



CMA(MD).No.742 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	31.03.2023
Pronounced on	19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.742 of 2017

and

C.M.P(MD) No.8028 of 2017

The Managing Director,
Sakthi Auto Agencies,
T.P.S.Nagar,
Thanjavur- 5

....Appellant/ 3rd Respondent

Vs.

1. Santhi
2. Jeyanthi
3. Chitra

.... Respondents 1 to 3/ Claimants

4. Thanavel

5. The Branch Manager,
Oriental Insurance Company,
Thanjavur.

6. The Managing Director,
Suruthi Motors,
Theradi Street,
Kumbakonam Main Road,
Thiruvaiyaru Taluk,
Thanjavur District.

... Respondents 4 to 6/
Respondents 1, 2 and 4



CMA(MD).No.742 of 2017

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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 29.04.2016, made in M.C.O.P.No.531 of 2011 on the file of Special District Judge and Motor Accidents Claims Tribunal, Thanjavur.

For Appellant : Mr.G.Sridharan

For Respondents : Mr.N.Balakrishnan
for Mr.D.Veerasekaran
for R1 to R3

: Mr.K.Balasubramanian – For R5

: No Appearance – For R4 and R6

J U D G M E N T

The present appeal has been filed by the third respondent in M.C.O.P.No.531 of 2011, on the file of the Motor Accidents Claims Tribunal, Thanjavur.

2. The claimants have contended that the deceased Ramasamy, while he was walking on the road, on 22.05.2010, at about 08.50 a.m, a two wheeler belonging to the first respondent came from behind in a rash



CMA(MD).No.742 of 2017

and negligent manner and dashed against the deceased. The deceased sustained head injury and multiple grievous injuries all over the body and he passed away in Thanjavur Medical College Hospital, on 23.05.2010.

3. The claimants further claimed that the deceased was working as Karvari in Poondi Vandayar Pannai and he was also a cattle broker thereby, earning a sum of Rs.10,000/- (Rupees Ten Thousand only) per month. The deceased was aged about 60 years and the claimants claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation. They have further contended that the first respondent is the owner cum driver of the vehicle and the second respondent is the insurer. They have further contended that the third respondent who is the dealer of the vehicle was the owner at the time of accident.

4. The owner of the vehicle viz., the first respondent had remained ex-parte and the second respondent/Insurance Company filed a counter contending that the offending vehicle was a brand new vehicle and it was neither registered nor insured with the second respondent/ Insurance



CMA(MD).No.742 of 2017

Company on 22.05.2010. Only on 25.05.2010, the vehicle was registered in the name of the first respondent. Therefore, according to the Insurance Company, since the vehicle was registered in the name of the first respondent and insured with the Insurance Company only on 25.05.2010 they are not liable to pay any compensation for the accident that has taken place on 22.05.2010. The Insurance Company also questioned the quantum of the award prayed for by the claimants.

5. The third respondent herein is the dealer of TVS vehicles. They have filed a counter contending that the claimants have not given any clear version about the manner of accident and hence, the entire burden is on them to prove the rash driving of the first respondent. They have further contended that since the vehicle being insured with the second respondent and the policy was in force at the time of the accident, the respondents 1 and 2 alone are liable to pay the compensation to the claimants. They have further contended that the vehicle involved in the accident was sold by the third respondent in favour of one Suruthi Motors at Thiruvaiyaru, by way of a bulk invoice sheet, dated 27.02.2010. Thereafter, the said Suruthi Motors have sold the vehicle to



CMA(MD).No.742 of 2017

the first respondent. Therefore, there is no relationship between the first respondent and the third respondent. They have further contended that Suruthi Motors, at Thiruvaiyaru is the proper and necessary party to the proceedings and due to their non-joinder, the claim petition is liable to be dismissed.

6. The Tribunal, after considering the oral and documentary evidence, came to the following conclusions:

(i) The accident has happened only due to the rash and negligent driving of the first respondent;

(ii) On 22.05.2010, when the accident took place, the vehicle was not registered in the name of the first respondent and it was not insured with the second respondent;

(iii) The vehicle was registered in the name of the first respondent only on 25.05.2010 and the Insurance Policy was also taken only on 25.05.2010. Therefore, on the date of accident, there was no Insurance Policy and hence, the second respondent Insurance Company is not liable to pay any compensation;

(iv) Based upon the oral evidence of the employee of the third



CMA(MD).No.742 of 2017

respondent/dealer, viz., RW-1, and the deposition of RTO RW-4, the Tribunal came to a conclusion that on the date of the accident, only the third respondent/dealer was the owner of the vehicle. It also found that the Sale Certificate for the vehicle has been issued only by the third respondent/dealer on 25.05.2010 (after the accident) in favour of the first respondent and therefore, till such date, only the third respondent/dealer was the owner of the vehicle; and

(v) The third respondent/dealer who was in possession of the vehicle had unauthorisedly permitted one Ramesh to drive the vehicle without registration and without an insurance policy in violation of the Motor Vehicles Act and the relevant Rules.

7. Based upon the above said findings, the Tribunal fixed the liability upon the dealer and directed him to pay a compensation of Rs.3,27,000/- (Rupees Three Lakhs and Twenty Seven Thousand only). The said award is under challenge in the present appeal by the third respondent/dealer.



CMA(MD).No.742 of 2017

8. The learned counsel appearing for the appellant/dealer had contended that by no sketch of imagination, the dealer could be considered to be the owner of the vehicle. The TVS Company which manufactures the two wheeler and transports the said vehicles to their dealer. The dealer is in possession of the vehicle till it is sold to the customer. The dealer only receives commission by the sale of the vehicle. The dealer never purchases the vehicle from the manufacturer to call the dealer as the owner of the motor vehicle.

9. The learned counsel appearing for the appellant had further contended that the Suruthi Motors, Thiruvaiyaru is also another dealer of TVS Motors, to whom, the appellant/dealer had sold many vehicles under a bulk invoice, on 27.02.2010 itself. The vehicle involved in the accident is also one among the said vehicles. He further contended that the vehicle that was in possession of Suruthi Motors, Thiruvaiyaru had been taken by one Ramesh and due to his rash and negligent driving, the accident has taken place. Therefore, the said Suruthi Motors is not only a proper party, but also a necessary party.



CMA(MD).No.742 of 2017

10. The learned counsel appearing for the appellant had further contended that under the Motor Vehicles Act, compensation should be paid for an accident arising out of the usage of Motor Vehicle only by three type of persons viz., the Driver, Owner and the Insurer. There is no scope for fixing the liability upon the dealer of the vehicle.

11. The learned counsel appearing for the appellant had further contended that when the appellant had filed Ex.R1, dated 27.02.2010 which is a bulk invoice, under which, the vehicle involved in the accident had been sold to Suruthi Motors, Thiruvaiyaru, and thereafter, no liability can be mulcted upon the appellant. He further contended that an FIR has been registered as against one Ramesh on the ground that he was driving the Motor Vehicle at the time of accident. The dealer is no way connected with the said Ramesh and therefore, the accident itself is doubtful. He further contended that the Tribunal has arrived at an erroneous finding that there is no agreement between the fourth respondent and the fifth respondent.



CMA(MD).No.742 of 2017

12. The learned counsel appearing for the appellant had further contended that RW.1 had categorically admitted in his evidence that Suruthi Motors have got the TVS two wheeler under a bulk invoice and there is an agreement between the TVS and the said Suruthi Motors. Therefore, Suruthi Motors who was arrayed as the fourth respondent in the claim petition had sold the vehicle without registration and without Insurance. Hence, the said Suruthi Motors alone are liable to pay compensation. The learned counsel for the appellant had further disputed the quantum of compensation fixed by the Tribunal on the ground that all the claimants are married daughters and they were not dependents upon the deceased. Hence, he prayed for allowing the appeal and exonerating the appellant.

13. Per contra, the learned counsel appearing for the Insurance Company had contended that the vehicle was registered before the RTO office in the name of the first respondent viz., Thanavel, only on 25.05.2010. On the same day, the vehicle was insured with the Insurance Company. However, the accident has taken place three days prior to the said registration of the vehicle viz., 22.05.2010. Therefore, on the date of



CMA(MD).No.742 of 2017

accident, the vehicle was used in a public road without registration and without Insurance policy in violation of the statutory provisions and the relevant Rules. He further contended that on the date of the accident, there was no insurance policy and the Tribunal was right in exonerating the Insurance Company.

14. The learned counsel appearing for the claimants had contended that the Sale Certificate for the vehicle has been issued only by the appellant/dealer and therefore, the contention of the appellant that they have already sold out the vehicle in favour of Suruthi Motors in the month of February is not legally sustainable. If really the appellant had sold the vehicle to Suruthi motors, the appellant would not have issued a sale certificate on 25.05.2010 on the date of registration of the vehicle. Therefore, the Tribunal was right in mulcting the liability upon the dealer/appellant.

15. I have carefully considered the submissions made by the learned counsel on either side and perused the records.



CMA(MD).No.742 of 2017

16. The following facts are not in dispute:

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(i) The appellant and the sixth respondent in the appeal are dealers of TVS Motor bike. The appellant is a dealer for Thanjavur, while the sixth respondent is a dealer for Thiruvaiyaru;

(ii) The deceased had died out of an accident that has happened at about 08.50 a.m, on 22.05.2010, by way of an accident caused by TVS Star City 110 – two wheeler bearing Registration No. TN-49-AF-2026;

(iii) An FIR has been registered as against one Ramesh who is said to have driven the vehicle at the time of accident. The name of the said Ramesh is reflected under Ex.P.1-FIR and Ex.R.4- Motor Vehicle Report;

(iv) The vehicle was registered before the RTO Office in the name of one Thanavel, on 25.05.2010 and a Policy was issued by the Insurance Company on the same day;

(v) The above said undisputed facts will clearly establish that on the date of the accident, the vehicle was neither registered nor insured, but used in the public road in violation of the Motor Vehicles Act and the relevant Rules; and



CMA(MD).No.742 of 2017

(vi) It is the contention of the appellant that they have sold the disputed vehicle along with many other vehicles to Suruthi Motors at Thiruvaiyaru by way of bulk invoice, dated 27.02.2010 which is marked as Ex.R.1.

17. A perusal of the deposition of the employee of the appellant who was examined as RW.1 will clearly indicate that the appellant/dealer alone had sold the vehicle. In the cross-examination, the said employee viz., the Manager, had admitted that without temporary registration or insurance policy, the vehicle was transferred by them in favour of Suruthi Motors at Thiruvaiyaru on 27.02.2010. He further admits that the sale certificate was issued only by the appellant/dealer to the RTO Office.

18. In view of the above said categorical admission by the Manager of the appellant dealer, it is clear that till the vehicle was registered before RTO Office on 25.05.2010, the vehicle was under the control and possession of the appellant/dealer only. If really, the vehicle was transferred by way of a bulk invoice 27.02.2010, Sale Certificate



CMA(MD).No.742 of 2017

would have been issued only by Suruthi Motors, Thiruvaiyaru and not by the appellant/dealer. Therefore, it is clear that Ex.R1 is only a paper transfer in favour of Suruthi Motors at Thiruvaiyaru, but the actual sale was effected only by the appellant /dealer.

19. Admittedly, the vehicle has been sold by the appellant dealer only on 25.05.2010 and it has been registered with the RTO Office and insured with the Insurance Company on the same day. Therefore, it is clear that on 22.05.2010, when the accident had taken place, the vehicle was very much within the control, custody and possession of the appellant/dealer.

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,



CMA(MD).No.742 of 2017

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 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



CMA(MD).No.742 of 2017

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 hire-purchase lease or hypothecation. Therefore, it is clear that a dealer should possess a Trade Certificate to use the vehicle in a 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



CMA(MD).No.742 of 2017

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 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



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CMA(MD).No.742 of 2017

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 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.

21. 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



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CMA(MD).No.742 of 2017

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 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”.



CMA(MD).No.742 of 2017

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 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



CMA(MD).No.742 of 2017

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 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



CMA(MD).No.742 of 2017

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 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.

26. The deliberations made above will clearly establish that the vehicle that was in possession of the dealer has been permitted by the dealer to be used by one Ramesh to drive the vehicle in a public place without any temporary/permanent registration. A perusal of Rule 42 of Central Motor Vehicle Rule, clarifies that a dealer in possession of a trade certificate shall not deliver a motor vehicle to a purchaser without temporary/permanent registration. Therefore, it is clear that the appellant



CMA(MD).No.742 of 2017

has handed over the vehicle to the said Ramesh without any kind of registration in violation of the statutory provisions and the Rules under the Motor Vehicles Act.

27. Though the appellant had contended that they have sold the vehicle on 27.02.2010 itself by way of bulk invoice marked as Ex.R1, the issuance of sale certificate by the appellant/dealer to the first respondent before the RTO Office for registration, on 25.05.2010 will clearly establish that the said bulk invoice is only a name sake one and the vehicle continued to be in possession and custody of the appellant/dealer alone. Even assuming that a bulk invoice was created in favour of the Suruthi Motors at Thiruvaiyaru, it could only be presumed to be for the purpose of marketing the vehicles and there was no transfer of ownership in favour of Suruthi Motors, at Thiruvaiyaru.

28. The appellant /dealer is expected to follow Section 43 of the Motor Vehicles Act and get the vehicle temporarily registered for using the Motor vehicle for the purposes other than mentioned under Rule 41 of Central Motor Vehicle Rules. On such temporary registration, the



CMA(MD).No.742 of 2017

dealer would be the owner of the vehicle for the limited period of one month as per Section 43(2) of Motor Vehicles Act. By avoiding such a temporary registration, the appellant tries to escape from the liability by contending that he is not the owner of the vehicle at the time of accident. A dealer who uses the vehicle or permits some one to use the vehicle for the purposes other than enumerated under Rule 41 of Central Motor Vehicles Rules without temporary registration should be considered to be the deemed owner, for the purpose of payment of compensation for the injuries/death arising out of an accident.

29. In view of the above said deliberations, the Tribunal has rightly arrived at a finding that the appellant is the deemed owner of the vehicle and mulcted the liability to pay compensation. As far as the quantum of the award of a sum of Rs.3,27,000/- (Rupees Three Lakhs Twenty Seven Thousand only) for the death of a 60 years old man who had left behind three married daughters, this Court does not find any ground to interfere in the quantum of compensation.



CMA(MD).No.742 of 2017

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30. Therefore, this Civil Miscellaneous Appeal lacks merit and the same stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

19.04.2023

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Internet : Yes/No
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CMA(MD).No.742 of 2017

To
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1. The Motor Accident Claims Tribunal/
Special District Judge,
Thanjavur.
2. The Branch Manager,
Oriental Insurance Company,
Thanjavur.
3. The Managing Director,
Suruthi Motors,
Theradi Street,
Kumbakonam Main Road,
Thiruvaiyaru Taluk,
Thanjavur District.
4. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA(MD).No.742 of 2017

R.VIJAYAKUMAR,J.

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Pre-Delivery Judgment in

C.M.A(MD)No.742 of 2017

19.04.2023