

(2011) 02 MAD CK 0512
In the Madras High Court
Case No : C.M.A. No. 2919 of 2007

The National Insurance Co. Ltd.

APPELLANT

Vs

Gurusamy, A. Murugesan and Krishnamoorthy

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0512

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : D. Bhaskaran, for the Appellant; N. Manokaran, for R 1 and S. Gunalan, for R 2 and R 3, for the Respondent

Judgement

B. Rajendran, J.—The Insurance Company has come forward with this appeal against the grant by the Tribunal in respect of a mini door vehicle, in MCOP. No. 70 of 2007 on the file of the Learned Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court No. 4), Bhavani, Erode District.

2. According to the claimant, the claimant and two others were travelling in a mini door goods carrier vehicle. According to the F.I.R. filed, they were returning in the vehicle after the rice bags were delivered near Periyamariamman Koil. The Insurance Company would only contend that the vehicle which is a mini door goods carrier does not have any seating capacity for any passenger and only the driver can travel along with the vehicle and nobody else is permitted to travel as there is zero capacity in the vehicle. They are not eligible to travel in the vehicle even as the owner of the goods. But in this case as per the F.I.R. since they are returning back after the delivery of the goods, the passengers were travelling as un-authorised persons. Therefore, the Insurance Company cannot be held liable to pay the compensation since the policy does not cover for anybody else other than the driver and hence the award granted by the court below is not correct. They also questioned the quantum. Hence, the appeal.

3. The learned Counsel for the Respondents, would contend that in the F.I.R., it is

stated that they were travelling in the vehicle after delivering the goods. In the evidence which was let in, had contended that they were returning with some other returned goods also. Therefore, they were travelling as a passenger as the owner of the goods in the goods carrier. Therefore, under law, they would be covered under the policy and hence, the liability cannot be questioned by the Insurance Company and the award granted by the court below is fair and reasonable and they would contend that the R.C. Book has not been produced or permit is not produced to establish the fact that there is prohibition in so far as the passengers are concerned. Hence, the award is correct.

4. Heard both parties. The short point for consideration in the appeal is whether the Insurance Company would be held liable in respect of a passenger or as a person who is un-authorisedly travelling in the vehicle when there is no seating capacity in the vehicle.

5. The main point in dispute raised by the Appellant-Insurance Company is that the Insurance Policy does not cover persons who were travelling in the vehicle which are not authorised. In this case, as per the F.I.R. the claimant and two others were travelling in the mini door goods carrier vehicle after delivering the rice bags. Whereas, in the evidence of P.W.1 it could be seen that the persons claimed that they travelled along with the returned rice bags. Therefore, they were travelling as owners of the returned goods. Therefore, the main contention of the learned Counsel for the Respondents is that, once they are travelling in the vehicle as owner of a good, they would be covered by the policy.

6. But when we analyse the original policy which is marked as Ex.B1, there is one clause in the policy, namely, seating capacity which clearly indicates zero capacity which means apart from the driver nobody else could travel in the vehicle. This main point was argued and brought to the notice by the learned Counsel for the Appellant-Insurance Company.

7. Per contra, the learned Counsel for the Respondents would contend that even though there is a specific clause in the policy which is a commercial vehicle that no seating capacity was allowed, this could be only checked and proved by the production of the R.C. book and the permit which conveniently was not produced by the Insurance Company.

8. The argument cannot hold good because the moment, the original document namely the Insurance Policy has been produced for the specific purpose that the policy would not cover any other passengers in the vehicle, the burden shifts on the claimants to send for the R.C. Book or the permit to denounce the argument or controvert the evidence put in by the Insurance Company which the claimant have failed to do so. In that case, from the only document which is available before the Court, it is very clear that the policy under which the Insurance Company has now sought for prohibits anybody else travelling in the vehicle apart from the driver. When that is proved by the Insurance Company, it is only open for the claimant at this point of time to say that they would have been

permitted under the R.C. Book.

9. In this connection, a decision of the Hon''ble Supreme Court reported in United India Insurance Co. Ltd. Vs. Suresh K.K. and Another, wherein in paragraph 10 it is very clearly stated as follows:

10. It is now settled that the term "any person" envisaged under the said provision shall not include any gratuitous passenger. National Insurance Co. Ltd. v. Baljit Kaur If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter, in a three-wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved. The Tribunal and the High Court, therefore, in our considered opinion, should have held that the owner of the vehicle is guilty of the breach of the conditions of policy.

From this it is clear that the Insurance Company cannot be held liable in respect of gratuitous passenger who has travelled in a vehicle which he is not supposed to travel. In as much as the Insurance Company cannot be held liable to pay the compensation, the owner of the vehicle third Respondent will be held liable to pay the compensation.

10. The learned Counsel for the third Respondent, owner of the vehicle would only contend that if the question of liability is not fastened on the Insurance Company, then the quantum awarded by the court below is high. He would mainly contend that the lower court has awarded on the basis multiplier theory in respect of injury which is wrong. Again the lower court has awarded both on the ground of permanent disability as well as the loss of earning power which is not in consonance with the Hon''ble Full Bench of this Court. Even otherwise, the award under various heads are very high.

11. The lower court has awarded compensation as follows:

1. for loss of income :	Rs. 10,000/-	2.for transport expenses :	Rs. 3,000/-	3.for extra-nourishment :	Rs. 3,000/-	4.for medical expenses :	Rs. 31,632/-	5.for pain and sufferings :	Rs. 15,000/-	6.for loss of income due to permanent disability :	Rs. 41,760/-	7.for future medical expenses :	Rs. 20,000/-
Total : Rs. 1,24,392/													

12. When we analyse the award granted by the lower court, we see there is a repetition of the award both under the heading of loss of income and loss of income and loss due to permanent disability. Further, the lower court has awarded the amount under the multiplier method which is not in consonance with law. When we consider the evidence of P.W.2, the Doctor, the Doctor has certified 29% disability fracture of right leg femur. The claimant has been hospitalized from 23.06.2004 to 04.07.2004 in Dhatshin hospital and therefore, he is liable to be compensated.

13. Even if 29% disability is taken into consideration, applying the percentage method, if we apply Rs. 1000/-for each percentage of disability Rs. 29,000/- would be easily awarded for the 29% permanent disability. The lower court has awarded a sum of Rs. 3,000/-each for transport expenses and for extra-nourishment. Considering the fact, the claimant was hospitalised, it could be raised to Rs. 5,000/-each. The lower court has awarded a sum of Rs. 31,632/-for medical expenses taking into consideration Ex.P.8 the medical bills. Since the amount awarded is the actual expense, the same is confirmed. The lower court has awarded a sum of Rs. 15,000/-for pain and sufferings which is also fair, reasonable and correct. As far as the future medical expense is concerned, the lower court has awarded Rs. 20,000/-. No doubt P.W.2 the Doctor has certified 29% permanent disability. Though he needs yet another operation to remove the screws, Rs. 20,000/-awarded by the lower court under this head is high. Hence, the amount of Rs. 20,000/-awarded by the lower court for future medical expenses is reduced to a sum of Rs. 10,000/-.

14. In the result, the award amount is modified as follows:

1.for loss of income due to permanent disability : Rs. 29,000/- 2.for transport expenses : Rs. 5,000/- 3.for extra-nourishment : Rs. 5,000/- 4.for medical expenses : Rs. 31,632/- 5.for pain and sufferings : Rs. 15,000/- 6.for future medical expenses : Rs. 10,000/- Total : Rs. 95,632/- Rounded off to Rs. 1,00,000/

15. In the result, this appeal is partly allowed reducing the compensation from Rs. 1,24,392/-to Rs. 1,00,000/-(Rupees One Lakh Only) along with the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit of compensation.

16. It is represented that the Appellant-Insurance Company has deposited the entire amount. Hence, the Appellant-Insurance Company is permitted to withdraw the entire amount along with the interest accrued thereon.

17. The third Respondent, owner of the vehicle is held liable to pay the compensation amount of Rs. 1,00,000/-along with 7.5% interest. The third Respondent shall deposit the entire amount within a period of eight weeks from the date of receipt of a copy of this order and on such deposit, the first Respondent/claimant is permitted to withdraw the same. No costs.