

(2009) 08 MAD CK 0099
In the Madras High Court
Case No : C.M.A. No. 3232 of 2004

The New India Assurance Co. Ltd.

APPELLANT

Vs

Anbalagan and Seema Aallolam

RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 14(2)

Citation : (2009) 5 CTC 45 : (2010) 1 LW 764 : (2009) 8 MLJ 1225 : (2011) 7 RCR(Civil) 1488

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : K. Kumar, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

S. Palanivelu, J.—In the claim petition, it is stated that on 27.3.2002 at about 10.00 p.m., while the claimant and his friend one Rathinavel

were going by a TVS Moped bearing Registration No. Tn 31 Y 6924 along Virudhachalam - Chidambaram road, near Ko.Mavidanthal village, a

tractor belonging to the second respondent with Registration No. TN 31 Q 3749 was driven by its driver in a rash and negligent manner dashed

against the moped by means of which the claimant fell down and sustained injuries including fractures in his leg. He was removed to Government

hospital, Virudhachalam and then was rushed to Zipmer hospital, Pondicherry for further management. He was earning a sum of Rs. 6,000/- per

month by milk vending business and agriculture. Hence, a sum of Rs. 2,00,000/- is prayed for as compensation.

2. In the counter filed by the appellant, it is stated that the accident did not took place due to the negligence on the part of the tractor driver but

only due to the carelessness of the claimant. It is false to state that he was earning from agriculture and milk vending business. The compensation claimed is excessive. Hence, the petition has to be dismissed.

3. The learned Tribunal Judge has observed that the tractor driver was negligent at the time of accident and there is not much dispute before this

Court with regard to the negligent part and the said finding is confirmed.

4. In so far as the liability for payment of compensation is concerned, the appellant Insurance company very much disputes the award by stating

that the driver of the tractor did not possess valid licence at the time of accident. Ex.P.5 has been marked which is zerox copy of the licence given

to the driver of the second respondent for in which it is stated that from 23.02.2000 to 24.02.2003 it was valid. It has been given for driving Light

Motor Vehicles.

5. The learned Counsel for the appellant Mr. K. Kumar would submit that unless an endorsement in the driving licence authorising the driver to

drive a particular type of vehicle, is made, it is not at all valid. He draws attention of this Court to Section 14(2)(a) of the Motor Vehicles Act,

1988 reads as follows:

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one

year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

6. Significantly, Ex.P.5 does not bear any endorsement authorising the driver to drive a heavy goods vehicle nor any tractor. It is mentioned therein

that the licence was obtained by the driver for driving tractor and trailer which was valid till 12.03.1986 and there is nothing to show that

afterwards it was renewed by the competent authority. It is also stated that he was authorised to drive transport vehicle with Badge No. 25212 dt.

18.11.95/Neyveli. Had he been authorised to drive any heavy goods vehicle or tractor, the necessary endorsement should have been made in

Ex.P.5 licence and they are absent therein.

7. The learned Counsel for the appellant also placed reliance upon two decisions of the Supreme Court. In 2008 (2) TN MAC 508 (SC), United

India Insurance Co. Ltd. v. Rakesh Kumar Arora and Ors. the Supreme Court has held that when there is no valid and effective licence on hand,

the insurance company cannot be held liable for payment of compensation. In 2008 (2) TN MAC 479 (SC), National Insurance Co. Ltd. v.

Kaushalya Devi and Ors. Their Lordships have observed that when an endorsement permitting the driver to drive heavy goods vehicle is not

existing on the date of accident, the owner not stepping into the witness box to say anything in this regard, then the Insurance company could not

be made liable; further the amount deposited was directed to be refunded to the insurer and the proceedings for realising the amount can be

initiated against the owner.

8. As far as the facts of the present case are concerned, even though the driver was possessing a licence, it is not a valid one, that is to say, he did

not possess any licence to drive the tractor at the time of accident. So it is to be held that the insurance company has to be absolved from its

liability.

9. As far as the quantum of compensation is concerned, the claimant was aged 27 years at the time of accident and he sustained two fractures in

both bones of his right leg. P.W.2, Doctor has stated that the fractured bones malunited and the left leg is found bent, that he could not walk

properly, that his right leg is shortened by 1 1/2", that the movements in his right leg have been restricted, that he could not lift the heavy things and

attend to agriculture work and that he is suffering permanent disability to the extent of 35%. However, the tribunal has fixed the permanent

disability at 20%. It has applied multiplier method. It has also fixed Rs. 2,500/- per month as loss of income and Rs. 30,000/- as annual loss of

income. Applying the multiplier 18, for 20% of disability, it has reached Rs. 1,08,000/- as total loss of income which has been awarded under the

head permanent disability. Rs. 5,000/- each has been granted for pain and suffering and medical expenses, respectively. The tribunal has held that

both the respondents, namely the appellant and the second respondent herein are jointly and severally liable to pay the compensation. In view of

this Court, the above said quantification of compensation is appropriate and there is no need to interfere with it.

10. In fine, the Civil Miscellaneous Appeal is allowed absolving the Insurance

Company from paying the compensation. It is stated that the entire award amount has been deposited by the Insurance company alongwith interest and costs in which 50% has been directed to be withdrawn by the claimant and it is accordingly withdrawn. The appellant is permitted to withdraw the excess amount available in the deposit and it may realise the part of compensation which was withdrawn by the claimant from the owner, namely the second respondent herein. The first respondent/claimant is entitled to realise the balance of compensation he is entitled from the owner/second respondent. The compensation shall carry interest @ 7.5% per annum from the date of claim petition till the date of deposit. No costs.