(2010) 03 MAD CK 0237

Madras High Court

Case No: C.M.A. No. 3165 of 2003 and C.M.P. No. 20350 of 2003

The Divisional Manager, The New India Assurance Co. Ltd.		APPELLANT
	Vs	
Pottiammal and Others		RESPONDENT

Date of Decision: March 25, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 149, 163, 166
- Workmens Compensation Act, 1923 - Section 3, 4, 4(A)

Citation: (2010) 3 LW 632 : (2010) 4 MLJ 1175

Hon'ble Judges: A. Arumughaswamy, J

Bench: Single Bench

Advocate: K. Padmanabhan, for the Appellant; P. Valliappan, for Respondents 1 to 4 and N. Muthuswami, for Respondent-5, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A. Arumughaswamy, J.
The Insurance Company is the Appellant herein. The Appeal is filed against the judgment and decree dated 16.04.2003 made in MCOP. No. 303 of 2002, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Tiruvannamalai, insofar as the liability and quantum of compensation awarded by the Tribunal.

2. The learned Counsel for the Appellant contended that once the deceased is a tort-feasor and after filing the Motor Accident Claims Petition, the additional premium is also not collected, passing the award against the Insurance Company is not maintainable in law and hence the appeal has to be allowed.

3. The counsel appearing for the Electricity Board (R5) contended that the vehicle has been insured with the Appellant by way of Act Policy. Therefore, the judgment of the Tribunal is correct and it has to be upheld. The Respondents 1 to 4 also

contended that the award of the Tribunal is correct and it has to be upheld.

4. From the evidence, it is seen that on 14.01.2000 at about 10.30 a.m., the deceased, while driving the jeep in his official capacity for official work, when negotiating the curve, since he could not control the vehicle, the vehicle capsized resulting which the death of the driver on the spot. The deceased was working under the fifth Respondent and he was aged about 50 at the time of the accident are not in dispute. Respondents 1 to 4 are the dependents of the deceased.

5. The vehement contention of the Appellant is that the since vehicle has not colluded with any other vehicle, the Insurance Company is not liable to make payment. PW.2, who claims to be an eyewitness, in his evidence deposed that when the deceased was driving and negotiating the curve, the vehicle was capsized. The accident is not due to the mechanical defect also.

6. From the perusal of the judgment, it is seen that there is no specific pleading of rash and negligent driving in the claim petition. Likewise, there is no clinching evidence as well as there is no issue also been framed in this regard by the Tribunal. The Tribunal has framed the triable issue in this regard, namely,

"(1) Whether at the time of accident, the jeep of the first Respondent bearing Registration No. TNM 6356 driven by its driver, the deceased, resulted in an accident in which the deceased driver was died?"

and the point for consideration was not framed the question of rash and negligent.

Hence, there is no issue regarding rash and negligent driving of the deceased driver has been framed and there is no specific finding in this regard also.

7. At this juncture, the learned Counsel for the Appellant pointed out the judgment reported in 2009 (2) TN MAC 169 Ningamma and Anr. v. United India Insurance Co. Ltd.). In the judgment cited supra, the Hon''ble Supreme Court has held that eventhough there is no specific pleadings/issues regarding the terms and conditions of the Insurance Policy and the applicability of provisions of Section 147 of the Motor Vehicles Act and also the rash and negligent driving on the part of the deceased, atleast the High Court has to consider and answer the said issues. Therefore, by showing this judgment, this Court has been reminded by the counsel for the Appellant saying that there must be specific finding regarding rash and negligent act of the driver or the deceased at the trial court. Thereafter, the award has to be passed in concurrent with this. In this case, there is no such specific pleading regarding the rash and negligent act. Likewise, as I already pointed out, no such issue has also been framed and no such finding has been rendered by the Tribunal as expected by law. Therefore, I am of the view that this aspect has to be considered and decided first, then only the Petitioners are entitled to prosecute this application.

8. The learned Counsel appearing for fifth Respondent contended that since fifth Respondent has taken out the policy for the vehicle and it has been issued as an Act Policy, then liability of the Insurance Company cannot be denied.

9. As admitted by both sides, at the time of accident, the deceased was driving the vehicle. The accident had occurred while the deceased/driver was negotiating the curve and the vehicle was toppled and he died on the spot. In the judgment cited supra also it has been specifically mentioned that when such a claim is made by the legal heirs of the deceased, the claimants have to prove that the deceased was not himself responsible for accident by rash and negligent driving. But, in this case the fact is otherwise. Of course, the Insurance Company in his counter affidavit in paragraph 4, has specifically mentioned as follows:

... It will reveal the fact that the case is governed by the priciples of Resipsa Loguitor" and consequently as the alleged accident is said to have taken place during the course of his employment and that too because of his negligence, the claimants have to workout their remedy under Workmen Compensation Act and not before this Court."

From this, it is very clear that the Insurance Company has admitted the fact that the policy is issued and during the relevant period, the coverage of policy is also admitted. It is needless to say that as per Act 147 of the Motor Vehicles Act, the Act Policy covers cases against any iability which may be incurred by the Insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in the public place.

10. In this context, it is useful to extract relevant paragraphs of Section 147 of the Motor Vehicles Act, which reads as follows:

147. Requirements of policies and limits of liability - (1) In order to comply with the requirement of this Chapter, a Policy of Insurance must be a Policy, which -

(a) is issued by a person, who is an authorised insurer; or

(b) Insurer, the person or classes of persons specified in the policy to the extent specified in Sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii)...

Provided that a Policy shall not be required-

(i) to cover liability in respect of the 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 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''s Compensation Act, 1923 (8 of 1923) in respect of his death of, or bodily injury to, any such employee -

(a)...

(b)...

(c)...

(2)...

(a)

(b)

(5) Notwithstanding anything contained in any law for the time being in force, an Insurer issuing a Policy of insurance under this Section shall be liable to indemnify the person or classes of persons specified in the Policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

From this, it is clear that the policy covers the liability of the driver as per the Workmen Compensation Act.

11. As already discussed, by the driver of the jeep due to his own rash and negligent act, the accident occurred. The jeep is not colluded with any other vehicle. In such case it has been held that in a case where third party is involved the liability of the insurance corporation would be unlimited. It is also held that u/s 163 of the Motor Vehicle Act, the rash and negligent act need not be proved provided that the owner of the vehicle or his authorised person of the vehicle cannot be a recipient or the drawer. So a person cannot be both a claimant as also recipient in respect of the claim. As per Section 166 of the Motor Vehicles Act, specifically provides that an application for compensation arising out of an accident of the nature, if the application is received by the tribunal is required to consider that the claimant has proved that the deceased was not himself responsible for the accident by his/her rash and negligent driving. It would be necessary to prove that the deceased would be covered under policy to make the Insurance Company liable to make the payment.

12. The liability of the Insurer and the policy has been held at Section 147 of the Motor Vehicles Act. The duty of the Insurer to satisfy the policy coverage of the persons insured in respect of third party policies as per the minimum risks by way of Act Policy u/s 149 of the Act.

13. The learned Counsel appearing for the Respondents 1 to 4 also contended that only at the time of negotiating the curve, the vehicle capsized and the accident took place and not due to the jeep in question colluded with any other vehicle. At this juncture, the counsel after narrating the accident, contended that the Compensation Application under Motor Vehicles Act can be converted into the application under Workmen Compensation Act under Sections 3, 4 and 4(A) of Workmens'' Compensation Act, 1923, and relied upon the judgment reported in 2002 (4) CTC 469 The Oriental Insurance Company Ltd. Vs. Kaliya Pillai, Thangam and N. Velu, .

14. On perusal of the claim application, it is seen that the claim application has been filed u/s 166 of the Motor Vehicles Act. Once if it is filed then it is needless to say that the claimants have to prove the rash and negligent act and then only the claimants are entitled for the compensation. In this case, the deceased is a driver and the application has also not been filed u/s 163(A) of the Act. Further, in this application, the claimants have not pleaded any rash and negligent act to satisfy the statutory ingredients of Section 166 of the MV Act. For want of pleading, there is no such issue has been framed by the Tribunal. Under this juncture, if this matter is remanded to the Tribunal, it is nothing but calling for the amendment of pleadings from the Petitioners. Since they failed to do it at earliest point, one cannot call for amendment of petition and substitute such a vital things to satisfy the provisions of law. Since the accident had taken place in the year 2000, mere remanding the matter will also cause hardship to the Petitioners. Therefore, I am of the view that by invoking the judgment reported in 2002 (4) CTC 469 : 2003 1 L.W. 113 cited supra, I am converting this application as to Workmen Compensation Application and I answer this point accordingly.

15. The next point arose for consideration is quantum. The trial Court fixed the age of the deceased as 50 and salary as Rs. 3000/- and passed an award of compensation of Rs. 3,08,000/-. Even though the claimants claimed that the deceased received Rs. 9,000/-as salary, outer limit of the wage during the relevant period is fixed as Rs. 2000/-. By applying the outer limit of wage, the compensation becomes Rs. 1,54,000/- (50/100 X 2000 X 154 = Rs. 1,54,000/-). The compensation has been arrived for a sum of Rs. 1,54,000/- as per Workmens Compensation Act. The interest awarded by the Tribunal is hereby confirmed.

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed. If the Insurance Company already deposited excess amount than the amount awarded by this Court, they are at liberty to withdraw the excess amount. The claimants are entitled to get their shares as apportioned by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.