



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED :13.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN  
C.M.A.(MD)No.339 of 2015

WEB COPY

Ravi

... Appellant

Vs.

1.Veerappan  
2.Banumathi  
3.Balasubramanian  
4.Paramasivam  
5.Punniyamoorthy  
6.Dhanakumar  
7.The Branch Manager  
National Insurance Company  
Chennai.

... Respondents

(R-6 set exparte before the Tribunal. Hence notice may be given against R-6)

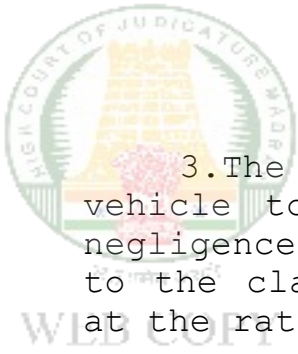
**Prayer:** Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the portion of Order fixing the liability on the part of the appellant and allow the appeal by modifying the judgment in M.C.O.P.No.74 of 2008 by the judgment dated 22.02.2011 by the learned Motor Accident Claims Tribunal/Additional District Judge (FTC-II), Pattukkottai.

|                     |                       |
|---------------------|-----------------------|
| For Appellant       | : Mr.S.Dheenadhayalan |
| R1 to 4             | : No Appearance       |
| For Respondent No.5 | : Mr.A.Anbalagan      |
| R6 Exparte R7       | : Mr.D.Sivaraman      |

JUDGMENT

The respondents 1 to 4 herein are the claimants. Suresh, the son of the respondents 1 and 2 and brother of the respondents 3 and 4 herein, got injured in an accident that took place on 24.05.2007 and died on 31.05.2007. It was a case of head on collision between 2 two wheelers. Claiming compensation for his death, M.C.O.P.No.74 of 2008 was filed before the Motor Accident Claims Tribunal (Fast Track Court No.II), Pattukottai.

2.The vehicle which was ridden by the deceased belonged to Dhanakumar, the sixth respondent herein and was insured with the seventh respondent/Insurance Company. Obviously, claim would not lie against the sixth and seventh respondents herein. Therefore, they were rightly exonerated. The offending vehicle stood in the name of the fifth respondent herein and was ridden by the appellant herein. The appellant herein remained ex-parte before the Tribunal.



3.The fifth respondent herein contended that he had sold the vehicle to the appellant. The Tribunal fixed 50% contributory negligence on the deceased and held that the compensation payable to the claimants stood quantified at Rs.2,66,536/- with interest at the rate of 7.5% per annum.

4.The question was who was liable to pay the said compensation amount. The Tribunal directed the appellant and fifth respondent herein to pay the said amount. Joint and several liability was imposed on them. Aggrieved by the fastening on liability of him, the appellant has filed this Civil Miscellaneous Appeal.

5.The learned counsel for the appellant submitted that even though he remained ex-parte before the Tribunal, he is very much having the right to maintain this appeal challenging the award passed by the Tribunal. This contention of the appellant is certainly right. Merely because the appellant remained exparte before the Court below, that will not take away his right to independently maintain an appeal. Now the question is whether the Tribunal was justified in making the appellant also liable to pay the compensation amount along with the fifth respondent herein. One fact is beyond doubt. The offending vehicle stood only in the fifth respondent herein. In other words, he is the registered owner as recorded in the RC Book on the date of the accident. Section 2(30) of the Motor Vehicles Act defines "Owner" as follows;-

"(30) "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;"

6.It is no doubt true that if the recorded owner can establish to the satisfaction of the Tribunal that he had already sold the vehicle and if the said fact is accepted by the claimants, the person who is owning the vehicle on the date of accident can be made available. In the present case, the appellant herein disputes that he was the owner of the vehicle.

7.According to the claimants, it is the fifth respondent who is the owner of the offending vehicle. The Tribunal in more than one place has given a specific finding that the fifth respondent who is the registered owner has not established that he has sold the vehicle. In Paragraph 14 of the award, the Tribunal has held that the fifth respondent herein has not produced an effective and a valid transfer of ownership of the vehicle. In Paragraph 16 of the award, it is mentioned by the Tribunal that the fifth respondent herein has not proved that he has sold the vehicle to the



appellant herein. After giving such a finding in a categorical manner, the Tribunal has chosen to fasten the liability on the appellant herein also.

8. There is thus no consonance between the discussion and the ultimate finding. The materials on record also would not establish that the fifth respondent herein has sold the vehicle to the appellant. Therefore, the fifth respondent as the registered owner is liable to satisfy the impugned award. The Tribunal erred in fixing the liability on the appellant. The award dated 22.02.2011 made in M.C.O.P.No.74 of 2008 on the file of the learned Motor Accident Claims Tribunal/Additional District Judge (FTC-II), Pattukkottai is accordingly modified. The claimants are entitled to proceed against the fifth respondent herein, Punniyamoorthy. The appellant is exonerated. The Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,  
The Motor Accident Claims Tribunal/  
Additional District Court (FTC-II), Pattukkottai.

COPY TO:

The Record Keeper, Vernacular Section,  
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.S.DEENADHAYALAN, Advocate SR.No.83164

+1cc to M/S.D.SIVARAMAN, Advocate SR.No.82852

tsg

MAS/SV-MMS/SAR1:13.11.2017:3P-5C

**C.M.A. (MD) No.339 of 2015**

**13.10.2017**