IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1957 of 2000

K.Selvaraj. .. Appellant/Petitioner

Vs.

1. Smt.Kantha
   (LR of the deceased
   Viswanathan)
2. Tamil Nadu Industrial Investments
   Corporation Ltd.,
   27, Whites Road, Chennai-600 014.
3. United India Insurance Co., Ltd.,
   24, Whites Road, Chennai-600 014. .. Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 27.01.2000 in M.C.O.P.No.2785 of 1988 on the file of Motor Accidents Claims Tribunal (II Judge, Small Causes Court), Chennai.

For Appellant	:	Mr.A.N.Viswanatha Rao
For R1	:	Not ready in Notice
For R2	:	Mr.L.N.Prakasam
For R3	:	Mr.C.Paranthaman

JUDGMENT

It is a peculiar case, where the claimant has come forward with this appeal, challenging an award, where the owner of the offending vehicle, which indisputedly knocked down a pedestrian alone was made liable.

2. On 20.05.1988, some 28 years from now, the claimant was knocked down by a van bearing no. TM J 9354. There was no insurance cover for the van at the relevant time of the accident. Therefore, the claim petition was laid only against the owner of the vehicle. It is seen from the records that the owner of the vehicle had passed away some time in the month of October, 1988, and his legal representative was impleaded in the December, 1989. The claimant made a claim for Rs.1,25,000/- against which the Tribunal had passed an award of Rs.67,850/- payable with interest at 12% p.a. The case is essentially between the legal representative of the first respondent/the owner of the vehicle and the third respondent, the financial institutions that financed the purchase of the vehicle.

3. Before the Tribunal, the father of the owner of the vehicle has entered the box as PW-1 and had testified that for non-payment of monthly dues to the State Financial Corporation/the third respondent, the third respondent had seized the vehicle, that at that time of the accident the vehicle was in the possession of the third respondent which however, had defaulted in insuring the said vehicle, and inasmuch as the vehicle was not in the possession of the owner of the vehicle, the first respondent, the legal representative of the owner is not liable for the compensation payable. The third respondent, on the other hand had contended before the Tribunal that it had only entered into a hypothecation agreement with the owner of the vehicle that at the time of the accident, the vehicle was only with its owner.

4. During enquiry, the third respondent had produced a communication dated 24.01.1991 whereunder the loan advanced to the owner of the vehicle was foreclosed and based on which a subsequent legal notice was issued through its counsel. The Tribunal even though arrived at the compensation payable, based on the documents made available before it, it came to the conclusion that the owner alone was liable.

5. Before this Court, the learned counsel for the appellant strongly argued that those who represented the estate of the second respondent as well as the State Financial Corporation, both of who are under an obligation to assist the Court, have not produced relevant materials to indicate as to whether in whose possession the vehicle was at the relevant time. The burden according to the learned counsel was on the State Financial Corporation as it could be in a better position to maintain the records for its activities visa-vis its borrower. In other words, the counsel's submission proceeded on the promise that RW-1, the father of the owner of the vehicle shall be believed and his testimony that the vehicle has been seized by the Financial Institution should be accepted.

6. I find it difficult to persuade myself to sustain this submission. As rightly pointed out by the counsel for the Financial Institution, Ex.R3, foreclosure notice was issued only on 24.01.1991, which is some 2½ years after the accident, and hence there could not have been any seizure of the hypothecation before the foreclosure of loan transaction. And, it is seen from the Advocate's notice, which was issued subsequently in March, 1991, the indications are that seizure of the vehicle had taken place after the issuance of foreclosure notice. These are the materials available before this Court today. The records in the case do not indicate that the claimant had moved the Tribunal for production of any specific document that it believed was relevant to lend strength its case.

7. At this distant point of time, this Court, can only arrive at a probable conclusion as guided by the evidence available on record and when so done it only leads to only one probability that the seizure of vehicle could have taken place only after the foreclosure, and no material was forthcoming from the owner of the vehicle to negate this conclusion. It is unfortunate the compensation awarded to the claimant may not be able to be realized but that does not imply that the Court can compel somebody to pay compensation when is not so liable. It is still open to the claimant to move against the owner of the vehicle to realise whatever that is due to be realized under the award.

9. I find no merit in the appeal and the same is dismissed without costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmi
To

The Registrar, Small Causes Court,
Small Causes Court, Chennai.

+ 1 cc to Mr. M.Pragasam, Advocate Sr.72536
+ 1 cc to Mr.C. Paranthaman, Advocate Sr.72618

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GJ(CO)
EU 02.02.17