



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA (MD)No.64 of 2019

and

CMP (MD)No.696 of 2019

The Commandant V Battalion RPSF,
Southern Railway, Kajamalai,
Tiruchirappalli-620 020.

... Appellant/1st Respondent

vs.

1)N.Balakrishnan

... 1st Respondent/Petitioner

2)M.Ganesan

3)Bharathi @ Parthasarathy

... Respondents 2 & 3/Respondents 2 & 3

Appeal filed under Section 115 of the Civil Procedure Code, to set aside the decree and judgment dated 20.03.2017 passed in MCOP.No.2156/2009 by the III Additional Subordinate Judge, Trichy.

For Appellant : Mr.A.Ravi

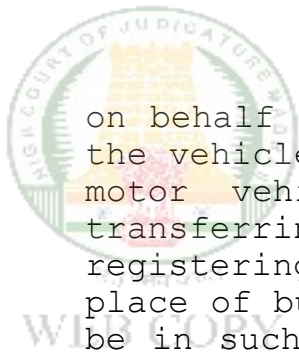
For R1 : Mr.N.Sudhagar Nagaraj

JUDGMENT

The present appeal has been filed questioning the liability.

2.Learned counsel for the appellant would submit that the appellant is the railway authority followed the due process of law and had auctioned the vehicle in question and subsequently the auction purchaser/2nd respondent herein has used the vehicle and met with the accident. However, the learned Judge has fixed the liability on the railway authority stating that the Registration Certificate has not been transferred in the name of the 2nd respondent, but the auction and the delivery has been proved. Only because, the Registration Certificate has not been changed in the name of the 2nd respondent, pay and recovery was ordered, against which, the present appeal has been filed.

3.Learned counsel for the appellant would further contend that as per Section 50(2)(b) of the Motor Vehicles Act, a motor vehicle has been purchased or acquired at a public auction conducted by, or



on behalf of Government, the person succeeding to the possession of the vehicle or as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept as the case may be in such manner accompanied with such fee and within such period as may be prescribed by the Central Government. Therefore, it is the bounden duty of the 2nd respondent to get the name transferred in the Registration Certificate. Thus, he prayed that the order of pay and recovery is liable to be set aside.

4.Learned counsel for the 1st respondent would contend that though the appellant contended that prior to the accident, the vehicle in question was auctioned and the 2nd respondent was the auction purchaser, on the date of accident, the registration certificate of the vehicle stood in the name of the appellant and considering the said fact, the learned Judge has rightly ordered pay and recovery which does not require interference by this Court. In support of his contention, he relied on a judgment reported in 2018 (1) TN MAC 637, Ravi vs. Sivanthi.

5.The above provision clearly says that it is the duty of the purchaser at a public auction to file an application within the prescribed date as fixed by the Government and therefore, change of the name in the Registration Certificate lies only on the 2nd respondent and once the appellant is able to prove that the auction had taken place and the vehicle was delivered, it is enough that the vehicle has been transferred. Therefore, the finding of the learned Judge that since the Registration Certificate has not been changed, pay and recovery should be ordered, in my considered opinion, is not right, because as per Section 50(2)(b) of the Motor Vehicles Act, it is the duty of the 2nd respondent to make an application for registration and for name change and therefore, the judgment reported in 2018 (1) TN MAC 637 relied on by the learned counsel for the 1st respondent, where I had been the Author, is not applicable to the present case as the appellant is a Government authority and there is a provision as to how the name has to be transferred and who should make application therefor.

6.Accordingly, the judgment and decree dated 20.03.2017 passed in MCOP.No.2156/2009 by the III Additional Subordinate Judge, Trichy, is set aside in respect of pay and recovery alone. The 2nd respondent is directed to deposit the entire award amount with interest and costs to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the same without filing formal permission petition before the Tribunal. In view of the appellant being exonerated, the appellant is at liberty to withdraw the award amount deposited, if



With the above direction, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1)The III Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Trichy.

2)The Section Officer,
V.R. Section
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-81430[F] dated 13/08/2019)

+1 CC to M/s.S.VIJAYASHANTHI, Advocate (SR-81372[F] dated 13/08/2019)

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