
(2002) 12 MAD CK 0157

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 81 of 2002

S.N. Shanmugham

APPELLANT

Vs

Shankarlal Jain and R. Sundaramoorthy

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2003) 1 ACC 52 : (2004) ACJ 1346 : AIR 2003 Mad 183 : (2003) 2 LW 126 : (2003) 1 MLJ 380

Hon'ble Judges : P. Sathasivam, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : R. Ravi, for the Appellant; M. Aravind, for R.1 and R. Muralidharan, for R.2, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The claimant in MACT. O.P. No. 251 of 1996 on the file of Motor Accidents Claims Tribunal, Panrutti is the appellant in the above appeal.

2. In respect of grievous injuries caused to him in a motor vehicle accident which occurred on 26.01.1995, he prayed for a compensation of Rs. 2 lakhs. Before the Tribunal, the claimant himself was examined as P.W.1 and Dr. Nandakumar as P.W.2. He also marked Exs.P.1 to P.12 in support of his claim for compensation. On the side of the respondents, first respondent - Sankarlal Jain was examined as R.W.1 and marked Exs.R.1 to R.3 in support of their defence. The Tribunal, after holding that the accident was caused due to the negligence of the rider of the motor cycle, TN-31 A 0397, passed an award for Rs. 42,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit and directed the second respondent therein - R. Sundaramoorthy, to pay the said amount. The Tribunal, has dismissed the claim against the first respondent. Questioning the said award, particularly dismissing the claim against the first respondent, the claimant / appellant has filed the above appeal.

3. Heard the learned counsel for the appellant as well as respondents.
4. The only point for consideration in this appeal is, whether the appellant - claimant is entitled to an award against the first respondent - transferor of the vehicle in question or the Tribunal is right in passing an award against the second respondent - transferee of the vehicle.
5. The appellant - claimant has specifically stated that on 26.01.1995, when he was riding his motor cycle PY-01 A 2586 from K.R. Motor Cycle Workshop, Panrutti on the Panruti - Madras Main Road, while he was nearing Dr. P.M.R. Mani Hospital, at about 14.45 hours, another motor cycle, bearing registration No. TN-31 A 0397, which came behind his (claimant) vehicle driven by one Chakravarthy in a rash and negligent manner, dashed against his motor cycle, as a result of the accident, the claimant had a fracture on his lateral left tibia and grievous injury on his left ear, he prayed for a compensation of Rs. 2 lakhs. Initially, he impleaded the first respondent - Sankarlal Jain, as owner of the motor cycle TN-31 A 0397. The first respondent filed a counter statement, wherein it is stated that on the date of accident, namely 26.01.1995, he was not the owner of the vehicle nor he caused the accident. In para 4, it is stated that he sold the motor cycle to one Sundaramoorthy, S/o. Rathina Chettiar, No. 210, Madras Road, L.N. Puram, Panrutti Taluk. By furnishing the said information, first respondent has stated that he is not liable to pay compensation amount to the claimant. Based on the said information, R. Sundaramoorthy has been impleaded as second respondent. The second respondent has filed a counter statement, wherein he has stated that he has purchased the vehicle bearing Registration No. TN-31 A 0397 only on 15.01.1995. It is also stated that one Chakkarai had taken the vehicle and committed accident on 26.01.1995. It is further stated that the said Chakkarai is necessary and proper party for the disposal of the claim petition.
6. Let us consider the materials placed, relevant discussion and the ultimate conclusion regarding the question in dispute, namely whether the first respondent - transferor is liable or the second respondent - transferee is liable to pay the award amount? To this aspect, we have to consider the evidence of P.W.1, the evidence of first respondent as R.W.1 and Exs.R.1 to R.3 marked through R.W.1.
7. Before the Tribunal, R.W.1 has stated that he had sold the motor cycle to the second respondent on 15.01.1995 and also produced the sale letter for cash payment - Ex.R.1 dated 15.01.1995. We have already referred to the fact that the second respondent in his counter statement has admitted that he purchased the motor cycle on 15.01.1995. Though he has filed a counter statement by engaging a counsel, thereafter, he did not contest the claim petition by letting evidence. The accident had occurred on 26.01.1995 at 14.45 hours. Apart from Ex.R.1, the first respondent has produced the proceedings of the Assistant Registering Authority, South Arcot at Cuddalore dated 25.08.1995 and a letter from Sayar Auto Finance dated 15.01.1995 to show that the dues in respect of

vehicle TN-31 A 0397 of C. Sankarlal Jain has been cleared on 15.01.1995. Both the said documents have been marked as Exs.R.2 and R.3 respectively. The Tribunal, accepting the office endorsement in Ex.R.2, namely changes have been made in the R.C. Book with effect from 17.01.1995, to the effect that second respondent is the owner of the motor cycle in question, the second respondent alone is the owner of the vehicle on the date of the accident and the first respondent cannot be held liable in view of the transfer made with effect from 17.01.1995 and also of the fact that the vehicle was not covered by a policy of insurance, passed an award in favour of the claimant against the second respondent.

8. Learned counsel for the appellant by drawing our attention to the relevant provisions, namely Sub-section 1, 2, 3 and 7 of Section 50 of the Motor Vehicles Act, 1988 (in short "1988 Act"), the seal and date found in Ex.R.2 would contend that inasmuch as the first respondent has not complied with those provisions by filing appropriate application within the time prescribed before the Registering Authority, on the date of the accident he was the owner of the motor cycle, accordingly, he is liable to pay the award amount. Section 50 speaks about Transfer of ownership. The following clauses are relevant.

"50. Transfer of ownership.-

(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,-

(a) the transferor shall,-

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii)

(b).....

(2).....

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereinafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him u/s 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5):

Provided that action u/s 177 shall be taken against the transferor or the

transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him u/s 177.

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2).

(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority. "

9. By pointing out the above provisions and in view of the period prescribed therein, learned counsel for the appellant would state that the first respondent - transferor of the motor cycle has not filed Form 29 within the time. Though it is dated 17.01.1995, he actually submitted the same only on 25.08.1995, i.e., after the expiry of the prescribed period. Hence, on the date of the accident, he was the owner of the motor cycle and liable to pay the award amount. He also contended that the office endorsement by the Assistant Registering Authority, South Arcot at Cuddalore in Ex.R.2 certifying that the ownership of the vehicle has been transferred to the name of R. Sundaramoorthy - second respondent with effect from 17.01.1995 cannot be accepted in view of the date (25.08.1995) found in the round seal in Ex.R.2. Apart from basing reliance on Ex.R.2, learned counsel for the appellant has also relied on certain decisions. He referred to the Division Bench decision of the Karnataka High Court in the case of Ramaiah Setty Vs. Meena, , wherein the Division Bench after considering Section 110-(b) and 31 of the Motor Vehicles Act, 1939, which are similar to Section 168 and 50 of Motor Vehicles Act, 1988 held that a specific mandatory duty is caused on the transferee to report the factum of transfer to the concerned Regional Transport Authority and get the vehicle registered in his name notwithstanding the fact that a similar obligation is on the transferor to report the transfer of the vehicle under sub-section 1 (a) of Section 31. Section 31 of the Act itself requires the owner to seek the registration of the vehicle. They further held that the expression owner must, therefore, be given the same meaning throughout the Act. According to them, u/s 113-A of the Act, when he permits somebody else to ride and involve himself in an accident, as long as someone is the registered owner under the Act, that owner alone is responsible u/s 92-A.

10. The next decision relied on by the appellant is the case of Dr. Gop Ramchandani Vs. Onkar Singh and Others, , wherein the learned Single Judge of

the Rajasthan High Court, Jaipur Bench has held that in such a circumstance the registered owner and the transferee both are jointly and severally liable.

11. The other decision is, Balbir Singh Vs. Pushpa Singh and Others, , wherein the learned Single Judge of the Allahabad High Court has held that transferor, a motor vehicle owner is under obligation to inform registering authority about transfer within 14 days and on failure of this legal duty, the transferor shall be deemed owner of the vehicle liable to compensation if vehicle involves in an accident.

12. The other decision relied on by the counsel for the appellant is the case of Dr. T.V. Jose vs . Chacko P.M. and others reported in , wherein the Supreme Court after referring Section 31 of the Motor Vehicles Act, 1939 (similar to Section 50 of 1988 Act), held that,

"10. We agree with Mr. Iyer that the High Court was not right in holding that the appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the appellant still continued to remain liable to third parties as his name continued in the records of R.T.O. as owner. The appellant could not escape that liability by merely joining Roy Thomas in these appeals.
"

It is clear from the above decisions that on payment of consideration and delivery of the vehicle, the title passes on, however the transferor is still continued to remain liable to third parties, as his name continued in the records of R.T.O. as owner. It is also clear that so long as necessary corrections are made in the R.C. Book by the competent registering authority, in so far as the third parties are concerned, the transferor still continued to remain liable as his name continued in the records of R.T.O. as owner.

13. Now, we shall consider the decisions referred to by the learned counsel for the first respondent. He very much relied on the case of Panna Lal vs. Shri Chand Mal reported in 1980 A.C.J. 233, wherein the Supreme Court held that as per Section 31 of the 1939 Act, the transfer of ownership is permitted, but the statute casts an obligation on the transferee to report to the registering authority concerned regarding the transfer of the vehicle along with the certificate of registration and then get the registration transferred in his name. Their Lordships have further held, it was therefore, the duty of the plaintiff to have applied to the registering authority u/s 31 of the Motor Vehicles Act and got the vehicle transferred in his name.

14. In the case of Kunjuraman vs. Saramma reported in 1990 68 Com Cas 259 , the Division Bench of the Kerala High Court held, u/s 31 (1) of the Motor Vehicles Act, 1939, a transfer of the ownership of a motor vehicle must precede the report to the registering authority about the transfer of the ownership. This report is intended to make the necessary entries in the certificate of registration.

If it is not so reported within the time prescribed, the persons concerned are liable to certain penal consequences. However, the Act nowhere states that non-reporting of the fact of transfer of ownership will render the transfer inoperative or ineffective. The endorsement of the transfer in the records of the registering authority is not a condition precedent to the transfer, nor does it deal with the legality or validity of the transfer which must be determined by other provisions of law. The actual owner can be different from the registered owner, and if it is proved that the registered owner has transferred the ownership to a different person, the tortious liability to pay compensation for death or injury caused in a motor accident will have to be borne by the transferee, despite the non-registration of the transfer. The registered owner cannot be made liable in such cases.

15. The very same High Court in the case of Commissioner of Income Tax Vs. Nidish Transport Corporation, has held that, a motor vehicle is a movable property. The transfer of ownership of the vehicle is governed by the Sale of Goods Act, 1930, and not by the provisions of the Motor Vehicles Act, 1939. The transfer takes effect from the date of sale. As between the transferor and the transferee, the sale is complete even before the transfer is effected in the registration certificate. The failure to report the same to the registering authority may entail levy of penalty prescribed u/s 31 of the Motor Vehicles Act, 1939, or section 112 of the Act. Beyond that, it does not affect the passing of title. Law is clear that registration is not necessary to pass title in the motor vehicle.

16. In the case of Anand Sarup Sharma Vs. P.P. Khurana and others, , Full Bench of the Delhi High Court has held that transfer of ownership in the records of registering authority is not a condition precedent for sale. They further held that the consequences of non-compliance of the statutory obligation will lead to two consequences, namely (i) criminal liability and (ii) tortious liability. However, the seller in no case would be liable either under the tort or under the statute. This non-compliance by the buyer would not make the seller liable for damages. The fact that he continues to be the registered owner would not make any difference so far as his liability to pay compensation under tort or statute is concerned.

17. In the case of Virendrakumar J. Handa Vs. Dilawarkhan Alij Khan and others, , the learned Single Judge of the Bombay High Court has held that transfer of ownership takes place from date of sale and not from date of recording transfer.

18. In the case of Oriental Insurance Co. Ltd. Vs. Rajamani and Others, , the Division Bench of this Court has held that change of registration is not a condition precedent for transfer of ownership. It is clear from the above decisions that if there is a valid transfer, merely because necessary changes have not been effected in the R.C. Book by the competent registering authority, does not mean that transferor continued to be owner of the vehicle. In other words, after valid transfer of the vehicle, if any accident takes place irrespective of the endorsement in the R.C. Book, the transferee is liable to pay compensation to

the victim.

19. In our case, we have already referred to the admitted factual position that the second respondent has purchased the motor cycle TN-31 A 0397 on 15.01.1995 and the accident had occurred on 26.01.1995, i.e., after the transfer. Ex.R.1 sale letter shows that on receipt of the consideration, namely Rs. 19,000/-, motor cycle TN-31 A 0397 had been delivered to the second respondent, namely transferee and he also acknowledged the same. We have already referred to Ex.R.2, wherein though it is stated that the first respondent - transferor has made an application to the registering authority even on 17.01.1995, the seal of the registering authority and the date found therein, namely 28.08.1995 as well as the date mentioned (28.08.1995) under the signature of Assistant Registering Authority, South Arcot at Cuddalore, we are of the view that the first respondent could not have filed the said application on 17.01.1995 and it is presumed that he filed the said application only on 25.08.1995, after the prescribed period u/s 50 of the 1988 Act and an order was passed by the Assistant Registering Authority only on 28.08.1995. It is clear that the transferor - first respondent herein has not made an application in terms of Section 50 i.e., within 14 days of the transfer. No doubt, the transferee - second respondent has also failed to comply with the statutory provisions, by not filing an application to the registering authority.

20. We have already referred to the various decisions supporting the stand of both parties. We are of the view that among all those decisions, the recent pronouncement of the Supreme Court in the case of Dr. T.V. Jose vs . Chacko P.M. and others reported in is directly on the point and the same has to be followed in preference to other decisions. We have already referred to the fact that in the said decision the Supreme Court considered similar question, Section 31 of 1939 Act, which is similar to Section 50 of Act, 1988, which we are concerned. We have already referred to the conclusion of their Lordships in para 10, wherein they held that there can be transfer of title by payment of consideration and delivery of the vehicle. In other words, according to them, the ownership of the vehicle had been transferred, however, in view of the fact that necessary application has not been made within the time to the registering authority and on the date of the accident, i.e., on 26.01.1995, the transferor - first respondent was the owner of the motor cycle, as concluded in the above decision, we hold that the transferor - first respondent continued to remain liable to third parties as his name continued in the records of the registering authority as owner.

21. In view of our above conclusion, particularly with reference to the latest decision of the Supreme Court in the case of Dr. T.V. Jose vs . Chacko P.M. and others reported in , we set aside the order of the Tribunal in so far as the liability is concerned and hold that first respondent - R. Sankarlal Jain is liable to pay the award amount. In all other respects, we confirm the award of the Tribunal.

Net result, the appeal is allowed to the extent mentioned above. No costs.