

G.Venugopal vs Mohanan

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Court : Kerala

Decided On : Oct-14-2022

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : MACA/1165/2018

Appellant : G.Venugopal

Respondent : Mohanan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
FRIDAY, THE 14TH DAY OF OCTOBER 2022 / 22ND ASWINA, 1944
MACA NO. 1165 OF 2018 AGAINST THE ORDER/JUDGMENT DATED
30.12.2017 IN OPMV 14/2008 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL, ALAPPUZHA APPELLANT/A2: G.VENUGOPAL, S/O.LATE
K. GOVINDA KURUP, AGED 76, THAYILETHU PUTHENVEEDU,C/O.
RAJESH, THARAYIL VEEDU ,EAST OF NSS H.S, THEKKEKKARA,
KURATHIKKAD, MAVELIKKARA, ALAPPUZHA DISTRICT, PIN 690
101. BY ADVS. SRI.R.RAMADAS SRI.T.SIVADASAN
RESPONDENTS/PETITIONER AND R1 & R3: * 1 MOHANAN (DIED
LRS IMPLEADED) AGED 58 YEARS, NALPATHIL CHIRA, NEDUMUDI,

KUTTANAD, ALAPPUZHA DISTRICT, PIN-688 508.(*DIED-LR'S IMPEADED) 2 RAJESH UTHAMAN THARAYIL VEEDU, EAST OF NSS H.S, THEKKEKKARA, KURATHIKKAD, MAVELIKKARA, ALAPPUZHA DISTRICT, PIN 690 101. 3 THE NATIONAL INSURANCE CO. LTD BRANCH OFFICE, PITCHU IYER JUNCTION, ALAPPUZHA, PIN 688 001.

*SUPPLEMEN LEELAMMA, W/O LATE MOHANAN, AGED 57, NALPATHILCHIRA, NEAR TAL R4 SASTHA TEMPLE, VADAKKAN VELIYANAD, VELIYANAD P.O., KUTTANAD, ALAPPUZHA, PIN - 688508 (*IMPEADED) *SUPPLEMEN MANJUSHA, D/O LATE MOHANAN, AGED 35, NALPATHILCHIRA, NEAR TAL R5 SASTHA TEMPLE, VADAKKAN VELIYANAD, VELIYANAD P.O., KUTTANAD, ALAPPUZHA DISTRICT, PIN - 688508.(*IMPEADED) *SUPPLEMEN MANESH, S/O LATE MOHANAN, AGED 34, NALPATHILCHIRA, NEAR TAL R6 SASTHA TEMPLE, VADAKKAN VELIYANAD, VELIYANAD P.O., KUTTANAD, ALAPPUZHA DISTRICT, PIN - 688508.(*IMPEADED) *SUPPLEMEN MAYA, D/O LATE MOHANAN, AGED 32, NALPATHILCHIRA, NEAR TAL R7 SASTHA TEMPLE, VADAKKAN VELIYANAD, VELIYANAD .P.O., KUTTANAD, ALAPPUZHA DISTRICT, PIN-688508

*THE LEGAL HEIRS OF DECEASED RESPONDENT NO.1 ARE IMPEADED AS SUPPLEMENTAL RESPONDENTS 4 TO 7 AS PER ORDER DATED 14/10/2022 IN IA BY ADVS. C.A.RAJEEV FOR R1 E.M.JOSEPH FOR R3 THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 07.10.2022, THE COURT ON 14.10.2022 DELIVERED THE FOLLOWING:

C.JAYACHANDRAN, J.

----- MACA No.1165 of 2018
----- Dated this the 14th day of October, 2022

J U D G M E N T

1. The second respondent/owner in OP(MV) No.14/2008 of the Motor Accident Claims Tribunal,

Alappuzha is the appellant herein. As per the impugned award dated 30.12.2017, it was found that the vehicle in question was not duly insured with the third respondent/insurance company and hence, the second respondent (appellant herein), along with the first respondent (driver), was held liable to pay the compensation amount awarded to the claimant.

2. The appeal is premised on the plea that

the appellant/R2 was not the owner of the offending vehicle at the relevant time. According to the appellant/R2, the vehicle was sold to one Sadasivan Pillai as early as on 26.6.2006, the date of accident being 15.11.2006. It was also contended that the first respondent/driver had purchased the vehicle from the said Sadasivan Pillai and he was the absolute owner in possession of the vehicle at the time of accident. The appellant's plea was negated by the Tribunal and hence, the instant appeal is filed.

3. Heard Sri.T.Sivadas, learned counsel appearing for the appellant/R2 and Sri.C.A.Rajeev, learned counsel appearing for the first respondent/ claimant. Sri.E.M.Joseph appeared for the third respondent/insurance company. Perused the records.

4. Learned counsel for the appellant submitted that the Tribunal misdirected itself in finding that the appellant/R2 continues to be

liable, solely for the reason that change of ownership has not been effected in the records of the Regional Transport Office concerned. According to the learned counsel, all legal formalities which the appellant is obliged to do in connection with the sale have been done as evidenced from Exts.B1 to B5, wherefore the sale stood complete in terms of the Sale of Goods Act. In such circumstances, mulcting the liability on the appellant/R2, when he had neither ownership nor possession or control over the vehicle at the time of accident, is illegal and unjustified.

5. Learned counsel submitted that reliance placed on the decision in Baby Varghese v. Anitha Roy [2015 (3) KLT 78] by the Tribunal was wrong, inasmuch as Baby Varghese did not notice an earlier

Bench decision of the High Court in Sumathy v. Raghavan [1996(2) KLT 1018]. Learned counsel also relied upon the decision of the Hon'ble Supreme Court in Surendra Kumar Bhilawe v. New India Assurance Company Ltd. [AIR 2020 SC 3149].

6. Per contra, learned counsel for the first

respondent/claimant submitted that the legal position as regards the liability of a person, who continues to be the owner in the official records, is no more res integra and that the same stands settled by a catena of decisions of the Hon'ble Supreme Court, as also, this Court.

7. Having heard the learned counsel appearing on both sides, this Court finds little merit in the submissions made by the learned counsel for the appellant. It is true that in Sumathy (supra), a Division Bench of this Court held, relying on another Division Bench in Said Mohammed v. Rema [1995 (2) KLT 343], that the purchaser (R1 therein)

was the owner in exclusive possession of
compensate the insured.

8. However, this Court is not in a position

to appreciate the appellant's contentions based on Sumathy (supra) and also Said Mohammed (supra), for the reason that the said decisions are in the teeth of a catena of decisions of the Hon'ble Supreme Court, as elaborately considered by another Division Bench in Baby Varghese (supra) relied upon

by the Tribunal. Baby Varghese (supra) referred to the definition of the term 'owner' as per Section 2(30) of the Motor Vehicles Act to mean a person in whose name a motor vehicle stands registered. The bench decision took note of the decisions of the Hon'ble Supreme Court in (1) Jose v. Chacko [(2001) 8 SCC 748],

(2) P.P.Mohammed v. K.Rajappan [(2008) 17 SCC 624] and (3) Pushpa @ Leela v. Shakuntala [(2011) 2 SCC 240] to find that the owner of the vehicle cannot escape from the liability to third

parties, so long as his name continued in the records of the registering authority as the owner. Such finding follows the findings in Jose, P.P.Muhammed and Pushpa (all supra). No decision of the Hon'ble Supreme Court contrary to the above proposition was placed before me, except Surendra Kumar Bhilawe (supra), the effect of which will be discussed herein below:

9. In Surendra Kumar Bhilawe (supra), the claim does not arise under the Motor Vehicles Act, though the law relating to motor vehicles have some

ramifications on the issue involved in that case. In that case, a lorry which was loaded with ammonia nitrate met with an accident, while negotiating to save a cow, near a culvert. The truck fell into a river and was extensively damaged. The ammonia

nitrate was also washed away. The surveyor appointed by the insurance company assessed a loss of Rs.4,93,500/-. However, the insurance company issued a show cause letter to the appellant in that case, alleging that he had sold the vehicle to another. It was not disputed that the appellant continued to be the registered owner of the truck, de hors the sale alleged. Aggrieved by the refusal to honour the claim, the appellant approached the District Consumer Forum, which allowed the claim. The appeal carried by the insurer to the State

Commission was dismissed. A revision before the National Commission was allowed, setting aside the orders of the District Forum and the State Forum, challenging which, the proceedings reached the Hon'ble Supreme Court. The Hon'ble Supreme Court, referring to the definition of the term 'owner' under the Motor Vehicles Act and the binding

precedents, including Pushpa @ Leela (supra), held

that the appellant was the owner of the vehicle, de hors the sale alleged, for the reason that he continued to be the registered owner and allowed the claim.

10. This Court fails to understand as to how the above proposition of law laid down by the

Hon'ble Supreme Court in Surendra Kumar Bhilawe (supra) could be of any assistance to the appellant before this Court. The Supreme Court only held that the registered owner continues to be the owner for all purposes, which dictum, if juxtaposed to the given facts, would only fasten the liability upon the appellant, as the owner of the vehicle, despite the sale claimed.

11. Faced with the situation, learned counsel contended that, by virtue of Exts.B1 to B5 records, the sale of the vehicle to Sadasivan Pillai is established, wherefore the appellant finally seeks a direction from this Court enabling the appellant to realise the compensation amount from the first respondent/driver, who was the absolute owner in possession of the vehicle at the time of the accident, according to the appellant. Even in respect of this request, this Court is not in a position to accede. The privity of contract is by and between the appellant/R2 and Sadasivan Pillai, the later of whom is not a party to this litigation, but was examined as RW4. In the examination before the court, Sadasivan Pillai/RW4 maintains that he had not purchased the vehicle in question from the appellant/R2, but was only a commission agent in between the appellant and the first respondent/driver. He would admit that the vehicle was kept in his workshop for a specific

period. He would also admit his signature in Ext.B1. Be that as it may. Secondly, the first respondent/driver from whom the appellant/R2 seeks to recover the amount remained ex parte before the Tribunal. In this context, the effect of having remained ex parte has to be analysed. Being ex parte after service of notice can be construed, as if the first respondent/driver has nothing to

submit and he has no objection to the claim propounded in the Original Petition. However, in respect of an inter se dispute by and between the respondents, which had not surfaced at the time when the first respondent was set ex parte and which is not the subject matter of the original petition, the fact that the first respondent chose to remain ex parte cannot be taken synonymous to admission of the claim by a co-respondent. For the aforesaid reasons, this Court is not in a position to direct the compensation amount to be recovered from the first respondent.

However, ends of justice would demand that such right of the appellant/R2 has to be left open, so as to enable him to claim recovery of the amount from the first respondent in an appropriately constituted proceeding. It is so done. The appeal is dismissed, subject to the above reservation.

Sd/- C.JAYACHANDRAN JUDGE jg

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