
(2011) 08 MAD CK 0523

In the Madras High Court

Case No : C.R.P. (PD) No. 2022 of 2010 and M.P. No. 1 of 2010

Cholamandalam MS General Insurance Company Ltd

APPELLANT

Vs

Dilshad and N.A. Chandrasekar

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 17, 170, 2

Citation : (2012) 3 TAC 606

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : K.S. Narasimhan, for the Appellant; Amar D. Pandiya, for respondent-1 and S.R. Rajagopal, for respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The present revision is directed against the order of the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai dated 18.03.2010 made in M.P. No. 99 of 2010 in M.C.O.P. No. 5790 of 2004 u/s 170 of the Motor Vehicles Act.

2. The Insurance company, the second Respondent in the M.C.O.P. preferred by the first Respondent herein, has filed the application u/s 170 of the Motor Vehicles Act, seeking permission to contest the claim on all grounds. The said application made in M.P. No. 99 of 2010 was dismissed by the Motor Accident Claims Tribunal, referred to above and the present revision is directed against the said order.

3. Mr. K.S.Narasimhan, learned Counsel for the Petitioner contended that since there was No. proper prosecution by the owner of the vehicle, it was necessitated for the Insurance Company to file an application u/s 170 of the Motor Vehicles Act. While so, the Motor Accident Claims Tribunal, Chennai without looking into the matter in proper perspective, has dismissed the said application and hence the present revision was filed. He has also taken me to the averments made in

the application and the orders passed by the Motor Accident Claims Tribunal, Chennai.

4. However, learned Counsel for the first Respondent submitted that since owner of the vehicle, viz., the second Respondent herein is prosecuting the matter in proper perspective, the presence of the Insurance company may not be necessary.

5. The learned Counsel for the second Respondent also supports the case of the first Respondent.

6. I have carefully considered the submissions made by the learned Counsel for the Petitioner and the learned Counsel for the Respondents.

7. In the affidavit filed in support of the application u/s 170 of the Act, the Petitioner has made the following averments:

"2 I submit that in the above matter, the counsel for 2nd Respondent had cross examined the witnesses and the counsel for the owner had not taken any initiative nor co-operated with the company. When the claimant had closed his evidence, we have instructed the counsel to request the owner to send the driver and instructed the counsel to send a letter to the Ist Respondent which is a regular procedure. In response to the letter the owner was present on 15.12.2009 morning and the counsel for claimant had objected to the examination of the witnesses. The counsel for the owner of the vehicle who was all along requested the counsel for the insurance company to cross examine the witnesses and willing to adopt the cross examination suddenly had declared in the afternoon session that he will not examine the rider-cum-owner and closed his side., without examination of the witness. This Respondent submits that on account of this non-co-operation of the rider, which may give room for suspicion of collusion have No. other alternative except to invoke the provisions of Section 170 of M.V. Act. I am advised to state that this anomalous situation had been dealt by the Apex Court and hence in order to protect the interest of the Insurer, it is just and necessary to grant the permission u/s 170 of the Act, to the Insurer for contesting the claim on all grounds."

8. Thus, the affidavit filed in support of the application u/s 170 of the M.V. Act, it is stated that the owner of the vehicle, viz., the second Respondent herein has not taken any initiative, nor co-operated with the Insurance company. That apart, it is stated that after the first Respondent herein has closed his evidence, the Petitioner herein has instructed the counsel who appears for the owner of the vehicle, viz., second Respondent herein, to request the owner to send the driver. However, there was No. response from the owner. When such was the plea that was taken by the Petitioner in the affidavit filed in support of the application, the Motor Accident Claims Tribunal should have entertained the application, filed by the Petitioner u/s 17 of the Act.

9. In this connection, it would be useful to extract Section 170 of the Motor

Vehicles Act hereunder:

170 Impleading insurer in certain cases: Where in the course of any inquiry, the claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

Section 170 contemplates where in the course of inquiry the Claims Tribunal is satisfied that there is collusion between the person making the claim and the person against whom the claim is made, or the person against whom the claim is made has failed to contest the claim, recording the reasons in writing, the Insurance company can be permitted to contest the claim on all grounds.

10. In the case on hand as stated already, the averments made in the affidavit filed in support of the application u/s 170 of the Motor Vehicles Act, clearly disclosed that the second Respondent, owner of the vehicle is not co-operative nor conducting the matter in proper perspective and hence the Petitioner was constrained to file the application u/s 170 of the Act.

11. The learned Counsel for the Petitioner relied on the decision reported in 2009 (1) TN MAC 474 (SC) (National Insurance Company Ltd. v. Meghji Naran Soratiya and Ors.). Paragraphs 7 and 8 of the said judgment are useful to extract hereunder:

"7 There is a prevalent view that a rethink of Sections 149 and 170 of the Act is necessary. As noticed above, Sections 149 contemplates Claim petitions being filed only against the driver and the owner, and the driver/owner alone contesting the claim on merits. The Insurer is required to satisfy the award made by the Tribunal, even if it is not impleaded as a party to the claim proceedings. But in practice, the Insurer is invariably made a part to the claim proceedings, presumably to avoid any kind of delay. It is also a reality that drivers who are primarily liable seldom contest the proceedings either because of their financial incapacity or because they know that the burden will be borne vicariously by the owner and by the Insurer under the policy of Insurance. It is also a reality that many of the owners do not appear and contest the claim by effectively cross examining the claimant's witnesses and by leading defence evidence. Owners are complacent as they have an Insurance cover and know that the Insurer will bear the liability. In practice, therefore the Insurer has to keep on goading the owner to contest the matter and place necessary evidence. Section 170 provides

that if the driver/owner fail to contest the claim, the Tribunal may permit the Insurer to contest the claim. But what, if the driver/owner file a reply but fail to effectively participate in the proceedings ? What if the counsel for driver/owner do not at all lead defence evidence ? What if there is a well-planned collusion that does not meet the eye ? Where the Insurer does not get permission u/s 170, there is a reasonable chance of the defence to the claim being far from satisfactory. Judicial notice can also be taken of the fact that there have been several false claims by claimants in collusion with the owners/ drivers of vehicle and/or Police and/or Doctors. The question raised is whether it is proper to prohibit the Insurer, which is to bear the liability statutorily and contractually, from participating in the process of adjudication of liability and assessment of compensation ? Or the statute having made the Insurer directly liable to the Claimants, should the Insurer be given a direct right to contest the claim on merits without the technical requirement of permission ? Should the Insurer always be at the mercy of the owner to contest the claim ? These are matters that invite serious consideration, particularly by the Parliament and Law Commission and other stake-holders. Be that as it may.

8. Coming to these cases, we are satisfied that the grant of permission by the Tribunal to the Insurer to contest the proceedings does not call for interference. In the first case, both the driver and owner, though served, remained absent and did not contest the claim. In the second case, the driver was deleted from the array of parties as he could not be served and the owner entered appearance, but did not file statement of objections or contest the claim. The Insurer specifically alleged in the applications u/s 170 that the driver/owner failed to contest the claim and therefore it was seeking permission."

The said judgment squarely applicable to the facts of the present case.

K. VENKATARAMAN, J

12. The Motor Accident Claims Tribunal, Chennai without considering the said aspect, has dismissed the application and hence the said order is liable to be revised in this revision.

13. Taking such a view, the order passed by the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai is liable to be set aside and accordingly set aside. The revision stands allowed. However No. order as to cost. Consequently, connected miscellaneous petition is closed.