IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A. No.297 of 2009

R.Balasubramani
S/o. Ramanujam .. Appellant/1st Respondent

Vs.

1. Janakiraman
S/o. Rajavel .. 1st Respondent / Petitioner

2. United India Insurance Company Ltd.,
No.100, South Ratha Street,
Chidambaram. .. 2nd Respondent / 2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.09.2008, made in M.C.O.P. No. 71 of 2006, on the file of the Motor Accident Claims Tribunal, (Sub Court), Chidambaram.

For Appellant : Mrs.Mala
for Mr.UM.Ravichandran

For Respondents : Mr.D.Baskar - R2
R1-No Appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the claimant against the judgment and decree dated 29.09.2008, made in M.C.O.P. No. 71 of 2006, on the file of the Sub Court, Chidambaram

2. Brief facts of the case is that on 21.02.2005 at 6.00

am the claimant was traveling as pillion rider in Hero Honda Bike bearing Reg.No. TN02-F-3904, while the said two wheeler proceeding in the Villiyanallur Nadar Street, the rider of the two wheeler rode the same in a very rash and negligent manner, due to which, the claimant fallen down from the vehilce and sustained grievous injuries all over the body. The accident had occurred only due to the rash and negligence on the part of the rider of the two wheeler, hence the claimant filed a claim petition before the tribunal for compensation as against the owner of the two wheeler and the insurer of the two wheeler for a sum of Rs.4,00,000/-.

3. The tribunal upon considering the oral and documentary evidence, has fixed the negligence on the part of the rider of the two wheeler and directed the owner of the vehicle to pay the compensation amount of Rs.82,500/- . The tribunal dismissed the claim petition as against the Insurance Company. Dissatisfied with the liability fastened as against the owner of the vehicle and challenging the quantum of compensation, the appellant/owner of the vehicle has preferred the present appeal to set aside the award passed by the tribunal.

4. The learned counsel for the appellant has submitted that before the tribunal the appellant herein has filed counter statement stating that the alleged vehicle bearing Reg.No. TN02-F-3904 involved in the accident was sold on 05.05.2004 by the appellant herein to Nandha Kumar and he has also signed in the delivery receipt. Hence, on and from 05.05.2004, the 1st respondent/appellant herein ceased to be the owner of the vehicle bearing number TN02-F-3904 Hero Honda allegedly involved in the accident. Hence it is contended by the learned counsel for the appellant that without considering the said aspect, the tribunal fastened liability on the appellant. Hence the award passed by the tribunal is liable to be dismissed.

5. The learned counsel for the insurance company would submit that the finding of the tribunal is fair and there is no liability as against the insurance company, therefore the decision made by the tribunal does not require any interference.

6. Considered the rival submissions made by the learned counsel for the appellant and the learned counsel for the 2nd respondent/insurance company and perused the materials available

on of record. Though notice served on the 1st respondent, none appeared on his behalf.

7. The main contention of the learned counsel for the appellant is that the alleged vehicle was sold to one Nandhakumar and the said Nandhakumar was not arrayed as party before the tribunal. Therefore, the matter was taken up for enquiry and during the trial, the 2nd respondent had not adduced any evidence in support of the statement made in the counter statement. Before the tribunal, the insurance company has made a statement that the 1st respondent/owner of the vehicle has taken insurance only for the third party and for the owner, no additional premium was paid for the pillion rider, therefore the insurance company is not liable to pay the compensation. Ex.R2/Copy of the Policy also reveals the same. Therefore, the tribunal has concluded that the owner of the vehicle/appellant herein alone is liable to pay the compensation to the claimant. The tribunal has further discussed in the award that there are no oral and documentary evidence to prove the statement made in the counter filed by the 1st respondent/appellant herein and no cross examination was conducted at the time of examination of PW1. Therefore, the said contentions of the appellant herein were disbelieved by the tribunal and award came to be passed as against the appellant herein.

8. It is clear from the findings that the appellant has not adduced any evidence to substantiate his claim, but he filed additional documents before this Court to show that the said vehicle was sold to one Nandhakumar and subsequently sold to another person.

9. At this stage the learned counsel for the appellant made a submission before this Court that the aforesaid appeal may be remanded to the tribunal to decide on the aspect of liability.

10. The learned counsel appearing for the insurance company strongly contended that unless the name of the owner is transferred and the registration was taken place to that effect, they cannot absolve from the liability.

11. The Hon'ble Supreme Court in the case of Prakash Chand Daga Vs.Saveta Sharma & Others reported in 2019 1 TNMAC 1 (SC) has held that 'a person, whose name reflected in records or

Registering Authority is 'owner' – mere transfer of ownership does not absolve such registered owner from his liability to Third Party”. The relevant portion is extracted below;

“5. It is true that in terms of Section 50 of the Act, the transfer of a vehicle ought to be registered within 30 days of the sale. Section 50(1) of the Act obliges the transferor to report the fact of transfer within 14 days of the transfer. In case the vehicle is sold outside State, the period within which the transfer ought to be reported gets extended. On the other hand, the transferee is also obliged to report the transfer to the registering authority within whose jurisdiction the transferee has the residence or place of business where the vehicle is normally kept. Section 50 thus prescribes timelines within which the transferor and the transferee are required to report the factum of transfer. As per Sub-Section 3 of said Section 50, if there be failure to report the fact of transfer, fine could be imposed and an action under Section 177 could thereafter be taken if there is failure to pay the amount of fine. These timelines and obligations are only to facilitate the reporting of the transfer. It is not as if that if an accident occurs within the period prescribed for reporting said transfer, the transferor is absolved of the liability.

6. Chapter XII of the Act deals with Claims Tribunals and as to how applications for compensation are to be preferred and dealt with. While considering such claims, the Claims Tribunal, in case of an accident is required to specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or whether such amount be paid by all or any of them, as the case may be. It is well settled that for the purposes of fixing such liability the concept of ownership has to be understood in terms of specific definition of owner as defined in Section 2(30) of the Act.

....

8. In the decision in Naveen Kumar (supra) the legal position was adverted to and this Court observed as under:

13. 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 Civil Appeal No.11369 of 2018 Prakash Chand Daga vs. Saveta Sharma & Ors. 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 1939 Act. 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 (2015)3 SCC 679 and Purnya Kala Devi (2014) 14 SCC 142.

14. 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 T.V. Jose (2001)8 SCC 748, 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. The law is thus well settled and can be summarised:

“Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person.”

12. In view of the decision of the Hon'ble Supreme Court cited supra and taking note of the fact that the delivery receipt was issued by the appellant and filed additional documents to disprove his liability, this Court is of the view that to decide the said factual position as against the appellant, it would be appropriate to afford opportunity to appellant to establish his case before the tribunal.

13. Accordingly, this Civil Miscellaneous Appeal is remand back to the tribunal. The tribunal is directed to consider the case of the appellant afresh only on the aspect of liability by providing opportunity to the appellant for marking additional documents, if any. The tribunal shall complete the entire process and pass orders within a period of four months from the date of receipt of a copy of this judgment.

14. In fine, the Civil Miscellaneous Appeal is partly allowed to the above extent. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Ordinate Judge,
  Motor Accidents Claims Tribunal
  Chidambaram.

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

+2cc to Mr.U.M.Ravichandran, Advocate, S.R.No.5348

C.M.A. No.297 of 2009

NMI(CO)
SB(22/10/2021)