(2007) 11 MAD CK 0216

In the Madras High Court

Case No : C.M.A. (MD) No. 1608 of 2006

N. Somasundaram APPELLANT

Vs

Ramachandran Bricks and United India Insurance Company Ltd. RESPONDENT

Date of Decision : 14-11-2007

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

Citation : (2007) 11 MAD CK 0216

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Manohar, for the Appellant; R. Kumara Raja, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This appeal is focussed as against the Judgment and Decree dated 19.04.2005 passed in MCOP. No. 886 of 2000 by

the learned Motor Accidents Claims Tribunal cum the Additional District Judge, Fast Track Court No. I, Madurai.

2. The nitty-gritty of the grounds of appeal as stood exposited from the records would run thus:

The damages awarded for the damage sustained in respect of the vehicle namely Ambassador car in a sum of Rs. 43,723/-, is too low and not in

commensurate with the actual damage suffered by the insured. Whereas the learned Counsel for the Insurance Company would contend that in

view of Section 165 of the Motor Vehicles Act, the very M.C.O.P itself was not tenable as the insured cannot claim damages before the Motor

Accidents Claims Tribunal.

3. The point for consideration is as to whether the M.C.O.P filed by the petitioner

claiming compensation was tenable at all in view of Section 165

of the Motor Vehicles Act?

4. At the outset itself, I would like to refer to the decision of the Division Bench of this Court in The Oriental Insurance Company Ltd., Tirunelveli

Vs. Pandurangan (dead) and others, . An excerpt from it, would run thus:

16. ...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 claim is no doubt relating to damages to property alone, but it is not

damages 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.

5. A mere perusal of it, would show that the cited decision refers to the earlier decision of the Division Bench of this Court and those decisions

unambiguously highlight and spotlight the point that the insured, who is the owner of the vehicle cannot claim compensation for damage to his

vehicle as against his insurer before the Tribunal concerned. At this juncture, I would like to reproduce Section 165 of the Motor Vehicles Act as

under:

165. Claims Tribunal.--(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims

Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of

adjudicating upon claims for compensation in respect of accidents involving the 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.

6. As such, the underlined words supra, would clearly demonstrate and indicate that the Tribunal has got no jurisdiction to decide the dispute

between the insurer and the insured relating to damage caused to insured''s property. I am in respectful agreement with the earlier Division Bench

decisions of this Court. Accordingly, the insured cannot claim compensation from his insurer and if at all, he is having any grievance, he is at liberty

to approach the District forum concerned under the Consumer Protection Act or the civil Court.

7. However, the learned Counsel for the petitioner would make an extempore submission that in view of the aforesaid settled legal proposition, the

petitioner may be permitted to withdraw a sum of Rs. 43,723/- (Rupees Forty Three Thousand Seven Hundred and Twenty Three only) deposited

in the trial Court without prejudice to his right to process his claim further before the appropriate forum. The learned Counsel for the Insurance

Company is having no objection.

8. In the result, this appeal is dismissed as not tenable. However, it is open for the petitioner to approach the appropriate forum excluding the time

taking for prosecuting the M.C.O.P as well as this appeal. No costs.

