IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3230 of 2004
and CMP.No.963 of 2005

Karnataka State Financial Corporation,
Tumkur Town,
Tumkur District,
Karnataka State. ... Appellant/3rd Respondent

Vs.

1.Ayyammal
2.Pavayi (minor)
(second respondent represented by next friend and guardian 1st respondent)
3.Naveen

4.United India Insurance Company Ltd.,
Opposite to Nanjundeswara Hotel
P.H.Road, Tumkur Town
Tumkur District,
Karnataka State.

5.Nandhi Borewells
No.1, Karnataka Complex,
P.H.Road, Tumkur Town,
Tumkur District,
Karnataka State.

6.L.Sivakumaraswami
7.K.P.Vasanthakumar
8.V.Nanjappa
9.P.N.Manjunatha
10.B.Mariappa
11.P.Jeenathkumar Jain
12.P.Kumar
13.K.P.R.Prasad ... Respondents/Petitioners and Respondent 1,2,4 & 6 to 13

Prayer : Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 against the award and decree dated 10.02.2003 in M.A.C.T.O.P.No.183 of 1998 on the file of the Motor Accidents Claim Tribunal (Additional District Judge and Fast Track Court No.II), Salem.

For Appellant :Mr.K.P.Hemanth Kumar
for M/s.Aiyar and Dolia

For Respondents :Mr.S.Arunkumar [for R4]

JUDGMENT

The State Transport Corporation that had financed the owner of the offending vehicle for purchasing it, has come forward with this appeal, challenging the liability fastened on it by the Tribunal.

2. The vehicle in question is used for digging bore wells. It originally belonged to the fifth respondent, Nandhi Borewells, who had entered into a hypothecation agreement with the appellant. It appeared that the fifth respondent had defaulted in paying its dues to the appellant as a consequence of which the appellant took over the assets and liabilities of the fifth respondent and transferred the same to the thirteenth respondent (R13). R-13 in turn had entered into a fresh hypothecation agreement on 10.06.1995 and this hypothecation agreement is made available on record as Ext.R-8.

3. Be that as it may, while the vehicle in question under the ownership of thirteen respondent, on 21.04.1996 it was involved in an accident as a consequence of which one of those who was then engaged in digging bore well died. His legal representatives approached the Tribunal with a claim of Rs.3,00,000/- as against which the Tribunal awarded Rs.2,33,400/- payable with interest at 9% per annum. In so doing, the Tribunal made both 13th respondent as well as its financier/appellant (third respondent before the Tribunal) jointly liable to pay the amount it has assessed as just and fair compensation.

4. The vehicle admittedly was not insured at that relevant time, though the petitioner has arrayed fourth respondent as the insurer of the vehicle. The fourth respondent had denied the existence of policy and it has never established that the vehicle was insured at that relevant time.

5. The learned counsel for the appellant/financial Corporation submitted that no where it is contemplated in the hypothecation agreement that the financier would be liable for any liability arising out of the use of the vehicle in public place, and covering such risk would be entirely the responsibility of 13th respondent.

6. In this case, attempts made to serve notice on 13th respondent appeared to have failed. However, 13th respondent is facing a joint liability along with the appellant and he is not going to face any new liability even if the appellant succeeds in this appeal. On the contrary, it may only deny the claimant one of its sources from which it can recover the amount awarded. Since the matter is of the year 2004 and the accident itself is of the year 1996, this Court does not consider very necessary to issue notice to R13. And, even before the Tribunal he remained exparte.

7. Turning to the arguments of the appellant's counsel, I find that there is hardly any material that suggests that it is the joint responsibility of the appellant either to insure the vehicle in question or to ensure that the vehicle is insured. In the circumstances, it may not be appropriate to burden the appellant with any liability. The Tribunal in this context has essentially relied on one stray sentence in the counter of the appellant wherein it has pleaded that it admitted to the ownership of the vehicle in question. However, Ext.R-8 hypothecation agreement that describes the relationship between the appellant and the 13^{th} respondent does not state that the appellant will have such statutory duties which a owner of a vehicle is required to do. Therefore, the alleged admission in the counter must be contextually understood, more particularly in the context of the hypothecation agreement available on the record.

8. In the result, I find enough merit in this appeal for allowing it. Accordingly, the appeal is allowed without costs, and the claimants are still not in a hapless situation and they can realise the compensation amount from the 13^{th} respondent. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accident Claims Tribunal,
(Fast Track Court No.II)
Additional District Court,
Gobichettipalayam.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/S.Aiyar & Dolia, Advocate Sr.5792

CMA.No.3230 of 2004

rsi[co]
srg 13/03/2017