
(2011) 04 MAD CK 0456

In the Madras High Court

Case No : C.M.A. No. 1555 of 2008 and M.P. No. 1 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

Sakthivel and Another

RESPONDENT

Date of Decision : 09-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2011) 3 TAC 474

Hon'ble Judges : V. Periya Karuppiah, J

Bench : Single Bench

Advocate : S. Vadivel, for the Appellant; K.A. Ramakrishnan, Advocate For the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

V. Periya Karuppiah

1. This appeal is directed against the Judgment and award passed by the lower Court made in MACOP No. 168 of 2006 dated 21st August, 2007.
2. The appellant herein was the second respondent before the lower Court and he has filed the appeal against the liability and quantum of compensation ordered by the lower Court.
3. The gist of the petitioner's case before the lower Court would be as follows:

On 17th June, 2005 at about 14.00 hours, when the petitioner was travelling as a load-man in the mini-door auto bearing Registration No. TN-32-W-6457 from Kaikalathur to Ayyarpalayam near Ayyarpalayam lake, the said mini-door auto was driven in a rash and negligent manner and capsized. Due to the said accident, the petitioner sustained injuries all over the body and his right leg was fractured and sustained abrasion in right leg, forehead and head. Hence, he prayed for compensation of a sum of Rs. 2,00,000/-. The first respondent is the owner of the mini-door auto and the second respondent is the Insurer of the

mini-door auto and hence the petitioner stated that both the respondents are vicariously liable to pay the compensation.

4. The contention of the second respondent in the counter would be thus :-

As per the First Information Report, the petitioner has travelled as an unauthorised passenger in the mini-door auto, owned by the first respondent. As per the policy condition, the owner of the vehicle, viz., mini-door auto bearing Registration No. TN-32-W-6457, cannot carry any passenger in the vehicle. Therefore, there is violation of policy condition. Similarly, there is no rash and negligent driving on the part of the driver of the first respondent. But, due to the negligence on the part of the petitioner, the accident had happened. Therefore, the second respondent is not liable to pay the compensation to the petitioner. The second respondent is unnecessary party to the petition. The second respondent have reserved their right in the policy to contest the case in the name of their insured on all grounds as per the judgment of the Supreme Court. If necessary, they are entitled to contest the case u/s 170 of Motor Vehicles Act and also entitled to file a separate petition to contest on behalf of the owner of the vehicle. Hence, it is prayed that a formal permission may be recorded for filing of the abovesaid petition. In any event, the compensation claimed is highly excessive and without any legal basis. The second respondent reserves his right to file any additional counter, if necessary, at later point of time. The petitioner only can claim interest from the second respondent when the petition was taken on file by the Hon'ble Court, and not the petition filed into Court, if liability on the second respondent is established. This petitioner only can claim 6% rate of interest if liability on the second respondent is established. Therefore, the second respondent prayed this Court to dismiss the claim petition as against the second respondent with costs.

5. The lower Court had examined the petitioner as PW.1 and the Doctor as PW.2 and admitted Exts.P1 to P6 on the side of the petitioner and also admitted Ext.R1 on the side of the second respondent and had come to a conclusion of awarding a sum of Rs. 1,63,000/- towards compensation payable with 7.5% interest per annum to the claimant.

6. Aggrieved by the said Judgment and award, the second respondent had preferred the present appeal.

7. Heard Mr. S. Vadivel, learned Counsel for the appellant/second respondent and Mr. K.A. Ramakrishnan, learned Counsel for the first respondent/claimant. No appearance for the second respondent.

8. Learned Counsel for the appellant would submit in his arguments that the Insurance Company was not liable to pay compensation as the policy did not cover the liability to pay any damages caused to the load-man and the driver of the vehicle was the only person covered under the policy. He would further submit that the mini-door auto is a load carrying vehicle and the lower Court had not considered the non-coverage of the policy while awarding the compensation.

He would further submit that the disability certificate said to have been issued to the claimant was not given by the Doctor, who treated the claimant and the particulars of the expenditure was also not truly submitted. He would further submit that the quantum of disability arrived at on the basis of the imaginary income and the unproved disability would not sustain. He would further submit that even otherwise the disability sustained by the claimant was not proved to have affected the employment of the claimant. He would further submit that the award of Rs. 10,000/- towards medical expenditure should not also have been done since there was no proof for the said purpose. Therefore, he would request the Court that the award passed by the lower Court may be set aside and the appeal may be allowed.

9. The learned Counsel for the first respondent/claimant would submit in his arguments that the lower Court has correctly assessed the monthly income of the claimant and had awarded a compensation of Rs. 1,63,000/- which comprises the compensation for disability and for medical expenditure. He would further submit that the claim for Rs. 2,00,000/- ought to have been awarded by the lower Court, but it had awarded only a sum of Rs. 1,63,000/-, to which the claimant had contended. He would further submit that the lower Court should have calculated the compensation for pain and suffering and the actual expenditure, submitted through Ext. P3, for a sum of Rs. 15,042.95p. He would further submit in his argument that the Insurance Company is liable to compensate the claimant, since he accompanied in the vehicle which is a load-carrying vehicle as a load-man and the person who is accompanying with the goods for loading and unloading can be awarded with compensation under the policy, even though there is no specific endorsement in that regard. He would further submit that the claimant could not be treated as gratuitous passenger as he was accompanying with the goods for loading and unloading and therefore the Insurance Company is automatically liable to make good the loss of owner of the vehicle, the second respondent herein. He would further submit that there is no merit in the appeal and therefore the appeal may be dismissed.

10. I have given anxious consideration to the arguments advanced on either side.

11. The accident which is stated to have taken place on 17th June, 2005 at about 14.00 hours near Ayyarpalayam lake, Kaikalathur-Ayyarpalayam Main Road and the involvement of the vehicle, viz., mini-door auto bearing Registration No. TN-32-W-6457, belonging to the second respondent herein, are not disputed. Similarly the claimant who was travelling as load-man in the said vehicle and he sustained injuries due to the accident are also not questioned. In the said circumstances, the conclusion of the lower Court that the accident had happened only due to the rash and negligent driving of the driver of the second respondent herein has become final.

12. Therefore, the points to be decided before this Court would be whether the second respondent is liable to pay the amount of compensation and the said quantum of compensation arrived by the lower Court is in accordance with law.

In order to ascertain the liability to pay the compensation, I have to see the policy produced as Ext. R1. No doubt, it could be seen in Ext. R1 that except driver, no other person has been covered under the policy. Admittedly, the claimant was accompanying with the goods in the vehicle for loading and unloading. Certainly, he cannot be classified as a gratuitous passenger. The claimant had travelled in the said vehicle for the purpose of transmitting the goods on behalf of the owner and his travel in the vehicle cannot be termed as illegal. In the said circumstances, even though the policy does not cover more than the driver, the claimant who travelled in the said vehicle alongwith the goods for its loading and unloading is certainly covered by the policy. Therefore, the compensation likely to have fastened against the respondent (owner of the vehicle) is liable to be indemnified by the appellant /Insurer.

13. As regards the quantum of compensation, I could see that the lower Court had arrived at Rs. 1,53,000/- calculated at the rate of Rs. 3,000/- per month towards the monthly income of the claimant. Of course, there is no documentary evidence to show that the claimant was earning a sum of Rs. 5,000/- per month as claimed in the petition. The lower Court had notionally fixed the monthly salary at Rs. 3,000/- per month. No doubt, it is true that the claimant was working as load-man in the said mini-door auto. Therefore, it could not be fixed that the minimum monthly income at Rs. 1,500/-. He would have earned a sum of Rs. 2,500/- per month which is 50% of his claim. Therefore, it is safe for calculating the compensation at the rate of Rs. 2,500/- per month towards monthly income. The age of the claimant was 22 years on the date of the accident as per the wound certificate and other documents. The Doctor who examined the claimant had deposed as PW.2 that the claimant had sustained the disability of 25% which is a permanent one. Since, there is no other factors to disbelieve the evidence of the Doctor, I could see that 25% of permanent disability awarded by the Doctor is accepted. When I calculate the compensation on these factors, I could see that the compensation can be arrived at through multiplier method for 25% permanent disability. When I calculate the annual income of the claimant, it would be Rs. 30,000/-. The multiplier as per the II Schedule for a person aged in between 20 to 25 would be 17. If the multiplier 17 is used for calculating the compensation, by taking into consideration the annual income at Rs. 30,000/- and 25% permanent disability, I could find that the compensation to be awarded, according to the formula $\text{Rs. } 30,000/- \times 17 \times 25\%$, would be Rs. 1,27,000/-. Therefore, the calculation of permanent disability at Rs. 1,53,000/- by the lower Court is slightly on the higher side.

14. The lower Court had awarded a sum of Rs. 10,000/- towards medical expenditure against Ext. P3 produced by the claimant for a sum of Rs. 15,042.95p. The said amount was reduced to Rs. 10,000/- and was ordered by the lower Court. On a perusal of the said document, I could see that a sum of Rs. 14,500/- may be accepted towards the medical expenditure on considering the injuries sustained by the claimant. In the wound certificate issued under Ext. P2, I can see that the right leg was fractured in tibia bone and three more injuries

were sustained by the claimant on his right leg, forehead and on his head. He suffered much pain due to the injuries. No doubt, I can consider the fracture as grievous injury and other three injuries on the leg, forehead and head as simple injuries. But the claimant would suffer much pain during the sustenance of the accident and while taking treatment. For that purpose, the lower Court did not award any compensation, which is not found to be correct. Therefore, a sum of Rs. 5,000/- (Rupees five thousand only) being awarded to a grievous hurt and a sum of Rs. 3,000/- (Rupees three thousand only) is awarded for three simple injuries sustained by the claimant and therefore, totally a sum of Rs. 8,000/- (Rupees eight thousand only) is ordered under the caption pain and suffering in favour of the claimant. There is no expenditure spoken by the claimant for being awarded and therefore, the claimant could be awarded totally a sum of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) towards his claim. However, the lower Court had awarded a sum of Rs. 1,63,000/-, which is slightly on the higher side and therefore, the order passed by the lower Court towards the grant of Rs. 1,63,000/- is modified to a sum of Rs. 1,50,000/- with interest at 7.5% from the date of petition till the date of realisation.

15. With the aforesaid modification, the compensation awarded by the lower Court is modified to a sum of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) with interest at 7.5% from the date of petition till the date of realisation with proportionate costs.

16. In fine, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the lower Court is modified to a sum of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) with interest at 7.5% from the date of petition till the date of realisation with proportionate costs. It is brought to the notice of this Court that as per the order of this Court dated 30th April, 2008 made in M.P. No. 1 of 2008, 50% of the award amount passed by the lower Court has been deposited by the appellant and the claimant was also ordered to receive certain part of the said compensation. Therefore, the appellant is directed to deposit the remaining compensation as awarded by this Court within a period of six weeks from the date of receipt of a copy of this Order. The claimant is at his liberty to withdraw the said amount as per rules. In the peculiar circumstances, there is no order as to costs in this appeal. Consequently, connected Miscellaneous Petition is closed.

Appeal party allowed.