

(2011) 06 MAD CK 0001

In the Madras High Court

Case No : C.M.A. No. 3193 of 2010 and M.P. No's. 1 of 2010 and 1 of 2011

The Branch Manager, The New India Assurance Company Ltd.

APPELLANT

Vs

Perumal, Amara and L. Durai

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Constitution of India, 1950 — Article 142

Insurance Act, 1938 — Section 64U

Motor Vehicles Act, 1988 — Section 147, 147(1)

Citation : (2011) 06 MAD CK 0001

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; M. Sriram, for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / New India Assurance Company Limited, against the award and

decree made in M.C.O.P. No. 218 of 2007, dated 02.07.2010, on the file of the Motor Accidents Claims Tribunal, Principal District Court,

Krishnagiri.

2. The short facts of the case are as follows:

On 30.09.2006, the (deceased) Murugesan, was travelling in the tractor-trailer, bearing Registration No. TN24-B-1858, belonging to the first

Respondent and insured with the second Respondent, as a coolie engaged in loading and unloading of goods. While he was travelling in the said

vehicle, which carried a sand load and at about 2.30 a.m., when the vehicle was near the land of one Kariraman in Thanampatti Village, the driver

of the said tractor-trailer drove the same in a rash and negligent manner at a high speed and without observing the ups and down on the rough

surface of the road. As a result of which the hook of the trailer, which was connected to the tractor was broken and the (deceased), who was

proceeding in the Trailer with sand load, fell down from the vehicle and sustained fatal injuries on his vital organs. He was immediately taken to the

Government Hospital at Krishnagiri, but died within a few hours of his admission in the Hospital. Hence the Petitioners, who are the parents of the

deceased have filed a claim for Rs. 7,00,000/- against the Respondents 1 and 2.

3. The second Respondent, in his counter has resisted the claim and denied the averments in the claim regarding the manner of accident, age,

income and occupation of the deceased. It was also submitted that the tractor-trailer was insured only for agriculture purpose but at the time of

accident, the tractor-trailer was used for carrying sand. The owner of the tractor-trailer had violated the policy conditions by allowing the carrying

of a sand load. It was also stated that the insurance coverage were not extended to coolies, travelling in the tractor-trailer. It was further stated that

the claimants should prove that they are the legal-heirs of the deceased. It was also submitted that the claim was excessive.

4. On the averments of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Whether the accident had happened due to rash and negligent driving of the driver of tractor-trailer?

(ii) Whether the first and second Respondents are jointly and severally, liable to pay the compensation? If so, what is the quantum of compensation

which the Petitioners are entitled to get?

5. On the Petitioners side, two witnesses were examined as PW1 and PW2 and five documents were marked as Exs.P1 to P5 viz., Xerox copies

of F.I.R, Post-mortem certificate, insurance policy, driving licence and legal-heir certificate. On the Respondents side, one witness was examined

as RW1 and one document was marked as Ex.R1, Insurance policy.

6. PW1 is the father of the deceased Murugesan. PW2 is the eyewitness. PW2 had adduced evidence that on 29.09.2006 at about 2.30 a.m., the

deceased was travelling in tractor-trailer bearing Registration No. TN24-B-1858, as a loadman in the tractor for unloading the load of sand from

the tractor and when the vehicle was near a land belonging to Kariraman near Thanampatti, the driver of the said tractor-trailer drove the same in a rash and negligent manner, due to which the hook of the tractor which was connected to the tractor broke and as a result of this, the said

Murugesan, who was sitting in the trailer with sand load, fell down from the vehicle and sustained fatal injuries and died on the spot. The complaint

regarding the accident was given by PW1 and the same was registered by Krishnagiri Taluk Police as against the driver of the first Respondent.

RW1, the Senior Assistant in the second Respondent's office adduced evidence that the vehicle bearing Registration No. TN24-B-1858 was

insured with the second Respondent for agricultural purpose only and the said tractor has not been insured for business purpose. He had further

adduced evidence that the vehicle owner has not paid any premium for insurance coverage for coolies and in support of his evidence had marked

Ex.R1, Insurance Policy.

7. The Tribunal, on scrutiny of FIR and evidence of PW2 and also considering that No. contra evidence had been let in on the part of the

Respondents side to rebut the evidence of PW2, held that the accident took place due to the rash and negligent driving of the driver of the first

Respondent. The Tribunal placing reliance on citations of judgment made in two cases viz., Sampath v. Pachiappan and Ors. reported in 2002

ACJ 1519 and New India Assurance Company Limited v. Palani N.Samundeeswari reported in 2010 (1)TN MAC 296, were of the opinion that

as the trailer was used for agriculture purpose of transporting sand and as claimant was sitting on the trailer for purpose of connected to agricultural

operations of owner, the insurance company is liable to pay the compensation to the claimants.

8. The Tribunal on considering that No. proof for avocation and income of deceased had been produced by the Petitioners held that the notional

income of the deceased could be taken as Rs. 3,000/-per month. Considering that the age of the deceased Murugesan was 20 years as per Ex.P2,

copy of postmortem certificate and adopting a multiplier of ""18"", as was relevant to the age of the deceased and considering that the deceased

being a bachelor could have contributed only 50% of his income to his family, the tribunal awarded a compensation of Rs. 3,24,000/-(Rs. 3,000 x

50/100 x 12 x 18) under the head of "loss of income to Petitioners". The Tribunal further awarded Rs. 10,000/- for loss of estate and Rs. 3,000/-

for funeral expenses. In total, the Tribunal awarded a sum of Rs. 3,37,000/- to the Petitioners and directed the first and second Respondents to

jointly and severally deposit the said award with interest at the rate of 6% per annum from the date of petition till the date of deposit.

9. Aggrieved by the said award passed by the Tribunal, the Appellant / New India Assurance company Limited has filed the present appeal to set-

aside the award passed by the Tribunal.

10. The learned Counsel for the Appellant has argued that the lower Court has grossly erred in fastening liability on the insurer in a case where the

victim was not required to be covered u/s 147 of Motor Vehicles Act, 1988 and under Ex.R1, contract of insurance. It was also argued that the

lower Court failed to see that as per decisions in Brij Mohan and Sulochana, C.M.A. No. 3448 of 2006, 2009 (5) MLJ 707 and 2009 (2) LW

953, insurer was not liable for the claim. It was also pointed out that the other reasonings of the lower Court in fastening liability on the insurer for a

huge sum as compensation are unsustainable and liable to be interfered with in the interest of Justice. In support of his contentions, the learned

Counsel has cited the following judgment:

Oriental Insurance Company Ltd. v. Brij Mohan reported in 2007 ACJ 1909

Motor Vehicles Act 1988 Section 147 (1) - Motor insurance - Goods vehicle - Tractor-trolley - Agricultural purpose - Passenger risk - Liability

of Insurance company - Labourer engaged to dig earth was sitting on earth loaded on trolley attached to tractor - Due to rash and negligent driving

of tractor-trolley the labourer slipped and came under its wheels and sustained injuries. Insurance company seeks to avoid its liability on the

grounds that trolley was not insured and tractor alone was insured; vehicle was not being used for agricultural purpose for which it was insured;

and injured was a gratuitous passenger not covered u/s 147(1) of the Act - Tractor was engaged for bringing earth from site of digging to brick-

kiln for manufacturing bricks which is not an agricultural work - Whether the insurance company is liable - Held: no, but in view of the fact that

injured is a poor labourer who suffered disablement, Apex Court in exercise of its extraordinary jurisdiction under Article 142 of the Constitution

directed the insurance company to satisfy the award but it would be entitled to realise the amount from owner of vehicle without initiating separate proceedings.

11. The learned Counsel for the claimants argued that the deceased's income was fixed as Rs. 3,000/-per month, which is on the lower side.

Besides, the Tribunal had deducted the personal expenses of deceased as 50% instead of 1/3 of his income. The award granted under the other

heads viz., Loss of love and affection and funeral expenses are very low. The rate of interest at the relevant period is 7.5% per annum, but the

Tribunal had fixed the rate of interest at 6% per annum, which is on the lower side. In support of his contentions, the learned Counsel has cited the

following judgment:

Royal Sundaram Alliance Ins. Company Ltd. v. A.Meenakshi and Ors. reported in 2009 (1) TN MAC 249:

MOTOR VEHICLES ACT, 1988, Section 147 - Gratuitous Passengers in Private Car - Liability of Insurer - Extent - Deceased, a gratuitous

passenger travelling in insured Private Car - Comprehensive / Package Policy - If, would cover such gratuitous occupants - Contention of claimant

that only in cases involving Act Policies risk of such victims not covered, and in case of Package/Comprehensive Policy such gratuitous passengers

are automatically covered - Contention of Insurer that risks to such victims are not covered by Section 147 and even under Package Policy, they

are covered only to extent of additional premium paid - Insured, under Package Policy, paid Basic Premium, Premium for Third Party Property

Damage and Premium for Personal Accident Benefits - Insured can always take policies covering risks not covered by Section - Tariff Advisory

Committee u/s 64-U of Insurance Act, by virtue of SC decision in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co.

(P) Ltd. and Another, specifically mentioned in its clarificatory Circular dated 17.03.1978 to effect that under comprehensive policy risk to a

gratuitous occupant in private car is covered - What was specifically mentioned in Tariff Advisory Committee's clarificatory circular in 1978

incorporated in contract itself in Package Policy - Therefore, even if India Motor Tariff (IMT) 2002 does not specifically mention that in a

Comprehensive Policy, gratuitous occupant's risk is covered, since it is a

Comprehensive Policy, by its own terminology it includes any person in car except those specifically excluded - Therefore, Insurer shall be liable to indemnify insured all sums he is legally liable to pay - Policy taken by insured and terms contained therein are in accordance with standard form and therefore, risks of occupants carried in motor vehicle, so long they are not carried for hire/reward are automatically covered when package/comprehensive policy is taken - Insurers cannot evade their liability in spite of having contracted under policy to cover risk to occupant - Therefore, in view of works of policy and SC decision in Amaritlal Sood's case held, a Comprehensive/Package Policy covers risk of a gratuitous passenger to extent of liability incurred.

12. Considering the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered view that as the deceased age was 20 years and that he was a coolie and as his income was fixed as Rs. 3,000/-per month, the assessment of compensation as Rs. 3,37,000/-by the tribunal is fair and justifiable. Further, this Court opines that mere carrying a sand loaded in the trailer cannot be treated as a commercial load and the sand can also be used for agricultural purposes. At the time of accident, No. insurance coverage was extended to coolies working as load-man in the said trailer-tractor. Hence, this Court holds that the Appellant / New India Assurance Company Limited can recover the compensation amount from the owner of the vehicle.

13. On 22.11.2010, this Court imposed a condition on the Appellant / New India Assurance Company Limited to deposit the entire compensation amount to the credit of M.C.O.P. No. 218 of 2007, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri. Now, it is open to the claimants to withdraw their entire compensation amount, as apportioned by the Tribunal, lying in the credit of credit of M.C.O.P. No. 218 of 2007, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri, after filing a Memo along with this order.

14. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.C.O.P. No. 218 of 2007, dated 02.07.2010 on the file of Principal

District Court, Krishnagiri is confirmed. There is No. order as to costs. Consequently, connected miscellaneous petitions are closed.