

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

C.M.A.No.1017 of 1998
and
Cross Objection No.8 of 1999

C.M.A.No.1017 of 1998:

Madappan

....Appellant/2nd Petitioner

vs.

1.K.Venkatachalapathy

2.Dr.S.Karunakaran

3.The Oriental Insurance Co. Ltd.,
Mettur Road, Erode.

(1st Respondent already set
exparte the trial court.

Hence given up in this CMA)

....Respondents/Respondents

Cross Objection No.8 of 1999:

Dr.S.Karunakaran

....Cross Objector/2nd Respondent

vs

1.Madappan

2.K.Venkatachalapathy

3.The Oriental Insurance Co. Ltd.,
Mettur Road, Erode.

....Respondents/Appellant
& Respondents 1 & 3

Civil Miscellaneous Appeal and Cross Objection have
been filed against the judgment and decree dated 18.2.1998
passed in M.C.O.P.No.1370 of 1993 on the file of the Motor
Accident Claims Tribunal, (II Additional District Court), Erode.

C.M.A.No.1017 of 1998:

For appellant : Mr. N.Manokaran
For respondents : Mr. G.K.Selvarajan,
for R.2
Mr. Arunkumar for R.3

Cross Objection No.8 of 1999:

For Cross objector : Mr. G.K.Selvarajan
For respondents : Mr. N.Manoharan, for R.1
Mr. Arunkumar for R3

COMMON JUDGMENT

While C.M.A.No.1017 of 1998 is filed by the second petitioner-claimant against the rejection of the claim petition, Cross Objection No.8 of 1999 is filed by the second respondent by name Dr.S.Karunakaran, who is the owner of the vehicle allegedly involved in the accident, against the finding rendered by the Tribunal that the legal representatives of deceased Marimuthu are entitled to compensation under 'no fault liability'.

2. The parties will be referred to as per their ranking in the original claim petition before the Tribunal.

3. The claim petition was originally filed by one Marimuthu and the second claimant-Madappan. The claimants are the husband and one of the sons of Sreerangayee, who was the victim of the fatal accident. The claim petition claiming compensation of Rs.2,00,000/- for the death of Sreerangayee was filed against one Venkatachalapathy, Dr.S.Karunakaran and the Oriental Insurance Company stating they were the Driver, owner and insurer of the vehicle bearing registration No.TNP 6271. The third respondent insurance company denied any valid insurance policy for the vehicle concerned. The Tribunal after due appreciation of evidence, found that though the vehicle bearing registration No.TNP 6271 involved in the accident belonged to the second respondent, the same was not driven by the first respondent at the time of accident, but by a different person and the accident was not due to rash and negligent driving of the driver of the vehicle.

4. During the pendency of the claim petition, the first claimant-husband of deceased Sreerangayee died and the claim petition was pursued by the second claimant.

5. During trial, it was brought to the notice of the Tribunal that there are other sons and daughters of the deceased and hence, the second claimant was given sufficient opportunity to implead them as parties. But, the second claimant did not admittedly take any steps to implead his brothers and sisters either as petitioners-claimants or as the respondents. The Tribunal though arrived at a conclusion that the legal representatives of the deceased were entitled to a fixed compensation of Rs.50,000/- on the principle of 'no fault liability', dismissed the claim petition for the failure of the second claimant to implead his brothers and sisters either as claimants or respondents. Hence, this CMA by the second claimant and on receipt of notice in this CMA the owner of the offending vehicle filed the Cross Objection against the finding rendered by the Tribunal that the legal representatives of the deceased are entitled to fixed compensation of Rs.50,000/- under 'no fault liability'.

6. Before going into the claim made by the second claimant on merits, it is but necessary to decide the correctness of the finding rendered by the Tribunal on the question of 'no fault liability' and on the quantum of Rs.50,000/- fixed as compensation for 'no fault liability'.

7. The learned counsel for the second respondent/owner of the vehicle by relying on two judgments reported in 1992 ACJ 1095 - K.Nandakumar v. Managing Director, Thanthai Periyar Transport Corporation Ltd., Villupuram and 1995 ACJ 413 - Kunjuraman Nair v. Managing Director, Nesamony Transport Corporation Ltd., and another, would seriously argue that when there is a dispute regarding the factum of accident and when there is a dispute regarding the involvement of the vehicle and the actual person who drove the vehicle at the time of accident and when there are no materials to show that the driver of the other vehicle was responsible for causing the accident, the question of applying the principle of no fault liability and awarding a fixed compensation of Rs.50,000/- does not arise.

8. The learned counsel for the second respondent would also in support of his denial of factum of accident, rely on Ex.B3 criminal court judgment dated 12.11.1993, as per the said judgment the driver of the vehicle was acquitted from the criminal charges on the ground the prosecution failed to establish any accident involving the second respondent's vehicle. It is also argued before this Court that having regard to the dispute raised as to who was actually driving the vehicle, the question of fastening any liability on the first respondent Venkatachalapathy for the cause of the accident does not arise in the instant case. Regarding quantum, it is argued that as the accident took place before the amendment, the fixed amount of compensation which could be awarded under the head of 'no fault liability' is Rs.25,000/- and not Rs.50,000/-. It is seriously argued herein that by applying the ratio laid down by the Division Bench of this Court followed by the single Judge no fault liability theory cannot be invoked in the present case.

9.I find some force in the argument advanced on the side of the second respondent in the case cited before this Court. The Division Bench while answering in negative the issue as to whether an injured claimant who was solely responsible for the accident could claim compensation on no fault liability basis, clearly observed that it cannot be social justice if a person is asked to pay compensation for another when there is no fault on his part at all, but there is fault only on the other person..... A person can make a claim for compensation against another only when the other person is at fault and not when he alone is at fault. The Division Bench held so by relying on the judgment of the Apex Court reported in 1977 ACJ 118 Minu B.Mehta V. Balkrishna Ramachandra Nayan. The observation of the Supreme Court is referred to in paragraph 7 of the Division Bench judgment and the same is as follows :

"The right to receive compensation can only be against a person who is found to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else."

10.In yet another Supreme Court judgment referred to in paragraph 8 of the Division Bench judgment is 1987 ACJ 561 (SC) - Gujarat State Road Transport Corporation V. Ramanbhai Prabhatbhai wherein, it is observed in relation to Section 92-A of the Act as follows :

"That part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified."

11. Applying the same view to the facts of the present case, where the factum of the accident and the identity of the driver are disputed, no claim petition is maintainable, that too, by one of the legal representatives, who failed to avail the opportunity given to him to implead other legal representatives as party to the proceedings.

12. Thus for the discussion held above, this Court is inclined to allow the cross objection and to confirm the rejection of the claim petition on different ground.

13. In the result, the Civil Miscellaneous Appeal is dismissed and Cross Objection is allowed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

sbi

To

1. Motor Accidents Claims Tribunal,
The II Additional District Judge,
Erode.

2. The Record Keeper,
V.R. Section, High Court, Madras.

1 CC to Mr. Arunkumar, Advocate SR.No. 46040
1 CC to Mr. G.K.Selvarajan, Advocate SR.No. 45483

C.M.A.No.1017 of 1998
and Cross Obje.No.8 of 1999

MSM (CO)PSI (07.12.2015)