



C.M.A(MD)No.189 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.09.2023

Pronounced On : 24.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

C.M.A(MD)No.189 of 2019

The Manager,  
M/s.Waluj Two Wheeler Section,  
Baja Auto Limited,  
Bajaj Nagar,  
Awrangabad-431 136.  
Maharashtra State

: Appellant / Respondent No.1

Vs.

1.Jannath Beevi  
2.Haja Moideen  
3.Minor.Nizar  
4.Minor.Parveen  
5.Minor.Jahangir  
(minor respondents 3 to 5 are  
represented by their mother are  
guardian, the first respondent herein)

6.Nallammal

: Respondents 1 to 6 /  
Petitioners 1 to 5 & 7

7.M.Sukumaran

8.M/S.A.V.M.Auto,  
Bajaj Two Wheelers Agencies,  
Alangudi Road,  
Pudukkottai,  
Tamil Nadu.



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9.Murugesan

10.The Branch Manager,

Indus Ind Bank,

No.24, veeramakaliamman Kovil Complex,

Pattukkottai Road,

Aranthangi,

Pudukkottai District.

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 23.11.2017 passed in M.C.O.P.No.762 of 2010 on the file of Motor Accident Claims Tribunal, Additional District Judge, Presiding Officer, Pudukkottai and allow this present Civil Miscellaneous Appeal.

For Appellant : Mr.R.Subramanian

For Respondents : Mr.P.Ganapathi Subramanian  
1 to 6

For 8<sup>th</sup> Respondent : Mr.N.Balakrishnan

For 9<sup>th</sup> Respondent : Mr.K.Gokul

For Respondents : No appearance  
7 and 10

### **J U D G M E N T**

This civil miscellaneous appeal is directed against the award passed in M.C.O.P.No.762 of 2010 dated 23.11.2017 on the file of the Motor Accident Claims Tribunal/Additional District Judge/Presiding Officer, Pudukkottai.



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2.The appellant/first respondent who was made liable along with the respondents 7 to 9/respondents 2 to 4 to pay compensation of Rs. 14,05,000/- with interest at 7.5% per annum to the respondents 1 to 6/claimants for the death of Ayyub Khan consequent to an accident occurred on 05.03.2006, challenged the liability mulcted on it.

For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking/status before the Tribunal.

3.It is pertinent to note that the appellant has not challenged the finding of the Tribunal that the accident had occurred only due to the rash and negligence driving of the fourth respondent and that they have also not challenged the quantum of compensation awarded by the Tribunal.

4.Admittedly, the vehicle involved in the accident, i.e., new Bajaj CT 100 bearing Chasis No.MDZ/DDDUZZ/MWJ 37911 and Engine No.DUM BMH 85257 M/C was manufactured by the first respondent



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and the same was sent to sale for their dealers/respondents 2 and 3. It is not in dispute that the fifth respondent financier has agreed to finance the fourth respondent for purchasing the said vehicle from the third respondent/dealer. The claimants have filed the claim petition against the respondents 1 to 4 alleging that the respondents 1 to 4 are the owners of the vehicle in question and that during the pendency of the claim petition, the fifth respondent/insurer was impleaded and that therefore, all the respondents are jointly and severally liable for the claim.

5.The defence of the respondents 1 to 3 is that the first respondent position is only as a manufacturer of the vehicle, that the fourth respondent has purchased the vehicle from the third respondent that the fourth respondent has purchased the vehicle through the finance arranged by the fifth respondent, and that since the vehicle was sold to the fourth respondent, the respondents 1 to 3 have ceased to exercise any right over the two wheeler and that therefore, they are not liable for the claim.

6.During the trial, the claimants have examined, the Claimants 1 and 2 as P.W.1 and 2 respectively and one Mohammed Ifrahim as P.W.3



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and exhibited 10 documents as Ex.P.1 to P.10. The respondents 1 to 3 have examined the second respondent as R.W.1 and exhibited one document as Ex.R1. The fifth respondent has examined its official as R.W.2 and exhibited loan application as Ex.X.1.

7. The learned trial Judge upon considering the evidence both oral and documentary and on hearing arguments of both sides, has passed the impugned order dated 23.11.2017 mulcting liability on the respondents 1 to 4 and dismissed the claim petition as against the fifth respondent. Aggrieved by the impugned award, the first respondent/the manufacturer of the vehicle has preferred the present appeal.

8. The learned counsel appearing for the appellant would submit that the Tribunal erred in fastening liability on the appellant, who is only the manufacturer of the vehicle. that the fourth respondent purchased the vehicle from the third respondent and took it from the show room without registration and insurance, that the Tribunal has failed to consider that the purchaser had given a letter to the dealer stating that he was taking delivery of the vehicle without registration and insurance and that therefore, the Tribunal erred in mulcting liability on the appellant.



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9.It is the specific case of the respondents 1 to 3 that the fourth respondent has purchased the vehicle through finance given by the fifth respondent that the fourth respondent by giving letter under Ex.R.1 had taken delivery of the vehicle and he has taken delivery of the vehicle without registration and without insurance at his own risk and that therefore, the fourth respondent being the owner of the vehicle, is liable for the claim. Admittedly the fourth respondent had remained *exparte*. The Tribunal had rightly relied on the decision of the Honourable Supreme Court in ***Dr. T. V. Jose Appellant vs Chacko P. M. Alias Thankachan & other*** reported in (2001) 8 SCC 748, and in ***P.P.Mohamed Vs. K.Rajappan and others*** reported in 2008(17) SCC 624 and ***HDFC Bank limited Vs. Kumari Reshma, and others*** reported in AIR 2015 SC 290 and the relevant passage in the ***HDFC Bank Limited case*** is extracted hereunder:

*“While dealing with the facet of liability, the Court referred to the authority in T.V.Jose (Dr.) Vs. Chacko P.M. Where in it has been held thus:*

*There can be transfer of title by payment of*



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*consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the appellant still continued to remain liable to third parties as his name continued in the records of RTO as the owner.*

*Thereafter, the Court held thus:*

*“The decision in T.V.Jose (Dr.) was rendered under the Motor Vehicles Act, 1939. But having regard to the provisions of Section (30) and Section 50 of the Act, as noted above, the ration of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount.”*

10.In a similar case, a learned Judge of this Court, in the case of ***the Managing Director, Sakthi Auto Agencies, T.P.S.Nagar, Thanjavur.***



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***Vs. Santhi and others***, in **C.M.A.(MD).No.742 of 2017** has held that the ownership of the vehicle legally passes to the purchaser only after temporary/permanent registration of the vehicle in the name of the purchaser and the relevant paragraphs are extracted hereunder:

*20. Section 39 of the Motor Vehicles Act makes it mandatory that 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 unless the vehicle is registered in accordance with the Motor Vehicles Act. However, as per the proviso, it shall not apply to the Motor Vehicle in possession of a dealer subject to the conditions as may be prescribed by the Central Government. As per Rule 33 of Central Motor Vehicle Rules, 13/26 though a dealer is exempted from the necessity of registration, he should obtain a Trade Certificate from the registering authority having jurisdiction in the area, in which, the dealer is doing his business in accordance with the provisions of the Rules. The dealer has to make an application under Rule 34 of Central Motor Vehicle Rules and any certificate that is granted is valid only for a period of twelve months from*



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*the date of the issue or renewal thereon. As per Rule 40, the Trade Certificate shall be used only by the person to whom it is issued and such person shall not allow or offer or cause the certificate or the number assigned to them to be used by any other person.*

*21. Rule 41 enumerates the purposes for which the Motor Vehicle with Trade Certificate may be used. The said Rule enumerates eight circumstances under which the vehicle can be used in public place which includes testing, proceeding to or returning, from weigh bridge, trial or demonstration by or for the benefit of a prospective purchaser, proceeding to or returning from the premises of a dealer or of a purchaser, proceeding to or returning from a workshop with the objective of fitting a body to the vehicle or painting and for repairs, proceeding to 14/26 and returning from Airport, Railway Station, wharf for or after being transported and for removing the vehicle, after that it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hirepurchase lease or hypothecation. Therefore, it is clear that a dealer should possess a Trade Certificate to use the vehicle in a*



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*public place for certain limited purposes. The registering authority has been granted power under Rule 44 either to suspend or cancel such a Trade Certificate for violation of the Rules. From the pleadings and evidence let in by the appellant herein before the Tribunal, this Court could not find that any Trade Certificate has been obtained by the appellant for using the vehicle in a public place without registration or Insurance policy. Even assuming that a Trade Certificate has been obtained, it is not the case of the appellant that the vehicle was used for anyone of the purposes mentioned under Rule 41 of Central Motor Vehicle Rules, 1989.*

*22. The appellant had contended that the vehicle has been registered in the name of the first respondent and insured with the second respondent and on subsequent date to the accident and therefore, the first respondent and the Insurance Company alone are liable to pay the compensation. The judgment of the Honourable Supreme Court reported in (2016) 4 SCC 82 (Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala V.K.T.C. Automobiles) in paragraph No. 20 and 21 reads as follows: “20. But this legal proposition does not take the*



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*appellant for. It must be carefully seen as to when the properties, particularly possession of a motor vehicle passes or can pass legally to the purchaser, authorizing him to apply for registration. Only after obtaining valid registration under the Motor Vehicles Act, the purchaser gets entitled to use the vehicle in public places. Under the scheme of the Motor Vehicles Act, 1988 and the Central motor Vehicles Rules 1989 the dealer cannot permit the purchaser to use the motor vehicle and thus enjoy its possession unless and until a temporary or permanent registration is obtained by him. Only thereafter, the vehicle can safely be said to be no more under possession of the dealer. Clearly, mere mentioning of engine number and chassis number of a motor vehicle in the invoice of sale does not entitle the intending purchaser to appropriate all the goods i.e. the motor vehicle till its possession is or can be lawfully handed over to him by the dealer without violating the statutory provisions governing motor vehicles. Such transfer of possession can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and registrable*



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*motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration. The possession can lawfully be handed over to the purchaser at this juncture because law requires the purchaser as an “owner” to make an application for registration but at the same time the law also prohibits use of the motor vehicle by the owner until is duly registered by the registering authority. Hence, in order to satisfy the requirement of law noticed above, the dealer can deliver possession and owner can take possession and present the vehicle for registration only when it reaches the office of the registering authority. With the handing over of the possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfected sale. The purchaser as an “owner” under the Motor Vehicles Act is thereafter obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of insurance, etc. Hence, technically though the registration of a motor vehicle is a post-sale event, the*



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*event of sale is closely linked in time with the event of registration. Neither the manufacturer nor can the dealer of a motor vehicle permit the intended purchaser having an agreement of sale to use the motor vehicle even for taking it to the registration office in view of the statutory provisions already noticed. Hence lawful possession with the right of use is permissible to be given to the intended owner only after reaching the vehicle to the office of the registering authority. Thus seen, in practical terms though sale precedes the event of registration, in normal circumstances and as the law stands, it is coterminous with registration of a new motor vehicle”*

*23. The judgment of the Honourable Supreme Court reported in (2020) 15 SCC 438 (Tata Motors Limited V. State of Jharkhand and others) in paragraph No.7 reads as follows: “7 ..... In case a dealer or a manufacturer is not having trade certificate, in order to drive the motor vehicle during the period it remains with him, he is supposed to get the vehicle registered for a temporary period. This temporary registration is to be done as per the provisions contained in Section 43 of the MV Act. It may be clarified that such temporary*



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*registration can be obtained by any person who is the owner of a motor vehicle and is not confined to a dealer or a manufacturer.”*

*24. A combined reading of the judgments of the Hon'ble Supreme Court will make it clear that the ownership of the vehicle legally passes to the purchaser only after temporary/permanent registration of the vehicle in the name of the purchaser. Any handing over of the possession to the purchaser without registration of the vehicle has to be considered to be violation of the statutory provisions as contemplated under Section 41 of the Motor Vehicles Act. An application for registration can be made only on behalf of the owner of a Motor vehicle. Therefore, when the vehicle is in the possession of a dealer and if he wants to use the vehicle in a public road for any other purpose, other than what is stated under Rule 41 of Central Motor Vehicle Rules, the dealer has to apply for temporary certificate of registration. The judgment of the Hon'ble Supreme Court reported in (2020) 15 SCC 438 (Tata Motors Limited V. State of Jharkhand and others) paragraph No.7 has clarified that the temporary registration can be obtained by any person who is the*



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*owner of a motor vehicle and is not confined to a dealer or manufacturer. Therefore, it is clear that a dealer can also be considered to be a owner of the vehicle provided he applies for a temporary registration under Section 43 of the Motor Vehicles Act, for the purposes of usage of the vehicle in a public road other than the purposes those enumerated under Rule 41 of Central Motor Vehicles Rules.*

*25. In the present case, the appellant/dealer had permitted the usage of the vehicle in a public road by one Ramesh without obtaining any temporary registration and admittedly, not for the purposes mentioned under Rule 41 of Central Motor Vehicles Rules. A dealer is expected to obtain a trade certificate under Rule 34 of Central Motor Vehicles Act, for operating the vehicle in a public road without registration for certain limited purposes. The dealer has to obtain either the trade certificate for using the vehicle for limited purposes or should go for a temporary registration of the vehicle under Section 43 of the Motor Vehicle Act, if he wants to use the vehicle in a public road. Merely by avoiding temporary registration under Section 43 of the Act, a dealer cannot claim that he*



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*is not the owner of the vehicle. The appellant/ dealer cannot take advantage of his own wrong and contend that having not obtained temporary registration under Section 43 of the Act, he is not the owner of the vehicle.*

11.As already pointed out, in the case on hand, the vehicle was neither registered nor insured on the date of accident. Admittedly, the vehicle was not registered in the name of the fourth respondent. No doubt, the respondents 1 to 3 have taken a defence that the fourth respondent, after giving a letter, had taken delivery of the vehicle at his own risk. But Rule 42 of Central Motor vehicles Rules, 1989 mandates that no holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.

12.As rightly pointed out that the learned counsel for the claimants, the dealers are duty bound to make sure that the vehicle was registered before delivering the same to the purchaser. Moreover, until the vehicle is registered in the name of the purchaser, the ownership of the vehicle remain to be vested with the dealer. But in our case,



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dealers/respondents 2 and 3 have not challenged the finding of the Tribunal mulcting liability on them, whereas, the first respondent/manufacturer alone has come forward with this appeal. Even according to the dealers/respondents 2 and 3, once the manufacturer delivers the vehicles to the dealers, the manufacturer ceases to be the owner of the vehicle and he has no connection with the vehicles. As already pointed out, the respondents 2 and 3 have specifically admitted that they are the dealers of the first respondent with respect to the two wheelers. The claimants have not shown that the first respondent was still having right or ownership over the vehicle and the same was within their control and custody.

13.Considering the above, the impugned order mulcting liability on the manufacturer, is not in accordance with law and as such, the same is liable to be set aside. As already pointed out, the appellant has not challenged the quantum of compensation. Hence, this Court concludes that the civil miscellaneous appeal is liable to be allowed.



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14.Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own cost.

15. In the result, civil miscellaneous appeal is allowed and the impugned award dated 23.11.2017 passed in M.C.O.P.No.762 of 2010 mulcting liability on the appellant /first respondent is set aside.

**24.11.2023**

NCC : Yes/No  
Index : Yes : No  
Internet : Yes : No  
vsg

To

1.The Motor Accident Claims Tribunal,  
Additional District Judge, Presiding Officer,  
Pudukkottai.

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



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**K.MURALI SHANKAR,J.**

vsg

Pre-delivery order made in  
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