BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 08.08.2017

Pronounced on : 18 .12.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)No.261 of 2014
and
M.P.(MD) No.2 of 2014

The Manager,
Bank of Baroda,
Main Branch,
Erode, Erode District. ... Appellant /3rd Respondent

Vs.

1.Kalarani
2.Dheliban
3.Aravindan ... Respondents 1 to 3/Petitioners
4.Rajini @ Alagesan ... 4th Respondent/1st Respondent
5.Amirtha Kumarasamy ...5th Respondent/2nd Respondent

Prayer : This Civil Miscellaneous appeal is filed under section 173 of Motor Vehicle Act, 1988, to set aside the fair and decretal order dated 29.04.2013 made in M.C.O.P.No.38 of 2010 on the file of the Motor Accidents Claims Tribunal/District Court, Karur.

For Appellant : Mr.Thiagarajan for Mr.Pala Ramasamy

For Respondents : Mr.R.Devaraj, for RR1 to 3
No Appearance for R4
Mr.A.George Stephen Kanikkairaj for R5

JUDGMENT
(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

The respondents 1 to 3 herein are the claimants in M.C.O.P.No.38 of 2010 on the file of the Motor Accidents Claims Tribunal/District Court, Karur.

2.One Rajan, the husband of the first claimant and father of the other two claimants was riding a two wheeler in Karur-Velur Road on 18.08.2009 at about 8.40 p.m. when the Tractor and Trailer belonging to the fifth respondent herein and driven by the fourth respondent herein hit the two wheeler. In the resulting accident, the said Rajan suffered grievous injuries and was admitted to hospital. Notwithstanding the medical treatment provided to him, he died. The claimants came to know that the vehicle owner had hypothecated the vehicle with the Bank of Baroda, Main Branch, Erode and that it was their duty to pay the insurance premium. Therefore, the appellant was impleaded as the third respondent in the claim petition. The Tribunal passed an award dated 29.04.2013 directing the appellant to pay a sum of Rs.13,40,180/- with interest at 7.5% from the date of petition. The Tribunal purported to follow the decision of Division Bench of this Court reported in ***2002(3) MLJ 415 - K.Ramalingam Vs. Parvathi*** for fastening the liability on the bank in whose favour the vehicle stood hypothecated. Contending that the Tribunal misdirected itself in passing an award against the hypothecatee, this appeal has been filed.

3.No doubt, the vehicle in question was hypothecated with the appellant Bank. As per the terms of the hypothecation agreement, it is the appellant Bank which must pay the insurance premium and renew the policy. The learned counsel appearing for the claimants pointed out that in a similar situation, a Division Bench of this Court in the decision reported in ***2002(3) MLJ 415 - K.Ramalingam Vs. Parvathi*** directed the State Bank of India to satisfy the award passed by the Tribunal. It was submitted by respondents 1 to 3 herein that the claimants are not only entitled to the compensation as quantified by the Tribunal, but that the appellant bank alone should be made liable to pay the compensation.

4.The learned counsel would point out that this Court can consider and apply the principle of pay and recovery. In other words, the bank can be directed to satisfy the award and thereafter recover the same from the vehicle owner. It is true that the decision relied on by the Tribunal as well as the learned counsel for the respondents 1 to 3 herein is apposite and squarely applies to the facts of the present case. But, unfortunately for them, the Hon'ble Supreme Court in the decision reported in ***2015 (3) SCC 679 - HDFC Bank Vs. Reshma*** has held otherwise.

5.As per Section 2(30) of the Motor Vehicles Act, 1988, “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement. Thus, a person in possession of the vehicle under the agreement mentioned in the dictionary clause treated as Owner for the purpose of the Act. In the said case also, the Bank had financed the owner for purchase of the vehicle and the owner had entered into hypothecation agreement with the bank. Since the person in possession of the vehicle under the hypothecation agreement has been treated as owner, the Hon'ble Supreme Court held that the liability to satisfy the award is that of the owner and not that of the financier. Accordingly, the direction given by the Tribunal was set aside and the appeal filed by the HDFC limited was allowed. We are of the view that the case on hand is squarely covered by this decision reported in ***2015(3) SCC 679 - HDFC Bank Vs. Reshma.***

6.It may be true that as per the terms of the hypothecation agreement, a duty was cast on the bank to pay the insurance premium and that in this case, it had not done so. It is open to the vehicle owner to proceed against the appellant bank for the said omission or deficiency in service. But, on that ground, the liability to satisfy the award in question cannot be shifted from the shoulder of the owner to that of the financier. In any event, as per Section 146 of the Motor Vehicles Act, the vehicle owner had a duty not to use the motor vehicle in a public place unless it was insured. Section 196 states that driving an uninsured vehicle is an offence. The vehicle owner therefore cannot shirk or abdicate his responsibility. Viewed from any angle, the Tribunal erred in fastening the liability on the appellant Bank. The Tribunal ought to have passed the impugned award against the fifth respondent herein viz., the vehicle owner alone. The appellant is exonerated of all liability. The award dated 29.04.2013 made in M.C.O.P.No.38 of 2010 on the file of the Motor Accidents Claims Tribunal/District Court, Karur is modified. The claimants 1 to 3 herein are entitled to proceed against the fifth respondent alone.

7.The fifth respondent is directed to deposit the entire compensation amount awarded by the Tribunal with interest at the rate of 7.5% annum with costs, to the credit of M.C.O.P.No.38 of 2010 on the file of the Motor Accidents Claims Tribunal/District Court, Karur, within a period of eight weeks from the date of receipt of a copy of this order, if the same has not been deposited already. On such deposit, the claimants are permitted to withdraw their share amount as apportioned by the Tribunal, less the amount already withdrawn by them, if any.

8.It is seen from the records that when the appeal was admitted , interim stay was granted on condition that the appellant deposits a sum of Rs.7 lakhs. The claimants filed application seeking permission for withdrawing half of the amount deposited by the appellant. Therefore, it is made clear that the appellant bank shall be at liberty to recover the said amount only from the fifth respondent herein. It is made clear that the appellant shall not be at liberty to proceed against the claimants for recovery of the said amount already withdrawn by them. It is open to the claimants to proceed to enforce the award amount for recovery of the balance amount from the fifth respondent. The appellant is also at liberty to withdraw the balance amount deposited by them.

9.This civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The District Judge,
Motor Accidents Claims Tribunal, Karur.

2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.R.Devaraj , Advocate in SR No. 93512
+ 1 cc TO Mr.S.Siva Thilakar , Advocate in SR No. 93481

skm/Arul
AE/KK/SAR3/20.03.2018/4P/6C

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