BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.12.2017
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)No.822 of 2015

T.Ramakrishnan ... Appellant

Vs.

1.P.B.Raja Stalin

2.The Branch Manager,
M/s.United India Insurance
Company Ltd,
No.164-C, Panchayat Union Road,
Valliyoor - 627 117. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.08.2011 made in MCOP.No52 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tirunelveli.

For Appellant : Mr.P.Mahendran

For Respondents : Mr.S.Srinivasaraghavan for R1

Mr.Sivakumar for R2

JUDGMENT

Heard the learned counsel for the parties.

2.The claimant is a Motor Mechanic. The two wheeler belonging to the first respondent herein was entrusted to him for carrying out repair works. When the vehicle was being taken for test ride, due to road condition, the vehicle swerved and the claimant lost his balance and fell down and suffered injuries and two fractures. The accident happened on 09.11.2009. The vehicle was insured with the second respondent herein. The claimant filed MCOP.No.52 of 2010 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Tirunelveli seeking compensation.

3.The claim petition was filed under Section 163 A of the Motor Vehicles Act, 1988. The Tribunal following the decision of the Hon'ble Supreme Court reported in *2009 (2) TNMAC 169 (SC) (Ningamma & Anr Vs. United India Insurance Company Ltd)* held that when a claimant was a tort-feasor himself and that he having stepped into the shoes of the owner is not entitled to maintain the claim under the M.V Act. The claim petition was dismissed as not maintainable. Aggrieved by the dismissal of his claim petition, this appeal has been filed.

4.The learned counsel appearing for the appellant/claimant drew my attention to two decisions. In its very recent decision in *Civil Appeal No.9694 of 2013 dated 24.11.2017 (United India Insurance Co., Vs. Sunil Kumar & Anr)*, the Hon'ble Supreme Court held that in a proceeding under Section 163 A of the M.V Act, it is not open for the insurer to raise any defence of negligence on the part of the victim. He also pointed out that the Patna High Court in its decision in *MA.147 of 2003 dated 30.09.2008* (*Branch Manager, National Insurance Company Limited vs. Meena Devi & Ors*) held that the claim arisen out of accident that took place in the course of trial of repaired vehicle on a public road is covered under the Motor Vehicles Act and policy of the insurance, because when the owner of the vehicle entrusts his vehicle to a repairer to carry out repairs, he is in fact allowing the repairer to use his vehicle in that connection. The mechanic acts within his limit of authority and in course of employment for and on behalf of the owner. If any accident occurs either to third party or to the mechanic himself, the owner is vicariously liable to third party or to mechanic himself, the owner is vicariously liable. Consequently if the vehicle is covered under Insurance policy then the insurer is also liable.

5.In the present case, the vehicle in question has been insured with the second respondent herein. The learned counsel appearing for the second respondent insurance company would contend that the decision of the Patna High Court is prior to the decision of the Hon'ble Supreme Court reported in *2009 (2) TNMAC 169 (SC) (Ningamma & Anr Vs. United India Insurance Company Ltd)* and that therefore this Court should follow the decision of the Hon'ble Supreme Court only.

6.I am of the view that Ningamma pertained to a case where the deceased borrowed the two wheeler from the vehicle owner and was a tort-feasor himself. The case on hand is not one of borrowal of the vehicle from the owner. It is a case where the owner had entrusted his vehicle to the claimant for carrying out certain repair. In other words, he had allowed the claimant to use the vehicle. The Accident had occurred when the vehicle was being taken for a test ride. Therefore, the ratio laid down in *Ningamma* case will not be applicable to the facts of the present case. Respectfully following the decision of the Patna High Court rendered in MA.No.147 of 2003 dated 30.09.2008, I have to necessarily hold that the claim petition filed by the appellant herein is maintainable.

7.As regards the quantum of compensation to be awarded to the claimant, it has to be seen that the claimant had suffered fractures on his wrist and his nose. He was an in-patient for five days. For over three months he was not able to pursue his avocation. Therefore, the compensation payable to the claimant can be re-worked as under :

For loss of income (4500x3)	: Rs.13,500/-
Medical expenditure	: Rs.50,000/-
Pain and sufferings	: Rs.5,000/-
Attender charges	: Rs.2,000/-
Extra nourishment	: Rs.5,000/-
Total	: Rs.75,500/-

8.The award dated 23.08.2011 made in MCOP.No52 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tirunelveli is set aside.

9.The second respondent insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same, by filing proper application before the Tribunal. This appeal is partly allowed. No costs.

Sd/
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate / Motor Accident Claims Tribunal, Tirunelveli.

2.The Record Clerk, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1cc to Mr.P.MAHENDRAN, Advocate, SR.No.91291
+1cc to Mr.N.SIVAKUMAR, Advocate, SR.No.91608

CMA(MD)No.822 of 2015
06.12.2017

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KK/SV MMS/SAR-3/18.06.2018/3P-6C