
(2005) 11 AP CK 0076

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 961 and 4861 of 2005

Duvvuru Siva Kumar Reddy

APPELLANT

Vs

Malli Srinivasulu

RESPONDENT

Date of Decision : 09-11-2005

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 455, 456, 457, 458, 459
Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, Order 13 Rule 3, Order 13 Rule 4, Order 13 Rule 5, Order 13 Rule 6
Motor Vehicles Act, 1939 — Section 112, 31
Motor Vehicles Act, 1988 — Section 177, 2, 50

Citation : (2007) ACJ 448 : (2006) 2 ALD 787 : (2006) 1 ALT 570

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : O. Manohar Reddy, in CRP 961/2005 and A. Chandraiah Naidu, in CRP 4861/2005, for the Appellant; O. Manohar Reddy, in CRP 4861/2005 and M. Venkata Narayana, for the Respondent in CRP 961/2005, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Though these two revisions arise from two different proceedings pending before the Motor Accidents Claims Tribunal-cum-1st Additional District Judge, Nellore, since both the cases arise out of the same accident, they are being disposed of by a common order.

2. C.R.P.No. 961 of 2005 arises out of the order dated 10-1-2005 in I.A.No. 1702 of 2004 in O.P.No. 531 of 2004 directing the respondent therein, who is the revision petitioner in C.R.P.No. 961 of 2005, to furnish security for an amount of Rs. 3,50,000/- on or before 17-1-2005 and directing attachment before judgment of the property specified in the schedule mentioned in the petition in case of his default.

3. C.R.P.No. 4861 of 2005 is filed by the claimants in O.P.No. 16 of 2005 being aggrieved by the order in I.A.No. 72 of 2005 dismissing the petition seeking

attachment before Judgment of the properties belonging to the first respondent therein, who is the revision petitioner in C.R.P.No. 961 of 2005.

4. For the sake of convenience, I would hereinafter refer the claimants in the O.Ps. as claimants, and the revision petitioner in C.R.P.No. 961 of 2005, who is the first respondents C.R.P.No. 4861 of 2005, as the respondent.

5. The claimant in O.P.No. 531 of 2004 is the injured, and the claimants in O.P.No. 16 of 2005 are the legal representatives of the deceased-Siva Narayana. The case of the claimants in both the O. Ps is that respondent is the owner of a tractor and trailer and that his driver, due to his rash and negligent driving caused an accident resulting in the death of the deceased, (whose legal representatives filed O.P.No. 16 of 2005) and injuries to the claimant in O.P.No. 531 of 2004, and that the respondent with a view to defeat their claims is trying to secret his properties and sought attachment before judgment of his proportion mentioned in the schedules appended to the petitions. The Tribunal while allowing the petition for attachment before judgment in O.P.No. 531 of 2004 dismissed the petition filed by the claimants in O.P.No. 16 of 2005. Hence, these revisions by the aggrieved parties.

6. Heard the learned Counsel for the parties at length.

7. The main contention of the learned Counsel for the claimants in O.P.No. 16 of 2005 is that the Tribunal, which, in the petition filed by the claimant in O.P.No. 531 of 2004, having found that the respondent is trying to secret his properties to defeat his claim ordered furnishing of security at the pain of attachment before judgment in case of his default, was in error in not passing the same order in favour of the claimants in O.P.No. 16-of 2005.

8. The contention of the learned Counsel for the respondent is that since the provisions of Rule 5 of Order 38 C.P.C. are not applicable to the proceedings under the Motor Vehicles Act, 1988 ("the Act") the Tribunal passing an order of conditional attachment in O.P.No. 531 of 2004 is unsustainable, more so because claimants failed to produce any document to show that respondent is the owner of the tractor allegedly involved in the accident. Relying on the definition of "owner" in Section 2 of the Act he contended that since respondent is neither the registered owner of the accident vehicle nor is in possession thereof under a hire-purchase agreement, or an agreement of lease or hypothecation he cannot, in any event, be made liable for payment of compensation and so there is no prima facie case against the respondent for an order under Rule 5 of Order 38 C.P.C. being passed against him, even assuming that that provision applies to the proceedings under the Act. He placed strong reliance on Imran Ansary Vs. Hajrat Ali Ansari and Another, (D.B.), S.N. Shanmugham Vs. Shankarlal Jain and R. Sundaramoorthy, and The New India Assurance Co. Ltd. Vs. Smt. Sheela Rani and Others, in support of the said contention. Relying on Rule 473 of the A.P. Motor Vehicles Rules ("the Rules") he contended that only those provisions of C.P.C. mentioned therein i.e., Rules 9 to 13 and 15 to 30 of Order 5, Order 9,

Order 13, Rules 3 to 10 of Order 13, Rules 2 to 21 of Order 16, Order 17, and Rules 1 to 3, Order 28 of C.P.C. apply to the proceedings before the Tribunal under the Act and the other provisions of the C.P.C. have no application, and contended that if it is the intention of the Rule makers is to make all the provisions of C.P.C. applicable to the proceedings under the Act, Rule 473 would have been couched in a different language and so the order directing the respondent to furnish security in O.P.No. 531 of 2004 is liable to be set aside and that there are no grounds to interfere with the order of the dismissal of the petition in O.P.No. 16 of 2005 because the claimants in O.P.No. 16 of 2005 cannot rely on the findings in the petition filed in O.P.No. 531 of 2004, as those petitions were disposed of on different dates, basing on the evidence adduced in the respective interlocutory applications.

9. The contention of the learned Counsel for the claimants is that inasmuch as Tribunals under the Act are manned by the officers of the rank of a District Judge, they are Civil Courts, and since the intention of the legislature and the Rule makers is that the claim petitions under the Act have to be disposed of in a summary fashion, but not by the elaborate trial process as contemplated by the C.P.C., only such of the provisions essential for disposal of the case in a judicious manner are mentioned in Rule 473 of the Rules, but that Rule does not impede the Tribunal under the Act taking recourse to the other provisions of C.P.C. for passing an order in the interest of justice, provided it is not inconsistent with any specific provisions of the Act or the Rules. Strong reliance is placed on Krishna Reddy Vs. K. Ramulamma and others, where it is held that the Tribunal under the Act has all powers of civil Court and so it can resort to the procedure laid down in C.P.C. basing on the principles of justice, equity and good conscience. They also relied on United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, in support of the contention that C.P.C. applies to the proceedings under the Act. Relying on the ratio in Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., followed in P.P. Mohammed v. K. Rajappan 2003 ACJ 1595 (SC) that a claimant in a proceeding under the Act can proceed against both the owner and the person in whose possession the vehicle is at the time of the accident, as owner, it is contended that the person in whose control the accident vehicle was at the time of the accident can be proceeded against and so respondent should be deemed to be the owner of the accident vehicle.

10. The first point for consideration would be who can be said to be the owner of an accident vehicle for the claimants to proceed against. In P.P. Mohammed's case, the Apex Court clearly held that the person in whose possession the accident vehicle was, "also" would be liable "along with the registered owner of the vehicle". No doubt, in Imran Ansari's case (1 supra), relied on by the learned Counsel for the respondent, a Division Bench of the High Court of Jharkhand at Ranchi, referring to Sections 50 and 177 of the Act held that a person in possession of a motor vehicle under an agreement of sale cannot be treated as a "owner" thereof under the Act unless the requirements in Section 50 of the Act are complied with, and the change in the registration certificate has taken place.

If I may say so the learned Judges did not refer to the case law on the aspect. The view expressed therein is contrary to the view of a full bench of this Court in *Madineni Kondaiah and Others Vs. Yaseen Fatima and Others*, that the transfer of motor vehicle also is governed by the provisions of Sale of Goods Act, and so in the absence of any agreement to the contrary, on payment of price and delivery of the vehicle the sale would be complete, and so the title therein passes to the purchaser, and since the obligation to register the vehicle is for the purposes of controlling and regulating the movement thereof by the authorities under the Act, it would not stand in the way of passing of title to the purchaser. For reaching the said conclusion their Lordships relied on the ratio in *Panna Lal Vs. Shri Chand Mal and Others*, . Though the said decision of the Full Bench was rendered under the provisions of the Motor Vehicles Act, 1939 since the language employed in the corresponding Sections in the Act i.e., since Sections 50 and 177 of the Act are almost the same as Sections 31 and 112 of the Motor Vehicles Act, 1939, the ratio in the decision holds good even after coming into force of the Act.

11. In *S.N. Shanmugham's* case (2 supra) relied on by the learned Counsel for the respondent, the point for consideration before the Division Bench of the Madras High Court was whether the transferor whose name continued in the records of the registering authority as owner "also" is liable to the third party for payment of compensation or not. Referring to *Dr. T.V. Jose v. Chacko P.M.* 2001 ACJ 2059 (SC) the Division Bench observing that on payment of consideration and delivery of the vehicle title in the vehicle passes on to the purchaser, held that the transferor "also" would continue to remain liable to third parties, as his name continued in the records of R.T.O., as owner. The said decision, far from helping the respondent, supports the view of the claimants because it held that both the transferor and the transferee, whose name is not registered in the records of R.T.O. as owner of the vehicle, would be liable for payment of compensation to the claimants under the Act.

12. *Sheela Rani* case (3 supra) relied on by the learned Counsel for respondent does not throw light on this point, as their Lordships dealt with the question whether the injured can proceed against the insurer of the transferred vehicle, when there is no proper intimation of the transfer to the insurance company, under the 1939 Act.

13. In view of the above, I am unable to agree with the contention of the learned Counsel for the respondent that unless a person's name is registered as a owner in the record of R.T.O, or unless he falls within the category mentioned in the definition of "owner" in the Act he cannot be proceeded against by the claimants under the Act because a person in possession and effective control of the driver of the vehicle can always be made liable for the tort of his driver, though he is not the owner under the Act, for payment of compensation.

14. The next but the important question relates to the applicability of the provisions of C.P.C. to the proceedings under the Act. From a reading of Rules 455 to 473 of the Rules it is easy to see that they relate to the points as to how

appearance of parties can be secured and what should happen if they fail to appear, and they empower the Tribunals to dispose of the claim petitions expeditiously, by recording a memorandum of the substance of the evidence of each witness, but not by the elaborate procedure contemplated by Order XVIII C.P.C. Since the Tribunals under the Act are presided over by the officer of the rank of District Judge, they, prima facie, would be Civil Courts and so, they, by virtue of Section 141 C.P.C., can apply the provisions of C.P.C. to the proceedings before them, so long as they are not inconsistent with the specific provisions made either under the Act or the Rules and the scheme and purpose of the Act as held by a Division Bench of this Court in *Soni @ Bhuthulasi and Others Vs. Kunda Nageswara Rao and Another*, while considering the applicability of C.P.C. to the proceedings under the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 following the observations of a Full Bench of five judges in *Pallapothu Narshimha Rao and Another Vs. Kidanbi Radhakrishnamacharyalu*, . Since the provisions of Rule 5 of Order 38 C.P.C. are not inconsistent with, and do not in any way contravene the provisions of the Act or the Rules, and since Rule 473 of the Rules is only directory and not mandatory in the sense that it does not injunct the Tribunals from applying any other provisions of C.P.C. to the proceedings before it, I am unable to agree with the contentions of the learned Counsel for the respondent that the provisions of Order 38 Rule 5 C.P.C. do not apply to the proceedings under the Act. In view of the fact that insurance of the vehicles being used in a public place is made mandatory by the Act, and since the liability of the insurer, under the Act, in respect of third party claim is unlimited, probably the rule makers might have thought it unnecessary to make a specific provision relating to attachment before judgment in the Rules. So merely because Rule 5 of Order 38 C.P.C. is not mentioned in Rule 473 of the Rules it cannot be said that the Tribunal cannot order attachment before judgment if the owner of a vehicle fails to insure the vehicle being used in public place.

15. The next point is whether the circumstances warrant the Tribunal invoking the provisions of Rule 5 of Order 38 C.P.C. In I.A.No. 1702 of 2004 in O.P.No. 531 of 2004 the claimant clearly alleged that he had earlier filed I. A.No. 1502 of 2004 seeking attachment before judgment of the accident Vehicle (tractor) and that the warrant was returned unexecuted on the ground of non-availability of that tractor and that on enquiry he came to know that the respondent secreted the said tractor beyond the reach of creditors, including himself, and that the respondent, who is possessing 22 acres of land is attempting to alienate his lands, and if he is allowed to alienate the property he cannot recover the amount of compensation that may be awarded. The respondent filed his counter, contending that when he is not the owner of the tractor, question of secreting the tractor beyond reach of the creditors including the petitioner/claimant does not arise.

16. The fact that prior to the filing of I.A.No. 1702 of 2004, the claimant in O.P. No. 531 of 2004 filing a petition seeking attachment before judgment of the

offending tractor and that petition being ordered is not denied or disputed. The parameters for granting an order of attachment before judgment of either movable or immovable property are one and the same. So prima facie it is clear that circumstances in this case warrant an order of attachment before judgment being passed. Since both O.Ps arise out of the same accident, what is true for the claimant in O.P.No. 531 of 2004, vis-a-vis the owner, is true for the claimants in O.P.No. 16 of 2004, also. So both claimants can seek attachment before judgment against the respondent if he, prima facie, is the owner of the accident vehicle.

17. Now the question is whether there is prima facie evidence to show that the respondent is in possession of the vehicle and can prima facie be said to be the "owner" of or has control over the accident vehicle. Since there is no documentary evidence on record in both the cases, as a result of the Tribunal not marking the documents referred to it in the orders under revision, I remit the cases to the Tribunal for disposal afresh after giving an opportunity to parties to adduce evidence i.e., oral or documentary with regard to ownership of the vehicle. Since the respondent already furnished security, in O.P.No. 16 of 2005 status quo as on today shall continue in that O.P. till the Tribunal passes an order on merits.

18. For the aforesaid reasons, these civil revision petitions are allowed and the petitions are remitted to the Tribunal for disposal afresh, after affording an opportunity to both parties to adduce evidence i.e., oral or documentary evidence, regarding ownership of the vehicle involved in the accident. Costs of the revision petitions shall abide by the result of the petitions in the Tribunal.