IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.Nos.3703 & 3704 of 2010 and 3276 & 3277 of 2011
and
MP.No.1 of 2011 (2 Nos.)

CMA.No.3703 of 2010:

1. Kamatchi
2. Viekneshwaran (Minor)
3. Thipeka (Minor)
   Minors rep. by their Mother and Next friend Kamatchi
4. Akilandam ...Appellants

Vs.

1. R.Selvi
2. National Insurance Co.Ltd.,
   Lawrence Road, Cuddalore.
3. The Managing Director, The Special Officer,
   Primary Co-op Agri. Rural Development Bank (L.D. Bank)
   Cuddalore. ...Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, as against the judgement and decree dated 21.06.2010 made in MACT.O.P.No.72 of 2004 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Vilupuram District, Villupuram.

CMA.No.3704 of 2010:

A.Subramanian …Appellant

Vs.

1. R.Selvi
2. National Insurance Co.Ltd.,
   Lawrence Road, Cuddalore.
3. The Managing Director, The Special Officer,
   Primary Co-op Agri. Rural Development Bank (L.D. Bank)
   Cuddalore. …Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, as against the judgement and decree dated 21.06.2010 made in MACT.O.P.No.211 of 2004 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Vilupuram District, Villupuram.

CMA.No.3276 of 2011:

The National Insurance Co. Ltd.,
Lorens Road, Cuddalore. …Appellant

Vs.

1. Kamatchi
2. Minor Viekneshwaran
3. Minor Thipeka
   Minors rep. by their Mother and Next friend 1st respondent
4. Akilandam

5. R.Selvi

6. The Managing Director,
The Special Officer,
Primary Co-operative Agricultural Rural
Development Bank (L.T.Bank),
Cuddalore. ...Respondents

Civil Miscellaneous Appeal Filed under section 173 of Motor Vehicles Act, 1988, as against the judgement and decree in MCOP.No.72 of 2004 dated 21.06.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vilupuram.

CMA.No.3277 of 2011:

The National Insurance Co. Ltd.,
Lorens Road, Cuddalore. ...Appellant

Vs.

1. Subramanian

2. R.Selvi

3. The Managing Director,
The Special Officer,
Primary Co-operative Agricultural Rural
Development Bank(L.T.Bank),
Cuddalore. ...Respondents

Civil Miscellaneous Appeal Filed under section 173 of Motor Vehicles Act, 1988, against the judgement and decree in MCOP.No.211 of

2004 dated 21.06.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Villupuram District, Vilupuram.

CMA.No.3703 of 2010:

For Appellants : Mrs.A.Subadra

For Respondents : R1-Exparte
Mr.S.Arun Kumar, for R2
Mr.Tamilnidhi, for R3

C.M.A. No. 3704 of 2010

For Appellant : Mrs.A.Subadra

For Respondents : R1-Exparte
Mr.S.Arun Kumar, for R2
Mr.Tamilnidhi, for R3

C.M.A. No. 3276 of 2011

For Appellant : Mr.S.Arun Kumar

For Respondents : Mrs.A.Subadra, for R1 to R3
R4-Died (Steps due)
R5-Set Exparte in EB
M/s.Tamilnidhi, for R6

CMA.No.3277 of 2011:

For Appellant : Mr.S.Arun Kumar

For Respondents : Mrs.A.Subadra, for R1
Notice not ready, for R2

R3-Exparte

COMMON JUDGMENT

Since the issue involved in all these Civil miscellaneous appeals are arising out of the very same accident, they are disposed of by way of this common order.

2. Challenging the common award dated 21.06.2010 made in MCOP. Nos.72 & 211 of 2004 on the file of the learned Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Villupuram District, Vilupuram, the claimants as well as the insurer have come up with these Civil Miscellaneous appeals.

3. For the sake of convenience, the parties are referred to in the same array as they were arrayed in CMA.No.3703 of 2010.

4. The appellant(s) in CMA.Nos.3703 & 3704 of 2010 are claimants. It is the case of the claimants that, on 14.10.2001 when the deceased Aramudhu and

the appellant in CMA.No.3704 of 2010 were travelling in the tractor bearing Regn.No.TN-31-C-3832 and trailor bearing Regn.No.TN-31-C-3834 owned by the 1st respondent insured with the 2nd respondent, the driver of the said vehicle drove the same in a rash and negligent manner and swerved the vehicle towards left due to which the deceased and the other claimant/the appellant in CMA.No.3704 of 2010 were thrown out of the vehicle and sustained grievous injuries and the deceased Aramudhu succumbed to the same. Thereby, the respective claimants filed claim petitions in MCOP.Nos.72 & 211 of 2004 seeking compensation of Rs.5,00,000/- and Rs.4,00,000/- respectively and both the cases were tried together. Before the tribunal, the claimants examined three witnesses viz., P.W.1–P.W.3 and marked Exhibits P.1-P.12 and on the side of the respondents therein, one witness viz., R.W.1 was examined and exhibits R.1-R3 were marked. After trial, the tribunal awarded a sum of Rs.3,30,000/- and Rs.1,25,000/- respectively towards compensation and directed the 1st respondent/onwer and the 2nd respondent/insurer of the vehice to pay the compensation. Challenging the same, these appeals have been filed.

5. Learned counsel for the claimants submitted that, the accident is of the year 2001 and due to the above said accident, one person lost his life and another person sustained grievous injuries, due to which, he is unable to

carryout his day to day activities without the help of another person. However, the tribunal had awarded a meagre sum of Rs.3,30,000/- and Rs.1,25,000/- respectively towards compensation, which is wholly unsustainable. Learned counsel further submitte that, immediately after the purchase of the vehicle, the same was hypothecated with the 3rd respondent/bank towards the loan obtained and the bank assured that the policy will be renewed periodically, which it failed to do so and necessarily the liability has to be fastened as against the owner and the bank, since both their names are mentioned in the insurance policy. Hence, both the owner and the bank are liable to pay compensation. Learned Counsel further relied upon Section 2 (30) of the MV Act wherein *"owner"* has been defined to *mean a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement*. Accordingly, she prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2nd respondent/insurance companny submitted that, admittedly the accident took place on 14.10.2001 and at the time of accident there is no valid insurance

policy and it is evident from the policy marked as Exhibit P4 and R3 that the policy expired on 26/11/2000 and subsequently the trailer policy was renewed for the period from 7/11/2001 till 6/11/2002 and on the date of accident, there was no valid insurance policy either for the tractor or for the trailor. Hence, fastening the liability as against the 2nd respondent/insurance company is not sustainable.

7. Learned counsel appearing on behalf of the 3rd respondent/Bank submitted that the 1st respondent/owner purchased the vehicle and immediately after the purchase he hypothecated the same with the 3rd respondent bank towards the loan obtained and it is the duty of the owner to renew the insurance policy periodically and the 3rd respondent bank has no compulsion to renew the policy since the possession of the vehicle was always with the owner and only for the purpose of payment of the amount they are retaining the name of the bank by mentioning that the vehicle was hypothecated with the bank and mere mentioning of the bank will not be the ground to fasten the liability on the bank and the same was elaborately considered by the trial court and thereby passed the present impugned award, which cannot be interfered with. Accordingly, he prayed for dismissal of these appeals.

8. Heard learned counsel on either side and perused the materials available on record.

9. Admittedly, the deceased and the other claimant/the appellant in CMA.No.3704 of 2010 were travelling in the tractor trailer on 14/10/2001. However, the issue as whether the travellers were authorised to travel in the vehicle was not raised before the trial court and, therefore, this Court is not venturing into the same.

10. The issue that falls for consideration of this Court is as to whether there was a valid insurance policy at the time of accidentt?

11. This court perused the Exhibit P4 as well as R3 and on perusal of the same reveals that the registration number of the vehicle is not mentioned in the policy and only the chasis number and the engine number is mentioned. It is evident that the earlier policy expired on 26/11/2000. Subsequently there is no material to show that the policy was renewed with regard to the tractor trailer and the vehicle met with an accident.

12. A perusal of exhibit R3 reveals that the policy was subsequently renewed for the period from 7/11/2001 and the same got expired on 6/11/2002. Between 26.11.2000 and 6.11.2001 there is no policy of insurance and the accident had taken place on 14.10.2001. In the absence of a valid insurance policy, fastening the liability as against insurance company is not sustainable.

13. The next issue arises for consideration is whether the trial court is right in discharging the 3rd respondent bank. Admittedly, the 1st respondent/ owner of the vehicle hypothecated the tractor and trailer with the 3rd respondent bank, thereby in exhibit P4 and R3, both the owner and the bank name is mentioned under the clause of hypothecation. However, merely towards the loan advanced, the hypothecation is being carried out, could the bank be made liable for payment of compensation is the question that arises for consideration.

14. In this regard this Court deems it fit to rely upon the Section 2(30) of the MV Act which reads as under :-

> *"2. **Definitions**. – In this Act, unless the context otherwise requires, -*
>
> .....
>
> *(30) "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the*

guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement ;

Corresponding Law.- *Section 2 (30) corresponds to section 2 (19) of the Motor Vehicles Act, 1939."*

15. A perusal of Section 2 (30) of the MV Act makes it clear that it is only the person in whose name the vehicle stands and in whose possessession the vehicle is, even in respect of a vehicle purchased on a hire-purchase agreement is deemed to be the owner. This makes it clear that mere hypothecation of the vehicle on the bank would not fasten any liability on the bank, as the vehicle has been purchased by the 1st respondent/owner under a hire purchase agreement with the bank and, therefore, the bank would in no way step into the shoes of the owner to partake the character of owner. Hence, no liability can be fastened on the bank, which holds a mere hypothecation on account of the hire purchase agreement between it and the owner. Hence, the trial court had rightly discharged the 3rd respondent bank with which this court does not find any fault with.

16. In the result, the Civil Miscellaneous appeals in CMA.Nos.3703 & 3704 of 2010 filed by the claimants stand dismissed and the appeals in CMA.Nos.3276 & 3277 of 2010 filed by the insurer stand allowed by setting aside the impugned common award dated 21.06.2010 made in MCOP.Nos.72 & 211 of

2004 insofar as fixing the liability on the 2nd respondent/insurer and instead the liability is fixed on the 1st respondent/owner alone and the respective claimants are granted liberty to proceed against the 1st respondent/owner to recover the compensation awarded by the Tribunal in the manner known to law. The 2nd respondent/insurance company is permitted to withdraw the compensation amount, if any, deposited by them. No costs. Consequently, the connected Miscellaneous petitions are closed.

14.11.2024

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Index : Yes / No

Speaking Order : Yes / No

NCC : Yes / No

To:

1. The Motor Accidents Claims Tribunal, (Chief Judicial Magistrate),
   Vilupuram District, Villupuram.

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

M.DHANDAPANI, J.

skt

CMA.Nos.3703 & 3704 of 2010 and 3276 & 3277 of 2011
and
MP.No.1 of 2011 (2 Nos.)

14.11.2024