
(2010) 06 MAD CK 0287
In the Madras High Court
Case No : C.R.P. (NPD) No. 1437 of 2010

Kalaivani and others

APPELLANT

Vs

R. Sharmila Rangaraj and others

RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21(1)
Motor Vehicles Act, 1988 — Section 140, 166(2)

Citation : (2011) ACJ 2382

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Nalliyappan, for the Appellant;

Judgement

G. Rajasuria, J.—Inveighing the order dated 3.2.2010, passed in M.C.O.P. No. 386 of 2006 by the learned Principal District Judge, Erode, this civil revision petition is focused.

2. Despite printing the name of R4, insurance company, no one has appeared. R1 to R3 were given up on the ground that they remained ex parte before the lower court.

3. The revision petitioners herein who happened to be the claimants in M.C.O.P. No. 386 of 2006 before the Motor Accidents Claims Tribunal, Erode, filed the said claim petition seeking compensation in connection with the death of the husband of the petitioner No. 1 and father of the revision petitioner Nos. 2 and 3 therein. However, the Tribunal after hearing the objection of the insurance company passed order returning the said petition on the ground that it had no jurisdiction to entertain the same, as according to the Tribunal, the petitioners could not establish that they are the permanent residents within the territorial jurisdiction of the said Tribunal.

4. Being aggrieved by and dissatisfied with the said order of the Tribunal, this revision has been filed on various grounds, the gist and kernel of them would run

thus:

Before the Tribunal ample evidence was placed so as to point out that the petitioners were residing within the jurisdiction of the said Tribunal well before the filing of that petition even though the accident had taken place in Nilgiris District. The lower court failed to take note of the VAO Certificate as well as the insurance policy issued by the very same insurance company in favour of the petitioner No. 1.

5. Learned counsel for the petitioners placing reliance on the grounds of revision and also the exhibits marked would develop his argument to the effect that the Tribunal could have very well placing reliance on the VAO Certificate and the insurance policy issued by the insurance company in favour of the revision petitioners herein treating the petitioners as residents within the territorial jurisdiction of the said Tribunal, entertained the M.C.O.P. but that was not done so.

6. The point for consideration is as to whether there is any infirmity or illegality in the order passed by the lower court, in view of the reasons found set out in the grounds of revision?

7. At the outset, I would like to extract hereunder the relevant portion of section 166 (2) of the Motor Vehicles Act:

Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

Even though the Tribunal adverted to the aforesaid provisions, yet it surprisingly took a tangential view as though the petitioners did not prove that they were permanently residing at the address set out in the petition. Oblivious of the circumstances involved in the case, the Tribunal arrived at the conclusion.

8. The learned counsel for the petitioners would convincingly and correctly draw the attention of this court to the VAO Certificate and submit that the Tribunal in matters of accident claims could have very well placed reliance on such document instead of taking a draconian view of the matter. There is nothing to indicate that the Karnam Certificate is a false one or such issuance was actuated by any mala fide intention. Inviting the attention of this court to the insurance policy issued by the very same insurance company in favour of R1, the learned counsel for the petitioners would submit that there is absolutely no rhyme or reason on the part of the insurance company in simply objecting for getting

processed the said M.C.O.P. in the Tribunal at Erode by the petitioner. A bare perusal of the said insurance policy issued by the insurance company in favour of the petitioner No. 1 would display and demonstrate that it was issued on 3.2.2010 citing the petitioner No. 1's address as the one within the jurisdiction of the Tribunal at Erode. No doubt it emerged during the pendency of the M.C.O.P. The matter has to be viewed in a wholesome manner taking into account the very object of the provision, it is a truism to state that Motor Vehicles Act is a beneficial legislation brought about to give immediate succour to the needy persons and the facts placed before the Tribunal should be analysed and understood commensurate with the object of the provisions as found envisaged in the said Act.

9. The learned counsel for the petitioners also cited the decision of the Hon''ble Apex Court in Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others, , an excerpt from which would run thus:

(15) We say so because ordinarily an appellate court shall not, having regard to the provisions contained in sub-section (1) of section 21 of the Code of Civil Procedure, entertain an appeal on the ground of lack of territorial jurisdiction on the part of the court below unless he has been prejudiced thereby. Other respondents did not raise any question of jurisdiction. Although one witness each had been examined on behalf of the truck owner and owner of the bus, neither a question of lack of territorial jurisdiction was raised nor the question of any prejudice had been argued. It is only the respondent No. 1 who raised the question of territorial jurisdiction. However, no prejudice was caused to the appellant by the claim petition being tried by the M.A.C.T. at Nainital.

The said precedent would highlight that the Tribunal, in the absence of any prejudice that would be caused to the insurance company and others, could very well entertain the claim petition.

10. The learned counsel also cited one other precedent of this court in Yasoda v. J. Jahir Hussain, 2008 (2) TLT 385, on the same point, an excerpt from which would run thus:

(9) Admittedly, the third respondent has got office at Erode and as such the petitioners could have filed the claim petition at Erode also on the ground that the third respondent is residing within the jurisdiction of the Tribunal at Erode. Therefore, the Tribunal at Erode has got jurisdiction on account of the residence of the petitioners at Erode as well as on account of the functioning of the office of the third respondent at Erode. Such being the position, I am of the view that the Motor Accidents Claims Tribunal, Erode has got jurisdiction to try the matter and as such it is not necessary to transfer the claim petition from the file of Motor Accidents Claims Tribunal, Erode to the file of Motor Accidents Claims Tribunal, Dharapuram as prayed for by the petitioners.

11. Learned counsel for the petitioners in order to buttress and fortify his contention would also additionally submit that the Branch Office of the insurance

company concerned in this case is situated in Erode only and so they could effectively contest the M.C.O.P. and no prejudice would be caused to them.

12. In the claim petition itself under column No. 23, the petitioners have stated clearly that previously they were residing at Ramanagounden Pudur, Mahadevapuram, Mettupalayam, Coimbatore and that subsequently they started residing at Door No. B 64, Sampath Nagar, Collectorate (Post), Erode-11. Over and above that the Karnam Certificate also buttresses their claim. In such a case, the Claims Tribunal need not have doubted the evidence and also expected that there should have been clinching evidence to prove the permanent residency of the revision petitioners within the jurisdiction of Claims Tribunal, Erode. There is also nothing to suggest that the petitioners had any hidden agenda to choose the Tribunal at Erode as their forum for getting their claim processed. Hence, in these circumstances, the order of the lower court is set aside and the matter is remitted back to the trial court for processing it as per law.