



C.M.A(MD)No.1165 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 21.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A(MD)No.1165 of 2012

The Branch Manager,
National Insurance Company Limited,
1754/56, Manojiyappa Street,
Thanjavur Town & Munsif.

... Appellant/5th Respondent

Vs.

1.K.Gurunathan

... Respondent/Petitioner

2.A.Balathandayuthapani

3.D.Chithra

4.Minor Abirami

5.Minor Navin Kumar

... Respondents/Respondents 1-4

*(Minor Respondents 4 & 5 are
represented by their guardian third
respondent herein)*

6.N.Vimala

... Respondent/6th Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order, dated 30.06.2010 made in M.C.O.P.No.547 of 2002 on the file of the Motor



C.M.A(MD)No.1165 of 2012

Accident Claims Tribunal (Principal Subordinate Judge), Thanjavur and
allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.N.Balakrishnan

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.547 of 2002 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Thanjavur, wherein the first respondent herein has filed claim petition for compensation due to the injury sustained in the road accident.

2. The Tribunal has awarded a sum of Rs.8,57,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, by directing the respondents 5 and 6 in the main petition. As against the order passed by the Tribunal, the fifth respondent has filed this Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.



C.M.A(MD)No.1165 of 2012

WEB COPY

4. The brief facts of the petition averments are as follows:

On 14.06.2001 at about 05.00 pm, when the petitioner was riding Yamaha two-wheeler belongs to his friend, who is the son of the sixth respondent while proceeding the over bridge Thanjavur a Kinetic Honda two-wheeler belonging to first respondent driven by one Dhasaradarajan, the husband of the second respondent in a rash and negligent manner colluded with the petitioner's vehicle. Thereby, the petitioner sustained injuries all over the body and the second respondent injured with multiple fractures. The husband of the second respondent died on the spot. The petitioner sustained permanent disability and the petitioner is an Engineering Graduate and he has subjected for surgeries. The sixth respondent vehicle was insured with the fifth respondent. Hence, all the respondents are liable to pay compensation to the petitioner.

5. The brief facts of the counter filed by the first respondent are as follows:

The first respondent sold the Kinetic Honda vehicle to one Dhasaradharajan, who died in the said accident. Therefore, he is not a



C.M.A(MD)No.1165 of 2012

necessary party to the proceedings and he is noway liable to pay compensation to the petitioner. Hence, the petition is liable to be dismissed as against him.

6. The counter filed by the respondents 2 to 4 are as follows:

The second respondent is the wife of the deceased Dhasaradharajan and the accident took place due to the negligent driving of the sixth respondent vehicle (i.e.,) the petitioner. The deceased Dhasaradharajan is noway liable for the accident. The petitioner only with the rash and negligent manner without obeying traffic rules, dashed against the two-wheeler of Dhasaradharajan. Therefore, these respondents are not liable to pay any compensation to the petitioner. An FIR has been registered as against the petitioner and he also admitted the guilty before the Judicial Magistrate. Therefore, the petition is liable to be dismissed.

7. The counter filed by the fifth respondent are as follows:

The Yamaha vehicle in which the petitioner travelled is insured with the respondent. But the insurer of the Kinetic Honda has not been added as a necessary party to the proceedings. The pillion rider in the



C.M.A(MD)No.1165 of 2012

WEB COPY

Yamaha two-wheeler also filed another claim petition and the legal heirs of the deceased Dhasaradharajan have filed M.C.O.P.No.582 of 2001 for claiming compensation and the petitioner has to prove that he possessed valid licence on the date of accident. The petitioner has to claim compensation from the insurer of the other side vehicle, since both the vehicles colluded each other. Due to the negligent driving of the petitioner only the accident was happened. FIR also registered as against this petitioner. Hence, this petitioner is not entitled to get compensation.

8. In order to prove the case of the petitioner, the petitioner has examined P.W.1 to P.W.5 and marked Exhibits P.1 to P.25 and on the side of the respondents, R.W.1 and R.W.2 were examined and marked Exhibits R.1 to R.9.

9. After considering the evidences adduced on both sides, the Tribunal has awarded a sum of Rs.8,57,000/- towards compensation and directed the fifth and sixth respondents jointly to deposit 3/4th amount and directed the respondents 2 to 4 to pay 1/4th amount. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been



C.M.A(MD)No.1165 of 2012

preferred by the fifth respondent on various grounds.

WEB COPY

10. The learned Counsel appearing for the appellant would contend that the accident took place due to the negligence of the petitioner and the FIR also registered as against him. He being a tort-feasor cannot claim any compensation. The petitioner borrowed the vehicle from the owner of the sixth respondent and he was steps into the shoes of owner of the vehicle and he is not a third party. Therefore, he is not entitled to any claim. If at all any compensation claimed by him, he could get compensation from the owner and insurer of the Kinetic Honda, which is the opposite vehicle, but not through this vehicle. Therefore, the petitioner is not entitled to any compensation and the appellant / fifth respondent is not liable to pay any compensation. But the Tribunal failed to consider the above said facts and erroneously awarded compensation by directing the respondents 5 and 6 to pay 1/3rd of the amount. The respondents 2 to 4 are directed to deposit the 1/4th of the amount. Therefore, the order passed by the Tribunal is liable to be set aside by allowing the present Civil Miscellaneous Appeal.



C.M.A(MD)No.1165 of 2012

11. The learned Counsel appearing for the appellant has relied upon the following judgments:

(i) *Ramkhiladi and Another Vs. United India Insurance Company Limited and Another reported in 2020 (1) TN MAC 1 (SC).*

(ii) *Ningamma and Another Vs. United India Insurance Company Limited reported in (2009) 13 SCC 710.*

12. The learned Counsel for the respondent would contend that the claim petition is filed by the respondent / petitioner for compensation of the injuries sustained by him in a road accident. The accident took place due to the negligence on the part of driver of opposite vehicle and the rider of opposite vehicle died on the spot itself. Due to the accident, he sustained grievous injuries and incurred medical expenses and permanently disabled. The Trial Court fixed the liability as against the petitioner 3/4 and fixed the liability 1/4 as against the opposite vehicle driver and awarded a sum of Rs.8,57,000/- and directed the appellant / fifth and sixth respondents a sum of Rs.6,43,750/- and directed the 2 to 4 respondents to pay a sum of Rs.2,44,250/-.



C.M.A(MD)No.1165 of 2012

WEB COPY

13. However, the first respondent / petitioner has filed a petition under Section 163-A of the Motor Vehicles Act and thereby, he need not prove the negligence. But the Trial Court fixed the negligence as against the first respondent / petitioner 3/4 and fixed the liability as against opposite vehicle driver 1/4. Therefore, the finding of the Tribunal in respect of fixing the negligence is not correct, since the petition is filed under Section 163-A of the Motor Vehicles Act.

14. To support his contention, he relied upon the following judgments:

i) United India Insurance Company Limited Vs. Sunil Kumar and Another reported in 2014 (1) SCC 680 and

ii) Shivaji and Another Vs. Divisional Manager, United India Insurance Company Limited and Others in Civil Appeal No.2816 of 2018 on the file of the Hon'ble Supreme Court of India.

15. This Court had heard both sides and perused the materials available on record. Upon hearing both sides and perusing the records, the points for determination in this appeal are as follows:



C.M.A(MD)No.1165 of 2012

WEB COPY

"i) Whether the liability of negligence fixed by the Trial Court is sustainable?

ii) Whether the appeal has to be allowed or not?"

Point No.1:

16. According to the first respondent / petitioner, the petition was filed under Section 163-A of the Motor Vehicles Act and thereby, the petitioner need not prove the negligence. This Court has perused the entire records. On perusal of record, it is observed that, the petition has been filed by the petitioner before the Tribunal under Section 140, 163-A and 166 of the Motor Vehicles Act. The Trial Court has proceeded as if the petition was filed under Section 166 of the Motor Vehicles Act. But the learned Counsel appearing for the first respondent / petitioner would submit that before the Tribunal they filed petition only under Section 163-A of the Motor Vehicles Act and thereby, they need not prove the negligence. Since the petition is filed under Section 163-A of the Motor Vehicles Act and they need not prove the negligence and it is for the first



C.M.A(MD)No.1165 of 2012

respondent / petitioner to decide as against whom he has to make claim.

Therefore, the first respondent / petitioner can opt his option to claim compensation as against both the vehicles.

16.1. To support the contention, they also produced the following judgments:

i) United India Insurance Company Limited Vs. Sunil Kumar and Another reported in 2014 (1) SCC 680 and

ii) Shivaji and Another Vs. Divisional Manager, United India Insurance Company Limited and Others in Civil Appeal No.2816 of 2018 on the file of the Hon'ble Supreme Court of India.

16.2. On careful perusal of the above said judgments it is clear that, once the petition is filed under Section 163-A of the Motor Vehicles Act, the question of negligence would not arise and the petitioner need not prove the negligence and the Insurance Company also cannot raise any plea in respect of the negligence. Since the petition is filed under Section 163-A of the Motor Vehicles Act in this case, the Court need not go into



C.M.A(MD)No.1165 of 2012

the negligence aspect. However, the Tribunal fixed the negligence on the part of the first respondent / petitioner 3/4 and fixed the liability as against the opposite vehicle 1/4. Therefore, the order passed by the Tribunal in respect of the negligence is erroneous and un-sustainable and the same is liable to be set aside. Thus the point is answered.

Point No.2:

17. Before the Tribunal, the Tribunal has awarded a sum of Rs.8,57,000/- with interest at the rate of 7.5% and 3/4 was apportioned as against the petitioner's vehicle and the Insurance Company (i.e.,) respondents 5 and 6 and 1/4 was apportioned as against respondents 2 to 4. This Court in the previous point decided that since the petition is filed under Section 163-A of the Motor Vehicles Act, the petitioner need not prove the negligence and it is admitted fact that, both the vehicles involved in this accident and thereby, it is the option for the petitioner to recover the amount from anyone of the vehicle. As far as the appellant is concerned, he is the Insurance Company of the first respondent /



C.M.A(MD)No.1165 of 2012

petitioner's vehicle and already the Trial Court awarded Rs.8,57,000/- amount and the petitioner himself restricted his claim before the Trial Court for a sum of Rs.6,00,000/- however, the Trial Court awarded a sum of Rs.8,57,000/-. Therefore, it is appropriate to award a sum of Rs.6,00,000/- towards compensation to the petitioner and the Trial Court also already apportioned to the share of appellant / fifth respondent. There is no appeal as against the quantum of the amount and the appeal is only as against the liability. Since the petition was filed under Section 163-A of the Motor Vehicles Act, no question of negligence would arise. The another contention raised by the appellant that the 1st respondent/petitioner is the borrower of the vehicle and he cannot claim any compensation as against the Insurance Company. To support his contention he relied the judgments in (i) ***Ramkhiladi and Another Vs. United India Insurance Company Limited and Another reported in 2020 (1) TN MAC 1 (SC)***. (ii) ***Ningamma and Another Vs. United India Insurance Company Limited reported in (2009) 13 SCC 710***. On a careful perusal of the said judgements, it is clear that the borrower of the vehicle is steps into the shoes of the owner of the vehicle and he cannot claim compensation. In the case on hand, there is no pleadings before the



C.M.A(MD)No.1165 of 2012

trial Court that the petitioner is the borrower of the vehicle and no evidence adduced by the appellant/5th respondent to prove his contention.

In view of the above, the contention of the appellant is not acceptable.

Therefore, the appellant / fifth respondent is liable to pay the amount.

Thus the point is answered.

18. Since already the part of the amount was deposited and the petition was filed under Section 163-A of the Motor Vehicles Act and all the respondents are liable to pay the compensation, the appellant / fifth respondent cannot escape from the liability, as the vehicle was insured with the appellant / fifth respondent on the date of accident. Therefore, though the Tribunal has fixed the negligence both the vehicles, Trial Court has awarded only Rs.6,43,750/- as against this appellant / fifth respondent. The 1st respondent/petitioner in the main petition restricts his claim for Rs.6,00,000/-. Therefore, this Court awarded a sum of Rs.6,00,000/- as restricted by the claimant himself towards compensation with interest at the rate of 9% per annum from the date of petition till realization of the amount. Therefore, in view of the above, it is appropriate to dismiss the appeal. Since all the respondents are liable to pay compensation, the



C.M.A(MD)No.1165 of 2012

petitioner can recover the award amount from any of the respondents through appropriate proceedings as his choice, in accordance with law.

19. With the above said observations, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

21.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

P. DHANABAL, J.

BTR/mpa

To

- 1.The Motor Accident Claims Tribunal
(Principal Subordinate Judge),
Thanjavur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,



C.M.A(MD)No.1165 of 2012

Madurai.
WEB COPY

C.M.A(MD)No.1165 of 2012

21.02.2024