

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

MACA.No. 2003 of 2015 ()

AGAINST THE AWARD IN OPMV 889/2006 of M.A.C.T.,
NEYYATTINKARA.

APPELLANT(S)/R5:

PRADEEP,
S/O.SUKUMARAN, MAVILA VEEDU, KIDARAKKUZHI,
VENGANOOR, VIZHINJAM VILLAGE.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.PRATHAP PILLAI
SRI.SEBIN THOMAS
SRI.VISHNU BHUVANENDRAN

RESPONDENT(S)/CLAIMANTS/R1-4:

1. STEPHEN, AGED 48 YEARS,
S/O.JOHNSON, NEERNULLITHALA VEEDU, RAMAVARMANCHIRA
RAMAVARMANCHIRA P.O., EDAKODE VILLAGE-680631.

2. ANITHA, AGED 43 YEARS,
W/O.STEPHEN, NEERNULLITHALA VEEDU, RAMAVARMANCHIRA
RAMAVARMANCHIRA P.O., EDAKODE VILLAGE-680631.

3. AJITH, AGED 21 YEARS,
S/O.STEPHEN, NEERNULLITHALA VEEDU, RAMAVARMANCHIRA
RAMAVARMANCHIRA P.O., EDAKODE VILLAGE-680631.

4. MADHAVAN PILLAI,
S/O.VELUPILLAI, SARASWATHY VILAS, T.C.11/364,
AYOORKONAM, PEROORKADA P.O.,
THIRUVANANTHAPURAM-695034.

[THE ADDRESS OF 4TH RESPONDENT IS
CORRECTED AS 'MADHAVAN PILLAI
S/O.VELUPILLAI, SARASWATHI VILASOM, INDIRA NAGAR,
PEROORKADA PO.,
THIRUVANANTHAPURAM - 695 005.' AS PER ORDER
DATED 31.07.2015 IN IA 2679/15.]

5. ANI,
S/O.GEEVANANDAN, ALUVILAPUTHENVEEDU, KALLAMBALAM
THALAYAL DESOM, ATHIANNUR VILLAGE-695121.

6. THE MANAGER,
NEW INDIA ASSURANCE COMPANY LTD., 2ND FLOOR,
SWADESABHIMANI COMPLEX, NEYYATTINKARA-695121.

7. NAZEER, A.R.M.,
S/O.ABDUL RASHEED, PLAVILA PUTHEN VEEDU,
VAZHIMUKKU, BALARAMAPURAM P.O.-695501.

R1-R3 BY ADV. SRI.R.NIKHIL
R1-R3 BY ADV. SMT.P.K.PAMALA
R7 BY ADV. SRI.BABU CHERUKARA
R7 BY ADV. SRI.P.A.SALIM
R7 BY ADV. SMT.ROSAMMA MATHEW
R7 BY ADV. SRI.ANZAR BASHEER
R7 BY ADV. SRI.P.ANTO THOMAS
R7 BY ADV. SMT.AMINA BHANU
R4 BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
R4 BY ADV. SRI.R.JAYAKRISHNAN
R6 BY ADV. SRI.LAL GEORGE
R6 BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 28-09-2015, THE COURT ON 03-11-2015
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No. 2003 of 2015

Dated this the 3rd day of November, 2015

JUDGMENT

Harilal, J.

The appellant is the 5th respondent and the respondents 1 to 3 herein are the claimants in O.P. (MV) No.889/2006 on the files of the Motor Accidents Claims Tribunal, Neyyattinkara. The said claim petition was filed under Sec.166 of the Motor Vehicles Act, claiming compensation, by the respondents 1 to 3 herein, who are the legal heirs of deceased 'Ratheesh', who died in a road traffic accident. According to them, on 23/04/2006 at 2.50 p.m., while the said 'Ratheesh' was riding his bicycle, through Vellarada - Karakonam public road, when he reached at Puthentheri, a motorcycle bearing Registration

No.KL-01/T-7082 ridden by the 2nd respondent, in a rash and negligent manner, came from the same direction, hit the deceased and as a result, he fell down, sustained fatal injuries and later succumbed to the said injuries. At the time of accident, he was a minor aged about 13 years and was studying in 9th standard. The accident occurred solely due to the rash and negligent riding of the motorcycle by the 5th respondent herein. The motorcycle was owned by the appellant and the 7th respondent herein is the registered owner of the said motorcycle. Originally, the 4th respondent was impleaded as the owner-cum-insured of the motorcycle and the 6th respondent was impleaded as the insurer of the motorcycle. Later, they were deleted from the party array as per the order dated 24/3/2012 and thereafter, the appellant herein was impleaded as the 5th respondent, the actual owner in possession of the offending vehicle at the time of accident as per the sale agreement and the 7th respondent was impleaded as the registered owner of

the motorcycle. Thus, the appellant and the 7th respondent are jointly and severally liable to pay compensation to the respondents 1 to 3. The respondents 1 to 3 claimed ₹6 lakhs (Rupees Six lakhs only) as compensation from them.

2. The appellant and the 7th respondent herein were set ex parte. Thereafter, I.A. No.2048/2014 was filed by the appellant to set aside the ex parte order passed against him and to accept his written statement; but, that was also caused to be dismissed due to non-representation.

3. There was no oral evidence from the part of the respondents 1 to 3/claimants; but, marked Exts.A1 to A7 for them. After considering the evidence on record, the Tribunal passed the impugned award directing the appellant herein to pay a sum of Rs.4,56,000/- to the respondents 1 to 3 as compensation. The entitlement of the compensation from the appellant is under challenge in this appeal.

4. Heard the learned counsel for the appellant

and the learned counsel for the respondents.

5. The learned counsel for the appellant vehemently contended that the Tribunal went wrong in fixing the liability on the appellant, who purchased the vehicle after the date of accident. According to the learned counsel, the appellant purchased the offending vehicle from the registered owner Mr. A.R.M. Nazir, the 7th respondent herein, only on 9/7/2006 i.e., almost three months after the accident. Subsequently, the appellant was required to produce the offending vehicle before the police on 20/5/2007 and on that day only he came to know the accident which happened around one year back. During trial, the appellant was set ex parte and though he filed I.A. No. No.2048/2014 to set aside the ex parte order with the written statement stating the said facts, the said I.A., was also dismissed for non-representation. Thus, he could not bring up the actual facts to the notice of the Tribunal.

6. Per contra, the learned counsel for the

respondents advanced arguments to justify the findings, whereby the Tribunal fixed the liability upon the appellant. According to the learned counsel, in view of Sec.2(30) of the M.V. Act, the matter, which requires to be considered is, who was the actual owner in lawful possession of the vehicle. In view of the rival submissions at the Bar, the question to be considered is, whether the Tribunal is justified in fixing the liability to compensate the victim on the appellant, as the owner of the motorcycle at the time of accident?

7. Going by the impugned judgment, it is seen that the appellant was impleaded as the additional 5th respondent as the owner in possession of the motorcycle at the time of the accident. But, he was set ex parte, since he failed to appear before the court, though, notice has been duly served on him. Thus, indisputably, the appellant has failed to contest the matter on merits before the Tribunal, despite the receipt of notice.

8. Going by Sec.2(30) of the M.V. Act, it could be

seen that the 'owner' means and includes not only the person in whose name the motor vehicle stands registered; but also the person in possession of the vehicle under a hire purchase agreement or an agreement of lease or an agreement of hypothecation. It is pertinent to note that the possession under the above agreements are temporary possession only and even if it is temporary, the person in such possession also shall be deemed to be the owner of the vehicle. If that be so, the person in permanent possession by sale can never be excluded from 'owner' and it is implied in the definition under Sec.2(30) of the M.V. Act. Thus, the definition of the word 'owner' is a comprehensive one and it recognizes the person in temporary possession of the vehicle also as owner of the vehicle. The transfer of a motor vehicle is governed and regulated by the provisions of the Sale of Goods Act and hence passing of consideration and delivery of possession of the vehicle makes the transfer complete. Such sale, under the relevant

provisions of the Sale of Goods Act, transfers, permanent possession to the vendee and he can be said to be the owner of the vehicle irrespective of the fact that the vehicle stands registered in the name of another person. Thus, the person who is in actual possession of the vehicle as owner of the vehicle would be liable to pay damage to the injured or the legal heirs of the deceased, irrespective of the fact that the vehicle stands in the name of another person.

9. With the above view, we have examined the contentions raised in this appeal, though the appellant was set ex parte during the trial, for his own fault.

10. Admittedly, at the time of accident, the motorcycle had no insurance coverage and it stands proved that the accident was caused by rash and negligent riding of the motorcycle by the 2nd respondent. Needless to say, the owner of the motorcycle, at the time of accident, is vicariously liable to pay compensation to the respondents 1 to 3. Ext.A2, the certified copy of the charge sheet, refers to

the name of the appellant as the owner in possession of the vehicle at the time of accident. In Ext.A2 charge sheet dated 31/5/2007, it is specifically stated that, after the preparation of mahazar, interim custody of the offending motorcycle was given to the appellant on 'kychit' and the same was sent to the concerned Magistrate's Court. In the said 'kychit' dated 20/5/2007, it is specifically stated that he had purchased the said motorcycle from the 7th respondent under sale receipt. He had undertaken that he will produce the vehicle before the court as and when required. Further, the police sent a notice dated 20/5/2007 requiring the appellant to furnish the name of the person who had ridden the motorcycle at the time of accident and in response to that notice, he had sent a reply notice furnishing the name and particulars of the 5th respondent as the person who had ridden the motorcycle at the time of accident. More importantly, when he was examined as P.W.9 in C.C.No.690/07 before the Magistrate's Court in chief- examination, he

admitted the notice issued by the police and reply notice sent by him admitting the ownership of the motorcycle at the time of accident as Exts.P6 and P7. Further, in re-examination, he admitted that he is not the registered owner of the motorcycle. From the above evidence, it is well discernible that the appellant is the owner in possession of the motorcycle, which caused the death of 'Ratheesh' at the time of accident. It follows that in the absence of insurance coverage, he is liable to pay compensation to the respondents 1 to 3. There is no illegality or impropriety in any of the findings whereby the Tribunal fixed the liability to pay the compensation to the respondents 1 to 3, as owner of the vehicle.

This appeal is devoid of merit and is dismissed accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)
P.S. to Judge

Nan/ //true copy//