
(2015) 09 MAD CK 0158
In the Madras High Court
Case No : C.M.A.(MD) No. 351 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Mariadasan and Others

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Citation : (2015) 4 LW 916

Hon'ble Judges : P. Devadass, J.

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, for the Appellant

Final Decision : Disposed Off

Judgement

P. Devadass, J.—This is an insurer's appeal. On 01.07.1996, Jesu Michael went as a driver in the lorry belonging to 6th respondent. The vehicle has been insured with the appellant. On that day, a road accident took place. The Lorry and a Crane dashed against each other. In this accident, the said lorry driver died. His dependants claimed compensation in M.C.O.P. No. 1210 of 1999, before the Motor Accidents Claims Tribunal (Principal District Judge), Tiruchy.

2. The F.I.R. has been registered against the Crane driver (Ex. P. 1). After investigation, the Crane driver was charge sheeted (Ex. R. 4), He also admitted his guilt and paid the fine (See Ex. R. 3). In the circumstances, the Tribunal held that the Crane driver was guilty of negligence. However, it had considered the matter under Workmen Compensation Act, 1923 and granted compensation to the claimants applying the principles relating to determination of compensation under the Motor Vehicles Act, 1988 and ultimately awarded the entire Rs. 1,60,800/- with 9% interest p.a. and directed the 6th respondent and the appellant to pay the said amount.

3. The learned counsel for the insurance company/appellant would contend that the Tribunal recorded a categorical finding that the accident was caused by the negligence of the Crane driver. No imputation or allegation has been made as

against the lorry driver. In such circumstances, the Tribunal calling upon the Insurer of the lorry owner to pay the compensation and applying the provisions of Motor Vehicles Act will not arise. Even if the matter is considered under the Workmen Compensation Act, there is a separate quasi judicial authority namely Commissioner under Workmen Compensation Act, the Tribunal ought to have referred the matter to the said Commissioner. Thus, the Tribunal lacks jurisdiction to award compensation to the claimants in this case.

4. The learned counsel for the appellant also submitted that the proceedings under the Workmen Compensation Act and the Motor Vehicles Act are distinct. They differ in their salient features. One cannot be mixed with other.

5. On the other hand, the learned counsel for the claimants would contend that the Tribunal had adopted an innovative method. Instead of following the routine pattern, namely, dismissing the petition, the Tribunal wanted to do justice, in the circumstances, it had considered the claim petition as a W.C. case. Even if we calculate the compensation under the W.C. Act, the compensation will be Rs. 14,000/- more. So, what was awarded is less.

6. The learned counsel for the claimants would also submit that the Tribunal has to render justice. In appropriate cases, if compensation could not be given under the Motor Vehicles Act but it is possible and feasible under W.C. Act, it can give compensation under the W.C. Act. Further to do so, the Tribunal need not refer the matter to the quasi judicial authority under the Workmen Compensation. Parties should not be driven to dilatory practice. In this connection, the learned counsel for the petitioner cited *The Oriental Insurance Company Ltd. Vs. Kaliya Pillai, Thangam and N. Velu*, .

7. The learned counsel for the claimants submitted that Rs. 14,000/- is left out and interest has to be increased. Even without filing an appeal or cross appeal, that can be claimed in this appeal itself. In this connection the learned counsel for the claimants cited *The APSRTC, rep. by its General Manager and Another Vs. M. Ramadevi and Others*, .

8. I have anxiously considered the rival submissions and perused the materials on record, the impugned award and the decisions cited.

9. There is a distinction between the claims preferred under the Motor Vehicles Act, 1988 (hereinafter referred as M.V. Act) and claims preferred under the Workmen Compensation Act, 1923 (hereinafter referred as W.C. Act). M.V. Act among others things introduced a scheme of compulsory Insurance. It is intended to help the third parties. When a decree is passed against a vehicle owner, to satisfy the decree the responsibility to pay the amount is fixed on the insurer of the vehicle. Under MV Act to do so, the condition precedent is the liability must be fixed on the vehicle owner. The Scheme under the M.V. Act is largely based on fault theory with the exception of "no fault liability".

10. Establishment of negligence is on the part of the erring vehicle, which has

been insured with the insurance company is a condition precedent to call upon the insurer to satisfy the award/decreed because then only the principle of risk coverage, the principle of indemnification will arise.

11. But the Scheme under the W.C. Act basically differ. The Scheme under the W.C. Act is not based on negligence. It is based on employer - employee relationship. The accident should have arose out of and in the course of employment. W.C. Act also contains a structured formula. One may get more under M.V. Act, but will get lesser under W.C. Act. But sometimes, a case may fall both under W.C. Act and M.V. Act. A claim cannot be maintained at the same time before both the authorities. One may get compensation under the M.V. Act. If he feels less, again he cannot go to W.C. Act. The choice is his, but not both. Once claim is filed under W.C. Act again they cannot go to M.V. Act.

12. Now, in this case, as rightly pointed out by the learned counsel for the appellant, once negligence has been fastened on the part of the Crane driver, on that basis, the appellant cannot be called to satisfy the award because on that basis the lorry owner cannot be asked satisfy award.

13. But the Claims Tribunal followed a different procedure, because the Tribunal wanted to do justice to the dependants of the deceased. When the accident took place, the deceased worked as a driver of the 6th respondent. Hence, there is employer-employee relationship, the accident arose out of and in the course of employment. In the circumstances, the Tribunal is right in awarding compensation under W.C. Act. The vehicle has been insured with the appellant. So, appellant is bound to satisfy the award amount.

14. When the Claim is worked under the W.C. Act, the amount determined fell short of Rs. 14,000/-. The Tribunal awarded 9% p.a. from the date of filing of the claim petition. Grant of interest under the W.C. Act is very important. Under the W.C. Act the interest at 12% p.a. has to be paid from the date of accident till deposit, when there is default to deposit the amount in time. Neither the 6th respondent nor the claimants thought of making the claim under W.C. Act. Only the Tribunal on the date of judgment thought of applying the provisions of W.C. Act and the appellant also deposited the entire amount as awarded by the Tribunal. Further, the Tribunal while passing the award did not include the default clause as provided under W.C. Act.

15. In view of the foregoings, the award is modified. The claimants are awarded a total compensation of Rs. 1,74,800/- with interest at 9% p.a. from the date of accident viz., 01.07.1996 till the date of award, namely, 29.07.2004 and with interest at 12% p.a. from date of award of the Tribunal till date of deposit. The appellant shall deposit the entire modified award amount, less amount already deposited within two months from the date of receipt of a copy of this judgment. Respondents 2 to 5 are entitled to Rs. 1,17,000/-, Rs. 10,000/-, Rs. 10,000/- and Rs. 37,800/- respectively. They are entitled to withdraw their respective amount, less amount, if any, already withdrawn. In other respects, the award of

the Tribunal is upheld. Accordingly, this Civil Miscellaneous Appeal is disposed of.
No costs.