
(2013) 09 MAD CK 0215
In the Madras High Court
Case No : C.M.A. No. 120 of 2009

National Insurance Co. Ltd.	Vs	APPELLANT
Irban and D. Yusuff		RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0215

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; S. Sathiaselvan for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 11.10.2007, made in M.C.O.P. No. 512 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri. The short facts of the case are as follows:-

On 27.05.2003, when the claimant herein and others were travelling on the mini lorry bearing registration No. KA19 5536, after unloading mangoes and when the vehicle was proceeding on the Irumathur Main Road, at about 06.00 p.m., the driver of the mini lorry drove it at high speed and in a negligent manner and swerved the vehicle in order to avoid collision with a bus coming in the opposite direction. As a result, the mini lorry capsized and the petitioner sustained injuries. Hence, the claim petition in M.C.O.P. No. 512 of 2005, had been filed before the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri, against the owner and insurer of the mini lorry bearing registration No. KA19 5536.

2. The second respondent/Insurance Company had filed a counter statement and resisted the claim petition. The second respondent denied the manner of accident, age, occupation, income and nature of injuries and mode of treatment

of the claimants. It was submitted that the petitioner herein and other claimants and some others totalling about 50 persons had travelled in the mini lorry as unauthorized passengers. It was submitted that the owner of the vehicle had paid premium only for six employees including the driver and cleaner.

3. In the said accident, four other claim petitions have been filed by the injured claimants claiming compensation from the same respondents for the injuries sustained by them. As such, the Tribunal conducted a joint trial and passed a common order.

4. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Whether the accident had been caused by the rash and negligent driving by the driver of the mini lorry bearing registration No. KA19 5536? and

ii. Whether the claimant is entitled to get compensation?

5. The petitioners in M.C.O.P. Nos. 511, 512, 514, 515 and 516 of 2005 were examined as P.Ws. 1 to 5 and one Doctor Gandhi was examined as P.W. 6 and 20 documents were marked as Exs. P1 to P20. On the respondents' side, one Thimmaraja was examined as R.W. 1 and the copy of the Insurance Policy was marked as Ex. R1.

6. P.W. 2 the claimant had adduced evidence that on 27.05.2003, at about 06.00 p.m., when he and five other persons were travelling on the mini lorry bearing registration No. KA19 5536, for loading and unloading of Mangoes, and when the lorry was proceeding on the Irumathur Main Road, the driver of the lorry drove it in a negligent manner and as a result of which the vehicle had capsized. P.W. 2 further stated that he had sustained injuries on his hip, right hand, joint, left shoulder and that he had undergone treatment at Government Hospital, Dharmapuri.

7. P.W. 6 Doctor had assessed the disability at 35% and also spoke in similar lines of P.W. 2 about nature of injuries. The following documents were marked as common documents in all the cases namely first information report, wound certificates of the claimants, charge sheet, insurance policy, driving licence and medical bills, wound certificates of the claimants in all the cases, disability certificates and "X" rays of all the claimants.

8. On considering the evidences of the claimants and Doctor's evidence, the Tribunal had awarded compensation of a sum of Rs. 1,24,000/- with interest at the rate of 7.5% per annum. Aggrieved by the said award, the Insurance Company has filed the above appeal.

9. The learned counsel appearing for the appellant submits that more than 15 unauthorized persons had travelled on the goods vehicle and as such the owner of the vehicle had violated the policy and permit conditions and therefore the Insurance Company is not liable to pay compensation. All the submissions made

by the claimants that they had travelled as load men had not been proved by substantial evidence. The very competent counsel for the Insurance Company further submits that totally seven claim petitions had been filed for the same accident, but premium has only been paid for six persons. Hence, the learned counsel expects the Court to set aside the Award.

10. The very competent counsel for the claimant argued that all the claimants had travelled as load men for loading and unloading the mangoes. The learned counsel further submits that on 27.05.2003, all the claimants plucked the mangoes from one Kalliyur Durai's Mango Garden and loaded the same on the mini lorry bearing registration No. KA19 5536 and the claimants had also travelled along with the goods. After unloading the mangoes, when the vehicle was proceeding with the load men (Coolies) and while the lorry was proceeding on the Irumathur Main Road, a bus had come from the opposite direction suddenly. In order to avoid collusion of the lorry with the bus, the driver of the mini lorry had turned the vehicle to right side as a result of which the vehicle capsized. As per policy, the owner had remitted premium for six persons. But, only five claimants had claimed compensation before this Court. Further, the quantum of compensation and as payable to the claimants had been assessed on the basis of disability certificate and connected medical records. As such, there is no lacuna in the impugned award passed by the Trial Court.

11. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation.

12. This Court is of the further view that the first information report has been registered against the driver of the offending vehicle and subsequently charge sheet has also been filed against him. Therefore, negligence has been proved. As per the contentions of the learned counsel for the Insurance Company, premium has been remitted to cover risk of six persons. But, before this Court, only five injured claimants had sought remedy. Therefore, the liability of the Insurance Company has also been decided as per the policy conditions. The compensation amount has been decided as per the Doctor's evidence and disability certificate. Therefore, the quantum of compensation had been assessed in an appropriate manner. Hence, this Court is not inclined to entertain the appeal.

13. This Court already directed the appellant herein to deposit the entire compensation amount with interest and out of the deposited amount, the claimant was permitted to withdraw Rs. 15,000/- only. Now, the claimant is at liberty to withdraw the balance compensation amount with accrued interest thereon, lying in the credit of M.C.O.P. No. 512 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri, after filing a memo along with a copy of this Order. In the result, the appeal is dismissed and the order passed in M.C.O.P. No. 512 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri, dated 11.10.2007, is

confirmed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.