

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.1440 of 2019

Durairam

.. Appellant/Petitioner

vs.

1.Rathinam

2.The New India Assurance Co. Ltd.,

Claims HUB,

Salem, 2nd Floor,

Sethukrishna Trade Centre,

133/31-1, Trichy Main Road,

Gugai,

Salem-636 006.

.. Respondents /Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.10.2018 passed in M.C.O.P. No.1370 of 2016 on the file of the learned Special Sub Judge No.II, II -cum-Motor Accidents Claims Tribunal, Salem.

For Appellant : Mr.C.Paraneedharan

For Respondent-1 : Ex Parte

For Respondent-2 : Mr.J.Michael Visuvasam

J U D G M E N T

The Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 01.10.2018 passed by the learned Special Sub Judge No.II, II Special Sub Court-cum-Motor Accidents Claims Tribunal, Salem in M.C.O.P. No.1370 of 2016.

2. Though the Motor Accident Claims Tribunal passed a common order, the other MCOP was considered and compensation was awarded. As far as the present Civil Miscellaneous Appeal in respect of Mr.Durairam is concerned, MCOP No.1370 of 2016 filed by him, seeking compensation, was dismissed. Thus, the present Civil Miscellaneous Appeal is filed by the appellant, namely, Mr.Durairam.

3. The accident occurred on 25.12.2015 at about 01.30 A.M. in Perundurai-Erode Main Road, Mettukadai, Opposite to Sri Venkateshwara Rice Mill. The Erode Taluk Police Station registered a case in Crime No.483 of 2015 under Sections 279, 337 and 338 of IPC. The appellant Mr.Durairam was driving the Tata Nano Car bearing Registration No.TN-90-A-1821. The other person Mr.Rathinam was travelling along with the appellant in the front side of the car. Suddenly, a dog jumped into the Main Road and the appellant turned the car in the right side, lost control and dashed in the Centre Divider Lane, resulted in an accident. The appellant and the other passenger were sustained serious injuries.

4. The appellant, at the time of accident, was 36 years old and his father is the owner of the car. The appellant/injured was working as an Assistant Professor in a Private Engineering College and was earning a monthly salary of Rs.35,000/-. Thus, the claim petitions were filed separately by the appellant as well as by the other passenger, seeking compensation.

5. The second respondent/Insurance Company defended the case by stating that the appellant, who was driving the vehicle at the time of accident, is the son of the owner of the vehicle and therefore, he is not entitled to claim compensation as he is not a third party. This apart, the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 is also not maintainable in view of the fact that at the time of accident, the appellant was working as Assistant Professor in a Private Engineering College and was receiving a monthly salary of Rs.35,000/-. For these two reasons, the claim petition is liable to be dismissed.

6. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. The manner of accident and the probabilities were also examined by the Tribunal. The Tribunal arrived a conclusion that the appellant/driver was driving the vehicle in a rash and negligent manner, which caused the accident. Thus, the negligence was fixed on the appellant, who was driving the vehicle at the time of accident.

7. As far as the compensation is concerned, the Tribunal considered the issues with reference to MCOP No.1370 of 2016. The Tribunal has considered the provisions of Section 163-A of the Motor Vehicles Act, 1988. Section 163-A of the Motor Vehicles Act, 1988 is the special provision as to payment of compensation on structured formula basis. As per Second Schedule, if the annual income of the claimant is below Rs.40,000/-, then only the claim petition is entertainable under Section 163-A of the Motor Vehicles Act, 1988 and not otherwise.

8. In the present Civil Miscellaneous Appeal, as per the self-evidence of the appellant, he was working as Assistant Professor in a Private Engineering College and was earning a sum of Rs.35,000/- as monthly salary. Therefore, the appellant is not eligible to claim compensation under Section 163-A of the Motor Vehicles Act, 1988. This apart, it was established before the Tribunal that the vehicle, which met with an accident, was driven by the appellant, who is none other than the son of owner of the vehicle. In other words, the father of the appellant is the owner of the vehicle Tata Nano Car bearing Registration No.TN-90-A-1821, which met with an accident. Therefore, the case of the appellant cannot be considered as a third party.

9. The learned counsel appearing on behalf of the appellant reiterated that the Tribunal has committed an error in dismissing the claim petition merely on the ground that the appellant was receiving a monthly salary of Rs.35,000/-. It is further stated that though the appellant was driving the vehicle at the time of accident, he is not a paid driver, but he is the son of the insured. In this aspect, the learned counsel for the appellant made a submission that the appellant sustained multiple grievous injuries and was possessing a valid driving license and the father of the appellant is the registered owner of the vehicle and the same was insured with New India Assurance Company Limited.

10. As per the Private Car Package Policy, the premium was paid for the occupants also and in the present case, the seating capacity of the car is four persons and the entire premium is collected for the entire seating capacity. Thus, as per the terms and conditions of the policy for a private car, the entire seating capacity is covered and further a sum of Rs.100/- is collected for owner-driver PA and Rs.50/- collected for paid driver.

11. The appellant was not a paid driver as his father is the owner of the vehicle. Therefore, he is covered under third party liability. Consequently, the appellant is entitled to get compensation under the heads of loss of income, loss of

amenities, attender charges, extra nourishments, pain and sufferings and future medical expenses.

12. The learned counsel for the appellant cited a judgment of the Hon'ble Division Bench of this Court in the case of Chinnathamani and 2 others vs. Amman Granites and Another [delivered on 09.08.2019 in CMA No.584 of 2018 - 2019 (2) TNMAC 293]. Citing the above judgment, the learned counsel for the appellant is of an opinion that the award of the Tribunal is to be set aside.

13. As far as the judgment of the Hon'ble Division Bench of this Court (cited supra) is concerned, the issue was regarding the highest slab of income of Rs.40,000/- per annum was fixed under Second Schedule in the year 1994. The Hon'ble Division Bench of this Court dealt with the fixation of sealing regarding the annual income for grant of compensation under Section 163-A of the Motor Vehicles Act, 1988. The sealing was fixed in the year 1994. Therefore, the Hon'ble Division Bench of this Court considered the issue regarding the upper limit fixed in the Second Schedule and issued directions to the appropriate Government to bestow serious consideration in this aspect, more specifically, to amend the Second Schedule in view of Section 163-A (3) of the Motor Vehicles Act, 1988.

14. Reading of the entire judgment, this Court is of the considered opinion that the judgment may not have much avail to the appellant in the present Civil Miscellaneous Appeal. In fact, the learned counsel for the second respondent-Insurance Company mainly contended that it is an admitted fact that the appellant was working as Assistant Professor in a Private Engineering College at the time of accident and was earning a monthly salary of Rs.35,000/-. Further, it is admitted that the appellant was a driver and he was not a paid driver. The appellant's father is the owner of the vehicle and the appellant met with an accident and therefore, the facts established before the Tribunal in this aspect are relevant to decide the entitlement of the appellant to claim compensation from the second respondent-Insurance Company.

15. The learned counsel for the second respondent solicited the attention of this Court by stating that no specific and clear ground has been raised for assailing the order of the Tribunal, rejecting the claim petition. The Statutory Insurance Coverage provided under Section 147 of the Motor Vehicles Act, 1988 is intended to protect the third parties against any bodily injury or death caused in an accident that occurs in a public place due to use of a motor vehicle. In this regard, the essential requirement is that the claimant must be a third party.

16. The Motor Vehicles Act, 1988 provides choices to the claimant for preferring a claim petition either based on the principle of "Fault Liability" or on "No Fault Liability" basis. If a claim petition is filed in terms of Section 166 of the Motor Vehicles Act, 1988, the claimant has to establish "Fault" of the other person for getting compensation. The claim petition can also be preferred by the claimant based on the principle of "No Fault". The claim petition filed under Section 140 of the Motor Vehicles Act, 1988, the compensation provided therein is of interim in nature. However, it is not the case filed under Section 163-A of the Motor Vehicles Act, 1988, wherein the compensation to be awarded is final in nature. Admittedly, the claim petition filed by the appellant is under Section 163-A of the Motor Vehicles Act.

17. The facts established before the Tribunal is that the appellant/claimant was driving the Tata Nano Car and his father Mr. Rathinam is the owner of the car. Therefore, the appellant cannot claim himself to be a third party in view of the fact that he was working as Assistant Professor in Computer Science and Engineering Department in a Private Engineering College and he cannot be construed as a paid driver. Therefore, the appellant is not entitled for compensation under Section 163-A of the Motor Vehicles Act, 1988.

18. The learned counsel for the second respondent-Insurance Company cited a judgment of the Hon'ble Supreme Court of India in the case of New India Assurance Company Ltd vs. Sadanand Mukhi [2009 ACJ 998], wherein the Apex Court held that the deceased, being the son of the injured/owner of the motor vehicle, is not entitled to any compensation. In the case of Ningamma and Another vs. United India Insurance Company Ltd [2009 (2) TNMAC 169], the Apex Court held that the deceased authorised to drive the motorbike by its owner had stepped into the shoes of the owner of the motorbike and as such not entitled to any compensation.

19. In the present case, the appellant/claimant was authorised to drive the car belongs to his father, namely, the first respondent herein. As such, the appellant stepped into the shoes of his owner and therefore, the owner cannot lay any claim for compensation. Only a "Third Party" can lay a claim for compensation and therefore, the claim petition filed by the appellant under Section 163-A of the Motor Vehicles Act, 1988 is not maintainable at all.

20. Even in a recent judgment rendered by the Hon'ble Supreme Court of India in the case of Ramkhiladi and another vs. United India Insurance Company Ltd [2020 (1) TNMAC 1], wherein

it is held that the borrower stepping into the shoes of the owner is not entitled to any compensation. However, the Apex Court was placed to grant a sum of Rs.1 lakh provided under the head 'Personal Accident Cover' under the said Policy of Insurance.

21. In the present case on hand, the first respondent/owner of the car, namely, the father of the appellant, had also travelled in the said car as an occupant at the time of accident and as such, he has already been granted a sum of Rs.2 lakhs as compensation in terms of the Personal Accident Cover under the Policy of Insurance in the Claim Petition filed in MCOP No.1362 of 2016, which is also part of the common judgment rendered in the above case. Thus, the appellant is not entitled to any compensation even under the Personal Accident Cover and therefore, there is no reason whatsoever to interfere with the judgment of the Motor Accident Claims Tribunal.

22. As far as the judgment of the Hon'ble Division Bench of this Court in the case of Chinnathamani and 2 others vs. Amman Granites and Another (cited supra) is concerned, a cursory reading of the decision would reveal that the Hon'ble Division Bench of this Court had only recommended to the Central Government for amending the Second Schedule of the Motor Vehicles Act, 1988 and therefore, the decision cited by the appellant, cannot have any avail so as to set aside the judgment of the Tribunal.

23. This Court is of the considered opinion that admittedly, the appellant/claimant is not the paid driver. Further, his father is the owner of the vehicle, which met with an accident and therefore, the appellant cannot be construed as a third party and, the appellant stepped into the shoes of the owner of the vehicle, as he was driving the vehicle. Though the Tribunal has rejected the claim petition on the ground that the annual income of the appellant exceeds Rs.40,000/-, no claim petition would lie under Section 163-A of the Motor Vehicles Act, 1988. However, the other ground raised by the second respondent-Insurance Company is also relevant for the purpose of rejecting the claim petition filed by the appellant.

24. The appellant/claimant, who was driving the vehicle, had stepped into the shoes of the owner, who is none other than his father and therefore, the appellant is not entitled to any compensation and the appellant cannot be construed as third party and therefore, the grounds raised by the appellant in the present appeal are neither candid nor convincing. Accordingly, the judgment and decree dated 01.10.2018 passed by the learned Special Sub Judge No.II, II

Special Sub Court-cum-Motor Accidents Claims Tribunal, Salem in M.C.O.P. No.1370 of 2016 is confirmed and consequently, C.M.A.No.1440 of 2019 stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

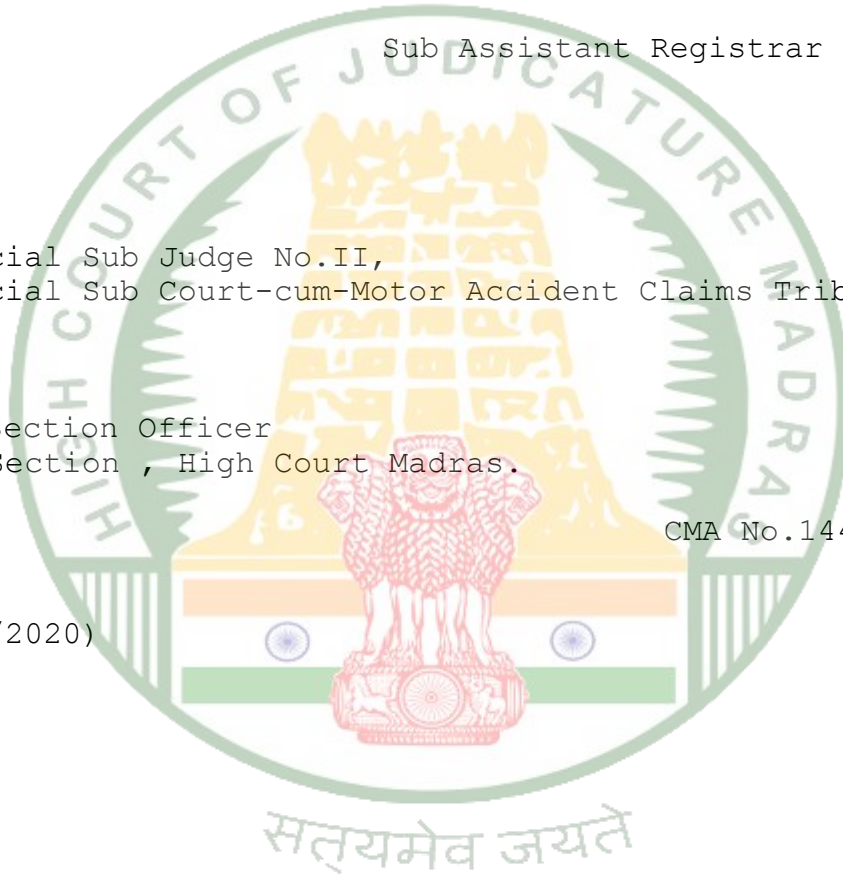
To

1.The Special Sub Judge No.II,
II Special Sub Court-cum-Motor Accident Claims Tribunal,
Salem.

Copy to :
The Section Officer
V.R Section , High Court Madras.

CMA No.1440 of 2019

MG (CO)
RMP (29/12/2020)



WEB COPY