



C.M.A.No.1066 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.12.2023

Pronounced on : 22.12.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.1066 of 2022
and CMP.No.7829 of 2022

M/s.Chinnasamy Agencies
Authorised Main Dealer
TVS Motor Company Ltd.,
276, Bangalore Road
Krishnagiri - 635 001.

... Appellant / 3rd Respondent

Vs

1.Amala Jesudas
2.Suganthi
3.Gopi

... Respondents / Petitioner ,
Respondents 1 & 2

PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1 Code of Civil Procedure 1908 read with Section 173 of Motor Vehicles Act, 1988, praying to set aside the award in M.C.O.P. No.473/2019 dated 10.03.2022 on the file of the Chief Judicial Magistrate cum Motor Accidents Claims Tribunal, Krishnagiri.



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For Appellant : Ms. B.S.Mitranshaa for
Mrs.V.Srimathi

For Respondents : Mr.C.Prabakaran for R1
R2, R3 - No Appearance

JUDGMENT

1. Can a liability be fastened on the dealer of the motor vehicle for payment of compensation to a victim of a motor accident of an unregistered, uninsured motor vehicle, is the issue that engages this Court in this appeal. This issue has visited another learned single Judge of this court earlier in *The Managing Director, Sakthi Auto Agencies Vs Santhi and others* [2023 (1) TNMAC 584]. More about it later.

Facts

2.1 The appellant herein is a dealer of two wheelers, in Krishnagiri. On 19.01.2018, it had sold the two wheeler in question to the second respondent, and delivered it to the purchaser under Ext.R1 delivery challan. This two wheeler was then removed to Chennai. Couple of months have elapsed since the purchaser had taken delivery, still she chose not to register



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the vehicle.

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2.2 While so, on 26.03.2018, the husband of the second respondent, the 3rd respondent herein, drove the said two wheeler negligently in a public place and dashed against the two wheeler of the claimant bearing Reg.No.TN 24 S 4320. Seeking compensation, the victim of the accident moved the MACT with MCOP 473 of 2019.

2.3 The Tribunal had determined the compensation payable at Rs.6,27,222/- and directed the appellant herein, the dealer of the said offending vehicle to pay it, and then to recover the same from its purchaser, the second respondent and its rider at the relevant time, the 3rd respondent.

3. Contending it is not liable to pay compensation as it is a mere dealer of two wheelers, the appellant has approached this Court with this appeal.

Arguments:

4. The learned counsel for the appellant submitted:

- a) for any tortious liability that arises out of the use of a motor vehicle in a public place, the principal liability is on the owner of the vehicle,



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irrespective of whether the vehicle is insured or not. Once the vehicle is sold and delivered, the property in the good gets vested in the purchaser thereof. In the present case, the appellant has sold the vehicle, and has also delivered it to the second respondent as evidenced by Ext.R1, delivery challan, wherein after only the second respondent will be principally liable for all the consequences that may arise out of the use of the two wheeler in a public place. Indeed, the second respondent had also executed a written undertaking, taking responsibility for the same which is annexed to Ext.R1.

b) It is true, that the two wheeler sold to the second respondent was not registered at the time of the accident. But, under Sec.39 of the M.V.Act, the duty to register a motor vehicle is on the owner of the vehicle and not the dealer.

5. Per contra, the learned counsel for the claimant (the first respondent herein) made a pointed statement that while it is true that under Sec. 39 of the Sale of Goods Act, the property in the good will be transferred on delivery, it should not be read in isolation but along with Rule 42 of the Central Motor Vehicle Rules, 1989 (henceforth the CMV Rules). It



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mandates that no trade certificate holder (by which term it signifies a dealer of a motor vehicle), shall deliver a motor vehicle to a purchaser without a temporary or a permanent registration. Placing reliance on the ratio in ***Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala Vs K.T.C.Automobiles*** [(2016) 4 SCC 82], the learned counsel argued that so far as a motor vehicle is concerned, the property in the good is transferred only upon its registration, which view was followed by this Court in ***The Managing Director, Sakthi Auto Agencies Vs Santhi and others.*** [2023 (1) TNMAC 584]. In ***Sakthi Auto Agencies case***, this Court was confronted with an identical situation, and a learned Single Judge of this Court fastened the liability on the dealer of the vehicle, since the vehicle was delivered in breach of the statutory mandate in Rule 42 of the CMV Rules, argued the counsel.

6. In response, the learned counsel for the appellant submitted that: Rule 42 must not be in read isolation, but read in conjunction with Rule 47. While Rule 42 proscribes a dealer from delivering a motor vehicle without a temporary or permanent registration, Rule 47 prescribes that an application for the registration of a motor vehicle shall be made within seven days from the date of taking delivery. This creates an apparent conflict which implies



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that the registration of a motor vehicle cannot be a pre-condition for transfer

of good in the vehicle. Placing reliance on the ratio in *Additional*

Commissioner of Sales tax VAT-III, Mumbai Vs. Sehgal Autoriders Pvt.

Ltd.[2011 SCC Online Bom 872], and *Muhammed Vs. Joint Regional*

Transport Officer & Others [2012 SCC Online Ker 31641 : (2012) 2 KLT

78], the learned counsel added that under the scheme of the M.V. Act, the

obligation to register the vehicle is only on the owner, and it is not

obligatory to obtain any temporary registration. She added that in *Sakthi*

Auto Agencies case [2023 (1) TNMAC 584], the implications of Rule 47

of the CMV Rules was not considered.

Discussion & Decision:

7.1 The facts being what they are, the only point to be considered is whether a dealer of a motor vehicle would be tortiously liable for the negligence of the purchaser merely because the vehicle was unregistered at the time when the dealer delivered the vehicle to the purchaser in violation of Rule 42 of the CMV Rules. Facing an identical question, a learned Single Judge of this Court had an occasion to consider the same in *Sakthi Auto Agencies case* [2023 (1) TNMAC 584], and held that the dealer would be liable.

In arriving at this conclusion, the learned Single Judge drew strength



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from the dictum of the Hon'ble Supreme Court in ***Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala Vs K.T.C.Automobiles*** [(2016) 4 SCC 82].

7.2 While the doctrine of *stare decisis* mandates that a co-equal Bench of a High Court is bound by the decision of another co-equal Bench, yet, it does not forbid the former from re-visiting the same issue if the earlier Bench did not have an occasion to consider certain facts for arriving at its decision. In ***Padma Sundara Rao Vs State of Tamil Nadu*** [(2002) 3 SCC 533], the Hon'ble Supreme Court has held that the “*circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.*” The differentiating material which persuades this Court to take a re-look at the issue is Rule 47, read along side with Rule 44 of the CMV Rules. They have to be understood wholesomely on a composite plane of MV Act and the Sale of Goods Act.

8. There is an inter play of two statutes: The Sale of Goods Act, 1930, and the MV Act, 1988. The Sale of Goods Act principally governs the sale of all goods, of which a motor vehicle is a species. Let there be an understanding of the issue on the basis of the Sale of Goods Act, 1930. Sec. 3(1) of the



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Sale of Goods Act defines a contract of sale of goods as “*a contract whereby the seller transfers or agrees to **transfer the property in goods to the buyer** for a money **consideration** called the price.*” This definition signifies that a contract of sale of good contemplates the transfer of property in the good. Accordingly, a owner of a good is the one to whom the property in the good is transferred on sale. Chapter II of the Sale of Goods Act, comprising Sec.18 to 26, deal with the transfer of property in a good. Contextually Sec.19 and 20 are relevant. Sec.19 reads:

19. Property passes when intended to pass

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at the time the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Sec.20 of the Sale of Goods Act deals with the rules for ascertaining the intention of the parties as to when the property in the good will pass within the meaning of Sec.19. In the context of the case, Sec.20(1) and Sec.20(2) of the Act are relevant. They read:

Sec.20(1): Unless a different intention appears the following are rules for ascertaining the intention of the parties as to the time at which the



property in the goods is to pass to the buyer:

Rule I. — Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery or both be postponed.

*(2) Where in pursuance of the **contract the seller delivers the goods to the buyer or to a carrier or other bailee, whether named by the buyer or not, for the purpose of transmission to the buyer and does not reserve the right of disposal he is deemed to have unconditionally appropriated the goods to the contract***

If the facts of this case is tested on the touchstone of these statutory parameters, it must be said that the property in the two wheeler has passed from the seller to the buyer when the two wheeler is delivered to the second respondent.

9. Here, there is another glitch. Is the dealer, the appellant herein, the owner of the good (read it as the two wheeler), for it to transfer the property in it to the second respondent? Ordinarily a dealer is an intermediary between the manufacturer of a good and the consumer. Therefore, unless it is adequately known that the property in a good is vested in a dealer, under a contract of a sale of a good, a dealer only transfers the title of the manufacturer in the



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good to the buyer thereof. Accordingly, unless it is established that at the time when the two wheeler in question was sold by the appellant to the second respondent, it can only be said that the dealer herein had only facilitated the transfer of property in the two wheeler from the manufacturer to the second respondent. It largely depends on the terms of agency between the dealer and the manufacturer.

10. Now, it is necessary to examine how far the MV Act affects the Sale of Goods Act. To state it differently, if the good sold is a motor vehicle, does the MV Act brings in a different set of rules for transfer and vesting of the property in the motor vehicle in the purchaser? The issue needs to be addressed on the foundation of Rule 42 of the CMV Rules, 1989. It reads:

Rule 42: *Delivery of vehicle subject to registration – No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.*

It does not postpone the vesting of property in the motor vehicle, but only imposes certain restriction on the dealer to deliver it to the purchaser. Here Sub-section (1) of Sec.20 of the SG Act is required to be revisited. It states that property in the good is transferred if the good is in the deliverable state,



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even if the delivery is postponed. Therefore, Rule 42 of the CMV Rules on its face only requires the postponement of delivery of the motor vehicle till it is registered either temporarily or permanently. The breach in the instant case is not about vesting of the property in the two wheeler in the second respondent, but about its delivery to the second respondent before its registration. Here it is apposite to refer to the ratio in ***Muhammed Vs Joint Regional Transport Officer & Others*** [2012 SCC Online Ker 31641 : (2012) 2 KLT 78], where a Division Bench of the Kerala High Court held that it is not obligatory for the owner to obtain temporary license within the scheme of Sec.39 of the Motor Vehicles Act read with Rule 47 of the CMV Rules.

11. Does delivery of a motor vehicle in breach of Rule 42, affects vesting of property in the motor vehicle? It relates to registration of a motor vehicle, where Sec.39 of the MV Act needs to be consulted. Sec.39 of the MV Act reads:

Sec.39: *No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries*



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a registration mark displayed in the prescribed manner:

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This provision prescribes the criteria for registration of a motor vehicle. Registration is required only when (a) a motor vehicle is driven; and (b) it is driven in a public place or any other place. How does non-compliance of registration within the meaning of Rule 42 can now affect the vesting of property in the motor vehicle in the buyer? Let a hypothetical situation be considered. If a buyer of a motor vehicle chooses not to drive the vehicle and opts to park it permanently, does it require registration? This situation is a theoretical possibility which will help in understanding the scope and need for registration vis-a-vis its perceived influence on vesting of the property in the motor vehicle. The answer will be an uncomplicated No. This can be demonstrated by another example: if there is a defect or malfunctioning of a motor vehicle, its buyer cannot seek remedy under the MV Act, and before the MACT, but has to resort to the Sale of Goods Act, or the Consumer Protection Act. These situations enable an understanding that MV Act is least concerned with the transfer and vesting of property in a motor vehicle pursuant to its sale, and the registration it mandates is required only for the purposes associated with its driving in public place.



12. This is fortified by the consequence spelt out for breach of Rule 42. This is embodied in Rule 44. It reads as below:

Rule 44: *Suspension or cancellation of trade certificate - If the registering authority has reason to believe that the holder of any trade certificate has not complied with the provisions of Rules 39 to 43, it may, after giving the holder an opportunity of being heard, suspend or cancel the trade certificate held by him.*

Rule 44 therefore, is categorical. The consequence it spells out is the suspension or cancellation of the trade certificate of a dealer who is in breach of Rule 42. It does not state anything about the vesting or divesting of property which had vested in a buyer.

13. Will the dealer of a motor vehicle in breach of Rule 42 of CMV Rules be liable to pay compensation to third parties due to its use in a public place? Sec.140 of the MV Act says that only an owner of a motor vehicle will be liable to pay compensation to the third parties. If Sec.147 of the MV Act is considered, it states that no person shall use, or cause or allow any other to use a motor vehicle in a public place, unless the vehicle is insured.

14. Can it be now said that by breaching Rule 42, a dealer has allowed the



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use of the motor vehicle in a public place, without insurance, to invite upon itself the liability to meet a third party claim to compensation? Here comes

Rule 47. Its opening lines are:

Application for registration of motor vehicles (1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of 1 week [seven days] from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by...

Therefore, while Rule 42 forbids the dealer from delivering a motor vehicle without a registration, Rule 47 enables registration within one week after delivery of a motor vehicle. This reduces Rule 42 proscription to a directory requirement, lest it will create a situation where both Rule 42 and Rule 47 cannot co-exist. And, this apparent conflict between Rule 42 and Rule 47 can be harmonised only through Rule 44. If it were to be contended, as argued by the counsel for the claimant, that Rule 42 violation will have the effect of fastening third party liability for the negligent use of a motor vehicle by the buyer thereof, then Rule 47 providing for seven days for applying for registration since taking delivery, cannot be reconciled with Rule 42. Therefore, the statutory intent behind violation of Rule 42 is penalising the dealer with cancellation or suspension of trade certificate,



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and not mulcting it with any liability which the buyer of a motor vehicle is principally required to meet. This apart, once the property in a motor vehicle is vested in the buyer there can be no vicarious liability between the dealer and the buyer either, for, otherwise, it will lead to a jurisprudential conundrum which cannot be reconciled if Rule 42 is read as stand alone provision, ignoring Rules 44 and 47, and Sec.39 of the MV Act.

15.1 Now, this Court needs to negotiate the dictum in *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala Vs K.T.C.Automobiles* [(2016) 4 SCC 82], which a learned Judge had followed in *Sakthi Auto Agencies case* [2023 (1) TNMAC 584].

15.2 In *K.T.C.Automobiles* [(2016) 4 SCC 82], the Hon'ble Supreme Court was concerned with ascertaining the situs where the property in a motor vehicle transfers for the purpose of erstwhile Sale Tax and VAT regime. The facts are KTC Automobiles is a dealer of cars of a certain manufacturer, and it is head quartered in Kerala, with its branch in Mahe, which falls within the Union Territory of Puducherry. It was registered under the Kerala State Sale Tax Act, Puducherry Sales Tax Act and also Central Sales Tax Act. The issue was whether certain number of cars which were registered in Mahe



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were sold in Kerala or Mahe. The CCT under Kerala Sales Tax contended that these cars were sold only in Kerala. It is in that context, the Supreme Court had reckoned Rule 42 of the CMV Rules and held that the vehicle will be considered as sold only at the place where it was produced for registration. Thus, the issue before the Supreme Court was to identify the place where the goods are sold to ascertain which of the two Sales Tax Act was applicable. The context here is entirely different. Therefore, it may not be appropriate to telescope the ratio of *KTC Automobiles case* to the facts-situation of the present case, where the Court is concerned with a dealer's liability to meet a third party claim for the negligence of the buyer of a motor vehicle. It is too firmly entrenched in the doctrine of *stare decisis* that a decision is an authority for what it decides and that it cannot be applied as an algebraic formula to all situations and circumstances.

16. Turning to *Sakthi Auto Agencies case*, a learned Single Judge of this Court has followed the ratio in *KTC Automobiles case*, but it must be stated that the learned Judge's notice was not drawn to Rule 47 and the effect of Rule 44 of CMV Rules, an advantage which this Court now has.



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The Conclusion:

17. It is to state the obvious: This appeal is allowed, and the appellant is relieved of the obligation to pay the compensation as awarded by the Tribunal, and the first respondent, the claimant, is at liberty to realise the compensation from the second respondent. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
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To:

1.The Chief Judicial Magistrate cum
Motor Accidents Claims Tribunal
Krishnagiri.

2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

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Pre-delivery Judgement
in CMA.No.1066 of 2022

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