether the petitioner is entitled to claim a sum of Rs. 1,00,000/= by way of compensation ?

(2) Whether the petition filed by the petitioner for claiming revenue loss is maintainable under the Motor Vehicles Act ?

(3) Whether the award passed by the tribunal is proper and correct ?

5. Points: The petitioner is the owner of the lorry bearing No. TDE 9339. The 2nd respondent is the owner of the bus and the 1st respondent was

the driver and the 3rd respondent was the insurer of the bus. According to the petitioner, the lorry was parked on the left side of the mud road on

04.11.1990 and at that time, the 1st respondent drove the bus coming from the opposite side in a rash and negligent manner, crossed the road,

came to the right extreme of the road and hit the lorry on the front side. There was an accident on 04.11.1990 is practically conceded and the

petitioner is putting the blame on the driver of the bus, namely, the 1st respondent, whereas the respondents put the blame on the petitioner alleging

that the driver had parked the lorry in the middle of the road. Whatever it may be, it is admitted that the police investigated the complaint and filed

a charge sheet against the 1st respondent, namely, the driver of the bus and he also admitted the offence and paid a fine of Rs. 400/=. Under the

circumstance, it is evidently clear that the accident occurred due to the rash and negligent driving of the 1st respondent, the driver of the bus.

6. The petitioner stated that between 04.11.990 and 24.01.1991 for a period of 80 days the lorry was in the workshop and she could not earn

any money. She would be getting a sum of Rs. 400/= per day excluding the other expenses. The lorry had sustained extensive damage is not in

dispute. Similarly, records have been filed to show that the repair works have been carried out at Perundurai and the insurer of the lorry, namely,

United India Insurance Company had already settled the claim to the extent of Rs. 22,000/= and odd.

This is relied upon by learned counsel for respondents 2 and 3 and contended that a full and final settlement has been made relating to the damage

caused to the lorry and, as such, the petitioner is not entitled to file this application claiming a fabulous amount towards revenue loss. It was also

pointed out that under the Motor Vehicles Act, the petitioner is not entitled to claim any revenue loss and the only remedy open to her is to file a

civil suit under a common law. When once it is admitted that the vehicle was kept at Perundurai for effecting repairs, naturally P.W.I could not use

the same. Considering the extensive damages caused to the vehicle, it had taken nearly 80 days for completing the repairs and during those days

naturally P.W.I may not be able to get any income from this lorry. The tribunal relied upon Karnataka State Road Transport Corporation Vs.

Abdul Majeed, came to the conclusion that damage to property means not merely actual damage to the property but also loss on account of its

non-availability for use. The tribunal also determined the revenue loss at Rs. 400/= per day and for a period of 75 days granted a sum of Rs.

30,000/=.

7. Learned counsel for respondents 2 and 3 mainly contended that the tribunal has grossly erred in awarding revenue loss in spite of the fact that it

has no jurisdiction to award the same. The tribunal also erred in awarding 15% interest per annum, which is contrary to the principles laid down by

this Court.

8. Learned counsel for the petitioner, on the other hand, contended that the

tribunal failed to see that the amount paid by the 4th respondent

Insurance Company is very meagre and as per their estimate. The petitioner is entitled to recover the actual loss from the tortfeasor / respondents 1

to 3. The present claim is for the loss suffered on account of the accident after deducting the amount paid by the petitioner's insurer. The award

suffers from errors apparent on the face of it. The tribunal also erred in not deciding the issue as to how much the petitioner is entitled under the

particular head. There is no question of suppression on the part of the petitioner and she is entitled to claim the entire amount.

9. It is seen from para VI-A of the petition, wherein the petitioner admitted that she had received Rs. 22,023/= from the 4th respondent, However,

she stated that without prejudice to the claim, actual compensation as third party to the 3rd respondent she has received the same and there is no

legal bar to claim actual compensation apart from the damages received from their own insurance company.

10. Learned counsel for respondents 2 and 3 relied on the decision reported in M.P. Janaki Ammal & Co., ..vs.. Dindigal Kottampatti Transport

& Another (2000 1 L.W.325), wherein it is stated that the claimant would not be entitled to any amount towards the loss of income sustained by

the claimant during the period when the vehicle was kept idle in the workshop for repairs. The claimant would not be entitled to any other amount

except the costs incurred towards the damage to the property. However, it is made clear that on the other heads, the claimant is at liberty to file a

civil suit, as Section 110(F) of the Act does not bar the jurisdiction of the Civil Court in respect of the same. Similar view has been reiterated in an

unreported judgment of this Court in C.M.A. No. 1490 of 1993 dated 13.07.1999.

11. Learned counsel for the petitioner relied on another decision of this Court in Rajendran ..vs.. Selvaraj (I (2001) ACC 240-2000-3-L.W.658),

wherein it is observed under sections 165 and 168 of Motor Vehicles Act, 1988 that by necessary implication Tribunal has jurisdiction to award

compensation for revenue loss. In assessing such economic loss or loss of income arising from damage to property, Tribunal has to adopt strict

assessment and claimants cannot be permitted to capitalised on accident unreasonably. The claimant cannot keep his vehicle idle without being sent

for repairs for several months or years and claim loss of income for such

indefinite period. The principle in this decision can be made applicable to the case on hand. However, the decisions cited on behalf of respondents 2 and 3 cannot be made applicable in view of this decision, wherein elaborate reasons have been given to take this view.

12. There was a view that ""damages to the property"" as occurring in Section 110(1) of the Motor Vehicles Act, 1939, would take in only the mandatory compensation to set right only the damage caused to the property in an accident involving the motor vehicle and nothing more and that it cannot be extended or expanded into damages under the heads. In short, according to respondents 2 and 3, the Act did not visualise compensation of economic loss or revenue loss arising out of damage to the property. The concept of granting compensation for damages arising out the accident grew out of common law principles. The legislature had created or incorporated any specific items of heads of claims such as loss of income, loss of consortium, love and affection, medical expenses, loss of prospective income, pain and suffering, funeral expenses, etc. The Legislature used only four expressions and nothing more namely, (1) death, (2) permanent disability, (3) fatal injury, and (4) damage to the property. The various other heads under which the compensation was to be calculated and the consequential loss arising out of an accident, were formulated only by series of judicial pronouncements both under common law and awards under the Act. For the first time, an attempt has been made by Legislature to statutorily recognize the various heads under which compensation may be assessed and had inserted Section 163-A by amending Act 54 of 1994 with effect from 14.11.1994 introducing special provisions for payment of compensation on the basis of a structured formula and appended Second Schedule to the Act containing a table of formula for awarding compensation for fatal accidents and injury cases and for general damages under several heads.

13. u/s 168 of Motor Vehicles Act, 1988, the Tribunals are enabled to make an award determining the amount of compensation which appears to be just. It was left to the Courts to formulate various items or heads under which the total compensation was to be arrived at. Therefore, to say that a person who suffers damage to the property would not be entitled to the consequential loss of income, in my opinion, amounts to placing a

narrow construction or interpretation of the provisions of a remedial or beneficial legislation. The word "property" has always been understood and interpreted as not only specific movable or immovable properties alone, but would also include a right to use or enjoyment for a beneficial right over all tangible things. Even ignoring the word "property", while calculating just and fair compensation resulting out of an accident, the Tribunal cannot ignore all the resultant and consequential damages caused by the accident. Otherwise, there would have been no justification to award any amount even towards loss of income or loss of estate arising out of death or disability or bodily injury on the ground that the Act did not mention about loss of income or loss of estate prior to introduction of Section 163-A only in the year 1994. The provisions of a beneficial or remedial Act require to be interpreted in a purposeful and liberal manner so as to achieve the purpose of the Act.

14. Now the position in 1988 Act is that the proviso mentioned above is not in existence. With the result, the Legislature having chosen to retain the bar on the Civil Court u/s 175 of 1988 Act also, and the claimant having been deprived of his liberty to move the Civil Court for claims towards damages to the property, he is totally disabled from suing for loss of income or economic loss. There can be no dispute over the entitlement of a person aggrieved, to sue for loss of income or revenue loss under common law and if there is a Forum before which he could pray for the said relief, he cannot be heard to complain. But with the deletion of the option given to the claimant to approach the Civil Court, he has no other option except to pray for the remedy only before the Tribunal. Section 165 of the Act, is all pervasive and for all claims of compensation in respect of accidents involving death or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party so arising, a claimant can approach only the Tribunal and nowhere else his claim petition would be entertained, if the claim relates to an accident arising out of the use of the motor vehicles. Assuming for the sake of discussion that the common law remedy before the Civil Court is not barred for claiming the revenue loss on the ground that it is not covered by the Act, it would lead to very anomalous and conflicting results. In 1939 Act the proviso ensured that the claim petition can be filed before only one of the two Forums. Now, the claimant has to necessarily file his petition only

before the Tribunal for compensation for damage to the property and a separate suit before the Civil Court for revenue loss. This could result in

conflicting verdict by the respective authorities. On the question of negligence and liability two different opposing views could be expressed.

Therefore, there is one more reason to hold that by necessary implication, the Tribunal has jurisdiction to award compensation for revenue loss. If

the aforesaid principle is applied to the case on hand, the period of assessment could be only the reasonable maximum period-required to restore

the property to its original condition. It cannot depend upon the self-serving plea of the claimant that she was unable to do so within the reasonable

period for her own reasons. Now, there is no dispute by the respondents that there was any deliberate delay for carrying out the repairs

considering the fact that for a period of 75 days, the petitioner could not earn any income and the net income was determined at Rs. 400/= per

day, the Tribunal has awarded a sum of Rs. 30,000/=. I am of the view that the tribunal has rightly appreciated the contentions of the parties and

the petitioner is entitled to claim the sum of Rs. 30,000/= under the head "revenue loss" and the objections raised by the contesting respondents

are not sustainable under law. Hence, these points are answered accordingly. For the reasons stated above, both the appeals fail and accordingly,

they are dismissed. No costs. Consequently, CMPs. No. 2822 and 3121 of 1994 are closed.