BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.08.2022

Delivered On : 29.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.523 of 2012

The Branch Manager,
City Union Bank Ltd.,
Ayyampettai Main Road,
Papanasam Taluk,
Thanjavur District. .... Appellant / 2nd Respondent

Vs

1.Sureshkumar ... 1st Respondent / Petitioner

2.Kubendran ... 2nd Respondent /1st Respondent

3.The Branch Manager,
National Insurance Company Ltd.,
Mutt Street, Kumbakonam Street,
Thanjavur District. ... 3rd Respondent /3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 29.11.2011, passed in M.C.O.P.No.2 of 2010, on the file of the Motor Accidents Claims Tribunal / Additional District and Sessions Judge cum Essential Commodities Special Court, Thanjavur.

For Appellant	: Mr.S.Rajasekar for Mr.T.Lajapathiroy
For R1	: Mr.C.Sundaravadivel
For R2	: No appearance
For R3	: Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 29.11.2011, passed in M.C.O.P.No.2 of 2010, on the file of the Motor Accidents Claims Tribunal / Additional District and Sessions Judge cum Essential Commodities Special Court, Thanjavur. The appellant herein is the second respondent, the first respondent herein is the claimant and the respondents 2 and 3 herein are the respondents 1 and 3 in the original M.C.O.P. Petition. The second respondent herein, who is the first respondent in the claim petition remain exparte before the Tribunal.

2. Brief substance of the claim petition in M.C.O.P.No.2 of 2010, is as follows:

On 02.10.2008, at about, 6.30 a.m., when the petitioner was walking along the left side of the road, an auto bearing Registration No. TN-49-H-5531 was driven by its driver in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injuries, he was taken to Thanjavur Vinodhan Memorial Hospital and took treatment as inpatient. The petitioner was working as a Lab Assistant and was earning Rs.4,500/- per month and he took tuition and earned Rs.10,000/- per month. After the accident, the petitioner could not continue his work and the petitioner claimed a sum of Rs.8,00,000/- as compensation.

3. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.2 of 2010, is as follows:

The petitioner has to prove the case.The first respondent purchased the vehicle by obtaining loan. The relationship between the first respondent and the second respondent is only the loan transaction. The second respondent is not the owner of the vehicle. It was the duty of the first respondent to pay premium for the insurance. Only the first and third respondents are liable to pay compensation. The injuries, age, profession are to be proved.

4. On the side of the claimants, 3 witnesses were examined and 9 documents were marked. On the side of the respondents, 2 witnesses were examined and 2 documents were marked. After considering both sides, the Tribunal awarded a sum of Rs.3,08,300/- to be paid by the respondents 1 and 2.

5. Against the order, the second respondent /City Union Bank has filed this appeal on the following grounds:-

The Tribunal has failed to note that under Section 31 of the Sale of Goods Act, the financier has to pay for the good and the duty of the seller is to deliver the goods, in terms of the contract. The Financier of a goods purchased have no role as the owner of the vehicle. Under Section 146 of the Motor Vehicles Act, no persons shall use a motor vehicle in a public place, except as a passenger, without the policy of insurance. The Tribunal has failed to consider that the appellant is only a financier and the relationship between the appellant and the second respondent herein, who is the first respondent in the claim petition is only a lendee and lender. As per clause 14 of the agreement of the hypothecation, it is the duty of the owner of the vehicle to ensure that the vehicle is insured. Even if the vehicle was under the custody of the financier, the liability of paying preminum for the Insurance is only upon the owner.

6. On the side of the appellant, it is stated that on the date of accident, the vehicle was in the hands of the first respondent and the vehicle was not in the hands of the appellant.

7. On the side of the appellant, a judgment of the Hon'ble Supreme Court reported in ***2015-3-SCC-679 (HDFC Bank Limited V. Reshma and others)*** is cited, wherein, it is stated as follows:-

> *"Terms in hypothecation agreement did not convey that the appellant – Financier had become owner and was in control and possession of vehicle. Nothing has been brought on record that clandestine taking away of vehicle from dealer without full payment of Insurance was known to appellant financier or it was done in collusion with Financier. When the second respondent – borrower without insurance plied vehicle in violation of Section 146 of the 1988 Act, the High Court could not have imposed the liability on Financier. The liability to satisfy award is that of the owner /borrower, the second respondent and not that of Financier and accordingly, that part of direction in award is set aside. However, as conceded by the appellant, no steps to be taken for realisation of amount from the respondent claimants."*

8. On the side of the third respondent / Insurance Company, it is stated that the third respondent was exonerated by the Tribunal. There was no insurance and that the third respondent is only a formal party in the appeal.

9. On the side of the first respondent / claimant, it is stated that the appellant is the owner of the vehicle. A judgment of the Hon'ble Supreme Court reported in ***2008-3-MLJ-93***2 and another judgment of the Hon'ble Supreme Court reported in ***A.I.R 1997-SC -3444*** are cited.

10. On the side of the appellant, it is stated that the Bank provide only the loan. The vehicle was in possession of the second respondent herein. There is no joint liability for the financier.

11. It is seen that the vehicle was not insured with the third respondent/ Insurance Company and the Tribunal is right in exonerating the third respondent. The second respondent herein has purchased the vehicle on executing the Hypothecation agreement and with the financial assistance of the appellant. As per clause 14 of the Hypothecation Agreement, it is the duty of the second respondent herein to insure the vehicle till the completion of the re-payment of the loan. It is seen that the second respondent violated the condition and failed to insure the vehicle. The appellant is not the Insurer. There is no liability for the appellant to indemnify, the borrower.

12. On the side of the first respondent, it is stated that the vehicle was seized by the appellant and the vehicle was in the custody of the appellant at the time of accident. On the side of the appellant, it is stated that the vehicle was in the custody of the second respondent at the time of accident. But, no document was produced on the side of the first respondent to prove that the vehicle was seized by the appellant at the time of accident and the vehicle was in the custody of the appellant, at the time of accident.

13. In the above circumstances, it is decided that the liability cannot be fixed on the appellant. Hence, the order of the Tribunal is modified. The first respondent herein / claimant is entitled to a sum of Rs.3,08,300/- as compensation from the second respondent herein – Owner of the vehicle.

14. This Appeal is allowed. No costs.

(i) The second respondent herein – Owner of the vehicle is hereby directed to deposit the entire compensation of Rs.3,08,300/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the second respondent herein – owner of the vehicle, the first respondent herein/claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. **The appellant / Bank is permitted to withdraw the amount, if any already deposited**. The Claimant is not entitled for interest for the default period, if there is any default.

29.09.2022

Index:Yes/No
Internet:Yes/No
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To

1.The Motor Accidents Claims Tribunal /
Additional District and Sessions Judge cum
Essential Commodities Special Court,
Thanjavur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.THARANI.,J.

Ls

Pre-delivery Judgment made in

C.M.A(MD)No.523 of 2012

29.09.2022