(2006) 11 MAD CK 0075

Madras High Court

Case No: C.M.A. (NPD-S) No''s. 747 and 1173 of 1998 and C.M.P. No''s. 7480 and 12471 of 1998

United India Insurance Co. Ltd. Cuddalore and National Insurance Co. Ltd. 34 J.N. Street Pondicherry		APPELLANT
	Vs	
Saradha, Sree Ganapathy Bus Service Proprietor Sindhu Poondurai 22, Middle Street, Tirunelveli, National Insurance Co. Ltd. 34, J.N. Street Pondicherry - 605001 and United India Insurance Co. Ltd. Cuddalore		RESPONDENT

Date of Decision: Nov. 20, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 110(A), 168

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: K.S. Narasimhan in CMA No. 747/98 and Mr. N. Vijayaraghavan in CMA No. 1173/98, for the Appellant; S. Geetha for Mr. Balakrishnan for Respondent 1, for the Respondent

Final Decision: Dismissed

Judgement

V. Dhanapalan, J.

As the present two Civil Miscellaneous Appeals arise out of one single judgment of the Motor Accident Claims Tribunal, (District Judge), Villupuram, (in short "the Tribunal"), they are decided by this common judgment. Two Insurance Companies, viz., United India Insurance Company Ltd., Cuddalore and National Insurance Company Limited, Pondicherry, challenging the judgment of the Tribunal on the

aspect of quantum of compensation, have preferred these appeals.

2. The first respondent in both the appeals, by name Saradha, who was the claimant before the Tribunal, filed a Claim Petition before the Tribunal u/s 110(A) of the Motor Vehicles Act, 1988, claiming compensation of Rs. 54,829.26, the break-up being Rs. 35,000/- for loss of revenue and Rs. 19,829.26 towards the balance of repair charges. It was her case that on 25.04.1988 at 4:00 a.m., while her bus bearing Registration No. TSD 4647 was proceeding near Vikravandi, the bus bearing Registration No. TNT 3610 which was coming in the opposite direction, in a rash and negligent manner, dashed against her bus causing severe damage to it and hence, the owner of the bus and the insurers of the buses are liable to pay her the compensation. In reply, the Insurers of the buses, by filing their counter, disputed the huge claim made by the claimant.

3. On appreciation of the evidence before it, the Tribunal made the two Insurance Companies equally liable to pay sums of Rs. 6,000/- towards revenue loss and Rs. 19,000/- towards repair charges. As against this judgment, the Insurers of the two buses in question, have appealed before this Court.

4. Mr. K.S. Narasimhan, learned counsel for the appellant Insurance Company in CMA No. 747 of 1998 and Mr. N. Vijayaraghavan, learned counsel for the appellant Insurance Company in CMA No. 1173 of 1998 would uniformly contend that firstly, the claimant is estopped from making any further claim further to receipt of a sum of Rs. 21,650/- in full quit and secondly, the Tribunal does not have the jurisdiction to entertain the claim under the head of revenue loss under the Motor Vehicles Act, 1988.

5. I have carefully considered the rival contentions of the counsel on either side.

6. The two points for consideration before this Court are (i) whether the Tribunal is justified in awarding Rs. 19,000/- towards repair charges when the fact remains that a sum of Rs. 21,650/- has already been claimed by the claimant from the insurer of her bus and (ii) whether the Tribunal has got the jurisdiction to award compensation towards revenue loss.

7. It is not in dispute that the claimant has received a sum of Rs. 21,650/- in respect of damage to her bus. It is also not in dispute that as against the claim for fifteen items, compensation has been awarded by the insurer of the bus in question, only in respect of seven items and the balance of eight items have not at all been surveyed. Also, the person who has surveyed the items has not been examined by the insurer. Before the Tribunal, it was the case of the Insurance Company that the surveyor had not surveyed eight out of fifteen items and it has paid damages in respect of those items for which the Surveyor had given them the report.

8. To answer point No. (i) as narrated above, i.e. whether the Tribunal is justified in awarding Rs. 19,000/- towards damage to the bus in question, it would be useful to

refer to a Division Bench judgment of this Court reported in 2005-3-L.W. 163 in the case of Mrs. Kannammal vs. N.N. Shanmugam, G.D. Gopal, The Branch Manager, National Insurance Co. Ltd. and United India Insurance Co. Ltd., in which relevant portions of para 10 and 13 read as under:

...The consequence of the failure to examine the person who carried out the assessment of the damage would, therefore, fall on the insurer, having regard to the fact that the insurer had at no point of time contended that the bills produced by the owner were not genuine and that they were inflated.

We, therefore, allow the appeal. The amount that had been claimed by the appellant towards the cost of repairs, after deducting the amount received from his insurer, shall be paid to the owner by the insurer of the bus....

9. In the instant case, if at all the Insurer does have any valid ground to reject the claim of the claimant in respect of eight out of fifteen items, it could have very well brought the Surveyor to the witness box which has not been done and I am not able to find any reason for the non-examination of the Surveyor by the Insurer. I am in full agreement with the view of the Bench in the aforesaid decision and as the said decision is squarely applicable to the facts of the case on hand, I am of the considered view that the Tribunal is only justified in awarding Rs. 19,000/- towards repair charges and thus, the point No. (i) is answered in affirmative.

10. Coming to point No. (ii) as to whether the Tribunal has got the jurisdiction compensate revenue loss, some useful reference could be made to a decision of this Court reported in 2000 (2) T.L.N.J. 193 = 2000-3-L.W. 658 in the case of Rajendran & another vs. Selvaraj Mohamed Munshi & Sakunthala in which a portion of para 19 reads as below:

To repeat what has been stated earlier, the Legislature can and in fact, had only specified the broad categories of causes of action such as death, disablement, fatal injury and damage to the property and nothing more. u/s 168 of the Motor Vehicles Act, 1988 (Sec. 110-B of 1939 Act), the Tribunals are enabled to make an award determining the amount of compensation which appears to be just? It was left to the courts to formulate various items or heads under which the total compensation was to be arrived at. When once death or disablement or injury was established, it was left to the Tribunal to consider all the incidental and consequential loss or deprivation caused to the victim or his legal heirs. Therefore, to say that a person who suffers damage to the property would not be entitled to the consequential loss of income, the courts opinion, amounts to placing a narrow construction or interpretation of the provisions of a remedial or beneficial legislation.

11. While considering the above judgment, I am of the firm opinion that when compensation is awarded towards damage to property, revenue loss which is a consequence of damage to property, has necessarily to be compensated, keeping in mind, more particularly, that the Motor Vehicles Act is a beneficial piece of

legislation. In that view of the matter, I hold that the compensation of Rs. 6,000/- awarded by the Tribunal as against the claim of Rs. 35,000/- under the head of revenue loss is justifiable and thus, the point No. (ii) also is answered in affirmative. In the light of what has been stated above, the judgment of the Tribunal in both the respects, viz., compensation in respect of repair charges and revenue loss, is upheld and in view of the same, the appeals stand failed and are dismissed without any order as to costs. Consequently, connected C.M.P. Nos. 7480 and 12471 of 1998 are closed.