

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD) No.1284 of 2015

And

M.P.No.1 of 2015

1.A.Manikandan

... Petitioner

Vs.

1.Cholamandalam MS General
Insurance Company Ltd.
Shanti Gears Ltd.304-A
III Floor, Shanthi Gears Road
Singanallur
Coimbatore – 641 005.

2.A.G.Priya Varshini

3.Minor.Logesh

Rep. by his Mother/Guardian Mrs.Priya Varshini

4.Mr.Nandakumar

5.Mrs.Kamalam

6.Mr.S.Srinivasan

... Respondents

Prayer:

Petition has been filed under Article 227 of the Constitution of India, to set aside the order dated 09.09.2014 passed in I.A.No.523 of 2014 in M.C.O.P.No.342 of 2012 by the Hon'ble V Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.K.M.D.Muhilan

For Respondents : Mr.N.Vijayaraghavan for R1
Mr.S.Mukunth for R2 to R5
M/s.Sarvabhauman Associates
No Appearance for R6

ORDER

Challenging the impugned order dated 09.09.2014 passed in I.A.No.523 of 2014 in M.C.O.P.No.342 of 2012 by the V Additional District and Sessions Court, Coimbatore, this revision has been filed.

2.The learned counsel for the petitioner would submit that the respondents 2 to 5 as claimants filed claim petition seeking compensation for the death of one Srinivasan/ the husband of the second respondent who died in a road traffic accident in collision with another vehicle which was driven by the petitioner herein/ first respondent in the claim petition. Both the parties filed counter and contested the same. The Insurance Company/ third respondent in the claim petition filed an application for examining the driver of the vehicle which was insured with them. That application was allowed by invoking Order XVI Rule 14.

3.The learned counsel for the petitioner would further submit that no witness can be compelled to give evidence against him. For that reason, he has taken me to the decision of this Court reported in **2014-4-L.W.174 (V.L.Ramanathan Vs.Salem Nagarathar Sangam represented by its President Mr.M.S.P.Subramaniam and others)** and also taken me to Section 169 of the Motor Vehicles Act and prayed for setting aside of the impugned order.

4.Resisting the same, the learned counsel for the first respondent/ Insurance Company submitted that the deceased Srinivasan has driven his own two wheeler bearing registration no.TN 45 R 4627. The Insurance Company in which the two wheeler was insured was not made as a party. The vehicle driven by the petitioner herein/ first respondent in the claim petition was insured with the Insurance Company/ first respondent herein/ third respondent in the claim petition and it is the other vehicle which colluded with the vehicle driven by the deceased. Though, the petitioner herein has filed his counter in the claim petition, he has not got into the box and to prove the negligence, the Insurance Company has filed the application and the Trial Court has considered

the same and allowed the application.

5.The learned counsel for the first respondent/ Insurance Company also relied upon ***AIR 2001 Mad 410 (V.K.Periasamy @ Perianna Gounder versus D.Rajan)*** and submitted that the Court has every right to examine the driver as per Order XVI Rule 21 and this Court is empowered to give a direction to issue summons to the driver/ revision petitioner to depose before the Court to find out on whose negligence the accident has been occurred. Hence, he prayed for dismissal of the revision.

6.The learned counsel for the respondents 2 to 5/ claimants have no objection either for allowing this revision or for dismissal of the revision, but he wants earlier disposal of the M.C.O.P. No.342 of 2012.

7.Heard the rival submissions made on both sides and perused the averment in the typed set of papers.

8.From the averment in the typed set of papers, it is known that on 31.01.2010 at about 19.45 hours, the deceased Srinivasan while travelling in his bike bearing Registration No.TN 45 R 4627 at

MTP Road near Pircol petrol bunk from North to South, colluded with the vehicle of the sixth respondent herein driven by the petitioner herein insured with the first respondent herein and has met with the accident. In this road accident, the said Srinivasan died. Hence, the dependents of the deceased Srinivasan filed the claim petition claiming compensation against the owner of the vehicle bearing registration No.TN 43 Z 4465, driver of the vehicle and the Insurance Company wherein the vehicle has been insured.

9.In this case, the driver/ revision petitioner has filed a counter and contested the same. Petitioner side evidence has been over and the case was twice posted for respondent side evidence and since the driver was not examined before the Court, the Insurance Company has filed I.A.No.523 of 2014 to issue summons to the driver to depose before the Court stating that the opposite driver Srinivasan has been died, investigation over, charge sheet laid against the revision petitioner, but to prove on whose default or negligence the accident has been taken place, his presence is necessary. On this basis only the application has been filed. Now, the Court has to consider whether by invoking Order XVI Rule 21 of the Civil Procedure Code, the Court has power to issue summons.

10. It is appropriate to incorporate Order XVI Rule 21 of the Civil Procedure Code which is as follows:

"21. Rules in case of parties appearing as witnesses – (1) *When a party to a suit is required by any other party thereto to give evidence or to produce a document, the provisions as to witnesses shall apply to him to far as applicable.*

(2) When a party to a suit gives evidence on his own behalf the Court may, in its discretion, permit him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case of similar standing. w. See C.R.P. Rules 23 and 24"

and also Section 169 of the Motor Vehicles Act, 1988 which is as follows:

"169. Procedure and powers of Claims Tribunals.- (1) *In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.*

(2) The Claims Tribunal shall have all the

powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry."

11. It is true that the finding of the Tribunal is not binding on the Civil Court. Furthermore, the finding of the Tribunal is not binding on the Criminal Court also. According to the learned counsel appearing on behalf of the 1st respondent/ Insurance Company that charge sheet has been levied against the petitioner herein/ the first respondent in claim petition.

12. Here the learned counsel for the first respondent/ Insurance Company relied upon ***AIR 2001 Mad 410 (V.K.Periasamy @ Perianna Gounder versus D.Rajan)***, but the said citation is not applicable to the facts of the present case because, in the citation, the plaintiff filed application for issuing summons to the first defendant to produce some documents and depose against him and on perusal it is known that the first defendant has given consent. Whereas, on perusal of averment of the typed set of papers, it is known that Insurance Company has filed I.A.No.523 of 2014 to issue summons to the driver to depose before the Court. In such circumstances, summon has to be issued to the first defendant to depose on behalf of the plaintiff. So the above citation is not applicable to the facts of the present case.

13. The learned counsel for the petitioner herein has relied upon ***2014-4-L.W.174 (V.L.Ramanathan Vs.Salem Nagarathar Sangam represented by its President Mr.M.S.P.Subramaniam and others)***. Here they filed application for issuing summons to fourth respondent who has contested the matter. In such circumstances, it was held no one can be compelled to depose against him at the instance of others and no summon has been

issued to him, but now considering the citation along with the facts of this case, now the Court has to decide whether the revision petitioner was called for and was compelled to give evidence against him.

14.It is pertinent to note that two vehicles were involved in this accident. One vehicle driver has died. The other one is the revision petitioner. He is the competent person to speak about the nature of this accident. So it is appropriate to incorporate Order XVI Rule 14 and 21 of the Civil Procedure Code which reads as follows:

"14.Court may of its own accord summon as witness strangers to suit. - Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such

document.

21. Rules in case of parties appearing as witnesses – (1) *When a party to a suit is required by any other party thereto to give evidence or to produce a document, the provisions as to witnesses shall apply to him to far as applicable.*

(2) *When a party to a suit gives evidence on his own behalf the Court may, in its discretion, permit him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case of similar standing.*
w. See C.R.P. Rules 23 and 24”

wherein it is stated that if the Court at any time thinks it necessary to examine any person including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

15. So also in Section 169 of the Motor Vehicles Act, 1988 in clause 3 it was specifically stated as follows:

"(3)Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry."

16. Here it is the duty of the Tribunal to decide whether the accident has occurred due to the negligence of the deceased Srinivasan or due to the negligence on the part of the petitioner herein/ first respondent in claim petition. Since Srinivasan died, there is no chance for examining him so, the only available evidence is this revision petitioner who is the driver having special knowledge of the accident. In such circumstances, I am of the view that the Trial Court has considered this view in proper prospect in paragraph no.7 of the judgment and came to the correct conclusion.

17. It is not the case the revision petitioner was called for giving evidence against him because even though the claimants have claimed compensation stating that this revision petitioner alone driven the vehicle in rash and negligent manner and caused

the accident but the Insurance Company wants to prove that either contributory negligence is on the part of this deceased, so he wants to examine the revision petitioner. In such circumstances, the impugned order does not warrant any interference. Hence, the impugned order dated 09.09.2014 is confirmed and the revision is dismissed.

18. Accordingly, this Civil Revision Petition is dismissed and the order dated 09.09.2014 passed in I.A.No.523 of 2014 in M.C.O.P.No.342 of 2012 by the V Additional District and Sessions Court, Coimbatore is confirmed. Since the revision petitioner filed this revision petition instead of giving evidence before the Court, which is sheer abuse of the process of Court, the revision petitioner is hereby directed to pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the Chief Minister's Flood Relief Fund. The learned V Additional District and Sessions Court, Coimbatore is directed to dispose of the M.C.O.P.No.342 of 2012 within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

21.01.2016

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Index: Yes/ No

Internet: Yes/ No

To

1.The V Additional District and Sessions Court, Coimbatore.

R.MALA,J.

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