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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 19.04.2021

Pronounced On : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)Nos.681 and 682 of 2021

C.R.P.(MD)No.681 of 2021:

1.K.Kannaki
2.K.Muthu
3.K.Karunagaran
4.K.Sasikala : Petitioners/ Claimants

Vs.

1.A.Jalaludeen
2.The Divisional Manager,
United India Insurance Company Ltd.,
Union Bank Upstairs,
Madurai Road, Virudhunagar. : Respondents/Respondents

C.R.P.(MD)No.682 of 2021 :

1.K.Ramachandran
2.R.Natchan
3.R.Alagunatchi
4.R.Alagarsamy : Petitioners/ Claimants

Vs.

1.Sornakumar

2.The Divisional Manager,
New India Assurance Company Ltd,
Madurai Road, Virudhunagar Town,
Virudhunagar District. : Respondents/Respondents

COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of Constitution of India, to direct the Motor Accident Claims Tribunal, Additional District Judge, Virudhunagar to take on file and number the claim petitions unnumbered MCOP.No. Of 2021 pending in file No.82 and 83 of 2021, dated 22.03.2021 and 25.03.2021 respectively on the file of Additional District Judge, Virudhunagar and to decide the same on merits in accordance with law.

(in both petitions)

For Petitioner : Mr.I.Pinaygash

COMMON ORDER

These Civil Revision Petitions are directed against the order of returning the Motor Accident Claim Petitions by the Motor Accident Claims Tribunal/Additional District Court, Virudhunagar.

2.Since the Civil Revision Petitions have been filed against

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the return made by the Tribunal, before taking the claim petitions on file, there is no necessity to issue notice to the respondents. As the points to be decided in both the revisions are one and the same, both are taken up together and a common order is being passed.

3.The revision petitioners in C.R.P.(MD)No.681 of 2021 have laid the claim petition under Section 140 and 166 of the Motor Vehicles Act, claiming compensation for the death of one Karanthamalai, who died in a road accident on 17.12.2020, against the owner and insurer of the lorry by alleging that the lorry had hit the two wheeler from behind and caused the accident.

4.The revision petitioners in C.R.P.(MD)No.682 of 2021 have filed the claim petition under Section 140 and 166 of Motor Vehicles Act, claiming compensation for the death of Dhanabackiam, who died in a road accident on 27.09.2020, against the owner and insurer of Car alleging that the Car had dashed against the two wheeler.

5.The Tribunal has returned the claim petitions, directing the claimants to implead the owner and insurer of the two wheeler, as per the judgment of Division Bench of Madras High Court in CMA.No.2309 of 2018, dated 12.12.2019. Thereafter, the claim petitions were represented by stating that the decision in CMA.No.2309 of 2018 is not applicable and that there is no necessity to implead the insurer as well as the insured of the two wheeler and cited the decision of this Court passed in C.R.P.(MD)No.190 of 2021, dated 12.02.2021.

6.The Tribunal has again returned the claim petitions, which is now under challenge, directing the claimants again to implead the insurer of the two wheeler by stating that the High Court in C.R.P.No.190 of 2021, has only observed that it is not necessary to implead the dead person. In both the cases, admittedly two vehicles were involved and the claimants have impleaded the owner and insurer of the alleged offending vehicle by excluding the owner and the insurer of the other vehicle, namely the two wheelers.

7. At the outset, it is necessary to refer the decision of Hon'ble Division Bench of this Court in C.M.A.(MD)No.2309 of 2018, [**The Oriental Insurance Company Ltd., Kumbakonam Vs. Thirugnanasambandam**] which was referred by the Tribunal, for returning the claim petitions. In that case, one of the vehicle was not insured, the claimants proceeded to file the petition against the owner and insurer of the other vehicle and the Hon'ble Division Bench of this Court had set aside the award already passed, leaving the issues open with liberty to the claimants to implead the driver or owner of the two wheeler, which was said to be responsible for the accident. The Hon'ble Division Bench has issued directions to all the Tribunals and the same is extracted hereunder :

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> "11. As we have stated earlier, in order to avoid the said approach, we direct all the Tribunals within the State of Tamil Nadu and Puducherry not to number any of the claim petitions without impleading the other vehicle which was also involved in the accident. However, we make it clear that this will not apply to the cases of hit and run where the tort-feasor cannot be possible of identification. The Tribunals are expected to insist the claimant to array the driver and owner of the other vehicle which is stated to be involved in the accident as party respondent before numbering the claim petition."

8.The Tribunal following the above decision of Division Bench of this Court and the directions issued therein, has returned the claim petitions, directing the claimants to implead the owner and the insurer of the other vehicle involved in the accident and as such, the action of the Tribunal cannot be found fault with.

9. The Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Company Ltd, Others** reported in **2015 (1) TNMAC 801 (SC),** while deciding whether it is open to the claimants to recover the entire compensation, from one of the joint tort-feasers in the accident occurred due to the composite negligence of both the vehicles, has considered various decisions, and has laid down the following principles of law:-

> "(i) In the case of Composite Negligence, Plaintiff/Claimant is entitled to sue both or any one of the Joint Tort-feasors and to recover the entire Compensation as liability of Joint Tort-feasors is joint and several.
>
> (ii) In the case of Composite Negligence, apportionment of Compensation between two Tort-feasros vis-a-vis the Plaintiff/Claimant is not permissible. He can recover at his option whole damages from any of them.
>
> (iii) In case all the Joint Tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine *inter se* extent of Composite Negligence of the drivers. However, determination of the extent of negligence between the Joint Tort-feasors is only for the purpose of their *inter se* liability so that one may recover the sum from the other after making whole of payment to the Plaintiff/Claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one Joint Tort-feasor can recover the amount from the other in the Execution proceedings.
>
> (iv) It would not be appropriate for the Court/Tribunal to determine the extent of Composite Negligence of the drivers of two vehicles in the absence

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of impleadment of other Joint Tort-feasors. In such a case, impleaded Joint Tort-feasor should be left, in case he so desires, to sue the other Joint Tort-feasor in independent proceedings after passing of the Decree or Award."

10.Considering the above, it is very much clear that in case of joint tort feasers, where liability is joint and several, it is the choice of the claimants to claim compensation from the owner and driver and insurer of both the vehicles or any one of them. Subsequently, another full Bench of Hon'ble Apex Court in **Kamlesh and others Vs. Attar Singh and others** reported in **2015 (2) TN MAC 577 (SC),** by referring the above **Khenyei's** case has held that in case of composite negligence, the claimant is entitled to sue both or any one of Joint Tort feasors and to recover entire compensation as liability of joint tort feasors is joint and several.

11.The Division Bench of our High Court in **United India Insurance Company Limited Vs. D.Hemavathi and others** reported in **2017 2 TNMAC 150,** has followed the judgment of the **Khenyei's** case. Subsequently, another Division Bench of this Court in **Tata AIG General Insurance Company Limited Vs. Kaveri and others** reported in CDJ 2020 MHC 4438 in CMA.No.3809 of 2019, dated 08.09.2020 has observed that though the claimants have impleaded the owner of the lorry and its insurer, they have not impleaded the owner of the car and its insurer as parties to the claim petition and it will not disentitle the claimants from getting the compensation amount from the appellant/Insurance Company and that at the same time, the Appellant Insurance Company can recover the compensation amount paid to the claimants, proportionate to the negligence attributable on the part of the driver of the car, from the owner or it's insurer by initiating separate legal proceedings and by relying the judgment of Hon'ble Supreme Court in **Khenyei's** case, has confirmed the award of the Tribunal.

12.It is pertinent to mention that the judgment of the Hon'ble Supreme Court in **Khenyei's** case was not brought to the notice of the Division Bench, while deciding the appeal in the CMA.No.2309 of 2018. No doubt, if all the parties, the owner and insurer of both the vehicles involved in the accident are parties to the claim petition, then it will be convenient for all and also for the Tribunal to decide the liability. But, the claimant, being the dominus litis cannot be compelled to add other parties, who are not impleaded earlier and it is for the claimants to decide and in case, if the case putforth by the claimants as against the impleaded parties is not true, then they have to suffer the dismissal of the petition.

13.At this juncture, it is necessary to refer the decision in **Rattiram and others Vs. State of Madhya Pradesh** through Inspector of

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Police and another, reported in 2012 (4) SCC 516, whereunder the Hon'ble Supreme Court has referred and followed the decision of the Constitution Bench relating to the concept of " per incuriam".

> "24.Thus viewed, the decision in Bhooraji (supra) was a binding precedent, and when in ignorance of it subsequent decisions have been rendered, the concept of per incuriam would come into play. In this context, it is useful to refer to a passage from A. R. 12 AIR 1980 SC 541 13 AIR 1985 SC 339 14 (2003) SCC (L & S) 827 Antulay (supra), wherein, Sabyasachi Mukharji, J (as his Lordship then was), while dealing with the concept of per incuriam, had observed thus:-
>
> ""Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."
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> Again, in the said decision, at a later stage, the Court observed:-
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> "It is a settled rule that if a decision has been given per incuriam the court can ignore it."
>
> 25.In Punjab Land Development & Reclamation Corporation Ltd. v. Presiding Officer, Labour Court, Chandigarh & Ors.15, another Constitution Bench, while dealing with the issue of per incuriam, opined as under:-
>
> "The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court."

14.Considering the above, since judgment of the Hon'ble the Division Bench of this Court in CMA.No.2309 of 2018, has not referred the judgment of the Supreme Court in **Khenyei's** case, the judgment can only be considered as per incuriam.

15.In view of the law laid down by the Hon'ble Supreme Court, the Tribunal has no power or authority, directing the claimants to implead the owner and insurer of the other vehicle. Hence, the order returning the claim petitions is not proper and is very much against the legal dictum laid down by the Hon'ble Supreme Court and hence, the same are set aside and the Tribunal is directed to take the claim petitions on file, if they are otherwise in order.

16.In the result, the Civil Revision Petitions are allowed and the Motor Accident Claims Tribunal/Additional District Judge, Virdhunagar is directed to take the claim petitions on file, if they are otherwise in order. The Registry is directed to return the original claim petitions filed along with these revision petitions

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to the counsel for the petitioners. No costs.

17.I am informed that as per the directions of the Division Bench, the said judgment has been circulated to all the Tribunals in the State of Tamil Nadu and Puducherry. It is brought to my notice that Motor Accidents Claims Petitions are being returned by several Courts in Tamil Nadu and Puducherry citing the above decision of the Division Bench. In order to clarify the position of law, thereby refrain the claimants from filing revisions and thereby save the time of the High Court, as well be of reprieve to all concerned, this order may be circulated to all the Tribunals. Hence, the Registry is hereby directed to place the same before The Hon'ble Chief Justice for appropriate orders, for circulation to all the Tribunals in the State of Tamil Nadu and Puducherry.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Virudhunagar

Copy to

1.The Registrar Judicial,
Madurai Bench of Madras High Court, Madurai.

2.The Section Officer,E.R.Section,
Madurai Bench of Madras High Court, Madurai

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