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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Mac. Appeal No.456 of 2007 & C.M. Appl. No.10105 of 2007

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04.05.2010

ANOOP KUMAR KAILA

..... Appellant

Through: Mr. Siddharth Khattar, Advocate.

Versus

SMT. SOMA DEVI & ORS.

.....Respondents

Through: Mr. Sanjeev Mahajan, Adv. for R-1 to 3.

Reserved on: 29th April, 2010

Pronounced on: 4th May, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By this appeal, the appellant has assailed the judgment of the Tribunal dated 13th October, 2006 whereby the Tribunal awarded a sum of Rs.4,30,000/- as compensation to the claimants and allowed interest thereon @ 12 per cent.

2. The grievance of the appellant is that the Tribunal wrongly fixed liability on the appellant to make this payment, however, the Tribunal gave liberty to the appellant to recover amount from respondent No.5, Mr. Virender. The Tribunal wrongly held the appellant and respondent No.5 as jointly and severally liable to pay the compensation. The Tribunal should have held only respondent No.5 liable to pay the compensation.

3. The undisputed facts relevant for the purpose of deciding this appeal are that the appellant was registered owner of a two-wheeler scooter No.DL-1SJ-5689. He sold this

scooter to respondent No.5, Virender on 20th January, 1999. The usual documents of sale, namely, sale letter in form No.29 and delivery challan in form No.30 were executed in favour of respondent No.5. Respondent No.5 was to get the registration of scooter transferred in his name. Respondent No.5, however, continued driving the scooter without getting registration transferred in his name and caused an accident on 2nd April, 1999 at about 10:10 p.m. thereby fatally injuring a cycle rider. After the accident, scooter was seized and it is respondent No.5 who laid his claim over the scooter as owner and got the scooter released from police station. No insurance cover was obtained either by appellant before sale or by respondent No.5 on purchase of scooter.

4. Before the Tribunal, claimants made the registered owner as well as respondent No.5, Virender Singh as respondents. The appellant took a plea before the Tribunal that he was not the owner of the scooter but it was Virender Singh, respondent No.5 herein, who was the actual owner of the scooter. This fact was proved by the appellant before the Tribunal by cogent evidence and the Tribunal came to the conclusion that it was respondent No.5 who was the real owner of the scooter. However, relying on the judgment of the Supreme Court in *P.P. Mohammed vs. K. Rajappan and others*; 2003 ACJ 1595 wherein the Supreme Court had observed that despite sale of vehicle by the owner and despite transfer of the actual possession of the vehicle, the registered owner would be liable to the third parties under Motor Vehicle Act; the Tribunal held that the appellant would be jointly and severely liable to pay the compensation being the registered owner. However, the Tribunal gave liberty to the appellant to recover the amount from respondent No.5.

5. During appeal, respondent No.5 initially did not appear. A compromise was entered into between the appellant and claimants and in terms of the compromise

recorded on 14th May, 2009, rate of interest was reduced to 6 per cent per annum. A sum of Rs.1 lac was paid by the appellant to the claimant in lumpsum and remaining amount was to be paid in monthly installments of Rs.3500/-. Post-dated cheques were given by the appellant to the claimant.

6. The appeal, however, continued viz-a-viz respondent No.5 who deliberately was not appearing before the court. This court had to summon respondent No.5 through SHO of the area and that is how respondent No.5 appeared before the court. Respondent No.5, the actual owner of the scooter expressed his inability to make payment and filed affidavit that his monthly income was only Rs.6,000/-. He was working with a doctor named Dr. Suresh Kumar Bhagra. He had no other moveable or immovable assets. The appellant disputed this and stated that he and his father were also running a hosiery factory employing 20 persons. However, there is no material on record in support of these averments.

7. The Supreme Court in *Ningamma and another vs. United India Insurance Co. Ltd.*; 2009 ACJ 2020 had occasion to consider the issue about liability of a person under Motor Vehicle Act when the owner was not driving the motorcycle but a person who borrowed the motorcycle was driving the motorcycle. In *Ningamma's* case (supra), the High Court had allowed the appeal of insurance company and held that claim petition filed by legal heirs of deceased was not maintainable against the owner since he was not the tort-feasor but the person who was driving the borrowed motorcycle himself was the tort-feasor. The Supreme Court dismissed the appeal holding that since the motorcycle was being driven by the borrower, he stepped into the shoes of the owner. He himself was the tort-feasor and since he died, no claim would lie against the actual owner from whom he borrowed the motorcycle.

8. I consider that a person who has sold the motorcycle or the scooter, is on much stronger footing than the one who has given motorcycle to a borrower and it is the purchaser who while driving the motorcycle caused accident and would be the tortfeasor. As a tort-feasor, the liability would be his and not of the person who has sold the motorcycle. The registration of vehicle with the Regional Transport Authority is made necessary so that people at large know who is the owner of the vehicle and they have not to run here and there just to search the owner but there may be cases where the vehicle is sold and transfer of registration takes some time and in between the purchaser due to his negligence commits an accident, I consider that in such cases where the vehicle has been sold and the purchaser is the tort-feasor, it is he who is responsible to pay compensation and not the one who has already sold the vehicle. The in-action on the part of purchaser in getting the vehicle transferred in his own name cannot absolve him of his liability towards the third party. His absolution would amount to giving a person benefit of his own wrong and would encourage purchasers of secondhand vehicles not to get registration transferred in their name and let the registration stand in the name of the original owner. There is no doubt that the original owner should be cautious enough and should send information of sale of vehicle to the Regional Transport Office immediately along with copies of documents, but despite his sending such information it is not necessary that the Regional Transport Office shall act upon such information and transfer the registration of vehicle in the name of purchaser. I, therefore, consider that it is the purchaser of the vehicle who being tort-feasor is primarily liable for the tort. A third person who is not the tort-feasor cannot be made to pay for the tort of someone else. This would be grossly unjust. I, therefore, consider that in this case it is respondent No.5 who is primarily responsible for making payment of the award amount to the claimant.

9. The appellant in this case has already paid part of the award amount to the claimant. The appellant is at liberty to recover this amount from respondent No.5. However, primarily the claim of claimants is against respondent No.5 and it should be satisfied by him. The balance payment payable to the claimant be recovered from respondent No.5 herein. However, after the claim of claimants is satisfied then only the appellant would be able to recover his amount from respondent No.5. I consider it would be appropriate that an attachment of Rs.3,000/- per month of the salary of respondent No.5 is done and directions to the employer of respondent No.5 are issued for sending 1/3rd salary of respondent No.5 to the Tribunal directly and the same should be paid to the claimants every month. In case, the claimant or appellant comes to know of any other property of respondent No.5, the claimant or appellant shall make an appropriate application before the Tribunal for attachment of that property for recovery of the amount. The Tribunal shall attach the property of respondent No.5 on such information being supplied. The appellant would not be required to file any separate suit against respondent No.5 for recovery of the amount paid by him.

10. With these directions, the appeal stands disposed of. Copy of the order be sent to Tribunal for sending necessary attachment order.

SHIV NARAYAN DHINGRA J.

MAY 04, 2010
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