

Manoharan Vs. D. Kannan,

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SooperKanoon Citation : sooperkanoon.com/840344

Court : Chennai

Decided On : Aug-31-2006

Reported in : (2006)4MLJ1105

Judge : K. Mohan Ram, J.

Acts : Workmen's Compensation Act, 1923; Motor Vehicles Act, 1998 - Sections 142 and 143

Appeal No. : C.M.A. NPD. No. 1706 of 1999

Appellant : Manoharan

Respondent : D. Kannan, ;national Insurance Company Ltd., Rep. by Its Branch Manager, ;pokuri Haragopal and the N

Advocate for Def. : D. Bhaskaran, Adv. for R2 and ;M. Krishnamoorthy, Adv. for R4

Advocate for Pet/Ap. : R. Muralidharan, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

K. Mohan Ram, J.

1. The claimant in M.A.C.T.O.P. Nos. 30/1992 on the file of the Motor Accidents Claims Tribunal (Addl. Sub-Judge). Chengalpattu, being aggrieved by the dismissal of the petition by the order dated 10.9.1998, has filed the above appeal.

2. The facts necessary for the disposal of the appeal are as follows:

On 11.1.1991, the appellant/claimant was driving the vehicle bearing Registration No. T.M.C.1116 belonging to the first respondent. The lorry bearing Registration No. A.E.E.5679 belonging to the third respondent was driven rashly and negligently by its driver and dashed against the vehicle driven by the appellant and thereby the appellant sustained injuries. The lorry belonging to the first respondent and driven by the appellant had been insured with the second respondent and the third respondent lorry has been insured with the fourth respondent.

3. According to the petitioner, he sustained multiple grievous injuries. In respect of the injuries sustained, he claimed a total compensation of Rs. 1,00,000/-. Before the Tribunal the respondents 1 to 3 remained ex parte. However, the first respondent filed a counter statement denying the averments contained in the claim petition; this vehicle had been insured with the second respondent; the claimant had not suffered any permanent disability and the claim is high and imaginary.

4. The second respondent filed a separate counter affidavit denying his liability to pay any compensation and also the details regarding the accident. It was further contended that the lorry bearing Registration Nos. T.M.C.1116 was not driven rashly and negligently and the same was driven in a normal speed and because the lorry bearing Registration Nos. A.E.E.5679 was parked in the middle of the road without any signal, the lorry bearing Registration Nos. T.M.C.1116 dashed against it and therefore contended that the accident was only due to the negligence of the driver of the lorry bearing Registration Nos. A.E.E.5679.

5. The fourth respondent herein filed a separate counter affidavit contending that the accident was only due to the rash and negligence on the part of the driver of the lorry bearing Registration Nos. T.M.C.1116. The fourth respondent denied his liability to pay compensation. It was further contended that had the claimant/appellant herein driven the vehicle with proper care and caution, the

accident could have been avoided. It has been subsequently pleaded that the claimant/appellant herein pleaded guilty before the Criminal Court on 09.4.1991 and paid a fine of Rs. 2,200/- and therefore he is not entitled to claim any compensation.

6. Before the Tribunal, on the side of the appellant he got himself examined as P.W.1, one Dhandapani was examined as P.W.2. and the Doctor was examined as P.W.3. Exs.A1 to A8 were marked as documents in support of the claim petition. On the side of the respondents, two witnesses were examined and Exs.B1 to B3 were marked. On a consideration of the oral and documentary evidence adduced before the Tribunal, the Tribunal came to a conclusion that since the claimant/appellant had pleaded guilty and paid fine before the Criminal Court he cannot now go back against that and claim that the accident did not take place due to any negligence on his part. After recording that finding, the Tribunal dismissed the claim petition. Being aggrieved by that, claimant/appellant has filed the above appeal.

7. Heard Mr. R. Muralidharan for appellant, Mr. D. Bhaskaran for second respondent and Mr. M. Krishnamoorthy for the fourth respondent.

8. Learned Counsel for the appellant submitted that the Tribunal ought not to have dismissed the claim petition by recording the finding that the appellant was responsible for the accident simply based on the fact that the claimant had pleaded guilty before the Criminal Court. The said submission of the learned Counsel for the appellant is liable to be rejected, in view of the decision reported in 1998 3 LW 521 (Rangaraj@ Sakkararaj and Anr. v. Guruvammal and 2 Ors.). In that decision the learned judge of this Court has observed as follows:

An admission against the interest made by R.W.1 either before the Tribunal or elsewhere has got to be taken into account in rendering a decision on the relative stands taken by the parties in the controversy.

9. In that decision learned Judge has relied upon the decision in 1974 A.C.J P. 215. In the said decision learned Judge has observed as follows:

On the principle laid down in the above judgement, it is not open to the lorry driver to go back from his admission. When once the lorry driver alone had been prosecuted and found guilty, it has to be concluded that the accident occurred only due to the rash and negligent driving of the lorry driver and not otherwise. Hence, I find that the lorry driver alone is responsible for the accident.

10. If the law laid down in the said decision is applied to the facts of this case, the finding of the Trial Court cannot be said to be wrong. Therefore, the contention of the learned Counsel for the appellant is liable to be rejected and accordingly rejected.

11. Learned Counsel further submitted that though the Tribunal has rejected the claim of the appellant made under the Motor Vehicles Act, the Tribunal ought to have considered the claim of the appellant under the provisions of the Workmen's Compensation Act 1923. In support of his contentions he relied upon the decision of the Division bench of this Court reported in 2003 1 LW 113 (The Oriental Insurance Company Ltd. v. Kaliya Pillai and Ors.) wherein it is observed as follows:

However, the insurer's liability is to be determined not only with reference to the provisions under the Motor Vehicles Act, but also with reference to the contract of insurance which would extend to the liability of the insured under the Workmen's Compensation Act. There is a specific finding by the Tribunal that the deceased tractor driver died in the course of his employment. Further, it is not disputed that there was a valid insurance on the date of the accident, and accordingly the insurer was liable to the extent of liability under the provisions of the Motor Vehicles Act, it would be proper to assess the compensation under the Workmen's Compensation Act and award the same in favour of the claimants. On this ground, instead of directing the respondents/claimants to go before the Commissioner for Workmen's Compensation Act, in order to shorten the litigation and also in the interest of justice, we decided to dispose of the appeal by determining the appropriate compensation in favour of the claimants.

12. Per contra the learned Counsel for the second respondent contended that the law laid down in 2003 1 LW 113 (The Oriental Insurance Company Ltd. v. Kaliya

Pillai and Ors.) is no longer good law in view of the decision of the Apex Court reported in 1(2006) ACC 1 (SC) in the case of National Insurance Company v. Mastan and Anr. In the said decision in paragraph 21,27 and 29, the Hon'ble Apex Court has observed as follows:

21. Under the 1998 Act, the driver of the vehicle is liable but he would not be liable in a case arising under the 1923 Act. If the driver of the vehicle has no licence, the insurer would not be liable to indemnify the insured. In a given situation, the Accident Claims Tribunal, having regard to its rights and liabilities vis-a-vis the third person may direct the insurance company to meet the liabilities of the insurer, permitting it to recover the same from the insured. The 1923 Act does not envisage such a situation. Role of Reference by incorporation has limited application. A limited right to defend a claim petition arising under one statute cannot be held to be applicable in a claim petition arising under a different statute unless there exists express provision therefor. Section 143 of the 1998 Act makes the provisions of the 1923 Act applicable only in a case arising out of no fault liability, as contained in Chapter X of the 1998 Act. The provisions of Section 143, therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. A fortiori in a claim arising under Chapter XI, the provisions of the 1923 Act will have no application. A party to a lis, having regard to the different provisions of the two Acts cannot enforce liabilities of the insurer under both the Acts. He has to elect for one.

27. The first respondent having chosen the Forum under the 1923 Act for the purpose of obtaining compensation against his employer cannot now fall back upon the provisions of the 1988 Act, therefor, inasmuch as the procedure laid down under both the Acts are different save and except those which are covered by Section 143 thereof.

29. Mr. P.R. Ramasesh is not correct in contending that both the Acts should be read together. A party suffering an injury or the dependants of the deceased who has died in course of an accident arising out of use of a motor vehicle may have claims under different statutes. But when cause of action arises under different statutes and the claimant elects the Forum under one Act in preference to the

other, he cannot be thereafter permitted to raise a contention which is available to him only in the former.

13. In view of the law laid down by the Apex Court in the above decision, the contention of the learned Counsel for the appellant is not sustainable. The claimant having chosen the forum under Motor Vehicles Act for the purpose of obtaining compensation cannot now fall back upon the provisions of the Workmen's Compensation Act. When the cause of action arises under different statutes and the claimant/appellant elected the forum under the Motor Vehicles Act in preference to the Workmen's Compensation Act, he cannot be thereby permitted to raise contention which is available to him only under the Workmen's Compensation Act.

14. In the result, as there is no merit in the above appeal and accordingly the same is dismissed. But the learned Counsel for the appellant submits that the Tribunal ought to have awarded compensation to the claimant/appellant on the basis of 'no fault liability'. In fact, the appellant in ground No. 12 has contended that the Tribunal ought to have awarded a sum of Rs. 12,000/- under Section 142 of Motor Vehicles Act, 1988 against the respondents 3 and 4 and submits that 'no fault liability' cannot be fastened on a single insurance company. Since two vehicles are involved in the accident, the liability should be apportioned equally against the owners of the two vehicles and consequently upon the respective insurers. Accordingly, it is held that the claimant/appellant herein is entitled for a sum of Rs. 12,000/- under Section 142 of the Motor Vehicles Act, 1998, together with interest at 9% from the date of the claim petition. The said amount together with interest shall be paid by the respondents 2 and 4 in equal proportion and accordingly the said amount shall be deposited by them before the Tribunal to the credit of M.A.C.T. Nos. 30 of 1992 within a period of four weeks from the date of receipt of a copy of this order. However, there will be no order to costs.