IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.202 of 2021
and
Civil Miscellaneous Petition No.1412 of 2021

The Branch Manager,
The National Insurance Company Limited,
Branch Office,
Anuradha Complex, III Floor,
Bangalore Road,
Opp. To Raja Theatre,
Krishnagiri – 635 001. ... Appellant / 2nd respondent

Vs.

1. Victor Jayaraj ... Respondent / Petitioner

2. S. Ravi ... Respondent/1st Respondent
[R2 remained ex-parte before Tribunal.
Hence, notice to R2 dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 31.10.2019 made in M.C.O.P.No.478 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

For Appellant	:	Ms. R. Sree Vidhya
For R1	:	Mr. S. P. Yuvaraj
For R2	:	No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the Award passed in M.C.O.P.No.478 of 2018, dated 31.10.2019 by the Motor Accidents Claims Tribunal, Additional District Judge, Hosur, wherein, the Tribunal has directed the Insurance Company to indemnify the first respondent and to pay compensation for a sum of Rs.3,71,364/-.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that he is an auto driver, and that on 10.06.2016 at about 17.00 hours on the Rayakottai to Krishnagiri Road, while he reached near Vajjirapalayam Down, a cow suddenly crossed the road and to avoid hitting on the cow, he applied sudden brake in which, the auto was capsized and he sustained injuries. Immediately, he was admitted in to the Government Head Quarters Hospital, Krishnagiri for treatment and thereafter he was admitted into Private Hospital, Banglore for further treatment. A Criminal case in Crime No.288/2016 under Sections 279 and

377 IPC was also registered against the claimant herein based on the complaint given by the owner of the Auto. After undergone treatment, the claimant has come forward with the claim petition seeking compensation for a sum of Rs.15,00,000/-.

4. The owner of the Auto who was arrayed as first respondent was remained ex-parte. The second respondent - Insurance Company filed counter and contended that since the claimant himself is the tortfeasor, he is not entitled to claim any compensation under any of the provisions of the Motor Vehicles Act. It is also contended that the auto was not having any Permit or Fitness Certificate at the relevant time. The claimant was also not having 'Badge endorsement' to drive the auto ”Three wheeler, Transport Vehicle”. Even though, he is having licence to drive the light motor vehicle (LMV) there is a violation of policy condition and that they could not be directed to pay the compensation. Hence, prays to dismiss the claim.

5. Based on the evidences placed on record, the Tribunal in Point No.1 has held that there was an employer - employee relationship between the first respondent and the claimant, hence the first respondent is liable to pay the compensation and also held that on behalf of the first respondent, second respondent is liable to indemnify the first respondent. In

Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.3,71,364/- as compensation to the claimant.

6. Aggrieved over the direction of the Tribunal that the Insurance Company to indemnify the owner of the vehicle, the Insurance Company has come forward with this appeal.

7. M/s. R. Sreevidhya, learned counsel for the Insurance Company has submitted that the claimants have filed their claim petition under Section 166 of the Motor Vehicles Act based on the fault liability. In this case, the claimant himself is a tortfeasor and there is no involvement of third party vehicle, hence as per the Judgment of the Apex Court in ***Ram Khiladi and Others vs. United India Insurace Company Limited and Others [2020 (2) SCC 550]*** the tortfeasor is not entitled to claim any compensation.

8. Per Contra, Mr. S. P. Yuvaraj, learned counsel for the claimant submitted that, it is true that there is no involvement of third party vehicle, however, there is an employer-employee relationship hence, the petition may be converted into claim under the Workmen Compensation

Act. Since, the claimant is the employee of the first respondent, the second respondent is liable to indemnify the first respondent for the compensation to be paid by the first respondent. He has also relied on the Judgment of the Division Bench of this Court in ***Royal Sundaram Alliance Insurance Co., Ltd., vs. Sangeetha and 4 others [2021 (2) TN MAC 15 (DB)]*** and the Judgment of this Court in ***C.M.A.No.109 of 2022, the Branch Manager, Shriram General Insurance Company Limited vs. Kannappan and 2 others dated 28.03.2022*** to support his case, that eventhough, the petition filed under Section 166 of the Motor Vehicles Act, the petition could be converted into the claim made under the Workmen Compensation Act.

9. I have considered the rival submissions made on both sides and also perused the records.

10. In this case, admittedly, the first respondent therein – S.Ravi has filed the First Information Report (FIR) before the police and stated that he has handed over his auto to the claimant herein for rental basis and accordingly, the passenger auto was operated by the claimant herein and he used to pay the monthly rent regularly. Subsequently, on the date of occurrence, the auto was met with an accident due to the negligent act of the

claimant herein. In the claim petition, the claimant has stated that he was working as an employee under the first respondent and there is no evidence produced in support of the same. He has also not given any satisfactory answer for the specific allegation stated by the owner of the vehicle in the First Information Report that, the auto was handed over to him as rental basis. The claimant, in his chief examination, stated that he was directly working as an auto driver and was earning Rs.20,000/- per month. He has nowhere stated in his evidence that he was employed by the first respondent as a driver. Even though, he has stated in the pleadings that he was engaged to drive the auto by the first respondent but in the evidence, he has strangely stated that he was working as an auto driver and was earning Rs.20,000/- per month. This evidence has not been properly appreciated by the Tribunal and has held that the claimant was engaged as an employee by the first respondent. This finding is not based on any evidence, finding that there was an employer - employee relationship between the claimant and the first respondent is liable to be set aside.

11. In the absence of the employer - employee relationship, invoking the Workmen Compensation Act, in this case does not arise at all. The Judgment relied on the by the claimant that conversion into petition

filed from Section 166 of the Motor Vehicle Act to the claim petition under Section 3 of the Workmen Compensation Act, is not applicable to the facts of this case. Admittedly, it is the evidence that the claimant himself is a tortfeasor and as per the Judgment of the Apex Court in ***Ram Khiladi and Others vs. United India Insurance Company Limited and Others*** case cited supra, he is not entitled to claim compensation for his own fault. Hence on this ground also the claim made by the claimant is not sustainable.

12. Under the said circumstances, since there is no employer – employee relationship, and the claimant enter into the shoes of owner of vehicle, since he is a owner of vehicle, he is not entitled to get compensation under no-fault liability. This Court is of the view that the Insurance Company is not liable to pay any compensation and Order directing it to indemnify the first respondent – owner of the auto is liable to be set aside. Accordingly, the appeal filed by the Insurance Company is allowed and the award passed by the Tribunal is liable to be set aside.

13. Accordingly, the Civil Miscellaneous Appeal is allowed. The Judgment and the Decree made in M.C.O.P.No.478 of 2018, dated 31.10.2019, by the Motor Accidents Claims Tribunal, Additional District

Judge, Hosur, is hereby set aside. The Appellant-Insurance Company is permitted to withdraw the award amount, if any, lying in the credit of M.C.O.P.No.478 of 2018, if the award amount has already been deposited by them. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

24.11.2023

ssi
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Additional District Judge,
   Motor Accidents Claims Tribunal,
   Hosur.

2. The Section Officer,
   V.R.Section,
   High Court,
   Chennai.

K.RAJASEKAR,J.

ssi

C.M.A.No.202 of 2021

24.11.2023