BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.11.2022

Pronounced on : 09.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.191 of 2012

K.Muthukumar ...Appellant / 2nd respondent

Vs

1.Anand

2.Rajeshwari .. Respondents 1 and 2 / Petitioners

3.Rajadurai

4.United India Insurance Company Ltd.,
Through its Branch Manager,
Tirunelveli.

5.Ramasamy .. Respondents 3 to 5 / respondents 1, 3 and 4

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 22.09.2011, passed in MCOP No.14 of 2005 on the file of the Sub-Judge (Motor Accidents Claims Tribunal), Ambasamudram.

For Appellant	: Mr.N.Mohan
For R1 & R2	: Mr.J.Ashok for M/s.Jeyapal Associates
For R3	: Mr.N.Pragalathan
For R4	: Mr.A.S.Mathialagan
For R5	: Mr.S.A.Ganapathy Raman

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in MCOP No.14 of 2005 on the file of the Sub-Judge (Motor Accidents Claims Tribunal), Ambasamudram. The appellant herein is the second respondent, respondents 1 and 2 herein are the claimants. Respondents 3 to 5 are the respondents 1,3 and 4 in the claim petition.

2.Brief substance of the claim petition is as follows:

On 03.05.2005, when the deceased Buvaneshwari, was playing in the Airport yard, a motorcycle bearing registration number TN 76 1725 driven by its rider in a rash and negligent manner, dashed against the minor child and the child succumbed to the injuries.

3.Brief substance of the counter filed by the respondents is as follows:

The first respondent vehicle was not involved in the accident. The father of the first respondent was not the owner of the vehicle. The vehicle was insured. The name of the first respondent was wrongly impleaded in the case.

4.Brief substance of the second respondent is as follows:

The second respondent has sold the vehicle to the fourth respondent on 09.10.2004. The son of the fourth respondent was the rider of the vehicle at the time of accident. This respondent is not liable to pay compensation.

5.Brief substance of the counter filed by the third respondent is as follows:

The insurance policy was not in force at the time of accident. The policy covers the period from 21.02.2004 till 20.02.2005. The accident has happened on 03.05.2005. The first respondent was not having valid driving licence. He got learners licence after the accident. The claim amount and the rate of interest are excessive.

6.Brief substance of the counter filed by the fourth respondent is as follows:

The fourth respondent is no way related to the accident or the vehicle involved and he denied the averments in the counter statement filed by the second respondent. The fourth respondent was not the owner of the vehicle that involved in the accident.

7.Three witnesses were examined, five documents were marked on the side of the petitioner. Four witnesses were examined and eleven documents were marked on the side of the respondent. The Tribunal has awarded Rs.2,00,000/- as compensation to be paid by the respondents 1,2 and 4.

8.Against the award, the second respondent filed this appeal on the following grounds:

The Tribunal failed to consider that the third respondent has admitted that he rode the vehicle that hit the deceased. Ex.R11 is the letter written by the first respondent, addressed to the Manager of the Insurance company. The Tribunal failed to consider Ex.R1, delivery challan which clearly proves that the vehicle was sold to the second respondent on 09.10.2004 itself. The Tribunal has failed to consider that Ex.R4. The Tribunal failed to consider the contents of the First Information Report which is different from the facts. The third respondent was not examined as a witness. No liability can be fastened against the appellant. In Ex.R11, the third respondent herein, has admitted that he was responsible for the accident. The award is exorbitant.

9.Copy of the FIR was marked as Ex.P1. Copy of the rough sketch was marked as Ex.R3. Copy of the observation mahazar was marked as Ex.P4, copy of the charge sheet was marked as Ex.P5, Copy of the confession statement was marked as Ex.R2. Copy of the remand report was marked as Ex.R3. Copy of the criminal Court judgment was marked as Ex.R7.

10.The complainant was examined as P.W.2. P.W.2 has deposed that the fifth respondent drove the vehicle in a rash and negligent manner. The private investigation report filed by the insurance company was marked as Ex.P10. The Tribunal has decided that the third respondent Rajadurai is responsible for the accident. On the basis of Ex.P1, Ex.P3 to Ex.P5, Ex.R2, Ex.R3 and Ex.R10, it is decided that the third respondent is responsible for the accident.

11.On the side of the appellant, it is stated that the appellant has already sold the vehicle to the fifth respondent and that the delivery challan was marked as Ex.R1. Though the vehicle was sold to the fifth respondent, the RC Book was not transferred to the name of the fifth respondent and that the appellant /second respondent is not liable to pay compensation. A judgment of this Court reported in **2017 SCC Online Mad 30662**, in the case of **N.S.Palani vs. Sulachana and others**, is cited, wherein it is held that,

> *"13.As pointed out at the very outset, the claimants themselves have conceded that they are aware of the factum of transfer. Only if the issue of transfer is contentious, the claimant cannot be made to run after unknown persons and therefore the registered owner should be proceeded against. But that is not the factual situation before me.*
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> *14.Under these circumstances, as the context otherwise requires, I am inclined to hold that the appellant cannot be made liable. The Tribunal has passed an award not only against the appellant herein but also against the third respondent. The third respondent herein had not chosen to come up on appeal. It is evidence from the record that he was not only the actual owner of the offending vehicle on the date of*

accident but also the offending rider. Therefore, in all fairness, the third respondent alone should be mulcted with the liability."

12.The vehicle was registered in the name of the appellant/second respondent. The allegation of the appellant/ second respondent is that he sold the vehicle to the fifth respondent. R.W.3 has deposed that the vehicle was sold to the fifth respondent on 10.02.2004 and on the date of accident, the fifth respondent herein was in possession of the vehicle. The delivery form was marked as Ex.R1, delivery receipt was marked as Ex.R5. A form for transferring the insurance was marked as Ex.R6. The appellant claimed that he sold the vehicle to the fifth respondent and the vehicle was not in the possession of the appellant at the time of accident and that the appellant is to be exonerated from the liability.

13.Ex.R1 and Ex.R6 are empty forms and they are not useful to decide the issue . Ex.R5 is the delivery receipt signed by the fifth respondent. The third respondent rider of the motor cycle gave a confession statement which was marked as Ex.R2 wherein he has admitted that the vehicle belongs to him. The third respondent is the son of the fifth respondent. The trial Court fixed the liability on the appellant, the third respondent and on the fifth respondent. But the third and fifth respondents did not come forward to file an appeal or cross objection. A verification of the signature in the counter filed by the fifth respondent and the signature in the Ex.R5 reveals that the signature tally with each other.

14.R.W.2 has deposed that he sold the vehicle to the fifth respondent. R.W.3 has deposed that he has witnessed the transaction and he has signed in Ex.R5 as a witness. It is seen that the vehicle was sold to the fifth respondent and he has not transferred the vehicle in his name. In Ex.R10, it was clearly mentioned that the third respondent was the rider of the two wheeler at the time of accident. From the evidence of P.W.2 and P.W.3 and from Ex.R2, Ex.R5 and Ex.R10, it is decided that the fifth respondent was the owner of the vehicle at the time of accident and that the appellant was not the owner of the vehicle at the time of accident. Normally, the person in whose name, the vehicle was registered would be liable to pay compensation. In the judgment cited on the side of the appellant/ second respondent, it is stated that the subsequent purchaser is liable to pay compensation. The judgment cited on the side of the appellant, is applicable to the fact of the present case. Hence, the appellant is exonerated from the liabilities.

15. On the side of the insurance company, it is stated that the vehicle was not insured with the company and that the Tribunal has held that the fourth respondent herein was not liable to pay compensation and that the Policy certificate was not marked on the side of the claimant and that it is the duty of the claimant to prove that the vehicle was insured with the fourth respondent herein.

16. The insurance policy was marked as Ex.R.9. The policy was valid from 21.02.2004 till 20.02.2005. The date of accident was 03.05.2005, the policy was not effective on that date. In the above circumstances, it is decided that the case against the fourth respondent/ Insurance company, is to be exonerated.

17. There is no dispute regarding the quantum. Hence it is decided that the quantum fixed by the Tribunal is reasonable. Hence it is decided that the respondents 3 and 5 herein are liable to pay the compensation with interest and costs and that the appellant is to be exonerated.

18.Accordingly, this Civil Miscellaneous Appeal is allowed.

(i) The appellant / second respondent is exonerated from the liabilities. Respondents 3 and 5 herein are liable to pay compensation as awarded by the Tribunal to the claimants.

(ii) The quantum of compensation awarded by the Tribunal is confirmed as Rs.2,00,000/- (Rupees Two Lakhs only) which shall carry interest at the rate of 7.5% per annum.

(iii) The respondents 3 and 5 herein are directed to deposit the entire compensation of Rs.2,00,000/- (if not already deposited) 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 to the credit of MCOP No.14 of 2005 on the file of the Sub-Judge (Motor Accidents Claims Tribunal), Ambasamudram, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the respondents 3 and 5, the first and second respondents herein/ claimants are permitted to withdraw equal share in the entire award amount of Rs.2,00,000/- (Rupees Two Lakhs only) with proportionate interest and costs, on filing petition before the tribunal. The claimants are not entitled to interest for the default period, if there is any.

09.03.2023

Index: Yes / No
Internet : Yes / No

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To

1.The Sub-Judge (Motor Accidents Claims Tribunal),
Ambasamudram.

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

R. THARANI, J

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