



CMA.No.734 of 2023

In the High Court of Judicature at Madras

Reserved on : 20.6.2024	Delivered on : 24.6.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.734 of 2023

R.Muthuraj, Ammu Gas
Agency, Nadarmedu,
Erode-2.

...Appellant

Vs

1.Mrs.R.Ponnurangam
2.Minor R.Kanishkar
3.Minor R.Yalini

Minors 2 & 3 are represented by
their mother Mrs.R.Ponnurangam

4.Mrs.Saraswathi

5.Mr.K.Devaraj
6.Mrs.Bhagyalakshmi

7.The Territory Manager, Bharat
Petroleum Corporation,
Bottling Plant, Peelamedu,
Coimbatore Division,
Coimbatore-4.

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988
against the award passed by the Special District Court (Motor
Accidents Claims Tribunal), Erode in M.C.O.P.No.711 of 2014 dated
11.1.2023.



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For Appellant : Mr.K.G.Vasudevan
For R1 to R4 : Mr.Ma.P.Thangavel
R5 & R6 : served and no appearance
For R7 : Mr.M.Vijayan for
M/s.King & Patridge

JUDGMENT

The appellant, who is the third respondent before the Special District Court (Motor Accidents Claims Tribunal), Erode (for short, the Tribunal below) has filed the above appeal questioning the entire liability mulcted against him in the award passed in M.C.O.P.No.711 of 2014 dated 11.1.2023.

2. Heard the learned counsel for the appellant, the learned counsel appearing for respondents 1 to 4 and the learned counsel for the seventh respondent. Though respondents 5 and 6 were served and their names printed in the cause list, they have not chosen to appear either in person or through counsel.

3. The facts leading to filing of this appeal are as follows :

(i) Respondents 1 to 4 in this appeal are the claimants before the Tribunal below. They are the wife, the two children and the mother of the deceased - one Mr.M.Ramesh. They filed the claim petition on the ground that the said Mr.M.Ramesh was riding a two wheeler on 01.7.2014 at Palani Main Road, that while he was



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proceeding from Erode to Avalpoondurai at about 3 PM, in the place of occurrence, the offending vehicle was driven by the fifth respondent herein in a rash and negligent manner and he dashed against the two wheeler ridden by the victim and as a result, the said Mr.M.Ramesh was thrown out of the two wheeler and had sustained grievous injuries. Unfortunately, the said Mr.M.Ramesh succumbed to the injuries.

(ii) A first information report came to be registered against the driver of the offending vehicle in Crime No.166 of 2014 on the file of Arachalur Police Station. It was under those circumstances, the claim petition came to be filed before the Tribunal below seeking for payment of compensation.

(iii) The Tribunal below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to be conclusion that the accident had taken place only due to the rash and negligent driving by the driver of the offending vehicle. The Tribunal below, having rendered this finding, proceeded to determine as to who must pay the compensation to the claimants.

(iv) The sixth respondent in this appeal is the registered owner of the offending vehicle and the appellant is said to have taken the offending vehicle on lease and used the same for loading and



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unloading cooking gas cylinders, for which, he had an agency agreement with the Bharat Petroleum Corporation Limited (for short, the BPCL), which is the seventh respondent in this appeal.

(v) The Tribunal below, on considering the evidence available on record, came to the conclusion that even though the sixth respondent herein was the owner of the offending vehicle, since the same has been taken on lease by the appellant and as the offending vehicle was under the control and possession of the appellant, the liability has been fastened on the appellant.

(vi) The Tribunal below fixed the total compensation at Rs.15,00,400/- under various heads as follows :

S. No.	Head	Amount in Rs.
1	Loss of dependency	13,10,400/-
2	Loss of consortium to the wife	40,000/-
3	Loss of parental consortium to minor children	80,000/-
4	Loss of filial consortium to the mother	40,000/-
5	Funeral expenses	15,000/-
6	Loss of estate	15,000/-
	Total compensation	15,00,400/-

(vii) The Tribunal below apportioned the total compensation amount of Rs.15,00,400/- among the wife, the two minor children and the mother of the victim in the following manner :



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S. No.	Relationship with the deceased	Amount in Rs.
1	wife	6,00,400/-
2	two minor children	4,00,000/- each
3	mother	1,00,000/-

The above compensation was directed to be deposited together with interest at the rate of 7.5% per annum from the date of claim petition till date of deposit. Aggrieved by the award passed by the Tribunal below in fastening the liability on the appellant, he has filed this appeal before this Court.

4. Learned counsel for the appellant submitted that there was no material to establish that the offending vehicle was leased by the sixth respondent in favour of the appellant and that apart, there was no material to establish that the fifth respondent was working as a driver under the appellant. Hence, it was further submitted that the Tribunal below went wrong in fastening the liability on the appellant and that it ought to have directed the owner of the offending vehicle namely the sixth respondent to pay the compensation in this case.

5. Per contra, it was contended on the side of the contesting respondents that the Tribunal below properly appreciated the



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evidence available on record and correctly fastened the liability on the appellant and that the same does not require the interference of this Court.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record. This Court has also carefully gone through the award passed by the Tribunal below.

7. Before going into the facts of this case, it will be more relevant to take note of the definition of the term '**owner**' as contained in Section 2(30) of the Motor Vehicles Act, 1988 (for brevity, the Act). The relevant definition is extracted as hereunder :

" '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."

8. The above definition makes it clear that apart from the person, in whose name, the vehicle is registered, even those persons, who are not registered owners, will come within the purview of the



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definition pursuant to a hire purchase agreement or an agreement of lease or an agreement of hypothecation. Through judicial interpretation, it has been held that a person, who is in possession of the vehicle and who is getting the benefits of the vehicle, is, for the purposes of the Act, will be considered as the owner of the vehicle.

9. Thus, in the given facts of the case, a registered owner of the vehicle cannot be held liable if the vehicle is not in his possession and control, as the vehicle has been handed over to another person through any agreement and the vehicle is under the control and possession of that person. Therefore, considering the interest of third parties, the Legislature has defined the term very widely to ensure that the third party claimant is not caught in the crossfire between two persons, who are fighting to establish as to who is the owner of the vehicle.

10. In the case in hand, the fifth respondent was the driver of the offending vehicle; the sixth respondent is the registered owner of the offending vehicle; and the appellant is said to have taken the offending vehicle on lease from the sixth respondent and used the same for transporting cylinders, for which, he had been given agency by the seventh respondent - the BPCL.



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11. To start with, it must be seen as to how the accident had taken place. The victim was riding the two wheeler and in the place of occurrence, he was hit by the offending vehicle, which, at the relevant point of time, was carrying 25 gas cylinders.

12. Admittedly, there was no agency agreement between the sixth respondent, who is the registered owner of the offending vehicle and the seventh respondent. The actual agency agreement was between the appellant and the seventh respondent. This fact has been confirmed by the evidence of R.W.3, who was the then Branch Manager of the seventh respondent. This witness further stated that for any eventuality, it is only the distributor, who must take the responsibility as per the agency agreement. Hence, there is no occasion for the sixth respondent to carry 25 gas cylinders in the offending vehicle at the relevant point of time.

13. The next issue that assumes significance is with respect to the relationship between the appellant and the fifth respondent, who was the driver of the offending vehicle. The appellant denied any relationship with the fifth respondent and feigned ignorance about the fifth respondent.



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14. On the other hand, the fifth respondent, who was examined as R.W.1, specifically stated in his evidence that he was an employee of the appellant for a monthly salary of Rs.9,000/- and that he only drove the offending vehicle carrying 25 gas cylinders and ultimately, he puts the blame on the deceased for negligent driving. R.W.1 was cross examined on the side of the appellant and what came out of his cross examination is that he denied the suggestion that there was no employer - employee relationship between the appellant and the fifth respondent. The fifth respondent is well known and in a way, he also happens to be the relative of the sixth respondent. However, R.W.1 had reiterated that during the relevant point of time, he was working with the appellant on monthly salary for more than three years.

15. The owner of the offending vehicle was examined as R.W.2 in this case. She stated in her evidence that the offending vehicle was given on lease to the appellant in the year 2008 upto 2013, that thereafter, the lease was renewed and that it was agreed between the appellant and R.W.2 that the appellant would take care of the vehicle, undertake to renew the insurance policy, pay tax and take the responsibility for any mishap arising out of the usage of the offending vehicle. R.W.2 was also subjected to cross examination on the side of the appellant and what came out of the cross examination



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is the fact that there was no material to substantiate the agreement between the parties.

16. The appellant was examined as R.W.4. In the cross examination on the side of the owner of the offending vehicle, the stand taken by him in the counter was pointed out. The stand taken by the appellant in the counter is extracted as follows :

"This respondent is wondering how the gas cylinders supplied from his outlet has been transported in the vehicle involved in the accident."

17. It is, therefore, clear from the stand taken by the appellant in the counter that he is not denying the fact that the gas cylinders belonged to his agency, but he only feigned ignorance as to how they got into the offending vehicle.

18. While undertaking the process of appreciation of evidence, Courts must assess the evidence from the standpoint of a prudent man, who, under the circumstances of a particular case, will act upon the supposition that a fact exist or does not exist.

19. In the instant case, it becomes evident that 25 gas



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cylinders that were carried in the offending vehicle belonged to the appellant. The reason is not far to seek since the appellant was a distributor under the seventh respondent and pursuant to the same, he delivers gas cylinders to the customers. It is quite unbelievable as to how the 25 gas cylinders would have made its way to the offending vehicle without the knowledge of the appellant. Applying a little amount of common sense, any prudent person, on the facts of this case, will conclude that the 25 gas cylinders had got into the offending vehicle only with the knowledge of the appellant.

20. As already pointed out, there was no agency agreement between the owner of the offending vehicle namely the sixth respondent and the seventh respondent - the BPCL and therefore, the owner of the offending vehicle cannot deal with distribution of gas cylinders. Since the gas cylinders were carried in the offending vehicle, it can be safely concluded that the offending vehicle was very much within the control and possession of the appellant. Just because there was no material to show the agreement between the owner of the offending vehicle and the appellant and the employer - employee relationship between the appellant and the fifth respondent, that, by itself, cannot discredit the evidence of R.W.1 and R.W.2.



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21. It is a common practice that whenever it comes to leasing of vehicles, which are movable properties, in most cases, it goes with an understanding or oral agreement and the terms of the agreement are not reduced to writing. Similarly, when an agency engages drivers for delivery of gas cylinders, most of the time, they are engaged on adhoc basis without any paper work. Therefore, the evidence of R.W.1 and R.W.2 cannot be disregarded just because they were not supported by any other material. The evidence of R.W.1 and R.W.2 must be understood and appreciated on the overall facts of this case. Apart from that, the evidence of R.W.3 also gains significance since it was R.W.3, who spoke about the agency agreement with the appellant, through which, the appellant was appointed as the distributor.

22. The Tribunal below took pains to deal with the evidence available on record and there is proper appreciation of evidence on the part of the Tribunal below while coming to the conclusion that the offending vehicle was within the control and possession of the appellant and therefore, the liability has been rightly fastened on the appellant. This finding does not suffer from any illegality or perversity.



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23. In the considered view of this Court, the quantum of compensation fixed by the Tribunal is reasonable and it does not require the interference of this Court.

24. In the result, the award passed by the Special District Court (Motor Accidents Claims Tribunal), Erode in M.C.O.P.No.711 of 2014 dated 11.1.2023 is hereby confirmed. The above civil miscellaneous appeal is dismissed. There shall be a direction to the appellant to deposit the entire compensation as awarded by the Tribunal below together with accrued interest till the date of deposit less the amount already deposited within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.

24.6.2024

To

- 1.The Special District Court (Motor Accidents Claims Tribunal), Erode.
- 2.The Territory Manager, Bharat Petroleum Corporation, Bottling Plant, Peelamedu, Coimbatore Division, Coimbatore-4.

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N.ANAND VENKATESH,J

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