

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

MACA.No. 1295 of 2014 ()

AGAINST THE AWARD IN OPMV 1391/2007 of M.A.C.T.,
PERUMBAVOOR DATED 31-07-2012

APPELLANT(S)/1ST RESPONDENT:

P.RAJU AGED 54 YEARS
S/O.PARAMESWARAN, KAILASAM HOUSE, I.R.E COMPANY
ELOOR, NOW RESIDING AT C/O.SOMASUNDARAM
SOMAVIHAR 10TH PIOUS CHURCH, KARIPPAYI ROAD
NJALAKAM KARA, KANAYANNOOR TALUK, THRIKKAKARA P.O.
PIN: 682 021.

BY ADVS.SRI.SANTHOSH G. PRABHU
SRI.A.B.XAVIER
SRI.S.KANNAN
SMT.N.U.DEEPA

RESPONDENT(S)/PETITIONERS AND 2ND RESPONDENT.:

1. RASIYA, AGED 35 YEARS
W/O.NADIRSHA, VELLERKODATHU HOUSE, THAIKKATTUKARA
MUTTAM, ALUVA, 683 101.

2. MEHABOOB ,, AGED 11 YEARS
(MINOR), S/O.NADIRSHA, VELLERKODATHU HOUSE
THAIKKATTUKARA, MUTTAM ALUVA
REPRESENTED BY HIS MOTHER AND NEXT FRIEND RASIYA
W/O.NADIRSHA VELLERKODATHU HOUSE, THAIKKATTUKARA
KUTTAM, ALUVA -683 101.

3. MOHAMMED FAWAS,, AGED 8 YEARS
(MINOR), S/O.NADIRSHA, VELLERKODATHU HOUSE
THAIKKATTUKARA, MUTTAM ALUVA
REPRESENTED BY HIS MOTHER AND NEXT FRIEND RASIYA
W/O.NADIRSHA VELLERKODATHU HOUSE, THAIKKATTUKARA
KUTTAM, ALUVA -683 101.

4. ABDUL KHADER,
S/O.AHAMMEDUNNY, VELLERKODATHU HOUSE, THAIKKATTUKARA
MUTTAM, ALUVA-683 101.

5. SARA BEEVI,
W/O.ABDUL KHADER, VELLERKODATHU HOUSE, THAIKKATTUKARA
MUTTAM, ALUVA-683 101.

6. M.RAVI,
S/O.LALAPPA @ MUNIAPPA, HALLAHALLI VILLAGE
MASTHI HOBILLY, MALOOR TALUK, KOLAR DISTRICT -563 139
KARNATAKA STATE

R1-R4 BY ADV. SRI.K.A.SHAMSUDEEN
R1-R4 BY ADV. SRI.K.J.MOHAMMED ANZAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.**

M.A.C.A.No.1295 of 2014

Dated this the 6th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the first respondent before the Tribunal in O.P.(MV) No.1391/2007. He was impleaded as registered owner of the vehicle involved in the accident. Respondents 1 to 5 herein are the legal heirs of the deceased Shri Nadirsha. He was hit by a motor cycle bearing Reg. No.KL-7/AF 6372 of which the sixth respondent herein was the rider. The deceased was immediately taken to Karothukuzhi Hospital, Aluva and from there to Ernakulam Medical Centre, Palarivattom and was treated there as inpatient. On 2.1.2007 at 3 a.m. he succumbed to the injuries. The Tribunal has granted a total compensation of Rs.7,98,687/-.

The appellant contends that during the relevant period the vehicle was under a higher purchase agreement with M/s. Concord Credit Limited. The said company had seized the vehicle from the

appellant on 19.10.2002 through their collection agent one Shri K.J. Soloman for non payment of instalments. It is submitted that the company should have been made a party before the Tribunal.

2. Before the Tribunal, R.Ws.1 to 3 have been examined. R.W.3 was the Manager of the above company. He was summoned to produce certain documents but he has produced only one letter which is marked as Ext.X1.

3. Learned counsel for the appellants submitted that going by the evidence of R.W.2, Shri Soloman, it can be seen that the re-possession of the vehicle made by him is admitted. We have gone through the evidence of R.Ws.1 to 3. R.W.1's evidence is that the appellant had purchased the vehicle on a hire purchase agreement and through their agent, R.W.2, the company had repossessed it. Ext.B1 is the letter given by Shri Soloman at the time of seizure. He was examined as R.W.2 and he admitted that he was a collection agent of M/s. Concord Credit Limited. According to him, he had handed over the vehicle to M/s. Concord Credit Limited. He also deposed that one week after the

seizure of the motor cycle the appellant had cleared the dues under the hire purchase agreement and taken back the vehicle.

4. Learned counsel for the appellant submitted that no evidence has been produced either by Shri Soloman or R.W.3 to show that he had repaid the instalments and got back the vehicle. We have perused the discussion of evidence of R.W.3 also. R.W.3 had produced Ext.X1 letter. The marking of the same was objected to by the appellant and the appellant had disputed the genuineness of it. Even though the evidence of R.W.3 is there, there is nothing worthwhile to show that the amounts have been repaid by the appellant and the vehicle was given back to him. The Tribunal proceeded on the assumption that the appellant being the registered owner, he is bound to satisfy the award.

5. Learned counsel for the respondents submitted that it is upto to the appellant to settle the dispute between him and M/s. Concord Credit Limited. But herein, the vehicle was not having any insurance also. Therefore, the insurer being absent, the liability will be on the appellant, going by the present award. Therefore, the issue will have to

decided by the Tribunal itself as to whether the appellant's plea that the vehicle was not possessed by him and was repossessed by the company is correct. The issue as to whether the hire purchase agreement was in force, the mutual rights and liabilities of parties under it and the liability to satisfy the award, under the provisions of the Act on the party concerned will have to be decided. It is seen from the judgment that a criminal complaint was there which was a private complaint filed by M/s. Concord Credit Limited against the first respondent for offence under Section 138 of the Negotiable Instruments Act. It appears that the Magistrate entered into a finding with regard to the genuineness of the cheque and the criminal case ended in favour of the appellant. But that also will not solve the problem therein. Therefore, according to us, there should have been a proper attempt to implead the company, viz. M/s. Concord Credit Limited, 2nd Floor, Golden Plaza, Chittoor Road, Ernakulam, Kochi - 18 by the claimants, before the award was passed. It is also the case of the learned counsel for the appellant that even though R.W.3 was directed to produce the files

including the one relating to the agreement executed between the appellant and the said company, nothing was produced before the Tribunal. The relevant clauses in the agreement will assume importance in a matter like this. Therefore, all these aspects can be resolved only if the said company is in the party array before the Tribunal. Otherwise, the claimants will not get an effective adjudication of the matter to enable them to recover the amount also.

6. In that view of the matter, for the purpose of impleading the said company and to adjudicate on the question as to the ownership and possession of the vehicle and also the liability to satisfy the award and the person with whom liability will be there to satisfy the award, we remand the matter. It is made clear that we have not interfered with the finding with regard to the negligence as well as quantum of compensation and those will stand confirmed. The award is set aside only to the limited extent shown above.

The parties will appear before the Tribunal on 25.5.2015. The appellant will file an application for impleading M/s. Concord Credit

Limited as an additional respondent which will be allowed by the Tribunal and they will be issued notice in the matter. Since the claim petition is of the year 2007, every effort will be taken by the Tribunal to dispose of the matter finally, within a period of six months thereafter.

The appeal is allowed as above. The parties shall suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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