BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.868 of 2017

1. Philomi
2. Geetha
3. Minor Kumar @ Saravana Kumar
4. Minor Santhi
5. Minor Jayanthi ... Appellants/Petitioners

(Minor appellants 3 to 5 are represented by their mother and next friend the first appellant herein.)

-vs-

1. Rajamani

2. The Motor General Finance Limited,
M.G.F. House,
17/B Asaf Ali Road,
New Delhi. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, against the judgment and decree dated 19.09.2002 passed in M.C.O.P.No.292 of 1991 on the file of the Motor Accidents Claims Tribunal/ Sub Court, Tuticorin.

For Appellants : Mr.K.Sathiya Singh

For R2 :Mr.S.Senthil Sankara Natha kumar
For R1 : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the claimants in M.C.O.P.No.292 of 1991 on the file of the Motor Accident Claims Tribunal/ Sub Court, Tuticorin, challenging the dismissal of the claim petition as against the financier of the vehicle.

2. The deceased was driving an Auto on 27.09.1990 and the Van belonging to the first respondent and insured with the second respondent came from the opposite direction in a rash and negligent manner and caused the accident. In the said accident, the deceased, namely, Maharajan had passed away. The legal heirs of Maharajan had filed the claim petition.

3. The first respondent, who is the owner of the offending vehicle namely, Van had filed a counter contending that he had purchased the said vehicle under hire-purchase agreement and therefore, the financier, namely, the Motor General Finance Limited, is a necessary party to the claim petition.

Based upon on the counter filed by the first respondent, the financier was impleaded as the second respondent.

4. The second respondent had filed a counter stating that the policy for the vehicle had expired on 30.08.1990 and continuously, they were addressing letters to the first respondent on 23.08.1990 and on 09.10.1990 to renew the insurance policy. However, they received instructions for renewing the policy only belatedly and thereafter, they renewed the policy on 04.10.1990. The financier has further contended that the obligation is upon the hire-purchase holder to take insurance policy. Therefore, the financier is not a necessary party to the claim petition.

5. Considering the submissions made on either side, the Tribunal had passed an award as against the owner of the offending vehicle exonerating the financier. The Tribunal was under the impression that the second respondent is an Insurance Company ignoring the fact that they were not an Insurance Company, but only the financier of the vehicle. Challenging the said award, the present appeal has been filed by the claimants with a prayer to pass an award to the effect that both the respondents are jointly and severally liable to pay the compensation.

6. The learned counsel appearing for the appellant had contended that the Tribunal has arrived at an erroneous finding that the second respondent is not liable to pay compensation and in fact, the second respondent is also liable to pay compensation.

7. Per contra, the learned counsel appearing for the second respondent/ financier had contended that the liability to take insurance policy is upon the hire-purchase holder and in case, no policy has been taken, it is for the first respondent to pay the compensation.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The policy for the offending vehicle had expired on 30.08.1990. The accident had taken place on 27.09.1990. The policy for the said offending vehicle was renewed only on 04.10.1990. The second respondent in the claim petition is the financier and the first respondent in the claim petition is the hire-purchase holder. These facts are not in dispute.

10. On the date of the accident, there was no policy and hence, no Insurance Company was impleaded in the said proceedings. As per Section 2 (30) of the Motor Vehicle Act, the person in possession of the vehicle under hire-purchase agreement is deemed to be owner and not the financier. Therefore, viewed from any angle, the second respondent, namely, financier of the vehicle cannot be made liable for paying the compensation.

11. In view of the above said deliberations, there are no merits in this appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. The Tribunal is directed to dispose of the execution proceedings within a period of four months from the date of receipt of a copy of this order. No costs.

10.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accidents Claims Tribunal/ Sub Court,
Tuticorin.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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