IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :08.02.2019

Judgment Pronounced on : 04.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.684 of 2011
and
MP.No.1 of 2011

State Bank of India,
represented by its Manager,
Nangavalli Branch,
Nangavalli Post, Mettur Taluk,
Salem District. ... Appellant/3rd Respondent

Versus

1.M.Chellammal
... 1st Respondent/Petitioner

2.M.Semmalai

3.C.Maadhu ...2 & 3 Respondents/1 & 2 Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.12.2009 passed in MCOP.No.88 of 2004,on the file of the Motor Accident Claims Tribunal, Mettur (In the Court of Sub-Judge of Mettur)

For Appellant : Mr.Imayavaramban
for M/s.Ramalingam & Asso.

For Respondents : Mr.T.Sai Krishnan (for R1)

: No Appearance - R2 & R3

JUDGMENT

The third respondent/State Bank of India in the claim petition in MCOP No. 88 of 2004 is the appellant herein, who solely preferred this appeal as against the award of the Tribunal, directing the respondents 1 and 3 in the claim petition to pay Rs.2,23,200/-

2.The case of the claimant/first respondent in the claim petition is that on 22.12.2001 at about 10.00 am., the deceased Dhanasekaran @ Mariappan came from his grandmother's house to go to Tharamangalam. While he was walking at the left side of the road near Arunachalampudur at Tharamangalam, a Tractor bearing Registration No.TN-27-T-9311 came from the rear side of the deceased with high speed, rashly and negligently, hit the claimant's son Dhanasekaran @ Mariappan. Due to the accident, the claimant's son died on the spot.

2.1. The second respondent herein/first respondent in the claim petition is the driver of the offending vehicle - Tractor. The third respondent herein/second respondent in the claim petition is the owner of the above said vehicle. The appellant/third respondent in the claim petition is the Bank, who is the financier for hire purchase of the above said Tractor. Hence, all the respondents are vicariously liable to pay the compensation.

3.The appellant/Bank, before the Tribunal filed a counter statement stating that they have advanced loan against the Tractor, hence, they are only a hire purchase holder and not owner of the Tractor, which involved in the said accident. Therefore, the appellant/Bank is not liable to pay compensation as alleged by the claimant in the claim petition and they are not necessary party to be impleaded as third respondent in the proceedings.

4.Before the Tribunal, the claimant herself examined as PW.1 and one occurrence witness examined as PW.2 and Exs.P1 to 5 were marked. On behalf of the respondents, RW1 to 5 were examined. RW1 was the driver of the vehicle and RW4 was the Assistant Manager of State Bank of India and RW5 was the Senior Assistant working in National Insurance Company, Mettur and Court documents were marked as Exs.X1 & X2.

5.On consideration of both the oral and documentary evidence, the Tribunal has held that the factum and the manner of the accident, rash and negligent driving on the part of the driver and the owner of the vehicle are proved and has held that R1 & R2 being the driver and owner are jointly and severally liable to pay the compensation. It also to be stated that it is the specific case of the third respondent/Bank, the appellant herein that on the date of the accident, there is no insurance policy coverage. In this regard, RW5 was examined from the insurance company and documents produced by them were marked as Ex.X1 & X2.

6.Before the tribunal, the appellant Bank has contended that on the date of the accident, there was no policy coverage for the vehicle. The appellant herein being the Bank which has granted hypothecated loan is not owner of the vehicle and as such they cannot be fastened with the liability. The Tribunal has over ruled the objection and held that the Bank, which has hypothicated the vehicle is liable to pay the compensation. Hence, the appeal.

7.Points for determination:

i) Whether the appellant being the bank, which has financed the offending vehicle under hypothecation, is liable to pay the compensation amount to the claimant.

8.The learned counsel for the appellant Bank relied on the decision of the Honourable Supreme Court in the case of HDFC Bank Limited vs. Kumari Reshma reported in Manu/SC/1094/2014, wherein it was held that the borrower had initial obligation to insure the vehicle, but without insurance, the borrower plied the vehicle on road and met with an accident. If vehicle is insured, the insurer is bound to indemnify unless there was violation of terms of policy.

9.Per contra, the learned counsel for the claimant would contend that as per the hypothecation agreement it is the duty of the Bank to pay the premium or additional premium towards insurance coverage for the hypothecated vehicle but they did not pay the same, hence, the Tribunal mulcted the bank with liability.

10.Taking into consideration the decision of the Supreme Court rendered above, wherein it is categorically held that merely because the vehicle was under hypothecation with the appellant/Bank, they cannot be treated as owner of the vehicle under the Motor vehicles Act. Further, it is the duty of the borrower of the vehicle to insure the vehicle and their failure to insure the vehicle will not render the appellant bank responsible to pay compensation to the claimant. Further, as per Section 2 (30) of The Motor Vehicles Act, a 'owner' means a person in whose name a motor vehicle stands registered and in relation to a motor vehicle, which is the subject matter 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.

11.In the light of the above factual facts and circumstances of the case the appellant/Bank is exonerated from the liability and award passed by the Tribunal is liable to be set aside to the limited extent of exonerating the appellant bank from paying the compensation amount to the claimant. It is open to the claimant to recover the award amount from the vehicle owner in a manner known to law.

12.For the foregoing reasons, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

klt

To

1.The Motor Accident Claims Tribunal, Mettur
(In the Court of Sub-Judge of Mettur).

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+2cc to Mr.Ramalingam & Associates, Advocate, S.R.No. 56230
+1cc to Mr.Sai & Bharath, Advocate, S.R.No. 56081

C.M.A.No.684 of 2011

and
MP.No.1 of 2011

CA(CO)
GN(16/10/2019)