

V.Manickam Vs. L.Sumithra

V.Manickam Vs. L.Sumithra

SooperKanoon Citation : sooperkanoon.com/1169021

Court : Chennai

Decided On : Jan-21-2014

Judge : R.Mahadevan

Appellant : V.Manickam

Respondent : L.Sumithra

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED 21.01.2014
CORAM THE HONOURABLE MR. JUSTICE R.MAHADEVAN C.M.A. NO.740 OF
2011 AND C.M.P.NOS.3443 & 5130 OF 2006 V.Manickam .. Appellant Versus
1.L.Sumithra 2.National Insurance Co. Ltd., Motor Third Party Cell, No.66, Greams
Road, Thousand Lights, Chennai 600 006. .. Respondents PRAYER : Civil
Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the judgment and decree in M.C.O.P.No.1603 of 2000 dated 08.04.2004
on the file of the Motor Vehicles Accidents Claims Tribunal (V Judge), Small
Causes Court, Chennai. For Appellant : Mr.R.Kalai Arasan For Respondent-2 :
Mr.D.Bhaskaran * * * * *

JUDGMENT

This appeal has been filed against the award in M.C.O.P.No.1603 of 2000 dated
08.04.2004 on the file of the Motor Vehicles Accidents Claims Tribunal (V Judge),
Small Causes Court, Chennai.

2. In the claim petition before the Tribunal, the appellant contended that he was an auto driver and when he was standing on the platform opposite to Sankara Nethralaya Eye Hospital, College Road, Chennai, waiting to cross the road, the car bearing registration No.TN-09-D-3865 which was driven in a rash, negligent manner moving in west to east direction, dashed against the claimant and as a result, he sustained injuries. A compensation of Rs.5,00,000/- under various heads was sought. The first respondent, the owner of the vehicle remained *exparte* and the second respondent Insurance Company contested the case. The second respondent amongst other defences raised an objection as to the liability claiming that the first respondent has violated the policy condition by changing the usage of the vehicle for some other purpose which was eligible for use as a private car only. After considering the oral and documentary evidences, the Tribunal awarded a sum of Rs.1,25,310/- with interest at the rate of 9% with costs. Aggrieved with the same, the present appeal has been filed.

3. The learned counsel for the appellant contended that without considering that the appellant's hip bone was fractured (fracture of the left pelvis and pubic rami) amongst other injuries as a result of which he cannot have normal family life, he cannot walk properly and that he cannot drive auto any more and without proper appreciation of the facts and evidences the Tribunal erred in awarding paltry compensation towards various heads. The loss of earning, transport expenses, compensation for pain and suffering, compensation for damages to clothes, attendant charges, compensation for continuing or permanent disability, cost for private medicines purchased and compensation for the loss of earning power have completely been lost sight by the Tribunal. The learned counsel for the appellant further stressed that disability is permanent and therefore the amount prayed for must have been awarded. By placing reliance upon the judgment of the Hon'ble Apex Court reported in 2011 (1) TN MAC441(SC) [UNITED INDIA INSURANCE CO. LTD., vs. K.M.POONAM & OTHERS]., he argued that since there was a valid insurance policy, even if there is violation of policy conditions, the insurance company is still liable to compensate third parties and therefore the Tribunal ought to have directed the insurance company to pay the award and claim the same from the first respondent.

4. In reply, the learned counsel for the second respondent by the counter affidavit contended that without paying extra premium, the first respondent cannot change the use of the vehicle, when the vehicle is given in contract it is only the beneficiary under the contract who is liable and not the owner, as the owner has lost the control over the vehicle and therefore the insurance company is not liable and sought for the dismissal of the appeal. In support, he placed reliance upon the judgments reported in 2008 (1) TN MAC126 (SC) [NATIONAL INSURANCE CO. LTD., vs. DEEPA DEVI & OTHERS].; 2011 (2) TN MAC205(SC) [UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION vs. KULSUM & OTHERS].; and 2013 (1) TN MAC620(SC) [NATIONAL INSURANCE COMPANY LIMITED vs. K.VAIJAYANHTIMALA]..

5. I have heard the learned counsel for the appellant and the learned counsel for the second respondent. The first respondent has not appeared before this Court. The original records and the judgment of the Tribunal have been perused.

6. In so far as the contention of the appellant that the Tribunal awarded only a paltry compensation under various heads and that no compensation was awarded to certain other heads, there is some force in it. With regard to loss of earning capacity, as against the claim of Rs.36,000/- a sum of Rs.18,000/- has been awarded considering that the claimant was an inpatient for two months. It is not possible for a person who has been hospitalized for two months to resume work within 30 days. The aftermath of hospitalisation and the fear to take up any work would take more time to settle. Hence, a further sum of Rs.6,000/- towards loss in earning capacity is awarded. The compensation awarded towards transport to hospital, purchase of medicines and extra nourishment to be reasonable and hence does not warrant any interference. With regard to compensation for attender, a person who has a monthly earning capacity of Rs.6,000/- would not have an attender for Rs.5000/- per month and spent Rs.20,000/-. Hence, a sum of Rs.4,000/- is awarded for the same. With regard to pain and suffering, it is not the pain and suffering during the hospitalization alone that matters, it is the pain and suffering that a person who has met with an accident undergoes throughout his lifetime that matters. The appellant suffered a fracture of the left pelvis and pubic rami and rupture in his urinary bladder and the accident has left the appellant with

a permanent limp. Hence, the compensation awarded towards pain and suffering is increased by another sum of Rs.15,000/-.

7. In so far as the continuing permanent disability is concerned, the certificate marked as P-6 makes it very clear that the disability is permanent. The claimant was an auto driver. To drive an auto one has to secure a licence to drive a light motor vehicle and then secure a permit to drive public vehicle. Being a driver he would not be accustomed to any other work and what is to be looked into is only whether he can work as the driver after the accident. P.W.2 another auto driver has let in evidence stating that the claimant subsequent to the accident has not driven the auto. The next question is can he drive any other vehicle?. But with the nature of injuries sustained the appellant would be disqualified from securing a valid licence as he would be unable to exercise absolute control over any vehicle. Section 4(3) of the Motor Vehicles Act, 1988, reads as follows: ".4(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section."

8. After the accident the licence of the appellant to drive the transport vehicle had expired. A reading of Section 15 together with Section 8(3) & (4) of the Motor Vehicles Act, 1988, makes it clear that unless a medical certificate to that effect that the appellant is fit to drive is produced the driving licence would not be renewed. Needless to say that no Doctor would declare the appellant as fit to driver either a transport or non-transport vehicle. The power to cancel the licence already issued is also available to the Regional Transport Officer under Section 16 of the Motor Vehicles Act, 1988, if he has reasonable grounds to believe that the holder of the driving licence is by virtue of any disease or disability unfit to drive a motor vehicle.

9. But in cases for compensation, it is not the disability which is partial or total alone that matters, it is the loss in earning capacity as a result of the accident that is to be considered. After considering the evidence and the documents the award of Rs.50,000/- by the Tribunal towards permanent disability seems to be low and a further sum of Rs.20,000/- is awarded. In so far as the loss of earning power,

which has occasioned as a result of the permanent disability, the Tribunal having found that the appellant cannot perform any act which a normal person of his age is expected to do and awarded only Rs.27,000/- which is improper. The Tribunal failed to consider that an injured man with a limp, having no experience of any other work, cannot get any job easily. Even if he gets a job, he would not be in a position to move swiftly and lift weight. The appellant was only 36 years at the time of accident and therefore he would have lost the prime of his earning capacity and therefore the compensation for the loss of earning power is enhanced by awarding a further sum of Rs.50,000/-.

10. Now coming to the issue regarding liability, the learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court reported in 2011 (1) TN MAC441(SC) [UNITED INDIA INSURANCE CO. LTD., vs. K.M.POONAM & OTHERS].. In the said judgment, excess passengers than permitted were travelling in the vehicle when the accident took place. The Hon'ble Apex Court observed that the same was violation of the policy conditions, but still went on to hold that the liability of insurer would continue in respect of third parties under Section 149(1) of the Motor Vehicles Act, 1988 as it would be entitled to recover the same from the owner if it proves the breach of one of the conditions of the policy.

11. The learned counsel for the second respondent has relied upon three judgments. In the judgment reported in 2008 (1) TN MAC126 (SC) [NATIONAL INSURANCE CO. LTD., vs. DEEPA DEVI & OTHERS].., the Hon'ble Apex Court held that once the vehicle is given under contract the State authority would exercise control over the vehicle and therefore the liability to pay compensation would vest with the State and not the owner and consequently the insurer. In the judgment reported in 2011 (2) TN MAC205(SC) [UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION vs. KULSUM & OTHERS]. reiterated ".control theory". that the vehicle would be under the control of the Transport Corporation. Similarly, in the judgment reported in 2013 (1) TN MAC620(SC) [NATIONAL INSURANCE COMPANY LIMITED vs. K.VAIJAYANHTIMALA].., this Court where the vehicle taken on contract by the Chennai Metropolitan Water Supply and Sewerage Board from the registered owner caused fatal injuries to the

victim, held that the Board was liable to pay the compensation and absolved the Insurance Company from any liability.

12. In the present case, the appellant being an auto driver is a third party to the terms and conditions between the policy and the respondents. From the documents, it can be seen that the vehicle was given under contract for being used as police escort which has been clearly established that the accident occurred only due to the rash and negligent driving of the driver of the car which was part of police escort. This Court can visualize the scene of escort vehicles travelling at high speed. In the judgment reported in 2011 (1) TN MAC441(SC) [UNITED INDIA INSURANCE CO. LTD., vs. K.M.POONAM & OTHERS]. even after finding that there was a violation of policy conditions the Hon'ble Apex Court has directed the Insurance Company to pay the compensation and recover the same from the owner.

13. Similarly, even in the judgment relied upon by the second respondent, considering that the driver had a valid licence and that the policy was in force directed the Insurance Company to pay compensation. The Hon'ble Apex Court further went on to hold so considering Section 146 of the Motor Vehicles Act, 1988 which gives complete protection to third party in respect of death or bodily injury or damage to the property while using the vehicle in public place. The State was not arrayed as a respondent before the Tribunal. After 14 years and after enhancing the compensation, there cannot be any justification to remand back the matter to the Tribunal with a direction to implead the State and retry the case. The Motor Vehicle Act is a social welfare legislation. It deals with the provisions for awarding compensation for victims who are suddenly thrown out of gear in life.

14. Hence in the above facts and circumstances, the total compensation awarded by the Tribunal is enhanced from Rs.1,25,310/- to Rs.2,20,310/- and the order of the Tribunal so far it relates to fixing the liability on the owner is set aside and the Insurance Company is directed to pay the compensation and recover the same from the owners of the vehicle or from the State. The enhanced compensation as ordered now shall be paid by the Insurance Company, within a period of four weeks from the date of receipt of the copy of this order. And on such deposit, the

claimant is permitted to withdraw the same along with accrued interest, by making necessary application.

14. In the result, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected miscellaneous petitions are closed. 21.01.2014 Index : Yes Internet : Yes sri To 1.The Motor Vehicles Accidents Claims Tribunal (V Judge), Small Causes Court, Chennai. 2.The Section Officer, V.R.Section, High Court of Madras, Chennai 600 104. R.MAHADEVAN, J.

sri PRE-DELIVERY

JUDGMENT

IN C.M.A. NO.740 OF201121.01.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com