The New India Assurance Co. Ltd. Vs K. Rameshkumar (rep. by his father and guardian Krishnamoorthi), V. Rangaraj and S. Arumugam

Court: Madras High Court

Date of Decision: June 17, 2011

Acts Referred: Motor Vehicles Act, 1988 â€" Section 163A, 166, 170
Penal Code, 1860 (IPC) â€" Section 277

Hon'ble Judges: M. Duraiswamy, J; K. Mohan Ram, J

Bench: Division Bench

Advocate: M. Krishnamoorthy, for the Appellant; N. Umapathy, for 1st Repondent, for the Respondent

Final Decision: Allowed

Judgement

M. Duraiswamy, J.
The Insurance Company has challenged the award of Motor Accidents Claims Tribunal (Subordinate

Court),Udumalpet made in M.A.C.T.O.P. No. 295 of 2002. In the above appeal, the claimant is the 1st Respondent, the 2nd Respondent is the

rider of the motor cycle bearing registration No. TN 41 H 4757 and the 3rd Respondent is the owner of the motor cycle. The Insurance Company

has challenged the award, both on the question of negligence a swell as quantum.

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

(i) According to the 1st Respondent/ claimant, on01.05.2002 at about 05.10 p.m. while the 1st Respondent and his friends were standing in

Mettupalayam Kallar bus stop, a Caliber motor cycle bearing registration No. TN 41 H 4757came from North and over took a lorry in a great

speed and dashed against the 1st Respondent in a rash and negligent manner. Immediately, the 2nd Respondent/ driver escaped from the place of

accident. Due to the accident, the 1st Respondent sustained multiple injuries all over his body. According to the 1st Respondent, the accident

occurred only due to the rash and negligent driving of the 2nd Respondent. A case was registered by the Mettupalayam Police in Crime No. 295

of 2002.

(ii) Immediately after the accident, the 1st Respondent''s friends brought him to Ramakrishna Hospital, Coimbatore and he was admitted as an

inpatient and took treatment for about two months from 01.05.2002 to01.07.2002. An operation was done on his neck. The 1st Respondent also

got injured in the skull and hence there was blood clot in the brain. He also suffered another grievous injury on his head and the bone taken from

his hip was transplanted in the neck. The 1st Respondent was kept in the ICU unit for ten days and due to the accident, the 1st Respondent could

not put his signature because of the inactiveness of the body. Even now, the 1st Respondent could not speak properly. He could not move without

others help. The 1st Respondent has become permanently disabled. So far, the 1st Respondent has incurred a sum of Rs. 6,00,000/-towards

medical expenses. The 1st Respondent was practicing as an Advocate since 2001. He earned a sum of Rs. 3,000/per month. He has to spend a

sum of Rs. 9,000/-for another three years towards medical expenses. Considering the above facts, the 1st Respondent claimed a sum of Rs.

25,00,000/-as compensation under various heads.

3. The Appellant/ Insurance Company in their counter had stated that the 1st Respondent was the root cause for the alleged accident and the

accident has not taken place due to the rash and negligent driving of the 2nd Respondent, therefore, the Insurance Company is not liable to pay

any amount to the 1st Respondent. The Appellant also stated that it is a false story put up by the 1st Respondent to shift the negligence on the part

of the 2nd Respondent by influencing the Police Authorities. The Appellant/Insurance Company also disputed the amount spent towards medical

expenses by the 1st Respondent/ claimant.

4. In the additional counter, the Appellant/ Insurance Company had stated that as per the Discharge Summary, the1st Respondent was treated

initially at Nankem Hospital, Coonoor and thereafter brought to Ramakrishna Hospital, Coimbatore on 01.05.2002, which has not been

mentioned in the petition. A complaint was registered only on 03.05.2002by the Police. Though the 1st Respondent was admitted in Ramakrishna

Hospital, Coimbatore on 01.05.2002, the complaint was given to the Police only on 03.05.2002. There was nothing to show that the hospital

authorities have informed the Police on the date of admission itself. Though, the 1st Respondent stated that he is unable to speak due to the

injuries, as per the FIR the 1st Respondent has given a statement before the Police Constable, that too by himself. The Respondents 2 & 3 had

colluded with the 1st Respondent for filing the claim petition. According to the Appellant/ Insurance Company, the accident has not taken place as

alleged by the 1st Respondent. In these circumstances, the Appellant/ Insurance Company prayed for dismissal of the M.A.C.T.O.P.

5. Before the Motor Accidents Claims Tribunal, on the side of the 1st Respondent, 8 witnesses were examined and 35documents, Exs.P.1 to 35

were marked and on the side of the Appellant/ Insurance Company, 2 witnesses were examined and 5 documents, Exs.R.1 to 5 were marked.

6. The Tribunal after taking into consideration the oral and documentary evidences of both sides found that the2nd Respondent/ driver was

negligent in driving the motorcycle and the accident occurred only due to the rash and negligent driving of the 2nd Respondent/ driver and awarded

a total compensation of Rs. 15,00,000/-to the 1st Respondent. Aggrieved over the award passed by the Motor Accidents Claims Tribunal, the

Insurance company has filed the above appeal.

7. Heard Mr. M. Krishnamoorthy, learned Counsel appearing for the Appellant and Mr. N. Umapathy, learned Counsel appearing for the 1st

Respondent.

8. Learned Counsel appearing for the Appellant submitted that the Insurance Company had obtained permission u/s 170 of the Motor Vehicle Act

1988 to take all the defence available to the insurer as per order dated 19.11.2003 in I.A. No. 1716 of 2003 inM.A.C.T.O.P. No. 295 of 2002.

9. Learned Counsel appearing for the Appellant raised the following contentions:

(i) that the Tribunal ought to have dismissed the claim petition since the motor cycle bearing registration No. TN 41 H 4757, which was insured

with the Appellant was not involved in the alleged accident and the motorcycle had been falsely implicated in the impugned accident with the

connivance of the rider and the owner of the said motor cycle.

(ii) that the 1st Respondent had sustained injuries while riding the two wheeler, whereas, the complaint was lodged after two days using the

position of his father who was a Sub-Inspector of Police, as though the claimant had sustained injuries while he was standing near the bus stop.

(iii) that no eye witness was examined on behalf of the claimant to prove the involvement of the insured motorcycle and rash and negligent riding of

the 2nd Respondent/ driver.

(iv) that as per the Wound Certificate and Discharge Summary issued by Ramakrishna Hospital, Coimbatore the1st Respondent/ claimant was

initially treated at Nankem Hospital at Coonoor for the injuries sustained by him while travelling in a motor cycle, however this fact was not

disclosed by the 1st Respondent in the claim petition.

(v) that the insured motor cycle has been falsely implicated in the accident with the connivance and collusion of the rider and owner of the motor

cycle and it is also evident from the fact that the counsel who was appearing for the claimant in the claim petition had also appeared for the rider of

the motorcycle before the criminal Court and filed an admission petition pleading guilty and admitted the offence for allegedly causing the impugned

accident as evident from Exs.B.2 & B.3.

(vi) that the Tribunal failed to analyse the evidence ofR.W.2, who had initially treated the 1st Respondent/claimant in Nankem Hospital, Coonoor,

who had deposed that the claimant came for treatment for the injuries allegedly sustained by him by falling from the motorcycle while he was

travelling at Coonoor-Kothagiriroad.

(vii) that the Tribunal over looked the aspect that the 1st Respondent was an Advocate and his father was a Police Officer and they have used their

position and implicated the insured motor cycle with the collusion of the rider and owner of the motor cycle.

(viii) that the quantum of compensation awarded by the Tribunal is excessive.

10. In support of his contentions the learned Counsel appearing for the Appellant relied upon the following judgments:

(i) 2007 (2) TN MAC 9 (SC) [Oriental Insurance Company Limited v. Meena Variyal and Ors.] wherein the Hon''ble Apex Court held that once

the claimants approach the Tribunal u/s 166 of the Motor Vehicles Act, 1988 they are necessarily to take upon themselves, burden of establishing

the negligence of the driver or owner of the vehicle concerned, but if they proceed u/s 163-A of the Act, the compensation will be awarded in

terms of the Schedule without calling upon the victim or defence to establish any negligence on the part of the owner of the vehicle or the driver of

the vehicle.

(ii) 2004 (2) TN MAC 101 [C.M.A. No. 614 of 1995 - N. Sathidevi and Ors. v. V. Giridharan and Anr. and C.M.A. No. 25 of 1997 - New

India Assurance Company Limited, No. 66, West Bouliward Road, Trichy v. N. Sathideviand Ors.] wherein this Court relying upon the decision

of the Division Bench of this Court reported in 1995 2 MLJ 317[The Managing Director, Than Thai Periyar Transport Corporation Limited,

Villupuram v. Mohammed Jaffer] held that in the case of confession made by the driver before the Criminal Court and when no evidence was let in

to conclude that the vehicle was involved in the accident and the claimants not establishing independently before the Tribunal that the said vehicle

was involved in the accident, the Tribunal is not correct in holding that the accident took place due to the rash and negligence of the driver of the

vehicle.

11. Countering the submissions made by the learned Counsel for the Appellant, the learned Counsel for the Respondent submitted that the 2nd

Respondent/ driver was solely responsible for the accident and the award passed by the Tribunal below is just and proper and therefore, the

appeal filed by the Insurance Company is liable to be rejected.

12. In support of his contentions the learned Counsel appearing for the Respondent relied upon the following judgments:

(i) 2009 (4) L.L.N. 91 [Biecco Lawrie, Ltd., and Anr. v. State of West Bengal and Anr.] wherein the Hon''ble Supreme Court held that mere

presumption of bias cannot be sustained on the sole ground that the officer was a part of the management and where findings of the enquiry officer

were based on evidence and were not perverse, the mere fact that the enquiry was conducted by an officer of the management would not vitiate

the enquiry.

(ii) Gayatri Devi and Others Vs. Shashi Pal Singh, wherein the Hon''ble Apex Court held that plea of fraud must be specifically pleaded and

proved and fraud vitiates all proceedings is general proposition. Butthe plea of fraud cannot be countenanced without any basis.

13. On a careful consideration of the materials available on record and the submissions made by both the learned Counsels, so far as with regard

to the negligent part is concerned, it is not in dispute that the 1st Respondent/ claimant was not examined to prove that the 2nd Respondent was

rash and negligent in driving the motorcycle. The 1st Respondent''s father was examined as P.W.1. However, he was not an eye witness. The

Tribunal relied upon the confession made by the 2nd Respondent before the Criminal Court and found that he was negligent in driving the motor

cycle.

14. In the judgment reported in 2004 (2) TN MAC 101 (cited supra), the learned Single Judge relying upon the judgment reported in 1995 2 MLJ

317 held that the confession made by the driver before a Criminal Court should not be solely taken into consideration for deciding the negligence

aspect in a Motor Accidents Claims petition.

15. The learned Judge also held that the claimant should prove the negligence by examining independent witnesses. Since the learned Judge relied

upon the judgment of the Division Bench of this Court reported in 1995 2 MLJ 317, it is relevant to take into consideration the judgment of the

Division Bench. Therefore, it is relevant to extract the portion which is necessary for deciding the proposition which reads as follows:

On the evidence on record, it is clear that the accident with respect to which the present petition has been filed by the owner of the van was caused

only by the rash and negligent driving of the Appellant''s bus. In fact, no reliance can be placed by the Appellant on the admission made by the

driver of the van in the criminal proceeding that he was guilty of rash and negligent driving. What he had admitted before the Magistrate was only

that first, the van had capsized on account of his rash and negligent driving which would fall u/s 277, I.P.C., even though no third party was

involved in that accident. That will not enable the Appellant to contend that the same would bind the owner of the van so as to prevent the owner

from claiming compensation for the damage caused to the van by the bus. In fact, the accident by which the van has suffered damage is different

and not the same in which the van had capsized.

From the above, it could be seen that the petition was filed by the owner of the van alleging that the accident occurred only due to the rash and

negligent driving of the bus driver. In the criminal case, the driver of the van pleaded guilty of rash and negligent driving. However, what he had

admitted before the Criminal Court was that the van had capsized only on account of his rash and negligent driving, even though no 3rd party was

involved in that accident. Therefore, the owner of the bus cannot contend that the confession made by the driver of the van would bind that owner

of the van so as to prevent the owner from claiming compensation for the damage caused to the van by the bus.

16. The facts of the above referred case show that two different and distinct accidents had occurred (i.e.,) (i)the van had capsized on account of

rash and negligent driving of the van driver and (ii) thereafter the van wash it by the bus and due to that the van suffered damage. Therefore, the

accident by which the van had suffered damage is different and not the same in which the van had capsized. The van driver had confessed before

the Criminal Court that the van had capsized only on account of his rash and negligent driving. But he did not confess that the bus was not negligent

in causing damage to the van.

17. In these circumstances, the Division Bench of this Court held that so far as the damage suffered by the van is concerned, the confession made

by the van driver before criminal Court cannot be taken into consideration. In the case reported in 1995 (2) MLJ 317 (referred supra), the appeal

was filed by the owner of the bus viz., The Managing Director, Than Thai Periyar Transport Corporation Limited, Villupuram. Therefore, the

Division Bench held that the confession made by the van driver before a Criminal Court with regard to the capsizing of the van cannot be relied

upon by the Transport Corporation for deciding the issue of negligence. The principle laid by the Division Bench shall apply only to the facts and

circumstances of that particular case and it cannot be construed as a general proposition of laid down by the Division Bench. Preposition

18. In the case reported in 2004 (2) TN MAC 101, the learned Single Judge held that in the absence of any independent witness with regard to

the negligence, the Tribunal should not solely rely upon the confession made by the driver before a Criminal Court for deciding the negligence. The

proposition laid down by the learned Single Judge is completely different from the proposition laid down by the Division Bench reported in 1995 2

MLJ 317 and therefore the view of the learned Single Judge cannot be said to be laying down the correct proposition of law.

19. In 1975 A.C.J. 215 [Govind Singh and Ors. v. A.S. Kailasam and Anr.] this Court held that the driver, after having admitted before the

Criminal Court that the accident took place due to his rash and negligent driving, cannot contend in a Motor Accidents Claims petition that he did

not drive the car rashly and negligently and he was not to be blamed for the accident. In the said judgment this Court also held that an admission

against his interest, made by the driver either before the Tribunal or elsewhere, has got to be taken into consideration in rendering a decision on the

relative stands taken by the parties in the controversy.

20. In the judgment reported in 1998 3 L.W. 521 [The Managing Director, Pandiyan Roadways Corporation, Bye Pass Road, Madurai V.K.

Narayanan and Ors.] also this Court held that when once the 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 vehicle by the driver and not otherwise and it is not open to the driver to go

back from his admission. Hence, the driver alone is responsible for the accident.

21. In the case on hand, the driver viz., the 2nd Respondent pleaded guilty before the Criminal Court and his confession was relied upon by the

Tribunal while fastening the negligence on him. In the above referred judgments, this Court categorically held that the confession made by the

Tribunal before a Criminal Court can be relied upon by the Motor Accidents Claims Tribunal while fixing his negligence. In the present case, since

the 2nd Respondent/driver pleaded guilty before the Criminal Court, the Tribunal held that the 2nd Respondent was driving the motorcycle in a

rash and negligent manner and was solely responsible for the accident.

22. Though it is clear that the confession made by the driver before a Criminal Court can be relied upon by the Tribunal while considering the issue

of negligence, in the present case, according to statement made by the 1st Respondent to the Doctor, the accident occurred on01.05.2002 while

he was standing near a bus stop whis friends ends. R.W.2, the Doctor attached to Nankem Hospital, Coonoor deposed that the claimant came for

treatment for injuries allegedly sustained by him by falling down from the motor cycle when he was travelling in the Coonoor-Kothagiri road and

that after initial treatment, the claimant was sent to the Coimbatore hospital in an ambulance owned by his hospital. This fact has not been

considered by the Tribunal.

23. That apart, though the alleged accident took place on 01.05.2002, even according to the 1st Respondent/claimant he was admitted at

Ramakrishna Hospital, Coimbatore on the same day and the police complaint was lodged only on 03.05.2002. There was no explanation for the

delay in lodging the police complaint. When the 1st Respondent sustained serious injuries, even the hospital authorities could have lodged a

complaint with the police. This was not done immediately. Further, the criminal case was closed as mistake of fact. Thereafter, the counsel, who

appeared in the Motor Accidents Claims Petition on behalf of the 1st Respondent/ claimant filed a petition to reopen the criminal case and the

same counsel appeared on behalf of the 2nd Respondent/ driver in the criminal case and the 2nd Respondent/ driver pleaded guilty before the

Criminal Court. It is also pertinent to note that at this juncture that the father of the 1st Respondent/ claimant was a Sub-Inspector of Police.

24. In Ex.A.14 Discharge Summary, issued by the Ramakrishna Hospital, Coimbatore, it has been mentioned that the alleged accident occurred

on 01.05.2002 at about 05.10 p.m., in the Coonoor-Kothagiri road while travelling in a motor cycle. Ex.A.14 disproves the case of the 1st

Respondent/ claimant that the accident occurred when he and his friends were standing in Mettupalayam Kallar bus stop. Since the Appellant

disputed the very involvement of the motor cycle insured with it, the 1st Respondent could have examined himself and other eye witnesses to prove

the accident, if it had really happened, but neither the 1st Respondent nor other eye witnesses have been examined and for their non examination

no acceptable explanation is offered.

25. Learned Counsel appearing for the Respondent submitted that since the 1st Respondent was bed ridden, he was not in a position to give

evidence. However, the said contention cannot be accepted for the reason that the 1st Respondent being an Advocate could have filed an

application for appointment of Advocate Commissioner to examine himself in his house itself, which was not done by the 1st Respondent. Not only

this, according to the 1st Respondent, the accident occurred when he was standing in a bus stop with his friends. When his friends are said to have

witnessed the accident, the 1st Respondent could have examined his friends to prove the alleged accident. The 1st Respondent''s father was

examined as P.W.1., but he was not a witness to the accident and therefore there is absolutely no evidence to hold that the driver of the motor

cycle was responsible for the accident.

26. Considering all the discrepancies mentioned above, a strong suspicion is raised with regard to the very accident itself. However, the 1st

Respondent/ claimant has failed to dispel the doubt and suspicion by adducing any acceptable evidence. The Tribunal, without taking into

consideration the aforesaid aspects has found that the 2nd Respondent was negligent and awarded a sum ofRs.15,10,000/-to the 1st Respondent/

claimant as compensation. When the 1st Respondent/ claimant failed to prove that the accident had occurred on 01.05.2002 and that the 2nd

Respondent was negligent in driving the motor cycle, by examining independent witnesses the Tribunal ought not have awarded the compensation.

Therefore, we are of the considered view that the award passed by the Motor Accidents Claims Tribunal is liable to be set aside.

27. In these circumstances, the judgment and decree made in M.A.C.T.O.P. No. 295 of 2002 on the file of the Motor Accidents Claims Tribunal

(Subordinate Judge), Udumalpet are set aside. The civil miscellaneous appeal is allowed. However, there shall be no order as to costs.

28. If the entire compensation amount with accrued interest as awarded by the Tribunal had been already deposited by the Appellant and any

amount had been withdrawn by the 1st Respondent, the Appellant is entitled to withdraw the amount lying in Court deposit to the credit of

M.A.C.T.O.P. No. 295 of 2002 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Udumelpet and the Appellant is also

entitled to proceed against 1st Respondent/ claimant to refund the amount, if any, withdrawn by him.