

C.M.A(MD)No.164 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 20.03.2025

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.164 of 2019

National insurance Company Ltd.,
Second Floor,
92, Devarpuram Road,
Near Court Buildings,
Thoothukudi.

... Appellant / 2nd Respondent

Vs

1.M.Mariammal

2.Minor.M.Muneeswari

3.Minor.M.Ramalakshmi

4.Minor. M.Karpagaselvi

5.Minor.M.Anitha

6.Minor.M.Marimuthu

(Minors 2 to 6 are represented by
their mother / 1st respondent)

7.O.Raman

... 1 to 7 Respondents / 1 to 7 Petitioners

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8.E.Paulraj

9.E.Danabalan

...8 and 9 Respondents / 1 and 3 Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the decree and judgment dated 31.08.2018 made in M.C.O.P.No.363 of 2014 on the file of the I Additional District Judge (Full Additional in-charge), Thoothukudi.

For Appellants : Mr.A.Ilango

For R8 : Mr.M.P.Senthil

For R1, R7 & R9 : No appearance

JUDGMENT

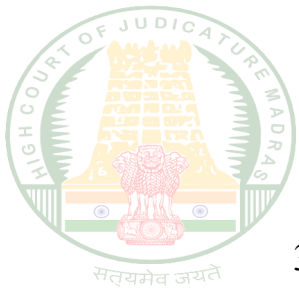
This Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 31.08.2018 made in M.C.O.P.No.363 of 2014 on the file of the I Additional District Judge (Full Additional in-charge), Thoothukudi.

2. Challenging the order passed by the learned Motor Accident Claims Tribunal in MCOP No.363 of 2014 dated 31.08.2018, this Civil Miscellaneous Appeal is filed. For the sake of convenience, the parties hereto



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are referred to as per the ranking before the Tribunal. The claimants are the legal heirs of the deceased, the first respondent is the owner of the two wheeler involved. The second respondent is the insurance company. Third respondent is the rider of the two wheeler. On 21.12.2013, at about 21.50 pm., when the husband of the deceased namely R.Murugan was travelling as a pillion rider in a two wheeler belonging to the third respondent along the Thoothukudi - Thiruchendur main road, near K.N.R. building from North to South, because of the negligence and rash driving of the driver of the two wheeler namely Danabalan, the third respondent who applied sudden brake without control, the pillion rider was thrown away and as a result of which he sustained grievous injury who was further admitted in the Thoothukudi Medical College Hospital on the same day on 21.12.2013. After taking treatment till 27.12.2013, he passed away. Muthaiyapuram police has registered First Information Report in Crime No.405 of 2013 for the offences under Sections 279, 337 of IPC altered into Section 304(A) of IPC as against the Danabalan, the third respondent. Seeking to compensate to the death of Murugan, his legal representatives had laid MCOP before the Tribunal.



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3. The learned Tribunal has examined two witnesses as P.W.1 and P.W. 2 on the side of the petitioners and marked Ex.P1 to Ex.P17 and examined three witnesses on the side of the respondent and marked Ex.R1. A Court document was marked as Ex.X1. On the basis of the arguments made by the parties, evidence deposed and the documents marked, the learned Tribunal passed an award of Rs.11,83,000/- fastening the entire liability on the insurer on the principle of pay and recovery. Challenging the same, the insurance company has filed this appeal.

4. The Learned counsel for the appellant Mr.A.Ilango, submitted that the vehicle involved in the accident stood in the name of the first respondent who was the RC Book owner. Though the same was sold away by the first respondent even before the date of accident to the third respondent, the name was not transferred to the name of the third respondent. That apart, the insurance policy operated by the first respondent is an 'Act only' policy, which will not cover the pillion rider. Hence the insurance company is not entitled to pay. Hence the Tribunal ought not to have fastened the liability on the insurance company in its entirety and the principle of pay and recovery also will not be attracted to the instant case. Since the policy is an 'Act only'



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policy relying upon the judgment passed in *Oriental Insurance Company Ltd., Vs Sudhakaran K.V. and others*, reported in 2008(2) TNMAC 16 SC, *New India Assurance Company Ltd., Vs Kunwar Singh Bisht and another* reported in 2016(1) TNMAC 554 UP, the learned counsel categorically contended that Act only policy does not cover the pillion rider. Further relying upon the judgment of the Hon'ble Supreme Court in *New India Assurance Company Ltd., vs Govindan and another* reported in 2014 ACJ 1677, principle of pay and recovery will be attracted only when the policy terms are violated. However, in this case, no violation of the same, since it is an Act only policy. The Tribunal ought not to have fastened the entire liability of pay and recovery on the insurance company. The insurance company should have been exonerated.

5. Learned counsel for the first respondent submitted that the owner of the vehicle which was involved in the accident, is not at all the owner of the vehicle at the time of the accident and he sold the vehicle to the third respondent, the third respondent himself being the rider should have been fastened with the entire liability, the first respondent is in no way connected with this case at all.



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6. Heard Mr.A.Ilango, learned counsel appearing for the insurance company and Mr.M.P.Senthil, learned counsel appearing for the eight respondent and carefully perused the materials available on record.

7. The delivery report of the vehicle involved in the accident with respect to the sale of the same by the first respondent in favour of the third respondent has been marked as Court document Ex.X1. The same would reveal that the said vehicle (TN 69 AB 9126) has already been sold by the first respondent to the third respondent. However, the name of the owner in the RC Book was not transferred and the same stood in the name of the first respondent on the date of accident that is on 21.12.2013. The judgment of the Kerala High Court reported in **2015 ACJ 1251** in the case of **Sree Kumar Vs Abdeen and others**, has held that in the case where the vehicle involved in the accident has already been sold and the RC Book still stands in the name of the registered owner of the vehicle then he can be fastened with the liability with the right to pay and recovery from the subsequent owner. The relevant portion of the said judgment is extracted as follows:



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4. *The learned counsel for the appellant contends that in view of bar of jurisdiction of the Civil Court under Sec.175 of the Motor Vehicles Act, 1988 (for short, “the Act”), inter se dispute between the appellant and the second respondent regarding transfer of the vehicle is to be decided by the Tribunal. If it is found that there was a transfer of the vehicle prior to the accident, may be the registered owner continues to be liable to the 3rd parties but the registered owner is entitled to recover the amount if realised from him from the real owner. The learned counsel has placed reliance on the decisions in Dr. T.V. Jose v. Chacko P.M. @ Thankachan ((2001) 8 SCC 748), National Insurance Co. Ltd. v. Swaran Singh (2004 (1) KLT 781), National Insurance Co. Ltd. v. Baljit Kaur ((2004) 2 SCC 1), P.P. Mohammed V.K. Rajappan ((2008) 17 SCC 624) and Pushpa @ Leela v. Shakuntala ((2011) 2 SCC 240).*

5.

6. *Question is whether inter se dispute between the registered owner and the defacto owner could be decided by the Tribunal and the registered owner could be given right to recover the amount if any realised from him from the defacto owner? In National Insurance Co. Ltd. v. Swaran Singh (supra) the Supreme Court observed,*



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“In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide the disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and the insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided under Sec.174 of the Act for enforcement and execution of the award in favour of the claimants.”

In Dr. T.V. Jose v. Chacko P.M. @ Thankachan (supra) the Supreme Court refused to look into the inter se dispute between the registered owner (transferor) and the defacto owner (transferee) for the reason that the transferee was impleaded in the proceeding only in the Supreme Court. In Pushpa @ Leela v. Shakuntala (supra) the policy of insurance was taken in the name of the registered owner even after transfer of the vehicle. Hence it was held that inter se dispute between the respondents in the claim petition was not required to be decided. The above decisions indicate that inter se dispute between the registered owner and the defacto owner is to be decided by the Tribunal if properly raised in the Tribunal.



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7. In this connection it is relevant to consider Sec.174 of the Act. It is as under:-

“Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the manner as an arrear of land value.”

The said provision says that if amount is due to ‘any person’ under the award the Claims Tribunal may on an application made to it “by the person entitled to the amount” issue a certificate stated therein. The words ‘any person’ occurring in Sec.174 of the Act should include the registered owner who had transferred the vehicle prior to the accident. Sec.175 of the Act ousts jurisdiction of the civil court to decide any question relating to any claim for compensation which may be adjudicated upon by the Tribunal. Reading the above provisions, I am of the view that the Tribunal alone has jurisdiction to adjudicate on dispute between the registered owner and the defacto owner regarding ownership of the vehicle involved in the accident and arising in a claim petition pending before it.



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8. *Once it is found that there is a transfer of the vehicle by the registered owner to the defacto owner before the accident, there is no reason why the registered owner should not be given the right to recover the amount (if any realised from him by the claimant) from the defacto owner as provided in Sec.174 of the Act.*

9. *Transfer of a motor vehicle is governed and regulated by the provisions of the Sale of Goods Act and hence passing of consideration and delivery of possession of the vehicle makes the transfer complete. But so far registration of the vehicle stands in the name of the vendor he continues to be liable to the 3rd parties (see P.P. Mohammed v. K. Rajappan and Pushpa @ Leela v. Shakuntala (supra)). Hence the appellant, notwithstanding transfer of the offending vehicle prior to the accident continues to be liable to the first respondent/claimant.*

10. *Ext. B1 is the sale letter dated 25.10.1998 executed between the appellant and Shine S/o. Balakrishnan as per which the appellant claims to have transferred the offending vehicle to the said Shine. Ext.B6 is the copy of FIR and Ext.B3 series (Ext.A6) is copy of final report submitted by the police in the criminal case. Ext.B3 series (Ext.A6) contains statement of the second respondent that the vehicle belonged to him on the date of accident. There is also oral evidence of the appellant as RW1 that he, by Ext.B1 transferred the vehicle to Shine, S/o. Balakrishnan. The second respondent does not dispute that he was the owner of the vehicle on*



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the date of accident. There is sufficient evidence to show that the appellant had transferred the offending vehicle prior to the date of accident and that on the date of accident, the second respondent was its owner.

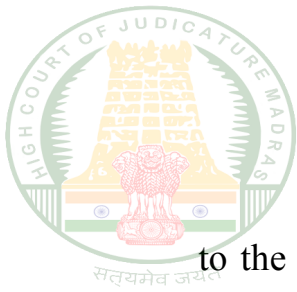
11. In that view of the matter the Tribunal erred in not deciding the inter se dispute between the appellant and the second respondent and in not giving right of recovery to the appellant.

Resultantly the appeal is allowed as under:-

1) It is directed that in case the amount awarded by the Motor Accident Claims Tribunal, Trivandrum in O.P. (MV) No. 1386 of 2004 in favour of the first respondent is realised from the appellant, the appellant can recover the said amount with interest at the rate awarded by the Tribunal from the date of payment till realisation from the second respondent under Sec.174 of the Act.

2) Parties are directed to suffer their cost in this appeal.

8. Accordingly, the trial Court judgment is modified fastening the liability on the first respondent on condition of pay and recovery method to recover the same from the third respondent exonerating the appellant herein / insurance company. The first respondent is directed to pay the entire amount



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to the claimants within a period of eight weeks from the date of receipt of a copy of this order and recover the same from the third respondent.

9. Accordingly, this Civil Miscellaneous Appeal is allowed. The amount deposited by the insurance company is directed to be returned within a period of four weeks from the date of making an application before the learned Tribunal. No costs.

20.03.2025

NCC : Yes / No
Index: Yes / No
Internet : Yes / No

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To

- 1.The I Additional District Judge (Full Additional in-charge), Thoothukudi.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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L.VICTORIA GOWRI, J

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