IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3490, 3491 and 3492 of 2006 and
M.P.No.1 + 1 + 1 of 2006

CMA No.3490 of 2006

M/s Canara Bank, Branch office,
Dharmapuri Branch, Dharmapuri. ...Appellant/2nd Respondent

Vs.

1. Radha
2. Minor Thavamani
   Rep by Mother and Natural Guardian Mrs.Radha
3. Minor Chitra
   Rep by Mother and Natural Guardian Mrs.Radha
4. M.Perumal
5. T.Mathaiyan
6. M/s United India Insurance Company Limited,
   Branch Office, RPR Complex, Nethaji Bye Pass Road,
   Dharmapuri Town, Dharmapuri Taluk. ... Respondents

CMA No.3491 of 2006

M/s Canara Bank,
Dharmapuri Branch,
Dharmapuri. ... Appellant/2nd Respondent

Vs.

1. Kumudha
2. Archana Devi
3. Minor Nagamani
   Rep by Mother and Natural Guardian Mrs.Kumutha
4. Minor Krishnamurthy
   Rep by Mother and Natural Guardian Mrs.Kumutha
5. Govindammal
6. Muniappa Naidu
7. T.Mathaiyan
8. M/s United India Insurance Company Limited,
   Branch Office, RPR Complex, Nethaji Bye Pass Road,
   Dharmapuri Town, Dharmapuri Taluk. ... Respondents

CMA No.3492 of 2006
M/s Canara Bank, Branch office,
Dharmapuri Branch, Dharmapuri. ...Appellant/2nd Respondent

Vs.

1. Pallikudathan alias Perumal
2. Thuthiammal
3. Minor Durai
Rep by Father and Natural Guardian Mr.Pallikudathan
4. T.Mathaiyan
5. M/s United India Insurance Company Limited,
Branch Office, RPR Complex, Nethaji Bye Pass Road,
Dharmapuri Town, Dharmapuri Taluk. ... Respondents

Prayer in CMA No.3490 of 2006: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 14.02.2006 passed in M.C.O.P.No.312 of 2003 by the Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri.

Prayer in CMA No.3491 of 2006: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 14.02.2006 passed in M.C.O.P.No.313 of 2003 by the Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri.

Prayer in CMA No.3492 of 2006: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 14.02.2006 passed in M.C.O.P.No.314 of 2003 by the Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri.

For Appellant : Mr.R.Umasuthan (in all appeals)
For Respondents : (CMA 3490/2006)
: Mr.N.Vijayaraghavan for R6
Mr.M.B.Gopalan Associates
Mr.M.Selvam for R1 to R4
No appearance for R5
For Respondents : (CMA 3491/2006)
Mr. M.Selvam for R1 to R6
Mr.B.Raghavan for R8
No appearance for R7
For Respondents : (CMA 3492/2006)
: Mr.M.Selvam for R1 to R3
Mr. Vijayaraghavan for R5
No appearance for R4

COMMON JUDGMENT

The appellant, M/s Canara Bank with its branch office at Dharmapuri have filed the present appeals under Section 173 of the Motor Vehicles Act questioning their liability to pay compensation to the claimants in MCOP Nos.312, 313 and 314 of 2003 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri.

2. The claimants in the above said MCOPs are the legal heirs of the deceased Puddan @ Chinnasamy, Munusamy and Veerakaran. All the three deceased were working as load men under Mr.T.Mathaiyan (5th respondent in CMA 3490/2006, 7th respondent CMA 3491/2006 and 4th respondent in CMA 3492/2006).

3. The case of the claimants is that on 31.12.2002, when the tractor-trailor belonging to T.Mathaiyan were brought to transport sand from the Karthanur river to the land of the said T.Mathaiyan, the three deceased load men, who were extracting sand from the river bed were buried under the same, due to the negligence of the driver of tractor, who had moved the vehicle nearer to a heap of sand causing the accident. The tractor tailor were hypothecated with the present appellant. Though the tractor-trailor were initially insured with M/s United India Insurance Company Limited (6th respondent in CMA No.3490/2006, 8th respondent in CMA No.3491/2006 and 5th respondent in CMA No.3492/2006), the same was not in force on the date of accident.

4. The tribunal while exonerating the insurance company from paying compensation to the claimant, has opined that the vehicle being under hypothecation agreement with the Canara Bank, appellant herein, they are also equally liable to pay compensation along with the owner of the tractor and trailer on the ground of negligence to renew the insurance policy.

5. The appellant Canara Bank, Dharmapuri branch has preferred these appeals stating that the name of the financier in the registration certificate alone would not be decisive for determining the owner of the vehicle. The learned counsel for the appellant Bank would contend that it is well settled that in case of a motor vehicle which is subjected to a hire purchase agreement, the financier cannot be ordinarily treated as the owners or even co-owner. He would contend that the very concept of insurance being ensured by the financier is only to protect the fund provided by the financier to purchase the vehicle.

6. The possession and control of the vehicle is wholly with the owner and it is he, who decides or is morally bound to decide whether the vehicle can be plied without a valid insurance cover. The insurance premium comprises of two components one for the damage to the vehicle and another for third party damage including loss of life. The first component is optional but in the best interest of the financier as his fund is covered while the second component is mandatory and it is the primary duty of the insurer to ensure that it is paid regularly and the policy is in force. The owner is also responsible if the vehicle is plied without a valid third party insurance as he would be primarily responsible for any damage caused to a third person as defined in the statute.

7. Placing reliance on the decisions in (i) Godavari Finance Company Vs. Degala Satyanarayanamma and others reported in (2008) 5 Supreme Court Cases 107 (ii) HDFC Bank Limited Vs. Reshma and others reported in (2015) 3 Supreme Court Cases 679, the learned counsel appearing for the appellant contended that the owner of a vehicle as defined in 2(3) of the Motor Vehicles Act, 1988 is a person in whose name the motor vehicle stands registered and in case the vehicle is subject to hire purchase agreement or hypothecation against the person in possession of the vehicle under the agreement is the owner.

8. The tribunal has based its decision as if the financier would step into the shoes of the owner in such instance of non-renewal of policy. The fact that the vehicle was plied without insurance which is in violation of statutory provision contained in Section 147 of the Motor Vehicles Act, 1988 cannot in any manner be attributed to the financier as the entire possession and control of the vehicle vested with the owner and the tribunal had definitely erred in concluding that it was for the financier to have ensured that the policy gets renewed by reminding the owner of the vehicle which itself is unsustainable. As contended by the appellant's counsel, just because the bank should renew the policy, when there is a failure by the owner to do the same, will not fasten a statutory liability on the financier to pay the compensation to the third party as the vehicle is not on the road by the financier or at the instance of the financier. In the instant case, surprisingly, the hypothecation agreement has not been filed by both the appellant and the owner of the vehicle. However, it is well settled that it would be inapposite to interpret the contract of hypothecation in a different way to fasten the liability on the financier.

9. It is also relevant to extract paragraph No. 24 of the decision in HDFC Bank Limited Vs. Reshma and others reported in (2015) 3 Supreme Court Cases 679, wherein it is held thus.

" In Purnya Kala Devi , a three-Judge Bench has categorically held that the person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted to the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control. There is reference to Section 146 of the Act that no person shall use or cause or allow any other person to use a motor vehicle in a public place without insurance as that is the mandatory statutory requirement under the 1988 Act. In the instant case, the predecessor-in-interest of the appellant, Centurion Bank, was the registered owner along with respondent no.2. The respondent no. 2 was in control and possession of the vehicle. He had taken the vehicle from the dealer without paying the full premium to the insurance company and thereby getting the vehicle insured. The High Court has erroneously opined that the financier had the responsibility to get the vehicle insured, if the borrower failed to insure it. The said term in the hypothecation agreement does not convey that the appellant financier had become the owner and was in control and possession of the vehicle. It was the absolute fault of the respondent no.2 to take the vehicle from the dealer without full payment of the insurance. Nothing has been brought on record that this fact was known to the appellant financier or it was done in collusion with the financier. When the intention of the legislature is quite clear to the effect, a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there is evidence on record that the respondent no.2, without the insurance plied the vehicle in violation of the statutory provision contained in Section 146 of the 1988 Act, the High Court could not have mulcted the liability on the financier. The appreciation by the learned Single Judge in appeal, both in fact and law, is wholly unsustainable.

10. After careful analysis of the principles laid down in both the cases referred to by the learned counsel for the appellant, it is held that the person, who is in possession and control of the vehicle as per the hypothecation agreement, is the owner of the vehicle, and having plied the vehicle fully knowing that the insurance policy was not in force is singly responsible for the liability arising out of the accident.

11. In the result,

(i) The appeals in CMA No.3491/2006, 3492/2006 and 3493/2006 are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(ii) The appellant is exonerated from the liability to pay compensation to the claimants.

(iii) The owner of the tractor-trailor (T.Mathaiyan) shall deposit the entire compensation amounts in all claim petitions as per the Award passed in three MCOP Nos.312/2003, 313/2003 and 314/2003 respectively on the file of the Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri, within four weeks from the date of receipt of a copy of this order and on such deposit being made him, the claimants are at liberty to withdraw the same, after following due process of law.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal,Dharmapuri.

2.The Section officer
VR Section
High Court, Madras 104.

CMA.No.3490, 3491 and
3492 of 2006 and
M.P.No.1 + 1 + 1 of 2006

RK(CO)
SP(06/02/2020)