Bava Vs. Cheriya Bava

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Court : Kerala

Decided On : Oct-15-2003

Reported in : I(2004)ACC622; II(2004)ACC666; 2004ACJ514; AIR2004Ker162; 2004(1)KLT1

Judge : A.K. Basheer, J.

Acts : Motor Vehicles Act, 1988 - Sections 2(30), 166 and 168

Appeal No. : O.P. No. 3195 of 2000

Appellant : Bava

Respondent : Cheriya Bava

Advocate for Def. : Siby Mathew,; A.A. Mohammed Nazir,; Philip J. Vettickatt

Advocate for Pet/Ap. : K.K. Mohammed Ravuf, Adv.

Disposition : Petition dismissed

Judgement :

A.K. Basheer, J.

1. The short but interesting question that arises for consideration in this Original Petition is whether the 'financier' of a motor vehicle under a hire purchase agreement has to be impleaded as necessary party in a proceeding before the

Motor Accidents Claims Tribunal, under Section 166 of the Motor Vehicles Act, 1988. Relevant facts may be briefly noticed.

2. A petition for compensation was filed by the parents of a deceased victim in a motor accident. The accident occurred on March 2, 1994. The insurance company which was impleaded in the case contended that there was no valid insurance in respect of the vehicle on the date of the accident. The petitioner who was impleaded as the owner of the vehicle filed written statement contending that the vehicle in question was the subject matter of a hire purchase agreement with M/s. Sundaram Finance Ltd. (hereinafter referred to as 'the financier'). It was further contended that the financier was bound under the Hire Purchase Agreement to remit the requisite insurance premium against the statutory third party risk as contemplated under the Act. The petitioners in his capacity as the hirer, was regular in remitting the monthly hire charges to the financier which included the amount payable towards the insurance premium also. Petitioner had remitted all the instalments and the entire liability was discharged. Petitioner was not liable if the financier had failed to renew the insurance policy on its expiry.

3. Petitioner, therefore, filed an application for impleading the financier in the proceedings before the Tribunal. The above application was initially allowed by the Tribunal. However, the learned Judge reviewed his earlier order suo-motu and dismissed the application, holding inter-alia that 'the breach of a contract entered into between the petitioner herein and the financier is not a matter to be adjudicated upon by the Tribunal'. It was further held that the dispute which was sought to be resolved was solely based on a different cause of action. Thus the Tribunal took the view that application for impleading the financier was not maintainable. The order passed by the Tribunal has been placed on record as Ext. P5. Petitioner prays that a writ of certiorari be issued to quash Ext. P5.

4. Separate counter affidavits have been filed by respondents 1 and 3. It is contended by respondent No. 1, the claimant before the Tribunal, that the financier is not a necessary or proper party to be impleaded in the proceeding. It is further stated that even assuming without admitting that the financier was liable to remit the insurance premium under the hire purchase agreement, it would not absolve

the petitioner in his capacity as the owner of the vehicle from the liability to pay the compensation. The order passed by the Tribunal dismissing the application for impleading is therefore just and legal.

5. In the counter affidavit filed by respondent No. 3, the Insurer, it is averred that there was no valid insurance policy in respect of the vehicle on the date of the accident. In fact the financier had informed respondent No. 3 by their letter dated April 11, 1994 that the vehicle in question was no longer under hire purchase agreement with them and that they have 'no more interest over the vehicle'. Respondent No. 3 has also stated that the order passed by the Tribunal is perfectly legal.

6. I have heard learned counsel for the petitioner and the respondents.

7. It is contended on behalf of the petitioner that the financier is the real owner of the vehicle by virtue of the Hire Purchase Agreement. Since the financier had undertaken to remit the insurance premium in respect of the vehicle, he is a necessary and proper party in the proceeding before the Tribunal. The compensation, if any, has to be paid by the financier. The insurance premium having been collected by the financier from the petitioner, it was the financier who was responsible for renewing the insurance policy within time. It is further contended that the Tribunal committed serious illegality and irregularity in reviewing its own order. The Tribunal did not have any inherent power to do so. Learned counsel therefore submits that the impugned order is liable to be quashed. It is also argued that for a proper adjudication of the claim for compensation, it is necessary that the financier is also impleaded in the proceeding.

8. According to the learned counsel, the principal issue in the Claim Petition as to who is liable to pay compensation can be decided only if the financier is also on the party array. In other words, the contention is that the petitioner is not the owner of the vehicle in its strict sense. Under the hire purchase agreement, petitioner is only the hirer. The hirer does not become the owner of the vehicle till the sale is complete. More importantly, it was the financier who was bound to take the insurance policy in respect of the vehicle as stipulated under the hire purchase

agreement. The financier had to renew the insurance policy when it expired. The petitioner had remitted the premium amount to the financier along with the hire charge. Therefore, it is contended by the learned counsel that while deciding the liability of the owner vis-a-vis the claimant, the question whether the financier had discharged the duty to renew the insurance policy had to be necessarily looked into. For this purpose the financier must be on the party array.

9. Learned counsel for the petitioner relies on a decision of this Court in Amarchand Chajer v. Sub Inspector of Police (2000 (3) KLT 529). He lays stress on the observation of the court that 'even if the registration certificate is in the name of the hirer, he will not be the owner of the vehicle till the sale is complete'. The hirer cannot alienate or encumber or part with possession of the vehicle till the entire hire purchase amount is discharged. It is further submitted by the learned counsel that the financier continues to be the owner of the vehicle, till the hirer has paid the entire hire purchase amount.

10. In my view there is an apparent contradiction in the contention raised by the petitioner. 'Owner' has been defined under the Act:

'2(30). 'Owner' means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement or an agreement of lease or an agreement or hypothecation, the person in possession of the vehicle under that agreement;'

The above definition unambiguously shows that in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle shall be the owner thereof. Thus in a claim petition before the Tribunal, the question which is relevant is only as to who was the person in possession of the vehicle which was involved in the accident in respect of which the claim has arisen. It is not very material or relevant as to who is the real owner in the abstract sense of the term.

11. It is not in dispute that the vehicle was in the possession of the petitioner at the time of the accident. He was the owner in possession at the relevant point of time.

The owner in possession of a vehicle is statutorily bound to take an insurance policy against third party risk. It was the duty of the petitioner in his capacity as the owner in possession to ensure that there was a valid insurance in force whenever the vehicle was used. Therefore the petitioner cannot be heard to say that the entire responsibility to renew the policy was that of the financier.

12. In this context it may also be relevant to make a brief reference to Section 51 of the Act which deals with special provisions regarding motor vehicle which is subject to hire purchase agreement. Clause (1) of the above section stipulates that the registering authority shall make an entry in the certificate of registration regarding the existence of the hire purchase agreement. Clause (4) provides that no entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the financier. Clause (5) obligates the financier to issue a notice to the registered owner before approaching the registering authority for transfer of the certificate of registration, if the financier has taken possession of the vehicle due to default of the registered owner. The provisions contained in Section 51 of the Act clearly show that the financier does not have any absolute right over the vehicle. The rights which accrue from the agreement are only subject to the covenants contained therein. Section 51 envisages protection of the rights of the registered owner and the financier. However when a vehicle which is subject to hire purchase agreement is involved in an accident, the only issue that is relevant while adjudicating the claim petition is whether the owner of the vehicle satisfies the definition contained in Section 2(30) of the Act. Nothing more and nothing less.

13. The decision in Amarchand's case (supra) will not in any way help the petitioner. In the above case, the criminal complaint filed by the financier against the hirer was dismissed by the trial court on the ground that failure of the hirer to pay hire charges would not entitle the financier to re-possess the vehicle unless he approached the civil court and got the vehicle attached. However, the learned Judge took the view that offences punishable under Section 406 and 420 of the IPC were attracted since it was specifically alleged in the complaint that the accused had 'dismantled the vehicle and disposed of the same in parts'.

14. In this case the position is totally different. The only issue which arises for consideration in the claim petition before the Tribunal is the ownership of the vehicle at the time of the accident. The question with regard to the alleged breach of the terms of the hire purchase agreement and the consequences thereof has to be decided by a civil court or any other forum which is competent to adjudicate. Therefore the decision of this Court in Amarchand's case is not applicable to the facts and circumstances of this case.

15. Learned counsel for the petitioner has also relied on the decision in M.&G.F. (India) Ltd. v. Mary Mony (1990 (2) KLT 971) and contended that the Tribunal has got the power and jurisdiction to entertain an application for compensation against any person other than the driver, owner and the insurer. It is submitted by the learned counsel that while fixing the liability of the owner vis-a-vis the insurer, the financier under the hire purchase agreement cannot be said to be an unnecessary party. In Mary Mony's case (supra) the accident took place in a service station. The deceased was the owner of the vehicle himself. The employee of the appellant who was running the service station had caused the accident. The Tribunal held that the appellant was liable to pay the compensation. While deciding the primary question as to whether the Tribunal had got jurisdiction to try the case, the Division Bench held that 'jurisdiction for a complete adjudication of all the claims for compensation in respect of accidents occasioned on the use of the motor vehicle was culled out from the general jurisdiction of the different and varied tortious actions which would enable parties to seek relief for compensation in ordinary courts in regard to accidents arising out of the use of motor vehicles and entrusted under Section 110 of the Act with the Motor Accidents Claims Tribunals'. It was further observed by the Division Bench that 'the intention of the Legislature..... is to ensure that third parties who suffer due to the user of motor vehicles would be able to get damages and recoverability of the damages should not depend upon the financial condition of the driver or owner of the vehicle who caused the accident'. A perusal of the above judgment shows that the question involved in the case was whether the owner of the service station could wriggle out of the liability to pay compensation on the ground that the accident had not occurred in a public place. Since the question involved in this case is on a totally different set of facts and circumstances I am of the view that the decision in Mary

Mony 's case would not render any assistance to the petitioner.

16. Another decision relied on by the petitioner is that of the Supreme Court in Union of India v. United India Insurance Co. Ltd. (1997 (2) KLT 986). The question that arose for consideration in the above case was whether the Railways could be held liable for an accident that occurred in an unmanned level cross involving a motor vehicle and a train. Their Lordships of the Supreme Court held that the 'claim for compensation is maintainable before the Tribunal against other persons or agencies which are held to be guilty for composite negligence or are joint tort feasors and if arising out of use of the motor vehicle'. It was further held that an award could be passed against the respondent if his negligence in relation to the same accident was also proved. In my view, the above decision of the Supreme Court is not applicable to the facts and circumstances of this case.

17. The next contention raised by the petitioner is that the Tribunal did not have any inherent power to review its own order. Learned counsel relied on a decision of the Supreme Court in P.N. Thakershi v. Pradyumansinghji (AIR 1970 SC 1273) and contended that unless the power of review is conferred by law either specifically or by necessary implication, no statutory authority can invoke a power of review which does not inhere in it. In the above case Their Lordships of the Supreme Court held that in the absence of any provision in the Saurashtra Land Reforms Act which empowers the State Government to review its own order, the Commissioners functioning as delegates of the functions of the Government could not have reviewed its own order. But a Division Bench of this Court in Rajan v. Sukumaran (1997 (1) KLT 686) has held that the Motor Accidents Claims Tribunal has got jurisdiction to review its own order. This view was taken by the Division Bench after considering a large number of earlier decisions of this court. Another Division Bench of this Court in Saji George v. Joicy Johnson (2000 (1) KLT SN - Case No. 83) had followed the dictum laid down in Rajan's case (supra). In that view of the matter the contention of the petitioner that the Tribunal had no jurisdiction to review its own order cannot be entertained.

18. There is yet another aspect of the matter. The liability to pay compensation is a liability under the general law of torts. Under the Motor Vehicles Act, 1988 the

Legislature has conferred the power on Motor Accidents Claims Tribunals to adjudicate 'the claims for compensation in respect of accidents involving death or bodily injury to persons arising out of use of the motor vehicle'. Thus the Tribunal's power of adjudication is restricted to only claims arising out of use of motor vehicles. Apparently, there is no other restriction, but the Tribunals have to necessarily confine its jurisdiction to adjudicate upon the issue relating to the primary liability of the tort feasor and the quantum of compensation payable to the victim of the accident or their legal representatives, as the case may be. Evidently by constituting Motor Accidents Claims Tribunals, no new right or new remedy is created. A separate forum is constituted and the process of adjudication is simplified.

19. In an application for compensation before the Motor Accidents Claims Tribunal filed under Section 166 of the Act, the primary questions to be decided are (1) Has the accident occurred resulting in death or bodily injury to persons or damage to the property of a third party out of the use of a motor vehicle (2) Is the claimant entitled to get compensation and if so, what is the quantum? and (3) Who is liable to pay the compensation? Section 168 of the Act stipulates that the Claims Tribunals, while making the award 'shall determine the amount of compensation which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. If it is established that the driver of the vehicle involved in the accident was negligent, it necessarily follows that the driver and owner of the vehicle would be liable to pay compensation to the victim of the accident. The insurer of the vehicle has to indemnify the insured owner if there was a valid insurance policy at the time of the accident. Thus the adjudicatory process lies in a narrow compass. The Tribunal need not go beyond the primary function of fixing the liability of the tort-feasor and the quantum of compensation payable to the victim.

20. In the case on hand, the question whether there was any breach of the terms of the hire purchase agreement entered into between the petitioner and the financier is totally beyond the realm and scope of an adjudication before the Motor Accidents Claims Tribunal. That is an issue to be decided before the Civil Court or any other forum mutually agreed upon between the contracting parties. The victim

of the accident or his legal representatives need not be dragged into a controversy or dispute between the owner of the vehicle and his financier. If the argument of the petitioner is accepted, the very intent and purpose of creating a separate adjudicatory forum to deal with the claim for compensation by the victims of the accident under the Motor Vehicles Act will be defeated and the procedure will be rendered cumbersome. There is no doubt that the petitioner can work out his remedies against the financier before the appropriate forum, if there was any breach of the terms of the contract. The Tribunal was therefore justified in taking the view that the financier was not a necessary party in the proceeding. There is no illegality or infirmity in the impugned order passed by the Tribunal. There is no merit in any of the contentions raised by the petitioner.

Original Petition fails and it is accordingly dismissed. No costs.

The Motor Accidents Claims Tribunal, Tirur will dispose of the claim petition as expeditiously as possible, at any rate, within 2 months from the date of receipt of a copy of this judgment.