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C.M.A.No.4578 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2023

Delivered on : 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.M.A.No.4578 of 2019

and

C.M.P.No.26008 of 2019

Tamilselvan

... Appellant / Respondent

Vs.

1.Thulasi

2.Sudha

3.Rajeswari

... Respondents / Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 18.08.2018, made in M.C.O.P.No.679 of 2013, on the file of the Motor Vehicle Accident Claims Tribunal – Principal District Court, Namakkal.

For Appellant : Mr.C.A.Ramanan
for Mr.N.Manokaran

For Respondents : Mr.T.Arthanareeswaran



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JUDGMENT

The instant Civil Miscellaneous Appeal is filed against the order, dated 18.08.2018, made in M.C.O.P.No.679 of 2013, on the file of the Motor Vehicle Accident Claims Tribunal – Principal District Court, Namakkal.

2. The appellant herein is the respondent, and the respondents herein are the petitioners before the Court below.

3. For the sake of convenience, the parties are referred according to their litigative status before the trial Court:

4. The short facts which gives rise to the Civil Misfiling of the Appeal is as follows:-

4.1. It is the case of the petitioners / claimants that on 14.04.2012, the deceased - Govindaraj met with an accident at 10.30 pm., due to the rash and negligent driving of the driver, who drove the vehicle, viz. Baja Pulsar, bearing Registration No.TN-36-W-1717. Due to the accident, the deceased - Govindaraj sustained severe injuries and succumbed to the



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injuries on 15.04.2012. Hence, the petitioners being the children and dependents of the deceased, have claimed a sum of Rs.20,00,000/- with interest against this respondent. According to the petitioners / claimants, the deceased was aged about 50 years and was doing building contractor work. They would further submit that, the respondent is the owner of the vehicle bearing Registration No.TN-36-W-1717, hence, prayed an award against the respondent.

5. Resisting the above contention, the respondent states that though he was the owner of vehicle bearing Registration No.TN-36-W-1717, he sold the said vehicle prior to the date of accident, dated 14.04.2012, to one "The Noble Motors", Honda exclusive authorised dealer, Erode, in an exchange programme. He would further submit that, after adjusting the exchange value this respondent was delivered Honda Activa, on 03.03.2011. Therefore, this respondent would submit that he was not at all the owner of the vehicle bearing Registration No.TN-36-W-1717, and that "The Noble Motors" and the subsequent purchaser K.M.Prabhu S/o. Madeshwaran are the owners, at the relevant point of time and necessary and proper parties to the proceedings. It is the submission of



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the respondent that, without transferring the name, they have illegally and unlawfully used the vehicle. Hence, contended that this application is liable to be dismissed against him.

6. Before the Court below, on behalf of the petitioners, 3 witnesses were examined as P.W.1 to P.W.3, and 7 documents were marked as Ex.P1 to P7. On behalf of the respondent, one witness was examined as R.W.1 and 4 documents were marked as Ex.R1 to R4.

7. After taking into consideration of the oral and documentary evidences and other materials on records, the Court below has directed the respondent to pay the compensation amount of Rs.7,16,400/- to the petitioners. The Court below justified the above finding on the ground that the Registration Certificate of the vehicle stands in the name of the appellant. Therefore, by relying Section 50 of the Motor Vehicles Act, and also by relying the judgment of the Hon'ble Supreme Court reported in **2018-2-CTC-91 (Naveen Kumar V. Vijaykumar)** held that the owner is none other than the person in whose name, the records of the registering authority is exist.



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8.The learned counsel for the appellant / respondent meticulously and also with great deft submitted that the very conduct of the Court below in proceeding with the case during the pendency of the Civil Revision Petition, that too during the subsistence of stay in CRP(PD)No.2067 of 2017, is illegal. He would further submit that, when the appellant / respondent would project the case of ownership with one K.M.Prabhu, and that when this appellant has submitted records that the alleged vehicle has already been exchanged with “The Noble Motors,” the decision of the Court below by relying the Registration Certificate is contrary to settled legal position. He has also invited various reported judgments and would submit that one additional or different fact may make a world of difference between the conclusion of cases. He would further submit that, the Court below without taking into consideration of the factual position of the reported judgment reported in **2018-2-CTC-91 (Naveen Kumar V. Vijaykumar)**, has wrongly followed the same to the case in hand. He would also submit that the very award has no factual and legal basis. Hence, prayed to dismiss the application.



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9. Per contra, the learned counsel for the respondent would submit that the Court below has considered all the material proposition of law and fact, and that on the basis of the ratio of the Hon'ble Supreme Court has rightly arrived at a conclusion and awarded just compensation. Therefore, would submit that there is no infirmity in the orders of the Court below. Hence, prayed to dismiss the application.

10. I have given my anxious consideration to the either side submissions.

11. The learned counsel for the appellant / respondent raised following two points, (i) that the proceedings of the Court below during the subsistence of the stay order of C.R.P.(MD)No.2067 of 2017 would make the award become nullity. (ii) that the non impleadment of “The Noble Motors” and the “owner“ of the vehicle- K.M.Prabhu is fatal to the case. Apart from that he would also submit that the very quantum was determined without any basis.



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12. Let us consider the above objection one by one. Though the learned counsel would contend before this Court that there was a stay in Civil Revision Petition in CRP.No.2867 of 2017, not to proceed with the trial of the instant M.C.O.P has fairly conceded that, subsequently that Civil Revision Petition has been dismissed by this Court. Hence, this Court could not find any infirmity in the conduct of the Court below in concluding the trial and passing an award in M.C.O.P.

13. Therefore, it is patently clear that, the non-impleadment of so called Noble Motors and the so called K.M.Prabhu was justified and confirmed by this Court in the above Civil Revision Petition. If that being the case, then who would become the owner of the vehicle is the only question lingering in this case. Admittedly, the offending vehicle stands in the name of the appellant / respondent. But his contention is that he has exchanged that vehicle with “The Noble Motors” and that subsequently the same was again sold to one “K.M.Prabhu”. To substantiate such contention he would rely upon Ex.R3- receipts. Wherein, this Court could not find any recitals or any inferences as to the exchange of the offending vehicle with the Noble Motors. Therefore, even on the facts, the appellant /



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respondent has miserably failed to establish the transfer of ownership of the offending vehicle, prior to the relevant date qua the date of accident.

14. In the case, the Court below has rightly referred to Section 50 of the M.V.Act, which deals about the duties and responsibilities of the seller and buyer, so as to effect the transfer of ownership. The Court below also has rightly followed the ratio in **2018-2-CTC-91 (Naveen Kumar V. Vijayakumar)**. From the above referred judgment, it has been clearly held that, the owner is none other than the person in whose name the vehicle stands registered. It is an admitted fact that as on the date of accident, the vehicle stood in the name of the respondent. Therefore, the findings of the Court below, that the respondent / appellant is the owner of the vehicle is well considered one, and cannot be found faulted with. Thus the order of the Court below, directing the respondent to pay the award amount also cannot be found faulted with.

15. It is pertinent to mention here that the Court below has arrived at a conclusion about rash and negligent driving of the offending vehicle based upon the evidence of the eyewitness. To contradict the same,



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no witnesses were examined on behalf of the respondent. Hence, the finding of the Court below in respect of rash and negligent is also liable to be confirmed.

16. Though the learned counsel would invite the attention of this Court about the Ruling reported in **2002-2-SC-533 (Padma Sundar Rao V. State of Tamil Nadu)** and **2011-3-CTC-168 (Meenakshisundaram Temple V. Valliammal Textiles)**, would submit that the judgment passed by the Court below is without reason and that the same is not in consonance with provisions under order 10 Rule 2 C.P.C. This Court on harmonious reading of the award would like to disagree with the contention of the respondent / appellant.

17. Besides, the learned counsel would also rely upon an unreported judgment of this Court held in **C.M.A.(MD)No.742 of 2017 (The Managing Director V. Santhi)**, which deals about the Rule 34 of the Central Motor Vehicles Act, in respect of the vehicles in the possession of the dealers. Now that the appellant herein would submit that he has exchanged the offending vehicle with the Noble Motors. Whereas, this



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Court is disbelieving the said contention. Therefore, this Court is of the firm view that the above cited judgment is not applicable to the case in hand.

18. The learned counsel for the petitioner would also contend that the Court below should not have proceeded with the M.C.O.P on the ground that there is no extension of interim stay order. In this regard, he has submitted a judgment of this Court reported in **2016-5-CTC-350 (M.Arumugam V. The Chairman)**. But, according to our case, though the appellant contends the pendency of the Civil Revision Petition, now admittedly the same ultimately been dismissed. Therefore, the above argument lost its significance. Thus, this Court is of the view that the appellant / respondent is liable to pay the compensation to the claimants.

19. Coming to the quantum, since no material submitted by the claimants, the finding of the Tribunal in fixing the notional income of Rs.6,000/- by following the precedent in **2015-1-TNMAC-451 (TNSTC V.R.Kalavathi)** is fair and rationale. Further, this Court could find no material to reduce or increase from the above notional income and inclined to confirm the notional income determined by the Court below.



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20. After arriving at the notional income of Rs.6,000/- by following the judgment reported in *AIR 2017 Supreme Court 5157 (National Insurance Company. V. Pranay Sethi)* the Court below has rightly arrived at compensation of Rs.7,16,400/-. The appellant did not make out any grounds warranting an interference in the award of the Tribunal. Thus, this Court hold that the award passed by the Court below is just and reasonable. Hence, the same is also confirmed.

21. In the result, the instant Civil Miscellaneous Appeal is **dismissed**. The compensation awarded by the Tribunal is hereby confirmed. The appellant is directed to deposit the entire award amount of Rs.7,16,400/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment.

23. On such deposit being made, the respondents / claimants are permitted to withdraw the award amount along with interest and costs as



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apportioned by the Tribunal, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

25.08.2023

NCC : Yes
Index :Yes
Ls

To

- 1.The Motor Vehicle Accident Claims Tribunal ,
Principal District Court,
Namakkal.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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C.KUMARAPPAN.,J.

Ls

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