

In the High Court of Judicature at Madras

Dated: 31/12/2002

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The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice A.K. RAJAN

Civil Miscellaneous Appeal No.612 of 1994
and C.M.A.Nos.613 / 1994 & 1784 / 1996
and
C.M.P.No.17556 of 1996

M/s. United India Insurance
Company Ltd., Athur, Salem. .. Appellant in
CMA.Nos.612&613/1994

The Managing Director
Tiruvalluvar Transport
Corporation Ltd.,
Tiruvalluvar House
Pallavan Salai, Madras 2. .. Appellant in
CMA.No.1784 of 1996

-Vs-

1. Tiruvalluvar Transport
Corporation Ltd.,
Tiruvalluvar House
Pallavan Salai, Madras 2.

2. Chittibabu

3. M/s. Annamalai Roadways
through its Managing Partner
P.K. Doraisamy. .. Respondents in
CMA.No.612 of 1994

1. M/s. Annamalai Roadways
through its Managing Partner
P.K. Doraisamy.

2. Tiruvalluvar Transport
Corporation Ltd.,
Tiruvalluvar House
Pallavan Salai, Madras 2.

3. Chittibabu .. Respondents in

CMA.No.613 of 1994

1. M/s. Annamalai Roadways
through its Managing Partner
P.K. Doraisamy.

2. Chittibabu

3. M/s. United India Insurance
Company Ltd., Athur, Salem. .. Respondents in
CMA.No.1784 of 1996

Civil Miscellaneous Appeals are filed under Section 173 of the
Motor Vehicles Act, 1988 against the common Judgment and decree dated 23
.04.1993 made in M.A.C.T.O.P.No.227 of 1998 and 376 of 1987 on the file of the
Motor Accidents Claims Tribunal (Subordinate Judge) Villupuram.

!For appellant in CMA.No.612 & 613/1994 &
R.3 in CMA.No.1784/1996 : Mrs. N.B. Surekha

For appellant in CMA.No.1784 of 1996: Mr. M. Dhandapani
for M/s. Muthumani Duraisami.

^For R.3 in CMA.No.612/94 and for R.1 in
CMA.Nos.613/94 & 1784/96 : Mr. L. Mohan.

For R.1 in CMA.No.612/94 and for R.2 in
CMA.No.1784/1996 : Mr. P. Jagadeesan.

:COMMON JUDGEMENT

(Judgment of the Court was made by P. SATHASIVAM,J.,)

Since all these three appeals arose from a common award of the
Motor Accidents Claims Tribunal, Villupuram, they are being disposed of by the
following common judgement.

2. CMA.Nos.612 and 613 of 1994 are by M/s. United India
Insurance Company Limited. C.M.A.No.612 of 1994 is filed against the award of
the Motor Accident Claims Tribunal, Villupuram dated 23.04.1993 made in
M.A.C.T.O.P.No.376 of 1987, wherein the United India Insurance Company
challenges the conclusion of the Tribunal relating to negligence and quantum
of compensation. C.M.A.No.613 of 1994 is filed against the award passed in
M.A.C.T.O.P.No.227 of 1988, wherein the very same Insurance Company challenges
its liability. Aggrieved by the same award, directing Tiruvalluvar Transport
Corporation to pay 50% of the award amount, the Transport Corporation has
filed C.M.A.No.1784 of 1996.

3. Among the three appeals, let us consider C.M.A.Nos.612 and
613 of 1994, filed by M/s. United India Insurance Company Limited. As stated
earlier, in C.M.A.No.612 of 1994, the Insurance Company challenges the finding

regarding negligence and quantum of compensation determined by the Tribunal, which we shall consider after arriving a decision in the other appeals.

4. In C.M.A.No.613 of 1994, the Insurance Company challenges its liability. Mrs. N.B. Surekha, learned counsel for the Insurance Company after taking us through the claim of M/s. Annamalai Roadways Company (in short "ARC"), claiming a sum of Rs.6,62,545.70 towards compensation for the loss of the goods carried in their lorry bearing registration No.TMF 3238 and the impugned award of the Tribunal directing the Insurance Company to indemnify the loss caused to ARC in respect of the goods carried in their lorry, would contend that in the light of Section 2 (i) (ii) of the Policy, which excludes the liability of the Insurance Company in respect of damage to property in control of the insured, the contrary conclusion arrived at by the Tribunal cannot be sustained.

5. In the light of the said contention, let us consider the necessary facts which necessitated ARC to file a claim for compensation, for the loss of the goods carried in their lorry. It is the case of ARC that they hired lorry bearing registration No. TMF 3238 belonged to one Chitty Babu - third respondent in CMA.No.613 of 1994 and transported the goods through 26 way bills, valued at Rs.6,62,545.70 from Madras to Madurai. The goods belonged to third parties / consignors. While the said lorry, namely TMF 3238 with goods was proceeding towards Madurai, at about 3.30 a.m. on 21.04.1987 at Shenkuruchi near Ulundupet from North to South, the Tiruvalluvar Transport Corporation bus bearing registration No.TMF 9756, which was coming in the opposite direction, driven in a rash and negligent manner, dashed against the lorry. It is further stated that as a result of the heavy impact, the bus caught fire and spread over to the lorry, causing total damage to the entire consignments carried and also to the lorry. A criminal complaint had been lodged by the driver of the lorry before the Tiruvallur Police Station in Crime No.96 of 1987. The loss to the goods is valued at Rs.6,62,545.70. The accident occurred as a direct result of the rash and negligent driving on the part of the bus driver. It is alleged that as the owner of the bus, first respondent is vicariously liable to compensate the loss of Rs.6,62,545.70.

6. Before going further, it is relevant to refer the case of ARC, as pleaded in their claim petition (O.P.No.227/88). In Column 24, sub para 4 it is stated.

"..... As owner of the Transport bus the first respondent is vicariously liable to compensate the loss of Rs.6,62,545.70. to the petitioner, consignors and consignees (emphasis supplied).

In sub-para 6 it is stated,

"The petitioner has claimed a sum of Rs.6,62,545.70 as damage of the goods as per the list attached herewith. The details of way bill numbers and description of goods which were consigned and carried in the lorry are given in the said list. The respondents are liable to compensate the damages to the petitioner at Rs.6,62,545.70. Hence this petition."

7. It is contended on behalf of the Insurance Company that as per the statutory provisions and the Policy of Insurance, they are liable to indemnify and pay compensation in respect of bodily injury or death and damage to the properties belonging to third parties. Though ARC has produced number of documents as Exs.R.1 to R.52 to show that the goods were entrusted to them for transport by various persons, admittedly, the owners of the goods have not filed any claim petitions before the Tribunal. It is relevant to note that as per Section 166(1)(b) of the Act, the "owner of property" alone is permitted to make an application for compensation. In the light of the said statutory provision (i.e., Section 166 of 1988 Act) and in view of Section 2 (i) (ii) of the Policy, it is clear that the owner of the goods alone is entitled to claim compensation from the Tribunal. In our case (MACTOP.No.227 of 1988), though ARC has claimed that they are the owner of the goods entrusted to them, the said question cannot be gone into by the Tribunal. We have already referred to the claim of ARC vide sub-para 4 and 6 in Column 24, as extracted above. It is not clear whether ARC has filed the said claim petition as owner or consignor or on behalf of the consignees. Therefore, in the light of the particulars furnished in the claim petition (O.P.No.227 of 1988), we are of the view that the said question can not be agitated before the Tribunal.

8. In this regard learned counsel for the Insurance Company has relied on the earlier Division Bench decision of this Court in the case of United India Insurance Company Limited vs. K.A.R.N. Janarthanam reported in 1988 ACJ 503. The facts before the Division Bench are as follows: The claimant therein filed a petition under Section 110-A of the Motor Vehicles Act claiming compensation for damages caused to his goods at about 10.30 p.m. on 05.07.1977 for the lorry bearing registration No.MSL 771. He had booked a consignment of 42 bales of MCU 5 cotton worth Rs.70,000/- on 05.07.1979 from Jayam Ginning Factory at Theni by the second respondent's lorry to be carried to Rajapalyam. Freight was to be paid at the destination. The lorry was driven by second respondent's driver, who has been impleaded as first respondent. It left Theni at 7.00 p.m. and due to the rash and negligent driving by the first respondent, the load of cotton came into contact with the electric wire running east to west in the north south road, as a result of which the entire 42 bales of cotton were burnt. Hence, he claimed a compensation of Rs.70,000/- from the owner of the lorry, being the second respondent and the Insurance Company with which the lorry had been insured, being the third respondent. On behalf of the Insurance Company it was submitted that when the policy issued contains a specific term in Clause (1) Sub-clause (d) of Section 11 that it shall not be liable in respect of damage to property belonging to or held in trust by or in the custody or control of the insured or a member of the insured's household or being conveyed by the motor vehicle, no liability could be fastened on it by the petitioner. It is further contended that when contractual liability had been excluded, the transaction entered into between P.Ws.1 and 4 and the consequent happening would not be binding upon it. On behalf of the second respondent it was contended that the petition filed under Section 110 -A of the Motor Vehicles Act itself is not maintainable on the finding that the goods damaged are not properties of a third party. The Division Bench after finding that the goods involved in the petition are not properties of a third party, coming within the scope of Section 95 (1) (b) (i), of Motor Vehicles Act 1939 and in view of

Section 110 held that the claims Tribunal would have no jurisdiction to entertain such a claim. The Division Bench further held that, "the Tribunal constituted under Section 110 of Motor Vehicles Act, 1939 could only adjudicate upon claims for compensation in respect of damage to any property of a third party so arising. Therefore, the petition as filed was not maintainable before the Tribunal at Madurai. "

After holding so, the Division Bench allowed the appeals filed by the Insurance Company.

9. Mr.L. Mohan, learned counsel for ARC relying on a Full Bench decision of the Madhya Pradesh High Court in the case of Harishankar Tiwari vs. Jagru reported in 1987 ACJ 1 would contend that the claim made by ARC before the Tribunal is maintainable and the Tribunal has rightly granted the relief. In the light of the said contention, we have gone through the decision of the Madhya Pradesh High Court. We have already referred to the relevant provisions of the Motor Vehicles Act both in 1939 and 1988 Acts as well as the Division Bench decision of this Court i.e., 1988 ACJ 503 (cited supra) and with respect, we are unable to share the view expressed by the Madhya Pradesh High Court and we follow the view of the earlier Division Bench decision of this Court.

10. Sections 165 and 166 of 1988 Act are corresponding to Sections 95 (1) (b) (i) and 110-A of the 1939 Act. Accordingly, by applying the said principles laid down by the Division Bench and in view of the language used in Sections 165 and 166 of 1988 Act, we are of the view that Section 166 of the Act does not cover the liability in question and damage to the property as envisaged under. The Section only relates to the property of a third party and does not cover the loss to the property carried in a "public carrier" held in trust by the carrier for the owners of the goods. Inasmuch as the claimant in O.P. No.227 of 1988 is not a third party, coming within the scope of Sections 165 and 166 of the Act, we are of the view that the Claims Tribunal would have no jurisdiction to entertain such a claim. It is a well settled law that the Tribunal constituted under Section 165 of 1988 Act could only adjudicate upon the claims for compensation in respect of the accident involving death or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party, so arising. In the light of uncertain details furnished in Column 24 sub-para 4 and 6 in O.P.No.227 of 1988 by ARC, the said claim petition was not maintainable before the Tribunal. The Tribunal failed to consider the above material aspect and committed an error in adjudicating the issue by passing an award as claimed in favour of the claimant / ARC. Accordingly, we set aside the same.

11. Learned counsel appearing for Tiruvalluvar Transport Corporation - appellant in CMA.No.1784 of 1996 though questions the finding regarding negligence and apportionment by the Tribunal, in the light of the order passed by this Court in CMA.No.585 of 1995 dated 26.03.2002, confirming the very same finding on the negligence in MCOP.No.376 of 1987 (disposed of along with OP.No.227 of 1988), we reject the said contention. However, in view of our conclusion, namely the claim petition filed by ARC (Claim Petition No.227 of 1988) claiming compensation for the damages to the goods as carrier,

is not maintainable before the Motor Accident Claims Tribunal, the appellant Transport Corporation is also entitled to the benefit of such conclusion.

12. In the light of what is stated above, we set aside the award of the Tribunal granting compensation of Rs.6,62,545.70 in favour of ARC. Consequently, we allow CMA.No.613 of 1994 filed by the Insurance Company and CMA.No.1784 of 1996 filed by Tiruvalluvar Transport Corporation. In view of the said orders, the question raised in CMA.No.612 of 1994 need not be considered; hence, the same is dismissed. No costs. Consequently, connected CMP., is also dismissed.

Index:Yes

Internet: Yes

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To

1. The Subordinate Judge (MACT)
Villupuram (with records).

2. The S.O., V.R. Section,
High Court, Chennai.

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