

The Divisional Manager Vs. M.Jayanthi

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Court : Chennai

Decided On : Mar-07-2012

Judge : Aruna Jagadeesan, J.

Acts : [Motor Vehicles Act 1988](#) - Section 166, 147(1)(b)(ii), 145 to 164, 146(1) ;
Workmen Compensation Act 1923

Appeal No. : CMA.No.688 of 2009; MP.No.1 of 2009

Appellant : The Divisional Manager

Respondent : M.Jayanthi

Advocate for Def. : Mr.v.Jaganathan, Adv.

Advocate for Pet/Ap. : Mr.K.Suryanarayanan, Adv.

Judgement :

Prayer:- This Civil Miscellaneous Appeal is filed against the Judgement and Decree dated 31.10.2008 made in MCOP.No.268/2007 by the learned Principal District Judge (MACT) Vellore.

JUDGEMENT

1. This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited, Vellore against the Judgement and Decree dated 31.10.2008 made in

MCOP.No.268/2007 by the learned Principal District Judge (MACT) Vellore.

2. The necessary facts leading to filing of this Civil Miscellaneous Appeal are that the deceased Mahadevan was working as a Coolie. On 3.3.2007 at 8.30 a.m., the deceased was travelling in the lorry as a loadman. The driver of the lorry drove the vehicle in a rash and negligent manner, as a result of which, the deceased fell down from the top of the lorry and sustained multiple grievous injuries. He was immediately taken to the K.H.Apollo Hospital Melvisharam and from there, he was referred to Government Medical College Hospital, Vellore, where he succumbed to injuries. The claimants, who are the wife, sons and mother of the deceased, claimed a compensation of Rs.7,00,000/- before the Tribunal. The Tribunal, after analysing the evidence placed on record held that the accident had occurred due to the rash and negligent act of the driver of the lorry and thus fastened the liability on the Insured as well as the Insurer. While computing the compensation, the Tribunal determined the monthly income of the deceased at Rs.4500/- and monthly dependency at Rs.3000/- after deducting 1/3rd towards his personal expenses and by applying the multiplier of 17, arrived at the total loss of dependency at Rs.6,12,000/-. In addition to that, the Tribunal awarded a sum of Rs.5000/- towards funeral expenses, Rs.10,000/- towards loss of love and affection and Rs.5000/- for the loss of estate and in all, Rs.6,32,000/- with interest at 9 per cent p.a. from the date of the claim petition till the date of realization. As against the same, this Civil Miscellaneous Appeal has been filed by the Insurance Company.

3. Mr.K.Suryanarayanan, the learned counsel for the Appellant contended that the deceased was a loadman and as such, the provisions under the Workmen Compensation Act 1923 alone is applicable and not the provisions under the Motor Vehicles Act, 1988. Therefore, he would contend that the claim petition for compensation is maintainable only before the Labour Commissioner under the Workmen Compensation Act and not before the Motor Accidents Claims Tribunal. The learned counsel would point that no additional premium was paid for wider legal liability or common law liability and the Insurance Policy being a statutory policy covering liability only under the Workmen Compensation Act, 1923, the Tribunal ought to have rejected the claim petition as not maintainable. In the

alternative, he would contend that even assuming that the jurisdiction of the Motor Accidents Claims Tribunal could be invoked, the Tribunal ought to have granted compensation as per the provisions of the Workmen Compensation Act, 1923 and not as per the common law, since such liability was not covered under the Insurance Policy covering the said liability.

4. On the other hand, Mr.V.Jaganathan, the learned counsel for the Respondents 1 to 4 supported the impugned award in all respects and contended that the Tribunal was right in awarding the compensation to the claimants as per the provisions of the Motor Vehicles Act.

5. The short question that arises for consideration is as to whether determination of the compensation amount can be made under the Workmen Compensation Act and whether the claim petition is maintainable?

6. Admittedly, the deceased was a coolie engaged for loading and unloading purposes. He has travelled in the lorry only as a coolie. The claim petition has been filed under Section 166 of the Motor Vehicles Act. A perusal of the Insurance Policy Ex.R1 shows that there is a coverage for WC employees, that is, coolies of the Insured. The Insurance Company has raised a prime contention that under the terms of the policy, the liability of the Insurance Company in respect of the employees/coolies was limited only to the amount payable under the Workmen's Compensation Act 1923 and even if the Insurance Company could be held liable, the liability could be assessed only under the Workmen's Compensation Act.

7. It is well settled that the liability of the Insurance Company for payment of compensation could be statutory or contractual. On a bare perusal of Section 147 of the [Motor Vehicles Act 1988](#), which starts with a non-obstante clause, it is clear that the claimants are entitled to claim compensation under either of the Acts, but not under both the Acts. As per the proviso to Section 147(1)(b)(ii), taking of policy is not necessary for the liability other than a liability arising under the Workmen Compensation Act. The liability cannot be more than what is required under the Statute itself. Therefore, the claimant is entitled to receive compensation as per the statutory limit, but in order to get higher compensation, it should be as per contractual liability and for that, the insured has to pay additional premium. In the

present case, no such additional premium has been paid by the Insured.

8. The learned counsel for the Appellant drew the attention of this court to the decision of the Honourable Supreme Court reported in 2006-AcJ-2008 (M/s.National Insurance Company Limited Vs. Mastan and another) and contended that when cause of action arises under different statutes and the claimant elects the forum under one Act in preference to the other, he cannot be, thereafter, permitted to raise a contention which is available to him only in the former.

9. For a vehicle which is run on public road everybody has to take policy against any liability which may be incurred by him in respect of a death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in public place, but no such policy cover for his employees is necessary except to such employees stated in the proviso to sub clause (1) of Section 147 to the extent arising under the Workmen's Compensation Act. The liability cannot be more than what is required under the Statute itself. But, for higher compensation, he has to take a policy of wider cover.

10. A reference in this regard may be made to the decision of the Honourable Supreme Court reported in 2005-ACJ-1323-SC (National Insurance Co. Limited. Vs. Prembai Patel) wherein the Honourable Supreme Court has held as follows:-

"12. The heading of Chapter XI of the Act is 'Insurance of Motor Vehicles against Third Party Risks' and it contains Sections 145 to 164. Section 146(1) of the Act provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI. Clause (b) of sub section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub clauses (i) and (ii) of clause (b) are comprehensive

in the sense that they cover both 'any person' or 'passenger'. An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in sub clause(i). However, the proviso (i) to clause (b) of sub section (1) of Section 147 says that a policy shall not be required to cover liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of the bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen Compensation Act, if the employee is such as described in sub clauses (a) or (b),). The effect of this proviso is that if an Insurance Policy covers the liability under the Workmen Compensation Act in respect of the death of or bodily injury to any such employee as is described in sub clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (Insurance Company) to satisfy judgements and awards against person insured in respect of third party risks. The expression 'such liability' as is required to be covered by a policy under clause (b) of sub section (1) of section 147 (being a liability covered by the terms of the policy)' occurring in sub section (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1) has to be satisfied by the Insurance Company. The effect of this provision is that an Insurance Policy, which covers only the liability arising under the Workmen Compensation Act in respect of death of or bodily injury to any such employee as described in sub clauses (a) or (b) or (c) of proviso (i) to Section 147 (1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the Insurance Company will be confined to that arising under the Workmen Compensation Act.

13. The Insurance Policy being in the nature of a contract, it is permissible for an owner to take such a policy where under the entire liability in respect of the death of or bodily injury to any such employee as is described in sub clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the Insurance Company and Insurance Company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for

which he may be required to pay additional premium and the policy must clearly show that the liability of the Insurance Company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen Compensation Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy."

11. In view of the law laid down by the Honourable Supreme Court in the aforesaid decision, there could be no escape from the conclusion that the liability of the Insurance Company is limited to the amount payable under the Workmen Compensation Act.

12. In the present case, the deceased was 35 years old and his income can be taken as Rs.4000/-. If the compensation is assessed in consonance with the provisions of Section 4 of the Workmen Compensation Act, the amount payable by the Insurance Company has to be calculated by multiplying 50 per cent of the income of the deceased by the relevant factor. As the deceased was aged 35 years old at the time of the accident, the relevant factor would be 197.06, thus the compensation payable would come to (Rs.2000x197.06) Rs.3,94,120/-. In addition to that, a sum of Rs.2500/- towards funeral expenses is awarded. In all, the claimants are entitled to a sum of Rs.3,96,620/- as total compensation with interest at 12 per cent p.a. from the date of the claim petition till the date of realization.

13. In the facts of the present case, although the claimants are entitled to get Rs.6,32,000/- with interest at 9 per cent p.a. from the date of the petition till the actual deposit, I hereby direct the Appellant Insurance Company only to pay the amount which would be payable by applying the provisions of the Workmen's Compensation Act. On such calculation, the Appellant Insurance Company is directed to pay Rs.3,96,620/- with interest at 12 per cent p.a. from the date of one month after the accident till actual payment and the liability of the Appellant Insurance Company would be limited to that amount.

14. In the result, this Civil Miscellaneous Appeal is allowed. The impugned award is modified to the extent that the liability of the Appellant Insurance Company is restricted to Rs.3,96,620/- with interest at 12 per cent p.a. from the date of one month after the accident till the actual deposit and that the excess amount in the

award should be paid by the owner of the vehicle/5th Respondent and that the claimants are at liberty to recover the balance award amount of Rs.2,35,380/- together with interest at 9 per cent p.a. from the owner of the vehicle/5th Respondent by initiating appropriate proceedings. It is brought to the notice of this court that the Appellant Insurance Company has deposited Rs.5,50,000/- and the claimants 1 and 4 have withdrawn 50 per cent of their award amount. Since the liability of the Appellant Insurance Company is restricted to Rs.3,96,620/- with interest at 12 per cent p.a. as stated above, the balance amount, after satisfying the award as mentioned above, shall be refunded to the Appellant Insurance Company. In the said sum of Rs.3,96,620, the claimants 1 to 4 are entitled to Rs.2,00,000/-, Rs.75,000/-, Rs.75000/- and Rs.46620/- respectively. The claimants 1 and 4 are permitted to withdraw their respective apportioned amount as stated above with proportionate interest, after giving credit to the amount already withdrawn by them if any. The share of the minor claimants 2 and 3 shall be invested in any one of the nationalized Banks till they attains majority. The 1st claimant is permitted to withdraw the accrued interest from the share of the minor claimants once in three months. No costs. Consequently, the connected MP is closed.

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