

(2006) 09 MAD CK 0012

In the Madras High Court

Case No : C.M.A. (NPD-S) No. 403 of 1998, C.M.P. No's. 3705 and 8747 of 1998

Madras Metropolitan Water Supply and Sewerage Board

APPELLANT

Vs

Balaraman, Sivanandam, The National Insurance Company
Limited and V.A.M. Sultan

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Citation : (2008) ACJ 1066 : (2006) 4 LW 99 : (2006) 4 MLJ 528

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : V. Murali, for the Appellant; J. Mahalingam and S. Arun Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—This Civil Miscellaneous Appeal, preferred by Madras Metropolitan Water Supply & Sewerage Board, is directed

against the order dated 08.08.1996 passed by the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai in M.A.C.T.O.P.

No. 2214 of 1987.

2. In respect of injuries sustained by him in a motor accident, the claimant by name Balaraman, filed a Claim Petition before the Tribunal for a

compensation of Rs. 30,000/-. According to him, on 20.09.1987 at about 9.45 a.m., when he was standing in Suthanthira Nagar I Street, a

tractor-trailer bearing Registration No. TNO 2641, driven rashly and negligently from South to North, dashed against him, causing bone fracture in

his left thigh. It is his case that the accident occurred only due to the negligence of the driver of the tractor-trailer and as such, he is entitled to get

compensation of Rs. 30,000/-. On his side, three persons were examined and

five documents were marked.

3. On the other hand, the Insurer of the tractor who is the third respondent herein, filed counter before the Tribunal and contended that the

insurance policy is in the name of the owner of the vehicle in question namely V.A.M. Sultan and that he has sold the vehicle to one Kannan in

1987 itself and this has been certified by the Assistant Director, Agriculture Department. It further went on to contend that the policy had expired

and the vehicle was supposed to be used only for agricultural purpose as per policy conditions, but, actually, the vehicle was used for supplying

water to the public which is in violation of the policy conditions. It was its further contention that the accident occurred only due to the negligence

of the injured claimant and as such, it is not liable to pay compensation.

4. The owner of the vehicle who is the fourth respondent herein filed counter and contended that since he was not able to maintain the tractor, he

had handed over the same to one Kannan on 31.01.1983 authorizing him to use it and during 1987, due to acute water shortage, the appellant

herein entered into a contract with the said Kannan for the use of the said vehicle. It is also his contention that Kannan had obtained permission

from the Government on 21.04.1987 for the purpose of water supply in addition to agricultural purposes and the vehicle was under the overall

control of the appellant and since the policy was existent on the date of accident, it is only the Insurer who is liable to pay the compensation.

5. The appellant herein who was the fourth respondent before the Tribunal, by filing its counter, contended that vehicle in question was not under

its control and it was under the control of one Kannan from whom it was hired to supply water to the public during the period of acute water

shortage. It further went on to contend that it was only the owner of the tractor who employed the driver and as such, only the owner of the tractor

is liable to pay compensation. It was its contention that a particular clause in the Work Order would show that it will not be responsible for any

accident in which the vehicle is involved in. On the above grounds, it contended that the petition has to be dismissed. On the side of the

respondents before the Tribunal, four persons were examined and six documents were marked.

6. The Tribunal, after considering the oral and documentary evidence, held that

since the driver who was under the direct control of the appellant was the cause for the accident, the appellant who hired the vehicle, is liable to pay a compensation of Rs. 14,500/- to the injured claimant.

Challenging this judgment, the appellant has preferred this appeal on the aspects of negligence, liability and quantum.

7. Mr. V. Murali, learned Counsel for the appellant, has contended that:

a. The Tribunal has failed to consider the evidence of R.W.2 and Ex.R.2. the agreement between the appellant and one Kannan who gave the vehicle on hire.

b. the vehicle was not under the control of the appellant at the time of accident and it is only the owner of the vehicle who is vicariously liable to compensate the injured claimant;

c. the existence of the policy at the time of accident was ignored by the Tribunal and the Insurer should have been made liable to compensate the injured claimant; and

d. the award of Rs.14,500/- fixed by the Tribunal and its finding that the appellant has to pay the compensation on behalf of its driver are incorrect.

8. Per contra, Mr. J. Mahalingam, learned Counsel for the injured claimant/first respondent has contended that the judgment of the Tribunal based

on a decision reported in 1988 ACJ 540 has to be upheld and the award of Rs.14,500/- fixed by the Tribunal is a just and fair compensation,

taking into consideration, the nature and extent of injuries sustained by the injured claimant.

9. Mr. S. Arun Kumar, learned Counsel for the Insurance Company who is the third respondent herein has contended mainly on the point that

since the vehicle was supposed to be used only for agricultural and forestry purposes and instead, since it was used for water supply purpose by

the appellant, there is a clear case of violation of policy conditions and that being the case, the Insurer is not liable to compensate the injured claimant.

10. Heard the counsel for the appellant Board and the counsel for the contesting parties.

11. The main questions to be decided in this appeal are as follows:

a Who is the cause for the accident?

b What is the amount of compensation the injured deserves?

c Who is liable to pay the compensation?

12. It is not in dispute that the accident took place on 20.09.1987 at Sudhanthira Nagar I Street. P.W.3, the injured claimant has deposed that

when he was collecting water from the water tank in the above-said street, he was dashed by a tractor-trailer, driven rashly and negligently,

causing bone fracture in his left thigh. P.W.2, Arumugam, has deposed that on the basis of complaint given by one Srinivasan, a criminal case was

registered in Crime No. 4296/1997 and after the investigation was over, the driver of the vehicle pleaded guilty and paid a fine of Rs.550/-.

Considering the fact that P.W.2 was not an interested witness and the respondents before the Tribunal did not agitate the fact that the driver had

pleaded guilty and paid the fine and on a perusal of the F.I.R. and sketch marked as Exs.P.2 and P.3 respectively, I have no hesitation in endorsing

the view of the Tribunal that the driver of the vehicle was the cause for the accident and accordingly, this finding of the Tribunal is confirmed.

13. As regards the amount of compensation, P.W.1, the doctor who has examined the injured claimant has deposed that the latter has sustained

bone fracture in his left thigh and it has not been set right even after his taking treatment as in-patient in Royapettah Government Hospital. He has

further deposed that the claimant is found limping while walking and he will not be able to squat his legs and for these, he has certified the extent of

partial permanent disability as 20% vide Ex.P.1, the Disability Certificate. Taking these factors into consideration, I find that the award of

Rs.12,500/- towards 20% partial permanent disability is quite reasonable and need not be interfered with.

14. P.W.3, the injured claimant has deposed that at the time of accident, he was a sixth standard student and because of the accident, he has

discontinued his studies and subsequent to his sustaining injuries in the accident, he is not able to stand for a long time, ride cycle and climb stairs.

Further, the injuries sustained by him are corroborated by Ex.P.4, Discharge Summary and Ex.P.5, O.P. chit. Having due regard to these, the

compensation of Rs. 2,000/- awarded by the Tribunal towards pain and suffering also seems to be only minimal and it is also confirmed.

15. As regards the liability aspect, the learned Counsel for the Insurance

Company has contended that the policy conditions clearly state that the vehicle has to be used only for agricultural and forestry purposes and since the vehicle has been used for the purpose of water supply at the time accident, it is a case of violation of policy conditions and as such, the Insurance Company cannot be made liable to pay the compensation. I am in agreement with the submission made by the counsel for the Insurance Company and hence, I hold that the Insurance Company cannot be made liable to pay the compensation to the injured claimant even though the vehicle was covered by insurance policy as on the date of accident.

16. The learned Counsel appearing on the side of the appellant Board has contended that the appellant Board has only hired the vehicle from one Kannan by entering into a contract with him for the supply of water to the public and as per a particular clause of the terms and conditions of its Work Order, it is not liable to pay any compensation if the vehicle is involved in any accident during the time of its usage by it and it is only the owner of the vehicle who is liable to pay the compensation.

17. In this connection, it is worthwhile to refer to the decision of the Supreme Court reported in Rajasthan State Road Transport Corporation Vs.

Kailash Nath Kothari and other etc., . In this case, the State Transport Corporation took a bus on hire from its owner for plying the same in a particular route and due to negligence of its driver, the bus met with an accident involving death of 23 passengers. The Transport Corporation contended that the driver was in the employment of the owner and it could not be held vicariously liable for the rash and negligent act of the driver.

The Transport Corporation further contended that as per terms and conditions of the agreement with the owner, it was only the owner who is liable

to pay any compensation and not the hirer. But, the Supreme Court opined that the particular clause relied on by the Transport Corporation is

misconceived and the later part of the said clause makes it clear that the Corporation did not completely shift the liability to the owner of the bus.

The Supreme Court made it clear that the Transport Corporation cannot escape from its liability under the said clause and the relevant portion

reads as under:

Thus, the RSRTC cannot escape its liability under condition No. 15 of the agreement either. Thus, both on facts and in law, the liability to pay

compensation for the accident must fall on the RSRTC.

18. Though it is argued by the counsel for the appellant Board that the owner has to pay the compensation, I am of the view that the term owner

has to be viewed in a broader perspective. The expression owner must include the person who has the actual possession and control of the vehicle

and under whose directions and commands, the driver is obliged to operate the vehicle. To confine the meaning of owner to the registered owner,

in a case where the vehicle is in the actual possession and control of the hirer, would not be proper for the purpose of fastening of liability in case of

an accident. The liability of the owner is vicarious for the tort committed by its employee during the course of his employment and it would be a

question of fact, in each case, as to on whom, vicarious liability can be fastened in the case of an accident.

19. In the case on hand, the appellant Board has hired the vehicle from its owner to supply water to the public and even according to the appellant

Board, the services of the driver were transferred to it with complete control, under whose directions and instructions, the driver has to act. The

driver of the vehicle, though an employee of the owner, at the relevant time of accident, was performing his duties under the order and command of

the appellant Board. In that view of the matter and in view of the ruling of the Supreme Court (supra), I am of the considered opinion that the

appellant Board cannot use the said clause relied on by it for its rescue and the finding of the Tribunal in holding the appellant Board liable to pay

the compensation is perfectly in accordance with law. Hence, I have no hesitation to hold that the appellant Board cannot escape from its liability

and it is liable to pay the compensation of Rs.14,500/- to the injured claimant with interest of 12% p.a. as fixed by the Tribunal.

For the above stated reasons, the appeal deserves no consideration and is liable to be dismissed and is accordingly dismissed without any order as

to costs. Consequently, connected C.M.Ps. are also dismissed.