IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. Nos. 2944 & 2947 of 2018
& Cros.Obj. No. 10 of 2019

M/s. National Insurance Company Ltd
Divisional Office 2,
Ramakrishna Road,
Salem – 636 007 ...Appellant in both CMAs
..1st respondent in Cros.Obj.10/19 /
2nd Respondent

Vs.

Rani ..1st respondent in CMA 2944/18 &
1st Cross. Objr./Petitioner

Minor Latha
(minor rep. By 1st respondent)
..2nd respondent/in CMA 2944/18
& 2nd Cross. Objr./Petitioner

Jotheeswari ..3rd respondent in CMA 2944/18
..2nd respondent in Cros.Obj.10/19
..4th respondent in CMA 2947/18
/ 1st Respondent

Saraswathi ..1st respondent in CMA 2947/18 /Petitioner

Thayagarajan ..2nd respondent in CMA 2947/18 /Petitioner

Divya ..3rd respondent in CMA 2947/18 /Petitioner

Prayer: Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.08.2017 made in M.C.O.P.Nos. 522,521 of 2014 respectively on the file of Special District Court, Motor Accident Claims Tribunal, Salem.

Cross Objection 10 of 2019: Cross Objection filed to enhance the compensation awarded by the Motor Accident Claims

Tribunal/Special Judge, District Court, Salem, dated 22/08/2017 made in MCOP. No. 522 of 2014.

For Appellant (in both) : Mr.S.Vadivel

For Cross Objectors and respondents 1 and 2 in CMA 2944/18 and respondents 1 to 3 in CMA 2947/18 : Mr.S.P.Yuvaraj

COMMON JUDGMENT
(Delivered by M.M.Sundresh,J.)

As both the appeals involve the same accident, they have been taken up together for consideration and disposed of by a common judgment.

2. C.M.A.Nos. 2947 and 2944 of 2018 are filed challenging the liability alone. Respondents 1 and 2 in C.M.A.No.2944 of 2018 have filed Cros.Obj.No. 10 of 2019.

3. The Tribunal has awarded a sum of Rs.34,24,054/- for the claimants in M.C.O.P.No.521 of 2014 and Rs.7,97,000/- for the claimants in M.C.O.P. No. 522 of 2014. The claimants in M.C.O.P. No. 521 of 2014 wife and children of the deceased, who was co-driver and the claimants in M.C.O.P. No.522 of 2014 are the legal heirs of the occupant.

4. Learned counsel appearing for the appellant in both the cases restricted his submission on one issue. It is submitted by him that even the FIR registered would show that the deceased in M.C.O.P. No. 521 of 2014 being the Special Sub-Inspector of Police at the relevant point of time was owning a vehicle, though the registration stands in the name of somebody else, namely, the fourth respondent before us by name Jotheeswari, and if that is the case, the very liability itself cannot be fastened on the appellant in both the cases.

5. Placing reliance on the recent judgment of the Hon'ble Supreme Court in Naveen Kumar v. Vijay Kumar reported in 2018 (1) TN MAC 157(SC), the learned counsel for the respondents/cross objector submits that under the Motor Vehicles Act, 1988, only a person in whose name the vehicle stands

registered has to be treated as the owner. If that is the position, both the appeals will have to be dismissed.

6. Insofar as the cross-objector is concerned, it is submitted that no amount has been awarded by the Tribunal towards the future income.

7. Learned counsel appearing for the appellant would submit that in that case, the cross-objectors are only entitled to 40% and not 50%.

8. The legal issues sought to be raised have been held in favour of the respondents by the judgment referred supra, wherein, it has been held as follows:-

> "11. The subsequent decision of a Bench of three judges of this Court in HDFC Bank Limited v Reshma (supra) involved an agreement of hypothecation. The Tribunal held the financier of the vehicle to jointly and severally liable together with the owner on the ground that it was under an obligation to ensure that the borrower had not neglected to get the vehicle insured. The High Court had dismissed the appeal filed by the Bank against the order of the Tribunal holding it liable together with the owner. In the appeal before this Court, Justice Dipak Misra (as the learned Chief Justice then was) adverted during the course of the judgment to the principles laid down by this Court in several earlier decisions, including of this Court [Mohan Benefit (P) Ltd. v. Kachraji Raymalji, (1997) 9 SCC 103 : 1997 SCC (Cri) 610; Rajasthan SRTC v. Kailash Nath Kothari, (1997) 7 SCC 481 ; National Insurance Co. Ltd. v. Deepa Devi, (2008) 1 SCC 414 : (2008) 1 SCC (Civ) 270 : (2008) 1 SCC (Cri) 209; Mukesh K. Tripathi v. LIC : (2004) 8 SCC 387 : 2004 SCC (L&S) 1128, Ramesh Mehta v. Sanwal Chand Singhvi (2004) 5 SCC 409, State of Maharashtra v. Indian Medical Assn. (2002) 1 SCC 589 : 5 SCEC 217, Pandey & Co. Builders (P) Ltd. v. State of Bihar (2007) 1 SCC 467 and placed reliance on Kailash Nath Kothari [Rajasthan SRTC v. Kailash Nath Kothari, (1997) 7 SCC 481, National Insurance Co. Ltd. v. Durdadahya Kumar Samal : (1988) 1 ACC 204 : (1988) 2 TAC 25 (Ori) and Bhavnagar Municipality v. Bachubhai Arjanbhai : 1995 SCC OnLine Guj 167 : AIR 1996 Guj 51; Godavari Finance Co. v. Degala Satyanarayanamma, (2008) 5 SCC 107 : (2008) 2 SCC (Cri) 531; Pushpa v. Shakuntala, (2011) 2 SCC 240 : (2011) 1 SCC (Civ) 399 : (2011) 1 SCC (Cri) 682; T.V. Jose [(2001) 8 SCC 748 : 2002

SCC (Cri) 94] , SCC p. 51, para 10; U.P. SRTC v. Kulsum, (2011) 8 SCC 142 : (2011) 4 SCC (Civ) 66 : (2011) 3 SCC (Cri) 376; Purnya Kala Devi v. State of Assam, (2014) 14 SCC 142 : (2015) 1 SCC (Cri) 304 : (2015) 1 SCC (Civ) 251."].

Noticing that the case before the court involved a hypothecation agreement, this Court held:

> "22. In the present case, as the facts have been unfurled, the appellant Bank had financed the owner for purchase of the vehicle and the owner had entered into a hypothecation agreement with the Bank. The borrower had the initial obligation to insure the vehicle, but without insurance he plied the vehicle on the road and the accident took place. Had the vehicle been insured, the insurance company would have been liable and not the owner. There is no cavil over the fact that the vehicle was the subject of an agreement of hypothecation and was in possession and control of Respondent 2." (id at page 693)

Since the Second respondent was in control and possession of the vehicle this Court held that the High Court was in error in fastening the liability on the financier. The failure of the Second respondent to effect full payment for obtaining an insurance cover was neither known to the financier nor was there any collusion on its part. Consequently, the High Court was held to be in error in fastening liability on the financier.

12. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the

> owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2 (30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi.
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> 13. The submission of the Petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In Dr. T.V. Jose, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled."

9. Thus, the contention of the learned counsel appearing for the appellant that they are not liable to pay compensation stands rejected, as admittedly the vehicle has not been registered in the name of deceased. Admittedly, the insurance policy was very much in existence at the time of accident, such a policy has to be attached to the vehicle. Therefore, even on that score the case of the appellants cannot be countenanced.

10. Coming to the other issue, the cross-objection has been filed claiming enhancement of Rs.3,00,000/- over and above of what has been granted in M.C.O.P. No. 522 of 2014. As held by the Constitution Bench judgment in National Insurance Company

Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680, the future income will have to be added. Inasmuch as the deceased was not having permanent job, we are inclined to add 40% towards the future income. If that is added, then the respondents/claimants in M.C.O.P. No. 522 of 2014 would be entitled to about Rs.3 lakhs more than what has been awarded by the Tribunal. As the cross-objectors themselves claimed Rs.3,00,000/-, we are inclined to allow the cross-objection in toto. The insurance company shall deposit the entire award amount, i.e., Rs.10,97,000/- forthwith. Out of the said sum, the first claimant is entitled to Rs.7,00,000/- and the second claimant is entitled to Rs.3,97,000/-. All other terms imposed by the Tribunal hold good.

In fine, the cross-objection stands allowed and the civil miscellaneous appeals are dismissed. No costs. Consequently, connected C.M.P. Nos. 22296, 22298 of 2018, and C.M.P. No. 22312 of 2018 are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ssm

To:-

The Special District Judge,
District Court/Motor Accident Claims Tribunal,
Salem.

+2cc to Mr.S.Vadivel, Advocate, S.R.No. 33302, 33303
+2cc to Mr.S.P.Yuvaraj, Advocate, S.R.No. 33310, 33312

C.M.A. Nos. 2944 & 2947 of 2018
and
Cros.Obj.No. 10 of 2019

GJ II(CO)
GN(30/07/2019)