

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2099 of 2018

Smt.Kalai Arasi ... Appellant/1st Respondent

Vs

1.Smt.Radha

2.Gowtham

3.Barani Kumar

(R2 & R3 declared as major and their mother and next friend Smt.Radha (R1) discharged fro guardianship vide Court Order dated 20.03.2019 made in C.M.P.No.21893 & 21899/2018 in C.M.A.No.2099/2018)

4.Smt.Pushparani

5.V.Palanisamy

6.Penta Cars Company Ltd.,
Avinasi Road,
Peelamedu,
Coimbatore.

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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.06.2016 made in M.C.O.P.No.2006 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court-II, Salem.

For Appellant : Mr.C.Prabakaran
For RR1 to 3 : Mr.Paneerselvam

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant challenging the award dated 15.06.2016 made in M.C.O.P.No.2006 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court-II, Salem.

2.The brief facts is as follows:

On 01.03.2010 at about 17.30 hours, when the deceased Karthik was walking on the extreme left side of the road i.e.Vadugapatty - Tiruchengode road, following all traffic rules and regulations in a careful manner, when the deceased was nearing Vadugapatty Mani thottam, at that time a Maruthi Car bearing Reg.No.TN-07-7515 was came from the same direction, which was driven by its driver in a rash and negligent manner without following any traffic rules and regulations with high speed, resulting in the driver of the car had lost his control hit against the deceased Karthik and caused the accident. He sustained grievous injuries on his vital parts of the body and he died on the spot itself. Thus the respondents 1 to 4/claimants 1 to 4 who are the legal heirs of the deceased claimed a sum of Rs.15,00,000/- as compensation for the death of one Karthik who died in the accident.

3.The learned counsel for the appellant contended that the Tribunal failed to note that the accident took place on 01.03.2010, but the appellant has sold the vehicle on 08.01.2009 to the 6th respondent under exchange and who in turn sold the vehicle to the 7th respondent on 06.04.2009. Therefore on the date of accident the petitioner i.e. the appellant herein is not the owner of the vehicle and the liability cannot be fastened on this appellant. Though the R.C. Book stands in the name of the appellant but the physical possession of the vehicle was with

the 7th respondent at the time of accident and he is the only owner in view of Section 2(30) of the Motor Vehicles Act. Hence the liability fixed on the appellant is liable to be set aside. Further contended that the appellant had given the delivery note and also Transfer Order Form to the 6th respondent on 08.01.2009 and physical possession of the vehicle also been handed over to the 6th respondent. From the said moment the appellant ceases to be the owner of the vehicle and hence the respondents 6 and 7 who are the subsequent owners of the vehicle failed to effect the name transfer in their favour. The appellant further contended that the Tribunal has not appreciated the fact that there was change of ownership and that has been very much proved by documentary evidence under Ex.B1 to Ex.B6. The Tribunal failed to note that under the sale of goods act once the goods was delivered, from the moment of delivery the transferor ceases to be the owner of the goods under Section 30 of the Sale of Goods Act, 1930. Therefore the impugned award liable to be set aside.

4. On the side of the respondent it is contended that the appellant herein is responsible for the liability since the ownership is not changed till date. The respondent relied upon the following judgement "2018 (3) SCC" in the case of "Naveen Kumar Vs Vijay Kumar and Others" is extracted hereunder:

"e. Motor Vehicles Act, 1988 - Ss.2(30), 50, 166, 168, 173, 146(1) and 196 - Motor accident - Liability of "owner" of offending vehicle - "Owner" of vehicle - who is - Definition of "owner" under S. 2(30) of MV Act, 1988 - Scope of - Continuance of name of registered owner of vehicle in records of Registering Authority despite sale/transfer of vehicle by him - Situation distinguished where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation or is under requisition". सत्यमेव जयते

"In present case, vehicle involved in accident in question was prior to accident sold to R-2 herein by its registered owner i.e. R-1 herein- Thereafter, successive transfers with respect to that vehicle were made in favour of various person including appellant herein (who as per High Court was the last admitted owner of vehicle) - Despite those transfers, name of

registered owner i.e. R-1 continued to be reflected in records of Registering Authority as owner of vehicle - On such facts (taking into account also that vehicle was uninsured on date of accident), following the mandate of law under S.2(30) of MV Act, 1988, held, it was R-1 who was liable to compensate in the manner and not appellant - Judgment passed by High Court reversed accordingly - Interpretation of Statutes- Subsidiary Rules - Construction in favour of advancement of object of the statute - Adoption of - Motor Vehicles Act, 1939, S.2 (19) "

5. Heard Mr.C.Prabakaran, learned counsel appearing for the appellant and Mr.Paneerselvam, learned counsel appearing for the respondents 1 to 3 and perused all the materials available on record.

6. On perusal of the records, it is observed that the Tribunal has given a finding that it is a rash and negligent driving on the part of the Maruthi Car while challenging the liability before the Tribunal. The petitioner as well as the respondents have appreciated the documents Ex.P7 to Ex.P10. On the respondents side Exs.R1 to R6 were marked the evidence of R.W.1 is that the appellant herein has exchanged her car on 08.01.2009 to the Penta Car Company. Further the said Company also sold the car to one Sivaprakasam. But the registration certificate of the said car stands in the name of the appellant herein. The accident has occurred on 01.03.2010. There was no change in the ownership on the date of accident. Hence, the Tribunal fixing liability on the respondents 1, 2 & 4 and dismissed the liability as against the 3rd respondent. The grievance of the appellant herein is that the Tribunal has exonerated the Penta Car Company/6th respondent herein on whom the liability has to be fixed, since he is the first person with whom the appellant made exchange of the car. There is no other reason was stated by the appellant herein for fixing liability on Penta Car Company. Since the ownership of the vehicle stands in the name of the appellant as on date, fixing liability on the appellant is proper. There is no error warranting interference by this Court.

7.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.8,73,000/- awarded by the Tribunal as compensation to the respondents 1 to 4/claimants 1 to 4, along with interest and costs is confirmed. No costs.

8.The appellant, 5th and 7th respondents are directed to deposit the award amount along with interest and costs, jointly and severally, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2006 of 2010. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

mtl
To

1.The Additional District and Sessions Judge - II,
Motor Accidents Claims Tribunal,
Salem.

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

+1 cc to Mr.C.Prabakaran Advocate sr68132
+1 cc to Mr.S.Panner Selvam Advocate sr67421

C.M.A.No.2099 of 2018

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