

(2011) 09 MAD CK 0153

In the Madras High Court

Case No : Civil Miscellaneous Appeal No's. 945, 3826 to 3828, 3883, 3966 to 3968 of 2008

National Insurance Company Ltd., Branch Office, Bazaar Street, Upstair, Attur and Post, alem District and National Insurance Company Ltd., Branch Office, No. 638, Cuddalore Main Road, Ranipet, Attur, Salem District

APPELLANT

Vs

Poongavanam and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 147(1)

Citation : (2011) 09 MAD CK 0153

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : K. Padmanabhan, for the Appellant; V. Raghavachari for R1 and R2 in CMA 945 of 2008, Mr. P. Jagadeesan for R1 in CMA Nos.3826 to 3828, 3966 to 3698 of 2008 and R1 to R4 in CMA 3883 of 2008 and Mr. P. Mani for R3 in CMA 945 of 2008, R2 in CMAs 3826 to 3828 and 3966 to 3968 of 2008 and R5 in CMA 3883 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

The Honourable Mr. Justice R. Subbiah

1. Aggrieved over the award dated 02.04.2007 passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Attur, in M.C.O.P.46 of 2002, the National Insurance Company Limited has filed CMA No.945 of 2008 and aggrieved over the common award dated 06.10.2007 passed by the Motor Accidents Claims Tribunal (Additional District and Sessions Judge-cum-Special Judge), Salem, in M.C.O.P.Nos.610 to 612, 915 and 607 to 609 of 2002, the National Insurance Company Limited has filed the remaining civil miscellaneous appeals respectively.

2. As all these appeals arise out of the claim petitions filed by various persons in respect of the same accident, it is convenient to deal with them together. For

convenience, the parties will be referred to as per their ranking before the Tribunal.

3. The case of the claimants, in brief, is as follows: On 21.12.2001 while some loadmen were travelling in a lorry bearing registration No. TCF 8193 owned by one Palani, the first respondents in all the claim petitions, insured with the 2nd respondent insurance company, the driver of the said lorry drove the same in a rash and negligent manner and hit against a tamarind tree, and as a result of which, one of the loadmen Angamuthu and the driver of the lorry, viz., Lucas died and other persons suffered multiple injuries. Hence, the legal heirs of the deceased Angamuthu had filed MCOP.No.46 of 2002 before the Tribunal (Sub Court) at Attur and the injured persons have filed independent claim petitions as against the owner of the vehicle and its insurer of the said lorry before the Tribunal (Additional District and Sessions Court-cum-Special Court) at Salem.

4. The case of the claimants was resisted by the insurance company by filing counter statements, stating that the alleged lorry is a goods carriage vehicle and the injured persons had travelled in the lorry as passengers by paying hire charges. At the time of accident, since they had travelled as the unauthorised passengers in the lorry, they are not entitled to get any compensation. As per the conditions of the insurance policy, only 9 coolies were permitted to travel in the vehicle, whereas 14 persons had travelled at the time of accident in the lorry, which is clearly a violation of the terms and conditions of the policy issued to the vehicle. Hence, the insurance company is not liable to pay compensation.

5. In order to prove the claim, in MCOP No.46 of 2002, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P-1 to P-3 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Exs.R-1 to R-6 were marked. The Tribunal, on a consideration of entire evidence, held that both the respondents are liable to pay compensation and passed an award directing the insurance company to pay the compensation. Challenging the said finding, CMA No.945 of 2008 has been filed by the insurance company.

6. In the other claim petitions, the Tribunal conducted a joint trial and examined witnesses and marked documents in MCOP No.915 of 2002. On the side of the claimants, P.Ws.1 to 9 were examined and Exs.P-1 to P-31 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Exs.R-1 to R-7 were marked. The Tribunal, after perusing the entire materials, came to the conclusion that the claimants are entitled to get compensation from both the respondents and awarded compensation in each petition directing the 2nd respondent insurance company to pay the same. Challenging the said finding, C.M.A.Nos.3826 to 3828, 3883, 3966 to 3968 of 2008 have been filed.

7. Learned Counsel appearing for the appellant insurance company submitted that as per the policy issued by the insurance company, there was a coverage for two drivers, two cleaners and six labourers and as per section 147 (1) (b) of the Motor Vehicles Act, the policy will cover only the employees of the owner of the

vehicle and not any other person. In the instant case, neither in the claim petitions nor in the evidence of the claimants, absolutely there is no whisper about their employer. It is further submitted that nowhere it is stated that they are the employees of the owner of the vehicle. It is the admitted case of the claimants that they had travelled only in order to load the goods. As per the terms of the policy, the coverage is only for the risk of employees of the owner and not any other person. Moreover, it is not the case of the claimants they had travelled in the lorry as "persons accompanying the goods". Therefore, they will not fall under the category of "persons accompanying the goods". But the Tribunal has erroneously come to the conclusion that since the owner of the vehicle has paid Rs.75/- as additional premium for third party property damages, the insurance company is liable to pay compensation.

8. Attacking the said finding, the Learned Counsel for the appellants submitted that the collection of Rs.75/- by the insurance company is only pertaining to the third party property damages and hence, the said premium would not cover the risk of personal injuries. Therefore, the finding rendered by the Tribunal based on the additional premium collected by the insurance company, is patently illegal and the same is liable to be set aside. Under these circumstances, the appellant insurance company cannot be made liable to pay the compensation. In support of these contentions, the Learned Counsel has relied on the decisions reported in *Oriental Insurance Company Ltd., v. Brij Mohan* (2007 SAR (Civil) 683), *United India Insurance Company Ltd., v. Serjearo* (2008 SAR (CIVIL) 69), *National Insurance Company Ltd., v. Kaushalya Devi* (2008 (2) Tn Mac 497 (SC) and *Smt. Thokchom Ongbi Sangeeta @ Sangi Devi v. Oriental Insurance Company Ltd.*, (2008(1) Tn Mac 59 (SC).

9. Per contra, Mr.P.Mani, the Learned Counsel appearing for the 1st respondent in the claim petitions/owner of the vehicle submitted that the owner of the vehicle examined himself as R.W.1 before the Tribunal, who had stated in his evidence that on the date of accident, the deceased and the injured persons had travelled as coolies in the vehicle. The Learned Counsel further submitted that only in the appeal, the insurance company is taking a defence that though the persons travelled in the lorry are labourers, unless it is established that they are the employees of the 1st respondent, the insurance company cannot be made liable to pay the compensation.

10. Pointing out the said defence, the Learned Counsel for the owner of the vehicle further submitted that before the Tribunal, the insurance company had taken a different stand that the victims are not the coolies and they are all fare paying passengers in the lorry. Inviting the attention of this Court to the evidence of R.W.1, the Learned Counsel further submitted that the owner of the vehicle had clearly stated in his evidence that the victims had travelled as labourers in the lorry on the date of the accident. There is no contra evidence on the side of the appellants to prove their defence. In the circumstances when there is a coverage for loadmen, i.e. two cleaners and six labourers, no infirmity

could be found in the compensation awarded by the Tribunal. In this regard, the Learned Counsel has relied on the decisions reported in *Ramesh Chand v. New India Assurance Company And Others* (2005(2) Tn Mac (HP) 429), *New India Assurance Company Ltd., v. T.K. Duraiswamy* (2009(2) Tn Mac 557) and *New India Assurance Company Ltd., v. Premadasan* (2011 (I) TN MAC 215).

11. Mr.V.Raghavachari, the Learned Counsel for the claimants (CMA No.945 of 2008) submitted that once an award is passed by the Tribunal in favour of the claimants, the scope of interference by this Court is very limited. In the instant cases, the Tribunal, by considering the entire evidence has come to the conclusion that the insurance company is liable to pay the compensation. Therefore, there is no need for interference. The Learned Counsel, by relying upon the judgments reported in *National Insurance Company Ltd., v. Baljit Kaur And Others* (2004(1) TN MAC 1 (SC) and *Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal, Unnamalai and V.B. Krishnan*, , has submitted that on the date of accident, the victims had travelled only as the employees of the vehicle. Even assuming for arguments" sake that they had been hired by the owner of the vehicle, even then, the insurance company is liable to pay compensation because at the time of accident, they had travelled only as coolies in order to carry out the work of the owner of the vehicle.

12. Mr.P.Jagadeesan, Learned Counsel appearing for the other claimants, by relying on the judgment reported in *Paratap Singh Vs. National Insurance Company Ltd. and Others*, and *A. Sampath v. Pachiappan And Others* ((2000) 2 MLJ 559), submitted that though the finding rendered by the Tribunal based on the collection of the premium of Rs.75/- by the insurance company with regard to third party damages is wrong, the evidence on record would show that there was a coverage for 9 employees under the policy i.e. one driver, two cleaners and 6 coolies. Under such circumstances, the insurance company cannot deny their liability in paying the compensation.

13. Having heard the arguments of the Learned Counsel on either side, I find that the main submission of the appellant insurance company is that they are liable to pay compensation as per the terms of the policy only on two circumstances;

(i) if the persons travelled in the goods carrying vehicle as "persons accompanying goods";

(ii) if the persons had travelled as the "employees of the owner of the vehicle".

Now it is the submission of the appellants that the claimants/victims will not come under either of the two categories. Though it has been stated that they had travelled as the coolies, unless it is established that they are the employees of the owner of the vehicle, the insurance company is not liable to pay compensation. Absolutely, there is no controversy in accepting the submission made by the Learned Counsel for the appellants with regard to the liability of the insurance company in paying the compensation. Therefore, I am not dealing with

the said submission. But at the same time, I find that the question as to whether the claimants had travelled as the employees of the owner of the vehicle or not has to be seen only based on the evidence available in the particular case. In the instant cases, admittedly, the owner of the vehicle, who examined himself as R.W.1, had admitted in his evidence that on the date of accident, the victims had travelled as coolies in the lorry in order to load the goods. Therefore, I am of the view that at the time of accident, they had travelled as the employees of the owner of the vehicle to carry out the work.

14. As contended by the Learned Counsel for the 1st respondent, before the Tribunal, the defence of the insurance company is totally contra to the submission made by the Learned Counsel for the appellants in these appeals. Before the Tribunal, it is the defence taken out by the appellants that all the victims had travelled as unauthorised passengers in the lorry, whereas in the present appeals, it is the stand of the appellants that though the victims are coolies, they are not the employees of the vehicle owner. But, on a careful scrutiny of the evidence of R.W.1, the owner of the vehicle, I find that the appellant insurance company has not brought forth any favourable reply from R.W.1 to the effect that the victims are not the employees under him. Moreover, the appellants insurance company has also not chosen to adduce contra evidence in this case.

15. As contended by the Learned Counsel appearing for the claimants in CMA No.945 of 2008, at the time of the accident, the victims had travelled in the insured vehicle only to carry out the work of the owner of the goods. In such a situation, no infirmity could be found in the award passed by the Tribunal since there was a policy coverage for 9 employees. In fact, the judgment relied on by Mr.P.Jagadeesan, the Learned Counsel for the claimants reported in 1998 ACJ 309 (supra) would go to the extent of laying down the principle that even if there was no contract of employment in writing between the owner of the vehicle and the loadmen, the case of the victims cannot be rejected and the relevant portion in the said judgment reads as follows:

5. Mr.Suri, Learned Counsel for the Insurance Company, with his usual ability and frankness, has not contested this issue. The only surviving question therefore is as to whether simply because there was no contract of employment in writing, the plea of claimants that they were hired by the appellant could be ignored? The Court is of the considered view that in a case of this kind there could not be any writing evidencing contract of employment between the appellant and the claimants. As mentioned above, it has been consistent case of the claimants that the deceased and the injured had boarded the truck simply for loading and unloading on a particular day. In a way, therefore, they were daily wage employees only for one day. They were only to go to the distance the goods were to reach and load and unload the same. Such a short durated contract is normally not reduced into writing and is oral. Such contracts, which are normally oral, cannot be rejected on the ground that there should have been writing of the

same. The findings of the learned Tribunal that the words "contract of employment" signify the employment of permanent or temporary post and not on adhoc basis, deserves to be simply rejected. It may, however, be stated that for coming to the conclusion as afore said, learned Tribunal relied upon two judgments of this Court in New India Insurance Company v. Shanti Devi, and Oriental Fire and General Insurance Company v. Gurdev Kaur's cases, (supra). The facts in New India Assurance Company v. Shanti Devi's case reveal that the hirers of the truck were travelling with a view to guard their goods. It was not at all a case of casual labour boarding the truck for a short duration of day or so. The facts of the case in Oriental Fire and General Insurance Company v. Gurdev Kaur and Ors. (1967) 69 P.L.R. 461 (F.B.) (not 1987 A.C.J.158, as mentioned by the Tribunal), reveal that the deceased was travelling in a truck. He was accompanying his goods carried in the truck. On his death on account of the accident, his dependents filed an application u/s 110-A of the Motor Vehicles Act, 1939. The facts of the cases aforesaid have, thus, no parity with the facts of the case in hand and the Tribunal was not justified in placing reliance upon these two judgments to come to the conclusion as aforesaid.

16. In (2000) 2 MLJ 559 (supra), it has been held as follows:

7. All the above mentioned particulars would clearly show that the deceased Annadurai was engaged by the owner of the tractor and trailer as a coolie and he died when the vehicle was in use for agricultural purpose. I have already stated that R.W.1 has admitted that the owner had paid Rs.1,340/- as premium for tractor and Rs.441/- for trailer. I have also extracted the details of payments in the earlier part of my order. Taking note of all the above aspects, namely, the tractor and trailer were engaged only for agricultural purpose on 9.6.1994, in view of payment of separate premium for tractor and trailer covering the driver and the other third parties of both the tractor and trailer, even though there is no specific reference covering the liability for the death or injury to the coolies and in the absence of any specific exclusion, I am of the view that the insurer has to pay the compensation to the claimants for the death of Annadurai. It is not the case of the insurance company or any one that the trailer can be used for agricultural purpose without the assistance of certain workmen. When the vehicle is intended for agricultural operation undoubtedly without the assistance of certain workmen, no work can be done. I have already stated that the owner had taken policy for both tractor and trailer and paid substantial amount towards premium. In such a circumstances, I am unable to accept the contrary view taken by the Tribunal exonerating the insurance company from its liability, and in the light of the valid policy for the tractor and trailer and of the fact that the deceased met with the accident in the course of agricultural operations, I am of the view that both the owner and his insurer are liable to pay compensation.

In my considered opinion, in the absence of any specific admission from the claimants that they were not the employees of the owner of the vehicle and also in the absence of any contra evidence produced on the side of the insurance

company, I am of the opinion that on the date of accident, the victims had travelled in order to carry out the work of the 1st respondent, namely, to load the goods. Since there is a coverage for 9 employees, the insurance company is liable to pay compensation. Under these circumstances, I do not find any infirmity in the awards passed in all the claim petitions and the appeals are liable to be dismissed. Accordingly, all the civil miscellaneous appeals are dismissed and the awards passed by the Tribunal are confirmed. No costs. Consequently, connected M.Ps. are closed.