

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC App No.181/2004

Judgment delivered on: February 7, 2008

The Oriental Insurance Co. Ltd. Appellant.

Through: Mr. Pradeep Gaur, Adv.

versus

Master Saddam & Ors. Respondents

Through: Mr. Y.R. Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

By way of this appeal the appellant seeks to challenge the impugned Award dated 20.12.2003 mainly on the ground that the appellant has not been given the recovery rights to claim the Award amount from the owner of the offending vehicle. Brief summary of the facts to deal with the

contentions of the parties are:-

On 4.4.2000 at about 6.40 p.m., the respondent No. 1 was going to Bhajanpura Market alongwith his mother. When they were crossing the road, the offending vehicle driven by Shri Shakeel at high speed and in a negligent manner hit him. As a result of the impact, he fell down and sustained grievous injuries. Respondent No. 1 was admitted to GTB hospital and thereafter he was treated in a mental hospital, Shahdara. It is stated that at the time of the accident, petitioner was 10 years old and was studying in class IV. It is stated that after the accident, mental state of the petitioner got disturbed and he was being treated at mental hospital, Shahdara. It is further stated that respondent No. 1 was unable to do his routine work and had suffered serious mental setback and trauma because of the impugned accident.

Mr. Pradeep Gaur counsel appearing for the appellant contends that the offending vehicle bearing registration No. DL-5CB-1759 was sold by the appellant in favour of respondent No. 3 on 23rd June, 1999 and requisite documents of sale were duly executed in his favour. Counsel further contends that intimation of sale was duly given by the appellant to the registering authority, but respondent No. 3 the transferee failed to take any steps to get the said vehicle transferred in the records of the registering authority in his own name before the accident. Counsel further contends

that respondent No. 3 had applied for superdari of the vehicle, which was allowed by the concerned Metropolitan Magistrate, and he had also obtained insurance of the offending vehicle in his own name on 5th April, 2000. Counsel also contends that the appellant had duly proved the factum of the sale before the Tribunal. Placing reliance on the judgment of the Apex Court referred in **P.P. Mohammed vs K. Rajappan and Ors. 2003 ACJ 1595** counsel contends that the appellant is at least entitled to recovery rights so as to recover the Award amount from the person in whose favour the vehicle was sold. Mr. Y.R. Sharma appearing on behalf of the claimant/respondent No.1 submits that he has no objection if the recovery rights are given to the appellant. Counsel further submits that respondent No. 1 has already received 50% of the Award amount and balance 50% is lying deposited with the Tribunal.

I have heard learned counsel for the parties and have perused the record.

Respondent No. 3 is the owner of the offending vehicle after transfer of the same by the appellant in his favour, but he has not chosen to appear before this Court despite his service by way of publication. Respondent No.2 has also not appeared despite being served by way of publication. Both the respondents were ex parte even before the Tribunal. It is a settled legal position that merely by transfer of ownership by the registered owner in

favour of the transferee, the registered owner cannot be absolved from his liability to third parties, so long as his name continues in the RTO records. However, at the same time the person, who is admittedly the transferee of the vehicle and who is in possession of the vehicle cannot claim complete absolution from paying the Award amount. It is due to the inaction of the transferee to not get his name recorded in the records of the registering authority the liability is fastened on the registered owner so as to protect the third party rights. Had the transferee taken the timely steps as envisaged under Section 50 of the Motor Vehicles Act then, such person alone would have been liable to satisfy the Award amount. I, therefore, find merit in the submission of the counsel for the appellant that the appellant is at least entitled to recovery rights from the transferee of the said vehicle. Respondent No. 3 has also not chosen to contest the matter before the Tribunal as well as before the Appellate Court, therefore, it can be presumed that respondent No. 3 has no defence to the said submission made by the counsel for the appellant. In view of the said position the appellant cannot be relegated to fight another civil battle to claim the said amount from the transferee of the vehicle. It would be, therefore, most appropriate that the rights are given to the appellant to recover the Award amount from respondent No. 3 by filing an execution petition.

The appeal in terms of the above direction is allowed. The appellant is

granted recovery rights to claim the entire award amount with upto date interest as paid by them to the claimants from respondent No. 3, transferee of the offending vehicle. The appellant has already deposited the entire Award amount in terms of the directions given by this Court vide order dated 5th May, 2004 and 50% of which has already been released in favour of the claimant/respondent No.1. The Tribunal is accordingly, directed to return the cheques to the appellant for revalidation of the cheques.

The appellant shall also be liable to pay the interest @ 7.5% per annum from the date of the deposit of the award till final payment to the claimant/respondent. Counsel for the appellant, Mr. Pradeep Gaur denied the liability of the appellant to pay any further interest as the entire award amount was deposited by the appellant pursuant to the directions given by this court vide Orders dated 05.05.2004. Mr. Y.R. Sharma, counsel for the respondent, on the other hand, claimed interest from the date of the deposit of the award on the ground that the claimants were deprived of the benefit of the said amount due to the stay order granted by this court. The counsel for the respondent also justified entitlement to interest amount as the appellant had merely deposited the cheques and therefore, for all practical reasons, the appellant never parted with the money and the same remained under its control, power and possession. Mr. Sharma also placed reliance on the judgments of this court represented in **Seetha Lakshmi**

Krishnan & Ors. vs. Gian Prakash & Ors. 1993 ACJ 206 and Delhi Transport Corporation vs. Harbans Kaur & Ors. 1983 ACJ 110. As it is clear from the above discussion, the 50% remaining amount in terms of award was deposited by the appellant only by way of cheques and the money practically was never transferred from the control, power and possession of the appellant therefore, the respondent/claimant cannot be made to suffer by denying them the interest amount to which they were legally entitled. In view of the foregoing, the appellant shall be liable to pay the interest @ 7.5% from the date of the deposit of the award till its final realization.

With these directions, the present appeal is disposed of.

February 07, 2008
rkr

KAILASH GAMBHIR, J