

(2010) 04 MAD CK 0142

In the Madras High Court

Case No : C.M.A. No. 540 of 2007 and M.P. No. 1 of 2007

The Manager, Cholamandalam MS Genl. Ins. Co. Ltd.

APPELLANT

Vs

Fathima Beevi and Senthilkumar

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 3(B)

Motor Vehicles Act, 1988 — Section 140, 142, 147, 147(1), 149

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 04 MAD CK 0142

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

Bench : Single Bench

Advocate : K. Poomalai, for N. Vijayaraghavan, for the Appellant; A.A. Venkatesan, for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the Award and Decree,

dated 18.07.2006, made in M.C.O.P. No. 1021 of 2005, on the file of the Motor Accident Claims Tribunal, District Court, Perambalur, awarding

a compensation of Rs. 92,000/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of

compensation.

2. Aggrieved by the said Award and Decree, the appellant/second respondent, The Manager, Cholamandalam MS Genl. Ins. Co. Ltd., Chennai-1

has filed the above appeal praying to set aside the award and decree passed by the Tribunal.

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

On 06.10.2003, at about 07.45 a.m. while the petitioner was standing at the Viswagudi bus stop at Veppanthattai Taluk in the Perambalur District,

a minidor vehicle bearing registration No. TN46 C9975 came there. She boarded the vehicle and as the vehicle was proceeding towards

Perambalur and when it was nearing the turning of the road near Udayar Shed at Annamangalam, the driver of the vehicle drove the vehicle at a

high speed and in a rash and negligent manner. As a result of which, the vehicle turned turtle and caused the accident. In the said accident, the

petitioner sustained bone fracture in her left hand and severe injuries on her left neck. She was admitted in the Government Hospital at Perambalur

for treatment. Subsequently, she received treatment at Annai Hospital, Perambalur.

4. After the said accident, the petitioner is unable to do any work. She was earning an income of Rs. 4,500/- per month before the said accident.

Due to the said accident and injuries sustained by her, the petitioner is unable to support her family. As the accident had been caused by the rash

and negligent driving of the first respondent and as the said vehicle had been insured with the second respondent at the time of the said accident,

both the respondents are liable to pay compensation to the petitioner. The petitioner has claimed a compensation of Rs. 2,50,000/- together with

interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation from the respondents under

Sections 140, 142, 149 and 163A Rule 3(B) of the Motor Vehicles Act.

5. Regarding the said accident, a criminal case has been registered at Arumbavur Police Station, Perambalur District in Crime No. 268/2005, as

against the driver of the first respondent's vehicle under Sections 279 and 337 of I.P.C.

6. The second respondent, in his counter statement has resisted the claim denying the averments in the claim petition regarding the age, occupation

and monthly income of the petitioner and had also not admitted that the vehicle bearing registration No. TN46 C9975 had been covered under a

policy of insurance with them. The second respondent has also denied the averments in the claim regarding the nature of injuries, period of

treatment and disability sustained by the petitioner. It has been submitted that the driver of the vehicle was not in a possession of valid driving

licence and had no authorisation to drive the vehicle. It was submitted that the vehicle covered under the policy is a goods vehicle and not meant

for carrying passengers. Admittedly, the passenger was travelling in this vehicle as a passenger and this is in violation of the provisions of the Motor

Vehicle Act, the respondent is not liable to compensate the petitioner. It was also submitted that as per the FIR, 15 persons were travelling in the

said vehicle, which was far beyond the permitted capacity of the vehicle, which was only two. It has been submitted that the claim is excessive and

has to be dismissed with costs.

7. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Whether the said accident took place due to the rash and negligent manner of driving by the driver of the minidor van?

(ii) Whether the petitioner is entitled to get compensation? If so, what is the quantum of compensation, which she is entitled to get?

8. On the petitioner's side two witnesses were examined as PW1 and PW2 and eight documents were marked as Exs.P1 to P8. On the

respondents' side one witness was examined as RW1 and two documents were marked as Exs.R1 and R2.

9. The petitioner was examined as PW1. The PW1 in her evidence deposed that on 06.10.2005, at about 07.40 a.m. when she had boarded a

minidor vehicle bearing registration No. TN46 C9975 at the Viswagudi bus stop and was travelling in the van and when the van was near

Annamangalam Udayar shed, the driver of the vehicle drove it in a rash and negligent manner and that due to this the vehicle had turned turtle. In

support of her evidence, she has marked Ex.P1, the FIR. It is seen that on scrutiny of the FIR that the petitioner herself had lodged the complaint.

It is seen from the evidence of the PW1 and the complaint in the FIR that they are in consonance with one another regarding the manner of the said accident.

10. The respondents have not chosen to examine the van driver to rebut the evidence adduced by the petitioner. As such, the Tribunal, on

considering the evidence of the PW1 and Ex.P1 opined that the petitioner had established her case and hence held that the accident took place

due to the rash and negligent driving of the van driver.

11. The PW1 has deposed in her evidence that her left shoulder bone was fractured and that she had also sustained injury on her left neck. She had stated that she had taken treatment in Government Hospital at Perambalur and at Annai Hospital, Perambalur. In support of her evidence, she has marked Ex.P4, the Wound Certificate. In the Ex.P4, the Doctor has noted the following injuries:

1. Swelling, pain, deformity of left upper arm,
2. Laceration on lower lip 1 X 0.5 X 0.5 cm. The injury No. 1 is grievous in nature and injury No. 2 is simple in nature.

Ex.P2 is the Discharge Summary issued by the Perambalur Government Hospital. It is seen from this that the petitioner was admitted on

06.10.2005 and discharged on 07.10.2005. Ex.P3 is the Discharge Summary issued by Annai Hospital, Perambalur. It is seen on scrutiny of the

Ex.P3 that the petitioner was admitted on 07.10.2005, that a surgery was done on 09.10.2005 and the petitioner had been discharged on

14.10.2005.

12. One Dr. Saravanan was examined as PW2. The PW2 deposed that he was examined the petitioner on 12.03.2006 for assessing the disability.

He had stated that the Clavicle middle 1/3rd bone in the petitioner's had had been fractured and that the upper 1/3rd left humerus bone was also

fractured and malunited; that the movement of her left shoulder is restricted by 90 Degrees and that the rotation capacity of the left shoulder is

reduced by 15 Degrees. He has also stated that the holding capacity of the left hand of the petitioner is reduced and the petitioner finds it difficult to

lift her hand above her head. As such, the Doctor assessed the disability of the petitioner as 56% and in support of his evidence, he has marked

Ex.P7, the Disability Certificate and Ex.P8, the X-ray. During Cross-examination, the Doctor has admitted that if continuous treatment is given the

disability may come down by 3%. As such, the Tribunal on scrutiny of evidence given by the PW2, held that the disability sustained by the

petitioner in the said accident was 53% and accordingly granted an award of Rs. 53,000/- as compensation to the petitioner under the head of

disability. On scrutiny of Ex.P5, the Medical Bills, the Tribunal granted an award of Rs. 29,400/- to the petitioner as compensation under the head

of medical expenses. The Tribunal, on considering that the petitioner was an

agriculturist and could have earned a sum of Rs. 1,500/- per month, awarded a sum of Rs. 4,500/- for the loss of income sustained by her for a period of three months during, which time she had taken treatment at hospital. The Tribunal further awarded a sum of Rs. 5,100/- as compensation to the petitioner under the head of pain and suffering. In total, the Tribunal awarded a sum of Rs. 92,000/- as compensation to the petitioner.

13. On the side of the second respondent, one Balaji, the Divisional Manager of the Insurance Company was examined as RW1. The RW1 in his evidence deposed that at the time of the said accident, the vehicle bearing registration No. TN46 C9975 was insured with the second respondent. He had stated that the vehicle was a goods vehicle and that only two persons other than the driver were allowed to travel in the vehicle. He has pointed out that in the FIR, it has been stated that 15 persons were travelling in the vehicle at the time of the said accident and that the petitioner was also one among them and as such, the policy conditions had been violated by the first respondent. He had therefore stated that if any award is passed, it is to be paid only by the first respondent.

14. The copy of the R.C. Book has been marked as Ex.R1 and the policy has been marked as Ex.R2. On the side of the petitioner, the insurance policy copy has been marked as Ex.P6. During the cross-examination, the RW1 has admitted that in respect of the the said accident, the petitioner alone has lodged the compensation petition.

15. The RW1 has stated that only the cleaner or driver of the said vehicle was entitled to get compensation as per the policy conditions. He has also admitted that the vehicle was insured with the second respondent at the time of accident. But, in chief-examination, the RW1 has admitted that in addition to the driver of the vehicle, two other persons are entitled to travel in the vehicle.

16. Hence, the Tribunal held that the petitioner should be treated as one of the persons entitled to travel in the vehicle and accordingly held that the second respondent also liable to pay the compensation to the petitioner.

17. Accordingly, the Tribunal directed the first and second respondents, jointly and severally, to deposit the award of Rs. 92,000/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P.

No. 1021 of 2005, on the file of the Motor Accident Claims Tribunal, District Court, Perambalur, within a period of two months from the date of

its Order. After such deposit was made into Court, the award was to be deposited in a nationalised bank, as fixed deposit, for a period of three

years and the petitioner was permitted to withdraw the interest on such deposit, once in six months. The petitioner was directed to pay the balance

Court fee ten days prior to the date of filing for copy application. The Advocate fees was fixed at Rs. 2,750/- and the respondents were directed

to pay the cost of Rs. 3,207.50 to the petitioner.

18. Learned Counsel appearing for the appellant has contended in his appeal that the lower Court has grossly erred in fastening liability on the

insurer in a case, where the victim was a gratuitous person and an unauthorised occupant carried in the goods vehicle along with 15 other persons

as well. It has also been contended that the lower Court ought to have seen that the insurer had adduced oral and documentary evidence in

support of his case and in the light of decision reported in United India Insurance Company Ltd. Vs. Selvam and A. Govindarajan, , should have

exonerated the insurer of any liability, more so, as the accident had occurred on 06.10.2005. It was also contended that the Lower Court had

grossly misconstrued the evidence of the RW1 to effect that only the driver and workman could be carried in the vehicle and concluded that the

claimant was entitled to cover ignoring the decision of the Hon''ble Supreme Court in 2003 ACJ 1 (SC) that such gratuitous occupants in a goods

vehicle are not required to be covered under the contract of insurance. As such, the learned Counsel has prayed to set aside the award and decree

as the award granted was highly excessive and not sustainable under law. In support of his contentions, the learned Counsel has cited the following

Judgments made in 2009 (1) TN MAC 1 (FB), High Court of Madras, Branch Manager, United India Insurance Co. Ltd., Branch Officer,

Nethaji Bye Pass Road, Dharmapuri Town v. Nagammal and Ors. the relevant head notes of which are as follows:

Motor Vehicles Act, 1988, Sections 147, 149(4) & 149(5) - Gratuitous Passengers travelling in Goods Vehicle - Liability of Insurer - Extent - u/s

147 Insurer not statutorily required to cover liability in respect of a passenger in goods vehicle unless such passenger is owner of goods or agent of

owner of goods accompanying such goods in goods vehicle - In absence of any statutory requirement to cover liability in respect of passenger in

goods vehicle, principle of "pay and recover" as statutorily recognized in Sections 147, 149(4) & 149(5) not applicable ipso facto - Therefore,

ordinarily Court not expected to issue direction to Insurer to pay to Claimant and thereafter to recover same from owner - Where, relying upon

decision in Satpal Singh, Tribunal directed Insurer to pay compensation, Appellate Court required to consider as to whether such direction could

be set aside in its entirety or liability should be fastened only on driver and owner or whether Insurer should be directed to comply with direction

pay & recover - No such direction can be issued by Tribunal after decision in Baljit Kaur's case, merely because date of accident was before such

decision - Date of accident is immaterial - However, where matter already decided by Tribunal before decision in Baljit Kaur, it would be in

discretion of Appellate Court depending upon facts and circumstances of case, whether doctrine of "pay and recover" to be applied or not.

2003 ACJ 1, Supreme Court, New India Assurance Co. Ltd. v. Asha Rani and Ors. the relevant head notes of which are as follows:

Motor Vehicles Act, 1988, Section 147(1) [prior to its Amendment in 1994] - Motor insurance - Goods vehicle - Passenger risk - Liability of

insurance company - Death of or injuries sustained by the owner of goods or his authorised representative being carried in a goods vehicle when

that vehicle met with accident prior to amendment of 1994 - Whether insurance company is liable - Held: No.[New India Assurance Company

Vs. Shri Satpal Singh and Others, overruled: New India Assurance Co. Ltd. Vs. Asha Rani and Others, answered].

2003 ACJ 468, Supreme Court, Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy and Ors. the relevant head notes of which are as

follows:

Motor Vehicles Act, 1988, Section 147(1) [prior to its amendment in 1994] - Motor insurance - Goods vehicle - Passenger risk - Gratuitous

passenger - Liability of insurance company - Whether insurance company is liable for passengers travelling gratuitously or unauthorisedly in a

goods vehicle - Held: no; Act does not enjoin and statutory liability on the owner to get his vehicle insured for any passenger travelling in a goods

carriage[New India Assurance Co. Ltd. Vs. Asha Rani and Others, relied].

19. Learned Counsel appearing for the first respondent vehemently argued that at the time of the said accident, the insurance policy was in force

for the offending vehicle. The premium was paid for three persons. In the said accident, only one claimant has filed the compensation petition

against the appellant herein. As such, the Insurance Company is liable to pay compensation. If the claimants are more than three in number in the

said accident, the appellant can raise the issue stating that the policy had been violated. But in the instant case, the claim is within norms of the

policy. The learned Counsel further argued that on 08.05.2007, this Court imposed a condition on the appellant to pay a sum of Rs. 34,500/-,

which was granted by the Tribunal under the head of conventional damages, medical expenses and pain and suffering; by way of Demand Draft in

favour of the claimant. This was complied by the appellant herein. As per the order of the Court, the claimant is entitled to get the remaining

compensation as per the policy conditions.

20. Considering the facts and circumstances of this case and the arguments advanced by the learned Counsel appearing on either side, this Court is

of the view that the Award and Decree, dated 18.07.2006, in M.C.O.P. No. 1021 of 2005, passed by the Motor Accident Claims Tribunal,

District Court, Perambalur, is confirmed as it found to be fair and equitable. The Tribunal assigned the reason that as per the policy conditions

three members are covered under the policy. But in the said accident case, as only one member had made a claim the Tribunal held that she was

entitled to receive compensation. As such, this Court does not find any error in the reasoning of the Tribunal.

21. In the result, the above Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 18.07.2006, in M.C.O.P. No. 1021 of

2005, passed by the Motor Accident Claims Tribunal, District Court, Perambalur, is confirmed. Consequently, connected miscellaneous petition is

closed. There shall be no order as to costs.