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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.445 of 2011

and

M.P. (MD) No.1 of 2011

N.S.Palani

... Appellant

Vs.

1.Sulochana

2.Aravindan

3.Rajkumar @ Jakaiyan

4.N.Raja

5.P.Jayaraman

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 28.11.2008, made in M.C.O.P.No.322 of 2003 on the file of the Sub court, Periyakulam.

For Appellant

: Mr.K.Hema Karthikeyan

For Respondents

: Mr.J.Lawrance for R1 and R2

Mr.A.Haja Mohideen for R3

Mr.K.Appadurai for R4

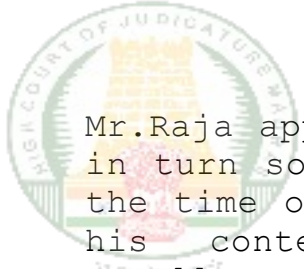
Mr.S.Muniyandi for R5

JUDGMENT

This Civil Miscellaneous Appeal has been filed by a person who was the erstwhile owner of the offending vehicle involved in the accident but whose name continued to be reflected in the Certificate of Registration (RC Book), when the accident took place.

2.One Narayanasamy was riding TVS Champ motor vehicle along with one Subbaraj on Kandamanur to Kadamalikundu main road on 05.09.2002, when the third respondent herein, Rajkumar, riding his TVS Suzuki motor cycle bearing Registration No.TN-57-6663 in a rash and negligent manner dashed against the said TVS Champ. On account of the injuries suffered in the said accident, the said Narayanasamy passed away. His wife and son/the respondents 1 and 2 herein filed M.C.O.P.No.322 of 2003 on the file of the Sub Court, Periyakulam claiming compensation.

3.In paragraph 5 of the claim petition, the claimants fairly stated that the offending vehicle appeared to have been sold by the appellant herein in favour of the other respondents. Unfortunately, there was no insurance cover for the vehicle in question. The appellant pleaded that he had sold the vehicle in favour of Mr.Raja / the fourth respondent herein on 22.04.2002.



Mr.Raja appears to have sold the same in favour of Jayaraman, who in turn sold it to Rajkumar @ Jakaiyan, who rode the vehicle at the time of accident. The appellant herein marked Ex.R.1 to prove his contention that he had already sold the vehicle. That the appellant was not the legal owner of the offending vehicle on the date when the accident took place was established beyond doubt. In fact, it has been conceded by the claimants themselves as evident from the averments in the claim petition. The Court below however directed the appellant herein along with the offending rider Rajkumar @ Jakaiyan to pay a sum of Rs.5,70,756/- as compensation to the claimants with interest by its award dated 28.11.2008.

4.Aggrrieved by the said award, the appellant alone filed this instant appeal. The third respondent herein has not chosen to challenge the award and he remained ex-parte in these proceedings also.

5.Heard the learned counsel for the parties and the learned counsel for the claimants.

6.The learned counsel for the claimants contended that the issue as regards the liability of an erstwhile owner who failed to get his name substituted in the RC book is no longer res integra in view of the decision of the Hon'ble Supreme Court of India reported in **(2001) 8 SCC 748 (T.V.JOSE (Dr.) Vs. CHACKO P.M.)**. This decision was followed by the Division Bench of this Court in **S.N.Shanmugam Vs. Shankarlal Jain (2004 ACJ 1346)**. He also placed reliance on two other decisions rendered by the learned Judges of this Court reported in **2009 (2) TN MAC 392 (Thangaraj Vs. Ameer Hussian & Others)** and **2010 (6) MLJ 543 (M.Duraisamy Vs. K.Balakrishnan and another)**. In the said decisions it has been held that if the transferor did not comply with the formalities of transfer set out in Section 50 of Motor Vehicles Act, 1988 and his name continued to be reflected as the recorded owner in the RC book, the transferor is liable to pay compensation to the claimants, in case the vehicle is involved in any accident. In other words, though he ceased to be the owner of the vehicle on account of having sold the same, he would still remain liable to pay compensation. On the other hand, the learned counsel for the appellant submitted that this Court should rather follow the latest decision of the Honourable Supreme Court reported in **2015 (3) SCC 679 (HDFC Bank Limited Vs. Reshma and Others)**.

7.I carefully considered the rival contentions. It would be useful to refer to the relevant statutory provisions. Section 2 (30) of the Motor Vehicles Act defines 'owner' as follows:

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"(30) "owner" means a person in whose name a motor vehicle stands registered and where such



<https://hcservices.ecports.gov.in/hcservices/>



ownership. While Form 29 is a mere notice, Form 30 is an application. Unless there is an application, there cannot be a name change in the RC Book. Fee is remitted only along with Form 30. It is inconceivable that without "fee", the officials in any RTO office would act.

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8.No doubt, the Hon'ble Supreme Court held in **2001 (8) SCC 748 (T.V.JOSE (Dr.) Vs. CHACKO P.M.)** that though there was transfer of title by payment of consideration and delivery of the vehicle, if the name of the erstwhile owner continued to remain in the Certificate of Registration without being substituted by the purchaser's name, he would remain liable to third parties. This decision was followed in **P.P.Mohamad Vs. K.Rajappan (2008) 17 SCC 624**. In SCOnline, there is an editorial comment which reads as follows :

"The name of the previous owner in RTO records may continue for several reasons, inter alia, inefficiency in RTO office, technical error or discrepancy in any document or mere laxity of the transferee to get the vehicle registered in his name, etc. Once the fact of sale is admitted by fact of payment and its receipt, it is submitted, liability cannot be fastened on the transferor merely because his name continued to appear in RTO records."

9.A similar issue arose for consideration before the Punjab and Haryana High Court in **J.S.Choudhary v.Ritu Devi (2013 ACJ 944)**. The learned Judge referred to an earlier decision of the Hon'ble Supreme Court reported in **2001(8) SCC 133** which held that the transfer of the vehicle in question would be governed by the provisions of Section 19 of Sale of Goods Act. The transfer of ownership of the vehicle is not effected under the provisions of the Motor Vehicles Act. Section 50 of the Motor Vehicles Act simply prescribes the procedure for entering the factum of transfer in the Registration Certificate which is an act posterior to the transfer. The learned Judge proceeded to distinguish T.V.Jose in the following words:

"In my view, the judgment of the Supreme Court must be understood in the context when the subsequent purchaser is not made party. In that case, the registered owner sought impleadment of the transferee before the Supreme Court for the first time. The court rejected the attempt and held as follows :

"We agree with Mr.Iyer that the High Court was not right in holding that the appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of consideration



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and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the appellant still continued to remain liable to third parties as his name continued in the records of R.T.O. as the owner. The appellant could not escape that liability by merely joining Roy Thomas in these appeals. Roy Thomas was not a party either before M.A.C.T or High Court. In these appeals, we cannot and we will not go into the question of inter se liability between the appellant and Roy Thomas. It will be for the appellant to adopt appropriate proceedings against Roy Thomas if, in law, he is entitled to do so.

6.I will read down the law laid down in *Rulda Singh's case*, 2010 ACJ 1242 (P&H), as valid in the situation where a subsequent purchaser is not even made a party. In this case, the subsequent purchaser is a party and the transfer of ownership to such a subsequent purchaser was also an admitted fact. The award could have been, therefore, sustained only against the subsequent purchaser. The liability cast on the transferor of the vehicle, who was not the owner at the time when the accident had taken place, cannot, therefore, be made answerable. It will only be appropriate that the decree is passed against the purchaser, for in the event of recovery, it will become possible for a claimant to even seize the vehicle and recover the amount, if the judgment debtor does not satisfy the award.

7.In all cases, where the plea of ownership is in question, the first attempt must be to see who is the registered owner. If the registered owner denies the ownership and pleads transfer to a third party but the transferee is not made a party, the Tribunal may call upon any party to direct the impleadment and if the evidence shows admission of transfer by the transferee, the Tribunal will be justified in making the transferee alone as liable. If there is a policy of insurance, no matter the fact of transfer is not notified to the insurer, but the insurer is a party in proceedings, the Tribunal will also be justified in making the insurer liable to answer the claim of a third party, by virtue of the provisions under section 157(1) of the Motor Vehicles Act, constituting the deeming provisions for transfer of policy of insurance. If the transferee is impleaded and he denies the transfer but the Tribunal finds prima facie evidence of transfer, such as proof of



delivery, payment of consideration and the contract details, evidence of transfer through the fact of who applied for custody of the vehicle from criminal court, evidence of driver, etc., the Tribunal will again be justified in making the award against the transferee. However, if the issue of transfer itself becomes contentious and the Tribunal is unable to gather materials regarding the transfer, it is better left alone for independent adjudication before appropriate forum. The Tribunal shall, in such case, pass the award against the registered owner, leaving it open to him to adopt recoveries before the appropriate forum, if in law, he is entitled to a course that the Supreme Court adopted in *Dr.T.V.Jose's case, 2001 ACJ 2059 (SC)*.
"

10.I am of the view that the case on hand can be decided in the light of another line of decisions starting from **(2008) 1 SCC 414 (National Insurance Company Limited Vs. Deepa Devi and others)**. In the said case a vehicle was requisitioned by the statutory authorities. It got involved in an accident. But the vehicle owner's name alone remained in the RC Book, as there was no transfer of ownership of the vehicle. But, the Hon'ble Supreme Court of India after observing that the definitional clause set out in Section 2 opened with the expression "In this Act, unless the context otherwise requires" held that if in a given situation the statutory definitions cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view. It also took note of its earlier decision reported in **Rikhi Ram Vs Sukhrania (2003) 3 SCC 97**. It proceeded to hold that it is the State and not the registered owner who should be liable to pay the compensation to the claimants.

11. Another similar case came up before the Supreme Court of India in **(2014) 14 SCC 142 (Purnya Kala Devi Vs. State of Assam and another)**. A vehicle was requisitioned by the Assam Government. It was involved in an accident when it was under requisition. The question was who was the owner and who was liable to pay compensation to the claimant. The High Court was guided by the statutory definition set out under Section 2 (30) of the Motor Vehicles Act and held the owner to be liable. The Hon'ble Supreme Court interpreted the said expression and observed that the High Court failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control. This decision by the three Judges Bench of the Hon'ble Supreme Court has been specifically followed in the decision reported in **2015 (3) SCC 679 (HDFC Bank Limited Vs. Reshma and Others)**. Invoking the theory of possession and control which was applied by quite a few High Courts earlier, the aforesaid two decisions held that the registered owner is not liable.



12. We can visualize a situation. A vehicle is stolen. It remains undetected for quite a period of time. Even the insurance cover lapses in the meanwhile. It then gets involved in an accident. Can the registered owner be held liable? If the definition set out in Section 2 (30) of the Motor Vehicles Act is mechanically applied, one must conclude that the registered owner is liable. But then nothing can be more unfair and inequitable.

13. I desire to make a reference to **Kannan & Vijayaraghavan's** commentary on the Motor Vehicles Laws (Volume 1 of 15th Edition edited by N. Vijayaraghavan, Advocate, Madras High Court at pages 182, 183, 1427 and 1429). The authors have categorically opined that if the original owner can convincingly establish that he has already sold the vehicle and that he ceased to be the owner at the time when the accident took place, he must not be fastened with liability only on the ground that his name is reflected in the Registration Certificate Book and that name transfer has not taken place.

14. As pointed out at the very outset, the claimants themselves have conceded that they are aware of the factum of transfer. Only if the issue of transfer is contentious, the claimant cannot be made to run after unknown persons and therefore the registered owner should be proceeded against. But that is not the factual situation before me.

15. Under these circumstances, as the context otherwise requires, I am inclined to hold that the appellant cannot be made liable. The Tribunal has passed an award not only against the appellant herein but also against the third respondent. The third respondent herein had not chosen to come up on appeal. It is evident from the record that he was not only the actual owner of the offending vehicle on the date of accident but also the offending rider. Therefore, in all fairness, the third respondent alone should be mulcted with the liability. The award passed by the Tribunal is accordingly modified. The same is set aside in so far as the appellant is concerned. The appellant is exonerated. The claimants are entitled to proceed against the third respondent herein for enforcing the award. This Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1. The Subordinate Judge, Periyakulam.

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

+1cc to Mr.A.Haja Mohideen, Advocate Sr.No.81866
+1cc to Mr.K.Appadurai, Advocate Sr.No.81836
+1cc to Mr.V.Venkadasamy, Advocate Sr.No.81828
+1cc to Mr.S.Muniyandi, Advocate Sr.No.81752
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TSG

VB/MR/KKR/SAR2/21.11.2017/8P/8C

**JUDGMENT MADE IN
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and
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