



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 20.07.2021
Delivered On : 18.08.2021
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1314 of 2013
and M.P. (MD)No.2 of 2013

WEB COPY

National Insurance Company Ltd.,
Through its Administrative Officer,
D.No.15.1.85, GRC Road,
Poonur-522 124,
Andhrapradesh.

..Appellant/2nd Respondent

Vs.

1.Kajamian Athar
2.Shaikanwar

... 1st Respondent/petitioner
.. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 09.12.2009 passed in M.C.O.P.No.1402 of 2005 on the file of the Motor Accidents Claims Tribunal/Sub Court, Trichirappalli.

For Appellant	: Ms.P.Malini
For 1 st Respondent	: Mr.K.P.Narayanakumar
For 2 nd Respondent	: Dismissed vide order dated 15.12.2017

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.1402 of 2005 dated 09.12.2009, on the file of the Motor Accidents Claims Tribunal/Sub Court, Trichirappalli.

2.The appellant herein is the second respondent, the first respondent herein is the petitioner and the second respondent herein is the first respondent in the claim petition. The first respondent has filed a claim petition in M.C.O.P.No.1402 of 2005, claiming compensation for the damages of the vehicle in an accident that took place on 23.12.2003. The Tribunal has awarded a sum of Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.1402 of 2005 is as follows:

On 23.12.2003, when the driver of the petitioner drove the vehicle Hyundai Accent bearing registration No.TN-31-S-9500 in a careful and cautious manner, the first respondent lorry bearing registration No.AHH-3997, was driven by its driver in a rash and negligent manner, came from the opposite direction dashed against



the petitioner's vehicle and caused damages. The petitioner claimed a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

The accident is denied. The vehicle was sold to one Basuriten. The petitioner is not the owner of the car. Only Rs.6,000/- (Rupees Six Thousand only) is the limit for the compensation to third party vehicle. The accident is not due to the negligence of the lorry driver. The car driver is responsible for the accident. The damages to the car is denied. The claim is excessive.

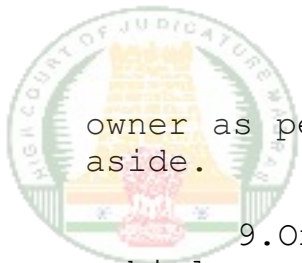
5.Brief substance of the additional counter filed by the second respondent therein is as follows:

The petitioner is not the owner of the vehicle at the time of accident. The accident took place on 23.12.2003. At the time of accident, Shankar is the owner of the vehicle. The vehicle was transferred to the name of the petitioner on 29.10.2004. The vehicle was verified by the M.V. Inspector on 10.03.2004. The car was insured with New India Insurance company, Villupuram. The insurance company of the car is a necessary party to the petition.

6.On the side of the petitioner therein, two witnesses were examined and six documents were marked. On the side of the respondents therein, two witnesses were examined and three documents were marked. After trial, the Tribunal has awarded a sum of Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand only) as compensation to be paid by the appellant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

7.On the side of the appellant, it is stated that the first respondent was not the owner of the vehicle at the time of accident. The petition is bad for non joinder of necessary parties. The driver of the car was liable for contributory negligence. Except the surveyor report, there was no oral or documentary evidence regarding the damages or the expenses incurred by the claimant. The original owner did not file any claim petition.

8.On the side of the appellant, it is stated that the accident was due to collision of a lorry and a car. The accident was due to the negligence of the car driver. The claimant is not owner of the car at the time of accident. The damages are not proved. The motor vehicle was inspected only three months after the date of accident. The name of owner was transferred in the R.C. Book only after 10 months from the date of accident. As per Section 50 of M.V. Act, the name transfer should be done within 14 days from the date of purchase. The RDO has no right to validate the purchase with retrospective effect. Paying penalty does not give the RDO power to change the name with retrospective effect. The claimant is not the



owner as per Section 230 of M.V. Act and prayed the award to be set aside.

9. On the side of the first respondent, it is stated that the vehicle was inspected by the Surveyor, who was examined as P.W.2 and his report was marked as Ex.P5. The claimant purchased the vehicle on 17.10.2003. After paying the penalty, the name transfer was done on 20.08.2004. On payment of fine, the RDO has permitted the name transfer, which is not illegal. It is further stated that the erstwhile owner Shankar has not filed any claim petition and the same was admitted by the insurance company and prayed the appeal to be dismissed.

10. On the side of the appellant, it is stated that under Section 230 of M.V. Act, if a vehicle was transferred but the registration certificate continued to be in the name of previous name, the insurance company is not liable to pay compensation.

11. On the side of the appellant, it is stated that the purchaser of the vehicle cannot be named as the owner of the vehicle and the purchaser of the vehicle cannot claim compensation. In support of this contention, the judgment of the Hon'ble Supreme Court in the case of **Naveen Kumar v. Vijay kumar and others** reported in **2018 (1) TNMAC 157 (SC)**, wherein it is stated as follows:

"Where such person is minor, guardian of minor to be treated as "owner" - vehicle if subject to agreement of hire purchase, lease or hypothecation, person in possession of vehicle under Agreement to be treated as "owner" - In instant case, registered owner/R1 though transferred vehicle, registration certificate continued to be in name of R1 as registered owner - R1, held, cannot be held absolved of liability - conscious departure from provisions of Section 2(19) of 1939 Act - Principle underlying Section 2(30) is that accident victim should not be left in a state of uncertainty - claimant not to be burdened with following trial of successive transfers not registered with registering Authority - to hold, otherwise would defeat salutary object and purpose of Act - vehicle, in instant case, being uninsured, Tribunal rightly fastened liability upon R1/registered Owner."

12. In the above cited case, the claimant was a third party not the owner of the vehicle. Hence, this citation is not applicable to the present facts of the case.

13. On the side of the first respondent, it is stated that the Surveyor report is a conclusive proof to fix the quantum of compensation. In support of this contention, the judgment passed by this Court in the case of **S. Rajendra Rao v. G. Vanaja and another**



reported in 2007 (1) TNMAC 106 is cited.

14.The learned counsel for the first respondent would rely upon the judgment of the Hon'ble Supreme Court in the case of **Surendra Kumar Bhilawe v. New India Assurance Co. Ltd.**, reported in 2020 (2) TNMAC 58 (SC), wherein it is stated as follows:

"48.In Naveen Kumar v. Vijay Kumar and others, 2018 (1) TNMAC 157 (SC) : 2018 (2) CTC 91 (SC) : 2018 (3) SCC 1, a Three-Judge Bench of this Court held that in view of the definition of the expression 'owner' in Section 2(30) of the Motor Vehicles Act, 1988, it is the person in whose name the Motor vehicles stands registered, who for the purpose of the said Act, would be treated as the Owner of the vehicle.

54.In view of the definition of 'Owner' in Section 2(30) of the Motor Vehicles Act, the appellant remained the owner of the said truck on the date of the accident and the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammed Iliyas Ansari."

15.In this judgment, the Hon'ble Supreme Court has held that the insurance company could not avoid its liability on the ground of transfer of ownership and as such, this citation is not applicable to the facts of the present case.

16.It is seen that under Section 230 of M.V. Act, a person who have an agreement of sale also can be treated as a owner. Here in this case, the claimant have purchased the vehicle but the same was not registered in his name. The claimant has paid the fine for the delay in registering the transfer. There is no possibility of the vehicle to get damages without an accident. The FIR, Ex.P1 clearly proves the accident. Ex.P3, is the copy of the M.V. Report, Ex.P4 is the photograph of the damages and Ex.P5 is the insurance company Surveyor's report, which reveals the damages. Ex.P5 was issued by the Insurance company Surveyor not by a private Surveyor. The Surveyor was also examined as the witness.

17.In the above circumstances, the award passed by the Tribunal is reasonable. There is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.1402 of 2005 dated 09.12.2009 on the file of the Motor Accidents Claims Tribunal/Sub Court, Trichirappalli.

18.In the result, this Civil Miscellenaous Appeal is dismissed. The first respondent is entitled to a sum of Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.



19.The respondents in claim petition are directed to deposit Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to the respondents therein. The claimant is not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Sub Judge, Motor Accidents Claims Tribunal,
Trichy.

Copy to

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

+1 CC to M/s.P.MALINI, Advocate (SR-26620[F] dated 18/08/2021)

+1 CC to M/s.K.P.NARAYANAN, Advocate (SR-26687[F] dated 18/08/2021)

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TR(21.09.2021) 5P 6C