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C.M.A.No.2326 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2326 of 2021

Sree Sakthi Bajaj,
No.135, Perundurai Road,
Erode – 638 011,
Represented by its Partner,
Mr.S.J.Sakthi Vadivel.

... Appellant/3rd Respondent

Vs.

1.S.Prabakaran

... 1st Respondent/Petitioner

2.S.Vasanth

... 2nd Respondent/1st Respondent

3.The Oriental Insurance Co. Limited,
Divisional Office,
Parimalam Complex,
Second Floor,
No.11, E.V.N. Road,
Erode – 638 011.

... 3rd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, praying to set aside the order dated 27.11.2020 made in M.C.O.P.No.388 of 2017 on the file of the Motor Accident Claims



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Tribunal/Special Sub Court for Motor Accident Claims Cases, Erode, fixing the responsibility on the appellant by allowing the Civil Miscellaneous Appeal.

For Appellant : Mr.P.Kannan Kumar

For R-1 : Mr.S.P.Yuvaraj

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the third respondent in M.C.O.P.No.388 of 2017 challenging the award dated 27.11.2020, whereby, the Tribunal has held that the third respondent/appellant herein is liable to pay compensation to the claimant therein along with the first respondent.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

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

The appellant herein is a two wheeler dealer, sold the unregistered two wheeler bearing Chassis No.MD2A55FZ90CGA 13859 and Engine



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No.JLZCGA26256, to the first respondent insured with the second respondent. Before effecting registration of the vehicle, the first respondent, who is the holder of learner's licence, while driving the vehicle on 01.06.2016 at about 8.30 AM met with an accident by hitting on the two wheeler driven by the claimant. The accident resulted in causing severe injuries to the claimant and he had come forward with the claim petition seeking compensation for a sum of Rs.20,00,000/- against the owner, dealer and insurer of the two wheeler.

4. The case of the claimant before the Tribunal is that on 01.06.2016 at about 8.30 AM, when he was riding a motorcycle bearing Registration No.TN 33 AD 2089 on the Solar to Moolapalayam Road near Manickkavasagar Colony, Erode, at the left hand side of the road by observing traffic rules and regulations, opposite to the very same road, the first respondent riding an unregistered two wheeler in negligent manner and uncontrollable speed, came in the wrong side and dashed on the two wheeler of the claimant, which resulted in causing grievous injuries. After undergoing treatment, he came forward with the claim petition under



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Section 166 of the Motor Vehicles Act, 1988.

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5. The first respondent/purchaser filed a counter and contended that he is not responsible for the accident and on the date of accident, originally, his two wheeler was hit by an unknown Splendor motorcyle, as a result of which, he fell down and at that time, the claimant was driving his two wheeler in a rash and negligent manner and dashed on the first respondent's unregistered vehicle.

6. The Insurance Company contested the claim on the ground that the unregistered vehicle was plied in the road by the person, who was not having valid driving licence and without proper registration, thereby statutory violations are committed. Hence, the Insurance Company is not liable to pay the compensation and the owner and the dealer of the vehicle alone are liable to pay compensation.

7. The dealer of the vehicle disputed the manner in which the accident had taken place and also submitted that the unregistered vehicle was



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properly insured and on the date of occurrence, insurance was in force. The first respondent has already purchased the vehicle on 11.05.2016 and as per the Motor Vehicles Act, the vehicle sold unregistered has to be registered with the Regional Transport Authority within a period of one month. The Regional Transport Authority was not issuing temporary registration in Erode District. For the purpose of registering the vehicle, the two wheeler was taken to the Regional Transport Authority and at that time, accident has taken place. Hence, the Insurance Company is liable to pay compensation. There is no violation of policy condition or any statutory violation and the Insurance Company is liable to pay the compensation on behalf of the first respondent/owner of the vehicle.

8. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 was examined and Ex.P1 to Ex.P21 were marked. On the side of the owner of the vehicle, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 were marked. On the side of the Insurance Company, R.W.3 was examined and Ex.R4 to Ex.R7 were marked. On the side of the dealer/appellant herein, R.W.4 was examined and Ex.R8 to Ex.R15 were marked. Court exhibit



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Ex.C1 was also marked.

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9. The Tribunal, after considering the evidence placed on record, has held that the owner of the unregistered vehicle has rashly ridden the two wheeler and dashed against the claimant's two wheeler, which resulted in causing injuries to the claimant. His negligence act is responsible for the accident. In Point No.2, the Tribunal has held that there is a violation of policy conditions and thereby, the respondents 1 and 3 alone are liable to pay compensation. Since the injured is a third party, the second respondent/Insurance Company was directed to pay the compensation and to recover the same from the respondents 1 and 3. In Point No.3, the Tribunal has quantified the compensation and awarded a sum of Rs.4,03,000/- along with interest at the rate of 9% per annum from the date of filing petition till the date of realisation.

10. Aggrieved over the finding that the respondents 1 and 3 have violated the policy conditions and also for the direction issued to recover the compensation payable to the claimant from the dealer of the vehicle, this



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Civil Miscellaneous Appeal is filed by the dealer of the vehicle. Neither the claimant nor other respondents have not filed any appeal challenging the award of the Tribunal.

11. The learned counsel appearing for the appellant/dealer of the vehicle would submit that the dealer was insured with Trade Certificate Insurance, which covers all forms of damage to the vehicles including road accident. Before the vehicle was used in the road, insurance was also purchased and the appellant herein is protected by two insurance policies. This Trade Certificate Insurance covers to all the vehicles during transportation, storage and travel towards registration, test ride etc. The Insurance Company has not disputed the policies. The purchaser at the time of taking delivery of the vehicle has informed the appellant that he is having valid driving licence. For non-possession of the driving licence by the purchaser, the dealer of the vehicle shall not be made liable. Further, the owner of the vehicle also adduced evidence to support his case that he used the vehicle as per the conditions appended to the learner's licence. Hence,



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the learned counsel prays to modify the award by absolving the appellant from paying any compensation.

12. The learned counsel for the claimant submits that since the vehicle has been plied by the owner of the vehicle without observing the conditions appended to the learner's licence, the Tribunal has held that there is a violation of policy condition and since the claimant herein is a third party to the policy, he shall be paid compensation by the Insurance Company and thereafter, the Insurance Company may be directed to recover the same from the other respondents. He also submitted that there is no evidence placed on record whether proper delivery was made to the purchaser by the dealer. Hence, the Tribunal has rightly held that there is a contradictory evidence with regard to the delivery of the two wheeler by the dealer to the purchaser and the dealer is also liable to pay compensation and prays to confirm the award.

13. I have considered the submissions made on both sides and also perused the records.



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14. In this case, the third respondent/dealer has produced delivery challan - Ex.R13 and invoice - Ex.R9 to show that the vehicle was handed over to the first respondent, who is the purchaser. The first respondent, who is a learner's licence holder, had driven the vehicle and while proceeding for registration, the vehicle met with an accident.

15. The Insurance Company has contended that the first respondent/owner of the vehicle, even though was having learner's licence, has not driven the vehicle as per the conditions attached with the learner's licence. To counter the same, the purchaser has examined R.W.2, one Gowthamkumar, who is the holder of valid driving licence. According to R.W.2, he travelled along with the first respondent as a pillion rider at the time of occurrence and thereby, there was no violation of conditions attached with the learner's licence. This evidence has not been accepted by the Tribunal on the ground that the first respondent has not stated about the fact that he was riding along with R.W.2-his brother, at the time of accident. Only on this ground, his evidence has not been accepted by the Tribunal.



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16. In the matters relating to pleadings before the Motor Accident Claims Tribunal, strict rules of pleadings contained in the Civil Procedure Code cannot be invoked while considering the claim petition, although the opposite parties are required to plead their specific case of defence available to them. In this case, the first respondent denied the allegation that he has driven the vehicle by violating the statutory and policy conditions. To substantiate the same, he has examined R.W.2 as his evidence. That being so, rejection of evidence must be based on the evidence placed on record. It shall not be rejected based on the pleadings. R.W.2 has deposed before the Court that he travelled along with the first respondent as a pillion rider at the time of accident. No contra evidence has been produced by any of the parties to discredit or discard his evidence. In the absence of any contra evidence, rejection of evidence of R.W.2, who claims that he travelled along with the first respondent at the time of accident and he is having valid driving licence, is not proper and this Court is of the view that there is no violation of conditions attached with the learner's licence. However, the Tribunal has held that the first respondent has driven the unregistered vehicle on the road and there was no temporary registration obtained by the



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vehicle, thereby violated statutory rules.

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17. Admittedly, the vehicle herein is not a registered vehicle and plied in the road without registration. It is the case of the first respondent/owner that the vehicle was taken to the Regional Transport Authority for the purpose of registration and at that time, the accident has taken place. There is no positive agreement between the parties that either the dealer or the owner of the vehicle is entitled to ply the vehicle on the road at the time of obtaining temporary or permanent registration. Section 39 of the Motor Vehicles Act, 1988, prescribes 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 or in any other place unless the vehicle is registered in accordance with this chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. Rule 42 prohibits the delivery of the vehicle to the purchaser by the Trade Certificate holder, i.e., dealer, without registration either temporary or permanent. The relevant provisions which deals with the issue involved herein are as follows:

(i) Section 39 of the Motor Vehicles Act reads as follows:



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39. Necessity for registration.—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 or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

(ii) Rule 41 to 44 and 47 of the Central Motor Vehicles Rules reads as follows:

"41. Purposes for which motor vehicle with trade certificate may be used.— The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following:—

(a) for test, by or on behalf of the holder of a trade certificate during the course of, or after completion of, construction or repair; or

(b) for proceeding to or returning from a weigh bridge for or after weighing, or to and from any place for its registration; or

(c) for a reasonable trial or demonstration by or for the benefit of a prospective purchaser and for proceeding to or



returning from the place where such person intends to keep it; or

(d) for proceeding to or returning from the premises of the dealer or of the purchaser or of any other dealer for the purpose of delivery; or

(e) for proceeding to or returning from a workshop with the objective of fitting a body to the vehicle or painting or for repairs; or

f) for proceeding to and returning from airport, railway station, wharf for or after being transported; or

(g) for proceeding to or returning from an exhibition of motor vehicles or any place at which the vehicle is to be or has been offered for sale; or

(h) for removing the vehicle after 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.

42. Delivery of vehicle subject to registration.—No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.

43. Register of trade certificate.—(1) Every holder of a trade certificate shall maintain a register in Form 19 in duplicate which shall be in a bound book, with pages numbered serially.

(2) The particulars referred to in Form 19 except the time of



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return under column 7, shall be entered in the register before the commencement of each trip by the holder of the trade certificate or his representative and a duplicate copy of Form 19 made prior to the commencement of each trip shall be carried during the trip by the driver of the vehicle and shall be produced on demand by any officer empowered to demand production of documents by or under the Act.

(3) The holder of a trade certificate shall, at the end of a trip, fill in column 7 of Form 19 (both original and duplicate), and the register and the duplicate shall be open for inspection by the registering authority.

44. Suspension or cancellation of trade certificate.—*If the registering authority has reason to believe that the holder of any trade certificate has not complied with the provisions of rules 39 to 43, it may, after giving the holder an opportunity of being heard, suspend or cancel the trade certificate held by him.*

47. Application for registration of motor vehicles.—*(1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of 67[seven days] from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by—*

(a) sale certificate in Form 21;



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(b) valid insurance certificate;

(c) copy of the proceedings of the State Transport Authority or Transport Commissioner or such other authorities as may be prescribed by the State Government for the purpose of approval of the design in the case of a trailer other than a vehicle of category;

(d) original sale certificate from the concerned authorities in Form 21 in the case of ex-army vehicles;

(e) proof of address by way of any one of the documents referred to in rule 4;

(f) temporary registration, if any;

(g) road-worthiness certificate in Form 22 from the manufacturers, Form 22-A from the body builders;

(h) custom's clearance certificate in the case of imported vehicles along with the licence and bond, if any:

Provided that in the case of imported vehicles other than those imported under the Baggage Rules, 1998, the procedure followed by the registering authority shall be same as those procedure followed for registering of vehicles manufactured in India, and

(i) appropriate fee as specified in rule 81;

(j) proof of citizenship;

(k) proof of legal presence in India in addition to proof of residence in case of foreigners;

(l) technical specifications and any other document as may



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be required by the registration authority in respect of the modular hydraulic trailer;"

(iii) Section 4, 19, 20 and 21 of the Sale of Goods Act, which reads as follows:

“Section 4:

4. Sale and agreement to sell.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another. (2) A contract of sale may be absolute or conditional. (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. (4) An agreement to, sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Section 19:

19. Property passes when intended to pass.- (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at the time the



parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Section 20

20(1): Unless a different intention appears the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule I. — Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery or both be postponed.

(2) Where in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee, whether named by the buyer or not, for the purpose of transmission to the buyer and does not reserve the right of disposal he is deemed to have unconditionally appropriated the goods to the contract.

Section 21:

21. Specific goods to be put into a deliverable state.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until



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such thing is done and the buyer has notice thereof. ”

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18. This Court has occasion to consider the liability of the dealer in payment of compensation under Motor Vehicles Act, if he had violated Rule 42 of the Central Motor Vehicles Rules in two earlier cases.

19. In ***Managing Director, Sakthi Auto Agencies Vs. Santhi and others*** reported in ***2023 SCC OnLine Mad 2938***, the learned Single Judge of this Court, after considering Rule 41 to 44 of the Central Motor Vehicles Rules, has held in paragraph 28 as follows:

“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 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



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purpose of payment of compensation for the injuries/death arising out of an accident.”

20. The facts of the above case is that the claimants therein are the dependants of the deceased Ramasamy and he succumbed to the injuries sustained in the road accident taken place on 22.05.2010, caused by an unregistered vehicle. Claim was made against three respondents. The first respondent was the purchaser of the vehicle, the second respondent was the insurer and the third respondent was the dealer of the vehicle. The Insurance Company contended that the offending vehicle was an unregistered brand new vehicle and not insured with the Insurance Company on the date of occurrence. The vehicle was registered three days after the occurrence. Hence, the Insurance Company is not liable to pay compensation. The Tribunal has held that on the date of accident, the vehicle was not registered in the name of the first respondent nor it was insured with the second respondent. Hence, the third respondent/dealer alone is liable to pay the compensation.

21. To buttress his reasons, the learned Single Judge has also relied on the judgment of the Apex Court in ***Commissioner of Commercial Taxes,***



Thiruvananthapuram, Kerala Vs. K.T.C. Automobiles reported in (2016) 4

WEB CO **SCC 82**, wherein, in paragraphs 20 and 21, the Apex Court held 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 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



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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 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



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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”.

22. The learned Single Judge of this Court has also placed reliance on the judgment of the Hon'ble Apex Court in ***Tata Motors Limited Vs. State of Jharkhand*** reported in **(2020) 15 SCC 438** in paragraph 7, which 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.”

23. This Court once again considered the liability of the dealer to pay compensation for causing accident by using the unregistered vehicle in ***Chinnasamy Agencies Vs. Amala Jesudas and others*** reported in **2024 (1) TN MAC 110** and held that the judgment of this Court in *Managing*



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Director, Sakthi Auto Agencies case cited supra, has not considered the Sale of Goods Act, and after considering the implications of the violation of Rule 42, has held that Rule 47 of the Central Motor Vehicles Rules were not brought to the knowledge of the learned Single Judge of this Court in the earlier judgment and concluded in paragraph 14 as follows:

“14. Can it be now said that by breaching Rule 42, a dealer has allowed the use of the motor vehicle in a public place, without insurance, to invite upon itself the liability to meet a third party claim to compensation? Here comes Rule 47. Its opening lines are:

"Application for registration of motor vehicles (1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of 1 week [seven days] from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by..."

Therefore, while Rule 42 forbids the dealer from delivering a motor vehicle without a registration, Rule 47 enables registration within one week after delivery of a motor vehicle. This reduces Rule 42 proscription to a directory requirement, lest it will create a situation where both Rule 42 and Rule 47 cannot co-exist. And, this apparent conflict between Rule 42 and Rule 47 can be harmonised only through Rule 44. If it were to be contended, as argued by the counsel for the claimant, that Rule 42 violation will



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have the effect of fastening third party liability for the negligent use of a motor vehicle by the buyer thereof, then Rule 47 providing for seven days for applying for registration since taking delivery, cannot be reconciled with Rule 42. Therefore, the statutory intent behind violation of Rule 42 is penalising the dealer with cancellation or suspension of trade certificate, and not mulcting it with any liability which the buyer of a motor vehicle is principally required to meet. This apart, once the property in a motor vehicle is vested in the buyer there can be no vicarious liability between the dealer and the buyer either, for, otherwise, it will lead to a jurisprudential conundrum which cannot be reconciled if Rule 42 is read as stand alone provision, ignoring Rules 44 and 47, and Sec.39 of the MV Act.”

24. The facts of the *Chinnasamy Agencies* case are relevant for consideration. The appellant therein is a dealer of two wheelers, in Krishnagiri. On 19.01.2018, it had sold the two wheeler in question to the second respondent and delivered it to the purchaser under Ext.R1 delivery challan. This two wheeler was then removed to Chennai. Couple of months have elapsed since the purchaser had taken delivery, still she chose not to register the vehicle. On 26.03.2018, the husband of the second respondent drove the said two wheeler in a public place and dashed against the two



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wheeler of the claimant. Seeking compensation, the victim of the accident moved the Tribunal with claim petition. The Tribunal had determined the compensation payable at Rs.6,27,222/- and directed the appellant therein/dealer of the offending vehicle to pay the compensation and recover the same from its purchaser/second respondent and its rider/third respondent.

25. I have carefully considered the above two judgments of this Court and the Apex Court judgments cited supra. In *Chinnasamy Agencies* case cited supra, this Court has interpreted Section 19 and 20 of the Sale of Goods Act and held that the property in the good is transferred if the good is in the deliverable state even if the delivery is postponed. Therefore, Rule 42 of the Central Motor Vehicles Rules on its face only requires the postponement of the motor vehicle till it is registered either temporarily or permanently. The breach in the instant case is not about vesting of the property in the two wheeler in the second respondent, but about its delivery to the second respondent before its registration.

26. In *Commissioner of Commercial Taxes* case cited above, the Apex



Court has considered Section 4, 19 and 20 of the Sale of Goods Act and also the Chapter III of the Central Motor Vehicles Rules and has held in paragraphs 19, 20, 21, 25 and 26 as follows:

“19. From the above submissions and counter-submissions of the parties as well as relevant statutory provisions in the Motor Vehicles Act, 1988; the Central Motor Vehicles Rules, 1989; Section 4(2) of the Central Sales Tax Act, 1956; Sections 4, 19 and 20 of the Sale of Goods Act and the relevant provisions of the KGST Act and the Rules noticed earlier, we find no difficulty in accepting the submissions advanced on behalf of the appellant that the application of registration is by law required to be made by or on behalf of the owner whose name is to be mentioned in the registration form along with relevant particulars of the vehicle such as engine number and chassis number and hence, registration of a motor vehicle is a post-sale event.

20. But this legal proposition does not take the appellant far. It must be carefully seen as to when the properties, particularly possession of a motor vehicle passes or can pass legally to the purchaser, authorising 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



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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 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 it 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 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.

...

25. *In the light of legal formulations discussed and noticed above, we find that in law, the motor vehicles in question could*



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come into the category of ascertained goods and could get appropriated to the contract of sale at the registration office at Mahe where admittedly all were registered in accordance with the Motor Vehicles Act and the Rules. The aforesaid view, in the context of motor vehicles gets support from sub-section (4) of Section 4 of the Sale of Goods Act. It contemplates that an agreement to sell fructifies and becomes a sale when the conditions are fulfilled subject to which the properties of the goods is to be transferred. In case of motor vehicles the possession can be handed over, as noticed earlier, only at or near the office of the registering authority, normally at the time of registration. In case there is a major accident when the dealer is taking the motor vehicle to the registration office and the vehicle can no longer be ascertained or declared fit for registration, clearly the conditions for transfer of property in the goods do not get satisfied or fulfilled.

26. Section 18 of the Sale of Goods Act postulates that when a contract for sale is in respect of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Even when the contract for sale is in respect of specific or ascertained goods, the property in such goods is transferred to the buyer only at such time as the parties intend. The intention of the parties in this regard is to be gathered from the terms of the contract, the conduct of the



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parties and the circumstances of the case. Even if the motor vehicles were to be treated as specific and ascertained goods at the time when the sale invoice with all the specific particulars may be issued, according to Section 21 of the Sale of Goods Act, in case of such a contract for sale also, when the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.”

(emphasis supplied)

27. The above discussion and declaration made by the Apex Court shows that even though the motor vehicles were to be treated as specific and ascertained goods at the time when the sale invoice with all specific particulars may be issued, according to Section 21 of the Sale of Goods Act, in case of such a contract for sale also, when the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

28. Since the Apex Court has considered all the provisions including Sale of Goods Act and delivered a specific finding as discussed above, I am of the view that the observations made by the Apex Court in the



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Commissioner of Commercial Taxes case in the above paragraphs, is applicable to the facts of this case. In this case, even though delivery challan was issued on the date of registration, since the dealer, who is effecting the sale, is bound to deliver the property only near the office of the Registering Authority, normally at the time of registration, the issuance of delivery challan could not be considered as the property already been delivered to the first respondent.

29. In this case, admittedly, the accident had taken place while the vehicle was taken to the Registering Authority. The purchaser is not having any right over the vehicle since permitting the purchaser to use the vehicle shall not be considered as a delivery of property. The purchaser of the vehicle shall not be considered as the owner of the vehicle for the purpose of claiming compensation under the Motor Vehicles Act. Admittedly, the vehicle was plied in the road without temporary or permanent registration, the dealer/trade certificate holder has violated the policy conditions and he is liable to pay the compensation for the accident caused by the first respondent, who shall not be considered as the owner of the vehicle. He



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only steps into the shoes of the dealer till the vehicle reaches the office of the Registering Authority and registration completes. In this case, the Tribunal has rightly concluded that the respondents 1 and 3, i.e., the purchaser and dealer of the vehicle are liable to pay compensation to the claimant and this Court finds no reasons to interfere with the award passed.

30. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accident Claims Tribunal/Special Sub Court for Motor Accident Claims Cases, Erode, in M.C.O.P.No.388 of 2017 dated 27.11.2020 stands confirmed. There shall be no order as to costs.

28.06.2024

Index : Yes / No
Speaking Order : Yes / No
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K.RAJASEKAR,J.

Lm

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28.06.2024