

(2001) 08 MAD CK 0127
In the Madras High Court

K.M. Manoharan (deceased) and Others	APPELLANT
Vs	
Kandasamy and Others	RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Citation : (2001) 3 MLJ 496

Hon'ble Judges : Prabha Sridevan, J

Bench : Division Bench

Judgement

Prabha Sridevan, J.—The appeal is filed by the Insurance Company of the trailer and the owner of the trailer. The accident happened in this manner:

2. On 1.10.1994 at 10.30 a.m., one Duraian who is the son of the respondents 1 and 2 was travelling in the trailer bearing Regn. No. TNW 9445 for loading sugarcane. The trailer was attached to the tractor. The trailer belonged to the deceased 1st appellant whose legal representatives have now been impleaded and was insured by the 2nd appellant. The tractor belonged to the 4th respondent and was driven by the 3rd respondent and was insured by the 5th respondent. The manner in which the accident took place is not in dispute and Ex.P-1 is the F.I.R. It is seen therefrom that when the tractor-trailer was going round the bend in Soogalur road, the deceased Duraian was attempting to place a stone on the left side rear wheel of the tractor. At that time, the driver, not noticing that Duraian was behind the wheels, started the tractor rashly and negligently and therefore, the trailer's back wheel went over the deceased Duraian and he died.

3. The person who gave the F.I.R. Murugesan has also given evidence as P.W.2. He is an eye witness. The respondents 1 and 2 claimed Rs. 2,52,500 and they were awarded Rs. 96,000 with interest. The tribunal found that since the death of Duraian occurred only because of the trailer going over him, the owner of the trailer and the insurer are alone liable to pay the compensation.

4. Mr. N. Rosi Naidu, appearing for the appellants would submit that the Tribunal

totally erred in fixing the liability to pay compensation solely on the appellants when it is evident that the trailer cannot move on its own and if the accident happened, it can only be on account of the negligence of the driver of the tractor and in fact, he referred to the following sentence in the judgment thus:

When the accident had occurred on account of the rashness and negligence of the tractor driver, the counsel wondered how it was legal to fix the liability on the owner of the trailer and the insurer. He referred to the following judgments: Karnataka High Court The Oriental Insurance Co. Ltd. Vs. N. Chandrashekar and Others, and Oriental Insurance Co. Ltd. Vs. Shivalingamma and Others, again of Karnataka High Court.

5. The counsel Ms. Mala appearing for 5th respondent would however submit that the Tribunal had not at all erred in making the appellants liable to pay compensation. The tractor had not caused the accident so, neither the owner of the tractor nor the insurer of the tractor could be made liable. She would also submit that if one were to accept the argument of the learned Counsel for the appellants, then, there was no justification for the trailer to be at all insured because in every case, in which the trailer causes the accident, it would be argued that the trailer cannot move on its own and therefore, the insurer of the tractor alone should be fixed with the liability to pay compensation. She would submit that the very fact that the trailer is insured would show that for accidents caused by the trailer, compensation should be paid by the owner of the trailer.

6. Mr. M.M. Sundaresh, learned Counsel appearing for respondents 1 and 2, the claimants would point out to an error in computing the quantum. He would submit that notwithstanding the fact the respondents had not filed cross-objection, it is open to this Court to exercise its powers under Order 41, Rule 33, C.P.C. which gives the appellate Court the power to pass any order which ought to have been passed or made. According to the learned Counsel, the Tribunal had fixed the income of the deceased at Rs. 900 and the contribution to his parents at Rs. 600. The annual loss of contribution would therefore be Rs. 7,200. Thereafter, it had multiplied thus by 20 on the ground that both the respondents 1 and 2 could have lived for 20 years and arrived at figure of Rs. 1,44,000. From, this again another 1/3rd had been deducted. Therefore, according to him, there has been a double deduction and this has to be set right.

7. The death had occurred by the trailer running over the deceased Duraiyan. In that sense, it may be said that only the appellants should pay the compensation. But we cannot ignore the fact that it was the rash and negligent driving of the tractor's driver which had jerked the trailer over the deceased. Without the negligence of the tractor's driver, the trailer would not have moved forward or backward as the case may be.

8. The two decisions cited by the learned Counsel for the appellants are exactly on the point.

(i) In the decision reported in The Oriental Insurance Co. Ltd. Vs. N.

Chandrashekar and Others, the Tribunal had held that as the tractor was insured and since the trailer cannot move by itself, the insurer of the tractor had to bear the liability and therefore appeal was filed in that case by the insurer of the tractor. The learned Judge held that the trailer is also a motor vehicle and if only both are insured, the insurance company would be liable against claims arising out of the use of tractor and trailer and it was held as follows:

In the present case the appellant has only issued a policy in respect of the tractor and the appellant would be liable to indemnify the insured in respect of risk arising out of the use of tractor as such. But if the tractor draws a trailer and the accident is caused by such tractor-trailer then the vehicle causing the accident would not be a tractor but a goods vehicle. It is only if both tractor and trailer are insured the insurer would be liable to indemnify the owner against the claims arising out of the use of tractor and trailer. This view would be in conformity with the other statutory provisions which require even a trailer to be insured. As in this case it is undisputed that only the tractor was insured with the appellant and that the trailer was not insured and that the accident was caused by tractor-trailer it has to be held that the appellant is not liable to pay the compensation awarded to the claimant.

To arrive at this conclusion, the definition sections were relied on.

It is patent that in view of the definition of a motor vehicle even a trailer must be deemed to be a motor vehicle. Section 94 lays down that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with requirements of this chapter. As a trailer is also a motor vehicle the statute requires that it should also be insured before it can be used in a public place. As a trailer can move only if it is drawn by a tractor and if it is to be held that the insurer of the tractor is liable to indemnify the owner of the tractor as well as the trailer for any compensation payable on account of an accident arising out of the use of both tractor and trailer, even if the trailer is not insured, then the statutory provisions requiring even a trailer to be insured become redundant. An interpretation which would render some provisions of the statute redundant should be avoided.

(ii) In *Oriental Insurance Co. Ltd. Vs. Shivalingamma and Others*, , which is again a case decided by the High Court of Karnataka, the above decision was also referred to. In that case, the tractor and trailer were driven rashly resulting in the death of the claimants. The Tribunal awarded compensation and fastened the liability on both sets of insurers and owners equally. The insurer of the trailer filed the appeal. The learned Judge after extracting the details of commercial vehicles tariff which deals with the rules for insuring trailers and after considering the fact that these tariff rules are private and confidential and not intended for circulation or sale to public, but only for the use of insurers, held that the reference to the tariff rules cannot be read as terms and conditions of the

insurance contract, but these may not be the answer for deciding this case and arguments were not advanced in this regard. However, the learned Judge has also held thus:

Trailer u/s 2(46) is defined as "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by motor vehicle". So when the trailer has to be used or intended to be used by a motor vehicle may be a tractor or otherwise but whether this vehicle is one which is intended to be drawn or to be used by use of a motor vehicle, external or internal then definitely it may be argued that motor vehicle used with the trailer becomes part and parcel of the trailer when it is used as a goods vehicle. Entire liability may be fastened on the insurer of the trailer because when tractor is being insured it is always very much clear to the insurer that this vehicle has to be made use of with the motor vehicle to be attached with it.

and thereafter proceeded to affirm the order of the Tribunal in mulcting the liability on both the insurance companies stating that for the present, he did not want to express any final opinion on the matter regarding whether the entire liability should be fastened on the insurer of the trailer.

9. Compensation is payable under the provisions of the Motor Vehicles Act when death or injury has resulted from an accident arising out of the use of a motor vehicle or motor vehicles and the owner of the vehicle shall or as the case may be, the owners of the vehicle shall jointly and severally be liable to pay compensation in respect of such death or injury.

10. Now, if we look at the definition section, the motor vehicle is any mechanically propelled vehicle adopted for use upon roads. "Tractor" is defined as a motor vehicle u/s 2(44) of the act. Section 2(46) defines a "trailer" as a vehicle other than a semi trailer and a side-car drawn or intended to be drawn by a motor vehicle. The definition of these terms is not very much different in the Act before the 1984 amendment. Therefore, both a tractor and a trailer are motor vehicles. As a trailer is a motor vehicle too, the Act requires that it should also be insured before it is put into use in a public place. In this case, there is no dispute regarding the fact that it was only the trailer which ran over the deceased. But at that time, it was propelled by the driver of the tractor and the vehicle was being used as a tractor-trailer. The Act fixes the liability to pay compensation on the owner of the vehicle or vehicles as the case may be, the use of which had caused the death or disablement. In this case, when the tractor-trailer was used in combination and when under the definition section of the Act, both the tractor and the trailer are motor vehicles, the inescapable conclusion that can be drawn is that the accident had happened because of the use of both the vehicles, the tractor and the trailer used in combination. If the tractor alone had been used, the accident would not have happened because factually, it was the trailer that ran over the deceased. But if the trailer had been dissociated from the tractor, the trailer would not have run over the deceased as the trailer would not have jerked over the body of the deceased since the trailer would have been

motionless. Therefore, since the accident occurred because of the rash and negligent driving of the tractor-trailer, the owner of the tractor and the owner of the trailer are jointly and severally liable to pay the compensation and the insurers of both the vehicle are also liable to indemnify the claim made against them. The situation may be different if an accident is caused by the rash and negligent driver of the tractor-trailer where the tractor causes the injury and not the trailer. But that need not be decided here. The Tribunal erred in fastening the liability to pay the compensation on the appellants alone.

11. As regard the quantum, as rightly submitted by the learned Counsel for the respondents 1 and 2, this Court has power even in the absence of a cross-appeal to enhance the compensation if the Tribunal had gone wrong. In this case, the deceased is a bachelor and the claimants are his parents. The multiplier has been fixed as 20. The age of the mother is 45 and though this accident occurred before the Amendment Act, we shall adopt the multiplier as per the II Schedule which is 15. The resultant figure is Rs. 1,08,000 since deduction has already been made while calculating the annual contribution. The lower Court's deduction of 1/3rd amount twice is clearly erroneous and is set aside. In the result, the C.M.A. is allowed and the order of the Tribunal fixing the liability on the appellants alone is set aside. The liability is apportioned equally and the appellants shall pay 50% of the amount and the respondents 3 to 5 shall pay 50%. The Award is also modified and there shall be an award of Rs. 1,08,000 with interest at 9% as per the supreme Court's decision. In other respects, the Award is not disturbed. The respondents 1 and 2 shall be entitled to 50% of each of the award. The appellants and respondents 3 to 5 are given eight weeks time to deposit the enhanced compensation. No costs. C.M.P. No. 9173 of 1998 is closed.