
(1990) 10 MAD CK 0064
In the Madras High Court

Leelavathi Natesan

APPELLANT

Vs

Khaja Mohideen and Others

RESPONDENT

Date of Decision : 05-10-1990

Acts Referred:

Citation : (1996) 2 ACC 83

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Judgement

Ratnam, J.—This appeal has been preferred by the claimant against the award of the Motor Accidents Claims Tribunal (Sub-Court), Tirunelveli, in MACOP. No. 102 of 1982, dismissing the claim petition of the appellant praying that compensation in a sum of Rs. 43,218/- should be awarded to her in respect of an accident that took place on 2.1.1982 involving the taxi owned by her bearing registration No. TNT 6636 insured with the fourth respondent and a mini-bus bearing registration No. APQ 6858 belonging to the first respondent, driven by the second respondent and insured with the third respondent.

2. There is no dispute now that the mini-bus APQ 6858 was driven rashly and negligently by its driver and that was responsible for the accident and had also caused extensive damage to the taxi of the appellant TNT 6636, almost reducing it to a total wreck. The appellant in M.A.C.O.P. No. 102 of 1982 prayed that compensation should be awarded to her under the following heads: (1) Loss of earning between 2.1.1982 to 4.5.1982 : Rs. 5,000/-; (2) Transport charges in respect of the damaged vehicle: Rs. 1,000/-; (3) Damage to the vehicle and repair charges = 35,000/-; and (4) Other expenses - Rs. 2,218/-; totalling to Rs. 43,218/-. The second respondent, viz., the driver of the vehicle remained ex-parte. In the common counter filed by respondents 1 and 3, besides stating that the rashness and negligence of the taxi was responsible for the accident, they had, while accepting that the third respondent had insured the mini-bus in question, disputed the claim of the appellant for payment of compensation and had also pleaded that the quantum of compensation claimed was excessive. In

the counter filed by the fourth respondent, which was impleaded later by an order in I.A. No. 109 of 1983 dated 14.12.1983, it put forward the plea that in respect of the accident that took place on 2.1.1982 involving the taxi of the appellant and the mini-bus of the first respondent, the appellant had received amounts in full discharge of her claims and had also executed a deed of subrogation enabling the fourth respondent to recover amounts from others in respect of the accident and, therefore, the claim made by the appellant suppressing the receipt" of compensation from it and also the execution of the deed of subrogation, cannot be countenanced. In the reply filed by the appellant, she disputed the execution of the deed of subrogation and her giving up the right to claim compensation from others in favour of the fourth respondent. On a consideration of the oral as well as the documentary evidence, the Tribunal found that the appellant had received Rs. 13,000/- from the fourth respondent towards compensation in respect of the accident and had also executed a deed of subrogation on 30.1.1982 and in view of that, the appellant was not entitled to claim any further compensation from respondents 1 to 3 in respect of the same accident. In that view, the claim petition filed by the appellant was dismissed by the Tribunal, the correctness of which is questioned in this Civil Miscellaneous Appeal.

3. Learned Counsel for the appellant contended that the circumstances that the appellant had received Rs. 13,000/- from the fourth respondent pursuant to the insurance cover issued by the fourth respondent in favour of the appellant, would not in any manner preclude the appellant from claiming compensation against the owner of the mini-bus and his insurer, viz., the third respondent. Strong reliance in this connection was also placed on the decision reported in Oriental Insurance Co. Ltd. Vs. Mahableshwar Sinai Salelkar and Others, . On the other hand, learned Counsel for the contesting respondents 1 and 3 submitted that the appellant having executed a deed of subrogation under Exhibit B-2 dated 30.1.1982 after receiving compensation in a sum of Rs. 13,000/- from the fourth respondent in respect of the same accident, cannot be permitted to recover any further amount and if at all, only the fourth respondent could recover amounts from respondents 1 to 3 in respect of the same accident on the strength of the deed of subrogation and in view of the dismissal of the application filed by the fourth respondent in I.A. No. 39 of 1984 on 10.4.1984 to transpose itself as the second claimant, which had become final, no claim could be made by the appellant against respondents 1 to 3 or even-by the fourth respondent against respondents 1 to 3.

4. In respect of the accident that took place on 2.1.1982 in which the taxi of the appellant TNT 6636 was almost completely destroyed, the fourth respondent herein, who was the insurer of the taxi, had paid a sum of Rs. 13,000/- to the appellant. Though in the reply filed by the appellant there was some dispute raised regarding this, the husband of the appellant examined as PW 2 had accepted in his chief-examination that a sum of Rs. 12,990.50 was paid by the fourth respondent to him. This is also supported by the Credit advice issued by

the bank under Exhibit A-9. In view of this, it is not now open to the appellant to dispute the receipt of compensation from the fourth respondent in respect of the damage caused to the taxi, which was covered by the policy issued by the fourth respondent. Besides, it is seen from other documents filed as Exhibits B-1, B-2, B-4 and B-5 that the fourth respondent, as desired by the appellant, had paid to her in full and final settlement of the claim, a sum of Rs. 13,000/- Under Exhibit B-1, the appellant had agreed to accept on the basis of cash loss settlement Rs. 13,000/- in full and final settlement of the claim. Under Exhibit B-2, dated 30.1.1982, the appellant had passed a letter of subrogation in favour of the fourth respondent herein. Thereunder the appellant had agreed to assign, transfer and abandon in favour of the fourth respondent all rights of claims and remedies against any person or persons whomsoever is liable in respect thereof, in consideration of the fourth respondent paying to the appellant a sum of Rs. 13,000/- and the appellant had also agreed to subrogate to the fourth respondent the same rights and remedies that the appellant had in consequence of or arising from the damage to the vehicle TNT 6636 and further had empowered the fourth respondent to take all lawful ways and means to recover the damage from whomsoever it may concerned. Under Exhibit B-4 dated 5.2.1982, the appellant had affirmed the execution of the letter of subrogation under Exhibit B-2 and it is despatched to the Divisional Office and had also given the name and address of the owner of the mini-bus as well as the name of its insurer. In Exhibit B-5 dated 10.2.1.982, the appellant had made a request to the Divisional Office of the fourth respondent to handover the claim cheque of Rs. 13,000/- to one Kasiviswanathan. Though an attempt was made by the husband of the appellant to throw doubts on the contents of the document as well as the signatures of the appellant contained therein, it is significant that the only person who could have disputed her signatures in the aforesaid documents, viz., the appellant had not been examined/The husband of the appellant, in the course of his evidence as PW 2, had stated that his wife is in a position to give evidence and that he cannot give any reason whatever for her non-examination. From this evidence of PW 2, it is clear that the person who could have spoken about the signatures in the aforesaid document not being hers has not been examined, but that her husband examined as PW 2 has attempted to dispute his wife's signature therein. The documents referred to earlier clearly show that the appellant had agreed to receive a sum of Rs. 13,000/- from the fourth respondent in full and final settlement of all her claims against the fourth respondent under the policy of insurance issued by it and had also received the amount and had further executed a letter of subrogation under Exhibit B-2 dated 30.1.1982. In the absence of examination of the appellant, who, according to her husband PW 2, is available for examination but for whose non-examination no reason could be given, it follows that the aforesaid documents have been executed only by the appellant. Among the documents so executed, Exhibit B-2 dated 30.1.1982 has an important bearing upon the claim now made by the appellant. Thereunder, as noticed earlier, the appellant had purported to assign, transfer and abandon in favour of the fourth respondent all rights of claims and

remedies against any person or persons whomsoever is liable in respect of the damage to the taxi bearing registration No. TNT 6636. The further provision in Exhibit B-2 is that the fourth respondent is subrogated to all the rights and remedies of the appellant with reference to the damage to the motor vehicle. In view of this letter of subrogation under Exhibit B-2, if at all any claim for compensation could be made in respect of the damage caused to the taxi belonging to the appellant, such a claim could be made only by the fourth respondent and not by the appellant. It may be that the fourth respondent had insured the vehicle belonging to the appellant and had also paid compensation in a sum of Rs. 13,000/- to the appellant and the present claim of the appellant is one under the provisions of the Motor Vehicles Act against the owner of the minibus and its insurer, viz., the third respondent. Even though the appellant can be considered to have the right to proceed against the insurer of her own vehicle and also against the owner and insurer of the mini-bus which was responsible for the accident in respect of the very same accident, yet, by reason of the execution of the letter of subrogation under Exhibit B-2, on receipt of a sum of Rs. 13,000/- from her own insurer, the appellant had given up her right to claim compensation in respect of the same accident from whomsoever it may be. Having thus received a sum of Rs. 13,000/- from the fourth respondent and executed a letter of subrogation also in favour of the fourth respondent, the appellant cannot be now heard to claim compensation in respect of the same accident against respondents 1 to 3, though this liability is statutory and based upon the tortious act of the vehicle belonging to the first respondent and insured with the third respondent under a separate contract of insurance. It had earlier been noticed how in I.A. No. 38 of 1984 the fourth respondent filed an application to transpose itself as the second claimant and that was dismissed and that order has become final. The resulting position, therefore, is that neither the appellant nor even the fourth respondent can successfully maintain any claim against respondents 1 to 3 for payment of compensation in respect of the accident that took place on 2.1.1982 involving the taxi of the appellant bearing registration No. TNT 6636. It only remains to refer to the decision in Oriental Insurance Co. Ltd. Vs. Mahableshwar Sinai Salelkar and Others, , relied on by the learned Counsel for the appellant. In that case, the bus of the first respondent was involved in an accident with a truck belonging to the third respondent and the appellant Insurance Company had issued a cover in respect of both these vehicles. The owner of the bus had received an amount in full settlement towards the loss or damage caused through the accident to his vehicle and he also agreed to give discharge to the Insurance Company in full and final settlement of all claims present or future. Realising that the damage caused was much more, the owner of the bus claimed further amounts by way of damage from the owner of the truck and also the Insurance Company. The Tribunal awarded, further compensation to the owner of the bus in a sum of Rs. 89,540 and that was questioned by the Insurance Company in the appeal and while pointing out that though the settlement was between the claimant and the Insurance Company where the claim of the claimant was restricted to his insurer

and it had nothing whatever to do with the claim he made in the claim petition from the owner of the truck, yet, the claimant had not given up his claim against the owner of the truck and in the absence of any plea of estoppel, the Insurance Company cannot seek to avoid its liability and its liability was limited by the Court to Rs. 50,000/-. That decision cannot have any application here. Though it may be that the settlement of the claim between the appellant and the fourth respondent related to the cover issued by the fourth respondent to the appellant and that had nothing whatever to do with the claim of the appellant against respondents 1 to 3, yet, it is seen that in this case, the claimant had given up under Exhibit B-2 her right to proceed against any other person for recovery of compensation in respect of this accident. Under those circumstances, the decision relied on by learned Counsel for the appellant cannot have any application at all.

5. Learned Counsel for the contesting respondents also submitted that the claim of the appellant for loss of earning between 2.1.1982 and 4.5.1982 could not be entertained by the Motor Accidents Claims Tribunal functioning under the provisions of the Motor Vehicles Act and the proper remedy of the appellant would only be a civil suit. Reliance in this connection was placed upon the decisions in *Rajkumar v. Sardar Mahendra Singh* 1985 (1) TAC 34 and *General Manager, Kerala State Road Transport Corporation Vs. Saradamma*, . On the other hand learned Counsel for the appellant drew attention to the decision in *Union of India (UOI) Vs. Ratan Lal*, to contend that a narrow interpretation of Section 110-A of the Motor Vehicles Act is not called for and damage would include loss of earnings which would have been earned by the owner of the vehicle but for the accident and such a claim cannot be negated. In the view taken earlier that the appellant had parted away with all her rights to claim compensation from any person whomsoever it may be in favour of the fourth respondent under the terms of Exhibit D-2 dated 30.1.1982 and had constituted the fourth respondent as the subrogee of all her rights, it is unnecessary to go into this aspect of the matter. Thus on a due consideration of the facts and circumstances, it is seen that the Tribunal was quite right in rejecting the claim petition filed by the appellant and that no case is made out to interfere with the award of the Tribunal. The Civil Miscellaneous Appeal is, therefore, dismissed with costs of the third respondent.