(2010) 07 MAD CK 0268

In the Madras High Court

Case No : C.M.A. No. 2461 of 2004 and C.M.P. No. 13646 of 2005

Manager United India Insurance Co. Ltd. — APPELLANT

Vs

M. Kumar — RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 110, 165

Citation : (2010) 07 MAD CK 0268

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; T. Dhanyakumar, for the Respondent

Final Decision : Allowed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the claimant against the award dated 31.03.2003 made in M.C.O.P No. 30 of 2001 by the Motor Accident Claims Tribunal Sub Court, Cheyyar.

2. Background facts in a nutshell are as follows:

The claimant Kumar, is the owner cum driver of the Tata Sumo bearing registration No. TN 09/W 0023 which he used for hiring. While the claimant returning from Thiruvannamalai on 31.08.2000 at about 04.30 A.M., a cyclist who crossed the road suddenly, and in order to avoid from hitting the cyclist, the claimant turned his vehicle and dashed against a Tamarind tree and as a result of which, the vehicle was badly damaged. He filed a claim petition for compensation of Rs. 2,18,416/-. The appellant-Insurance company resisted the claim. On pleadings, the Tribunal framed the following issues:

1.Whether the accident had occurred while the claimant going to tour or not?

2. Whether the appellant-Insurance company is liable to pay compensation? If so, how much?

After considering the oral and documentary evidence, the Tribunal held that the appellant-Insurance company is liable to pay compensation of Rs. 1,96,926/- with interest @ 9% per annum from the date of claim and the details of the same are as follows:

As per Ex.P12 : Rs. 1,650/- As per Ex.P13 : Rs. 78,620/- As per Ex.P14 : Rs. 10,666/- As per Ex.P15 : Rs. 9,990/- As per Ex.P16 : Rs. 88,000/- loss of income for two months : Rs. 8,000/- ------------------ Total : Rs. 1,96,926/- ------------------

Aggrieved by that award, the claimant has filed the present appeal.

3. The learned Counsel appearing for the appellant-Insurance company vehemently contended that the claim petition filed by the claimant against his own insurer is not maintainable and he is not a third party as mentioned in Section 165 of the Motor Vehicles Act. Therefore, the claim petition itself is not maintainable and he has to proceed his claim before appropriate authority. He further stated that the claimant used his vehicle as a tourist car for carrying passengers on hire. Therefore, he is not entitled to claim any compensation. Therefore, the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the claimant contended that the Tribunal has considered all the facts and circumstances of the case and awarded a compensation of Rs. 1,96,926/- which is based on valid materials and evidence. Therefore, the same has to be confirmed.

5. Heard the counsel and perused the documents. On the side of the claimant, P.Ws.1 to 3 were examined and documents Exs.P1 to P17 were marked. On the side of the appellant-Insurance company, no one was examined and no document was marked to substantiate their claim. P.W.1 is the claimant. P.W.2 is one Ramesh, P.W.3 is one Sarathy, who is the passenger of the claimant''s vehicle. Ex.P1 dated 03.09.2000, is the copy of the FIR in Crime No. 289/2000, Ex.P2 dated 05.09.2000, copy of the motor vehicle inspection report, Ex.P3 dated 08.09.2000 deposition of the claimant, Ex.P4 dated 08.09.2000 deposition of one Mohan, Ex.P5 dated 05.09.2000 deposition of the motor vehicle inspector, Ex.P6 dated 03.09.2000 deposition of one chithiravel, Ex.P7 dated 03.09.2000 deposition of one Raja, Ex.P8 dated 03.09.2000 deposition of one Arumuga Udaiyar, Ex.P9-deposition of one Mr. Haribrinjath, who is the doctor of C.M.C Hospital, Ex.P10 dated 08.09.2000 deposition of one Easwari, Ex.P11 dated 03.09.2000 deposition of doctor Suresh David, Ex.P12 dated 07.03.2000 hire receipt, Ex.P13-vehicle''s repair receipt series 13, Ex.P14-vehicle''s spare parts repair receipt series 10, Ex.P15 dated 10.11.2000 repair receipt, Ex.P16 dated 10.11.2000 repair bill from Auto Service Centre, Ex.P17-driving licence of the claimant.

6. It is seen that the claim petition is against the insurer and not against the third party. Therefore, the claim petition is not maintainable. The Division Bench

of this Court in the case of The Oriental Insurance Company Ltd., Tirunelveli Vs. Pandurangan (dead) and others, , has considered a similar issue and taken the view that the claim petition is not maintainable and in Paragraph No. 16, it has been held as follows:

16. C.M.A. No. 123 of 1993 is against the award passed in M.A.C.T.O.P. No. 26 of 1990 filed by the owner of the vehicle. He claimed a compensation of Rs. 80,000 for the damaged caused to his vehicle. According to the learned Counsel for the appellant, the claim made by the owner of the vehicle as against the insurer is not maintainable under law since he had not suffered any legal liability to be indemnified by his insurer. In support of his submission, he relied on a Division Bench decision rendered in National Insurance Co. Ltd. v. A.N. Subramanian in C.M.A. No. 253 of 1991 dated 30.09.1991, wherein one of us is a party (Abdul Hadi, J.). The facts in the said decision are similar to our case. In that case the appeal by the insurance company is against the award of the Tribunal, Thanjavur, in M.A.C.T.O.P. No. 71 of 1989 for a sum of Rs. 50,000 in favour of the claimant, respondent, who claimed in the said original petition, compensation for the damage caused to his lorry TTO 1517 in a road accident that took place at 04.30 a.m., when the respondent himself was driving the said lorry on 30.03.1988. After considering the relevant provisions of the Motor Vehicles Act in that decision, it is said:

...Only tortious claims are made before the Claims Tribunal. Unless some tort is committed by a third party, no party can approach the Claims Tribunal. If the claim is based on contract the aggrieved party can only go before a civil court for any redressal. Even Section 110 of the Act only deals with claims for compensation in respect of accidents involving death of or bodily injury to persons, arising out of the use of motor vehicles or damages to any property of a third party so arising, or both. The present claims is no doubt relating to damages to property alone, but it is not damage to property of a third party, but property of the claimant himself. In such a case, it is obvious from the very section that no Claim can be laid before the said Claims Tribunal. Therefore, the Claims Tribunal below has no jurisdiction to try the above said O.P. No. 71 of 1989. If, according to the claimant, the lorry, which was coming from the opposite direction was at fault and consequently, his lorry got damaged, he can no doubt make a claim in the Tribunal, but only against the driver and owner of the other lorry and the insurer thereof. The decision in Thillai Govindan v. Karuppasamy (1978) 2 MLJ 246, has no application to the present case since there the respondent in the claim petition was rightly the owner of the other offending vehicle and this Court rightly held that Tribunal had jurisdiction.

Since the above referred Division Bench decision is directly on this point and no contra decision cited by the respondent, we are inclined to accept the submission of the learned Counsel for the appellant. Consequently, the award passed in the M.A.C.T.O.P No. 26 of 1990 is set aside and C.M.A. No. 123 of 1993 is allowed. However there will be no order as to costs.

Following the principles laid down in the abovesaid decision, I am of the view that the claim petition filed by the claimant is not maintainable. Therefore, the order of the Tribunal holding that the appellant-Insurance company is liable to pay compensation is set aside. However, liberty is given to the claimant to proceed his claim before appropriate authority in accordance with law. All the original documents filed by the claimant may be returned to the claimant and the period of this appeal before this Court shall be taken into consideration by the appropriate authority, for the purpose of limitation.

7. With the above directions, the Civil Miscellaneous Appeal is allowed. Consequently, C.M.P. No. 13646 of 2005 is closed. No costs.

