

(2009) 03 MAD CK 0076

In the Madras High Court

Case No : C.R.P. (NPD) No. 61 of 2008 and M.P. No. 1 of 2008

The Divisional Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Gowri and Samikannu Koundar

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Constitution of India, 1950 — Article 142

Motor Vehicles Act, 1988 — Section 140, 147, 147(1), 168

Citation : (2009) 03 MAD CK 0076

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : S. Vadivel, for the Appellant;

Judgement

A.C. Arumugaperumal Adityan, J.—The award passed in MACTOP. No. 889 of 2005 on the file of the Motor Accident Claims Tribunal

(PDJ), Pondicherry, is under challenge in this revision.

2. Heard the learned Counsel for the revision petitioner, who is the 2nd respondent in MACTOP. No. 889 of 2005 (The Divisional Manager,

National Insurance Co. Ltd., 312, First Floor, J.N. Street, Pondicherry). The grievance of the revision petitioner is that the claimants in

MACTOP. Nos. 885, 887, 888, 889, 890, 891 & 892 of 2005 are unauthorised travellers in the tractor bearing Registration No. TN-31-Z-1647

with the trailer bearing registration No. TCF-6574, which involved in the accident on 19.06.2005 at about 10.00 am and the petitioner had

sustained injuries in the accident.

3. The Tribunal conducted a joint trial of all the above mentioned MACTOPs and during trial the petitioners have examined themselves as P.W.1

to P.W.8 respectively besides examining the doctor, who had treated them for the

injuries sustained in the accident as P.W.9 and also exhibited

Ex.A.1 to Ex.A.23. There was no oral or documentary evidence let in on the side of the respondents. The Tribunal has awarded Rs. 6,500/-for

the respondents in MACTOP.No.889 of 2005 and further directed the 2nd respondent/revision petitioner to pay the above said award of compensation.

4. According to the learned Counsel for the revision petitioner, since the respondent is an unauthorised passenger in the trailer bearing registration

No. TCF-6574, which was attached to the tractor bearing registration No. TN-31-Z- 1647 the insurance company/revision petitioner herein is not

liable to pay any compensation and if at all the respondents is entitled any award the compensation that is to be borne by the first respondent in

MACTOP. No. 889 of 2005, the owner of the tractor and trailer, which involved in the accident.

5. In support of this contention, the learned Counsel relied on United India Insurance Company Limited Vs. Serjerao and Others, . The facts of the

said case are that the claimants therein were travellers in a trailer attached to a tractor as labourers, which met with an accident, the claimants

suffered injuries. The claimants filed petition u/s 140 of the Motor Vehicles Act. The Motor Accident Claims Tribunal, Latur on the principle of no

fault liability has awarded compensation. The Insurance Company took a stand that it had no liability in respect of the persons travelling in the

trailer and the owner of the tractor alone is liable to pay the compensation. But the said plea was rejected by the Tribunal. The learned Single

Judge of the High Court also rejected the appeal as not maintainable. But he referred the matter to a Division Bench, which inturn had referred it to

a Full Bench. When the matter was pending consideration by the Full Bench, execution petitions were filed. Challenging the same Writ Petitions

were filed before the High Court. The said Writ Petitions were dismissed by the High Court. Hence, the appeal before the Honourable Apex

Court. While disposing of the appeal, the Honourable Apex Court held as follows:

In a given case, the statutory liability of an Insurance Company, therefore, either may be nil or a sum lower than the amount specified u/s 140 of the

Act. Thus, when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a

notice in which event, it goes without saying, it would be open to the Insurance Company to plead and prove that it is not liable at all.

Furthermore, it is not in dispute that there can be more than one award particularly when a sum paid may have to be adjusted from the final award.

Keeping in view the provisions of Section 168 of the Act, there cannot be any doubt whatsoever that an award for enforcing the right u/s 140 of

the Act is also required to be passed u/s 168 only after the parties concerned have filed their pleadings and have been given a reasonable

opportunity of being heard. A Claims Tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been

substantiated, which is the basis for making an award.

....

So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in Oriental

Insurance Co. Ltd. Vs. Brij Mohan and Others, and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions

of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of

what has been stated by this Court Smt. Yallwas case (supra) and Brij Mohans case (supra).

6. But the policy of pay and recovery was upheld in Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, in the following terms:

Although the effect of 1994 amendment in the Motor Vehicles Act did not call for consideration in Asha Rani case a three-Judge Bench of this

Court had the occasion to consider the said question in National Insurance Co. Ltd. v. Baljit Kaur in the following terms: (SCC pp.7-8, paras 17-

19)

17. By reason of the 1994 amendment what was added is "including owner of the goods or his authorised representative carried in the vehicle".

The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the

goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been

that the words "any person" occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever.

If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as the expression "any person" contained in

Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative

besides the passengers who are gratuitous or otherwise.

18. The observations made in this connection by the Court in Asha Rani case² to which one of us, Sinha, J., was a party, however, bear repetition:

(SCC p. 235, para 26)

26. In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words

"any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions

of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle

insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

19. In Asha Rani it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which

may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused

by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering

the risks of the passengers travelling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner

of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

....

In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot

be extended to the owner of the offending vehicle. The logic of fake licence has to be considered differently in respect of the third party and in

respect of own damage claims.

....

However, Respondent 1 is a poor labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of

compensation awarded in his favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of Ms

Indu Malhotra, we are inclined to exercise our extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the

award may be satisfied by the appellant but it would be entitled to realise the same from the owner of the tractor and the trolley wherefor it would

not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act.

7. Following the above principle enunciated in the above ratio decidendi, I am of the view that the revision petitioner herein shall pay the award of

compensation to the claimant and then to recover the same from the owner of the vehicle.

8. In the result, with the above observation, the revision is disposed of. No costs. Connected Miscellaneous Petition is closed.