

## ICICI Lombard General Insurance Co. Ltd. Vs Rajendran and Another

**Court:** Madras High Court

**Date of Decision:** Aug. 26, 2013

**Citation:** (2014) 2 ACC 142

**Hon'ble Judges:** R. Karupiah, J

**Bench:** Single Bench

**Final Decision:** Partly Allowed

### Judgement

R. Karupiah, J.

This Civil Miscellaneous Appeal is filed challenging the award passed in the proceedings W.C. No. 95 of 2008, dated

13.7.2011 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tiruchirapalli. The 1st respondent

herein/claimant in W.C. Proceedings claimed compensation of Rs. 5,00,000 and in the claim petition, it is stated that the second respondent

herein/1st respondent in the proceedings was employed the claimant i.e., Rajendran as a load-man in his lorry bearing registration No. TN-48-J-

1116. On 22.11.2007 at 5.15 a.m., the 2nd respondent lorry was met with an accident near Kumaragiri Spinning Mill, Rayakottai Highways Road

on Adiyamankottai, Dharmapuri District. In the above said accident, Rajendran, 1st respondent herein, being the load-man of the lorry got multiple

grievous injuries all over his body and immediately, he was admitted in Government Hospital, Dharmapuri. Thereafter, admitted in Thangalan

Clinic, Musiri, for one day as out-patient and then, taking treatment in a private Hospital. The police registered a case in crime No. 870 of 2007

under Sections 279 and 337, IPC. At the time of accident, the claimant was aged about 40 years and was earning Rs. 5,000 per month.

Therefore, the claimant claimed a compensation of Rs. 5,00,000 before the Commissioner of Workmen Compensation, Tiruchirapalli, against the

owner and insurer of the lorry.

2. The second respondent/first respondent i.e., owner of the vehicle has not appeared before the authority. On the side of the appellant/2nd

respondent the Insurance Company filed counter, in which, it is denied the manner of alleged accident stated in the claim petition and stated that the

avermments made in the copy of the FIR cannot be accepted and the claimant should prove the manner of the accident and further stated that the

claimant should also prove his age, occupation, monthly income, nature of injuries and avocation at the time of accident.

3. Before the authority, namely the Commissioner of Workmen Compensation/Deputy Commissioner of Labour, Tiruchirappalli, on the side of the

claimant, two witnesses were examined and marked 6 documents. On the side of the appellant/2nd respondent Insurance Company, one witness

was examined and 3 documents were marked.

4. Considering the above said oral and documentary evidence adduced on either side, the Commissioner of Workmen Compensation has held that

the claimant was a load man under the 2nd respondent herein/owner of the vehicle and therefore, the 2nd respondent/1st respondent in the

proceedings liable to pay compensation as the owner of the vehicle and since, the vehicle was insured with the Appellant Insurance Company, it is

liable to pay the above said award. Aggrieved over the said award passed by the authority, this civil miscellaneous appeal has been filed by the

appellant Insurance Company.

5. This Court admitted the above said civil miscellaneous appeal and framed the following substantial questions of law for consideration:

(i) Whether the Commissioner for Workmen Compensation is justified in holding that an insurer is not entitled to raise the defences open to him

under the Motor Vehicle Act in a proceeding under the Workmen Compensation Act when the policy of insurance is in dispute as the policy issued

is under the provisions of the Motor Vehicle Act?

(ii) Whether the findings of the Commissioner for Workmen Compensation to the effect that a person who was holding a licence to drive a light

motor vehicle is competent to drive transport vehicle also without an additional licence called a badge or endorsement are correct and sustainable?

(iii) Whether the findings rendered by the Commissioner of Workmen Compensation without appreciating the evidence available on hand is

sustainable?

6. The learned Counsel appearing for the Appellant Insurance Company mainly contended that at the time of accident, the driver of the lorry was

not having valid driving licence and, therefore, the Appellant Insurance Company is not liable to pay any compensation. The learned Counsel

further submitted that as per the settled principles of law laid down by the Hon"ble Supreme Court, the Commissioner ought to have passed an

order of pay to the claimant and then the same recover from the owner of the vehicle and hence, prayed for grant of the said relief of pay and

recovery.

7. The learned Counsel for the Appellant Insurance Company has not seriously objected the finding of the Commissioner that the claimant was a

load man under the owner of the lorry. He has also not objected to the quantum of compensation awarded by the authority. Further, the learned

Counsel appearing for the Appellant has not raised the question of eligibility to claim compensation under the Workmen Compensation Act at the

time of arguments and also conceded. Therefore, the only question to be decided by this Court is as to whether the Insurance Company has to be

directed to pay the above said compensation and then recover it from the owner of the vehicle, or not?

8. As already discussed earlier, the owner of the vehicle has not appeared before the Commissioner of Workmen Compensation. There is also no

representation for the owner of the vehicle/2nd respondent herein before this Court also, in spite of notice being served. Even on the side of the

claimant, he has not seriously objected to pass such an order of pay and recovery. In the above said circumstances, as rightly pointed by the

learned Counsel appearing for the Appellant Insurance Company, since the owner of the vehicle not appeared, the appellant Insurance Company

is entitled to the relief of pay and recovery subject to prove the same. The learned Counsel for the appellant Insurance Company has also informed

that entire compensation was already deposited by the appellant Insurance Company. In the result, the Civil Miscellaneous Appeal is partly

allowed and the award passed by the Commissioner in W.C. No. 95 of 2008, dated 13.7.2011 is confirmed and the Appellant Insurance

Company is liable to pay the entire award amount and recover the same from the second respondent/owner of the vehicle as observed earlier and

the claimant is permitted to withdraw the entire award amount with costs and accrued interest. No costs.