

REPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 285/2011

DELHI METRO RAIL CORPORATION LTD. Petitioner
Through: Mr. Chandan Kumar, Advocate

versus

SAMRAT RANGA AND ORS. Respondents
Through: Ms. Shantha Devi Raman,
Advocate for the respondent
No.3.

% Date of Decision : July 07, 2011

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

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 (ORAL)

: REVA KHETRAPAL, J.

1. This petition is directed against the order dated 15.12.2010 passed by the Motor Accidents Claims Tribunal, Dwarka Courts, New Delhi in MAC. P. No.24/10 rejecting the petitioner's

miscellaneous application seeking impleadment of M/s. Rajasthan Bombay Transport Pvt. Ltd.

2. The facts relevant for the disposal of the present petition briefly delineated are as follows.

3. The respondent No.1 had sustained injuries in an accident which occurred on 05.12.2009 involving RTV (Mini Bus) bearing No.DL-IVA-6400 driven by the respondent No.2 and insured with the respondent No.3. The petitioner, who was arrayed as the respondent No.2 in the claim petition, in the written statement filed by it put forth the plea that it had entered into an agreement dated 24.10.2007 with M/s. Rajasthan Bombay Transport Pvt. Ltd. whereunder the licensee, i.e., M/s. Rajasthan Bombay Transport Pvt. Ltd., had been granted the permission for operation of Feeder Buses on routes of Lot-4 for Metro Link Feeder Bus Project of Delhi Metro Rail Corporation Limited. The petitioner further pleaded that in consideration of the aforesaid licence granted by it to M/s. Rajasthan Bombay Transport Pvt. Ltd., the said licensee had expressly agreed and undertaken to indemnify and keep the petitioner indemnified against (i) any

accident/claims/liabilities or any criminal proceedings or statutory requirements at any time arising out of the operation of the buses on account of any act/omission/default/ on the part of the Licensee/its employees, (ii) any criminal and/or civil liability arising out of any accident or action of tort on part of the driver, conductor or any other employee of the Licensee during the course of operating the buses (iv) all consequential claims/liabilities arising out of any accident/incident or legal or statutory issue involving the vehicles or the running of the vehicles towards any third party.

4. In its said written statement, the petitioner further stated that an Indemnity Bond dated 20.09.2007 had been executed by M/s. Rajasthan Bombay Transport Pvt. Ltd. in favour of the petitioner, apart from the Lease Agreement and the delivery receipt dated 18.02.2008 in respect of the vehicle in question. It was also contended that there was no privity of contract between the petitioner and the injured victim, the respondent No.1 herein. It was submitted that as per the law laid down by the Hon'ble Supreme Court in the case of *Godavari Finance Co. vs. Degala Satyanarayanaamma and*

Ors., (2008) 5 SCC 107, the person who is in possession of the vehicle would be the person liable to pay the damages for a motor accident caused by the said vehicle.

5. Simultaneously with the filing of the written statement, the petitioner filed an application under Order I Rule 10 read with Section 151 of the Code of Civil Procedure praying for impleadment of M/s. Rajasthan Bombay Transport Pvt. Ltd. as a party to the proceedings on the ground that it would be just and necessary for the proper adjudication of the claim petition. The indemnity bond dated 20.09.2007 and copy each of the registration certificate and vehicle lease agreement alongwith the delivery receipt dated 18.02.2008 of the vehicle in question were placed on record alongwith the said impleadment application filed by the petitioner as ‘Annexure-R-1 & R-2’. The said application was dismissed by the impugned order dated 15.12.2010.

6. Aggrieved by the aforesaid order, the present petition has been filed on the ground that the rejection of the application in fact tantamounted to pre-judging the issue of liability even without a trial.

It is also submitted that the adjudication of the issue of possession of the alleged offending vehicle was of vital importance, as admittedly the RTV was in the possession of respondent No.2, who was an employee of M/s. Rajasthan Bombay Transport Pvt. Ltd. and the latter was in possession and operation of the vehicle due to the Lease Agreement dated 18.02.2008.

7. In the course of arguments, Mr. Chandan Kumar, the learned counsel for the petitioner has taken me through the Vehicle Lease Agreement entered into between the petitioner and M/s. Rajasthan Bombay Transport Pvt. Ltd. on 18th February, 2008. Emphasis has been laid by the learned counsel upon certain clauses of the said Agreement, which are reproduced hereunder:

“Clause 5.

5. The LESSEE shall keep the vehicle at all times in its possession and control.

Clause 7.

7. The LESSEE acknowledges that it holds the vehicle as a mere bailee of the LESSOR and shall not have any proprietary right, title or interest in the vehicle or any part thereof. The LESSEE shall at no time contest or challenge

the LESSOR'S sole and exclusive right title and interest in the vehicle.

Clause 11.

11. *The LESSEE shall:*

(a) *Forthwith upon the signing of this agreement at its own cost and have and keep the vehicle comprehensively insured in the name of LESSOR during the continuance of the Lease Agreement against loss or damage or destruction by fire accident, theft, riots, civil commotion, third party claims, and such other risk including terrorist, earth quake, natural calamity risk and on such terms as the LESSOR may require with an insurer approved by the LESSOR for an amount equal to the full insurable value of the vehicle. In the event of the LESSEE failing to insure as per this clause the LESSOR may do so and recover the cost thereof from the LESSEE forth with. The LESSEE shall be liable for all the loss or damage that may occur by or as a consequence of its failure to insure the vehicle as per this clause."*

8. On the basis of the aforesaid clauses, reproduced hereinabove, it is contended that though the petitioner was the registered owner of the alleged offending vehicle, by virtue of the Lease Agreement dated 18.02.2008 M/s. Rajasthan Bombay Transport Pvt. Ltd. was the

lessee of the said vehicle and the petitioner was the lessor. The lessee had agreed to pay charges as per the Schedule to the lessor for the vehicles leased to it and the first payment was to be made on 18.02.2008. In para 7 of the Agreement, it has been specifically stipulated that the lessee shall hold the vehicle as a mere bailee of the lessor and shall not have any proprietary right, title or interest in the vehicle or any part thereof. It is further clarified that the lessee shall at no time contest or challenge the sole and exclusive right, title and interest in the vehicle of the petitioner. In paragraph 11 of the Agreement, it is laid down that the lessee shall keep the vehicle comprehensively insured in the name of the petitioner during the continuance of the Agreement against loss or damage or destruction or third party claims, etc., and the policies of insurance are required to be handed over to the lessor by the lessee.

9. The learned counsel for the petitioner contended that the respondent No.2, who was driving the alleged offending vehicle at the time of the accident, though, originally an employee of the petitioner, on the date of the accident was working as an employee of M/s.

Rajasthan Bombay Transport Pvt. Ltd., which Company had effective control over him. In such a situation, he further contended, the petitioner could not be held vicariously liable for the tort committed by the respondent No.2. Reliance in this context was placed upon a judgment of the Hon'ble Supreme Court in the case of ***Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari and Ors., AIR 1997 SC 3444.*** Reliance was also placed upon the judgment of the Supreme Court in the case of ***National Insurance Co. Ltd. vs. Deepa Devi and Ors., AIR 2008 SC 735.*** It may be noted that both the said decisions have been cited with approval by the Hon'ble Supreme Court in its subsequent decision in the case of ***Godavari Finance Co. (supra)***, which, as noticed above, has also been relied upon by the learned counsel for the petitioner.

10. It may be mentioned at this juncture that the respondents No.1 and 2, though they initially appeared on service of notice of the filing of the present petition upon them, subsequently chose not to appear before this Court. The respondent No.3-Insurance Company was, however, represented by Ms. Shantha Devi Raman, Advocate, who in

principle, supported the prayer of the petitioner for impleadment of M/s. Rajasthan Bombay Transport Pvt. Ltd. as a party respondent to the claim petition.

11. Having heard the learned counsel for the petitioner and Ms. Shantha Devi Raman for the Insurance Company and gone through the order of the learned Claims Tribunal, in my opinion, the prayer of the petitioner for impleadment of the lessee of the vehicle, namely, M/s. Rajasthan Bombay Transport Pvt. Ltd. deserves to be allowed. The relevant provisions of the Motor Vehicles Act, including Section 165 of the Act, envisage that the Claims Tribunal should hold an enquiry to ascertain the liabilities of the persons who are involved in the *use* of the vehicle or the persons who are vicariously liable. Thus, the issue of possession or control of the vehicle assumes importance and may be the determining factor in fixing the liabilities of the parties to the claim petition.

12. I am fortified in coming to the aforesaid conclusion from the findings rendered by the Hon'ble Supreme Court in the case of *Godavari Finance Co. (supra)*. In the said case, the question before

the Supreme Court was whether a financier would be an owner of a motor vehicle financed by it within the meaning of Section 2(30) of the Motor Vehicles Act, 1988. The appellant, M/s Godavari Finance Co. was impleaded in the proceedings on the premise that it was the financier of the vehicle which caused the accident. As the vehicle was the subject matter of a hire-purchase agreement, the appellant's name was mentioned in the registration book. Notwithstanding, the Supreme Court, setting aside the judgments of the learned Tribunal and of the High Court holding that the appellant as a registered owner was liable for payment of compensation, held that in the case of a motor vehicle which is subjected to a hire-purchase agreement, the financier cannot ordinarily be treated to be the owner. The Supreme Court further held that the person who is in possession of the vehicle, and not the financier, being the owner, would be liable to pay damages for the motor accident. Referring to the provisions of Section 168 of the Motor Vehicles Act and to its earlier decisions rendered in *Kailash Nath Kothari* and *Deepa Devi (supra)*, the Supreme Court observed as under:

*“16. An application for payment of compensation is filed before the Tribunal constituted under Section 165 of the Act for adjudicating upon the claim for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Use of the motor vehicle is a sine qua non for entertaining a claim for compensation. Ordinarily if driver of the vehicle would use the same, he remains in possession or control thereof. Owner of the vehicle, although may not have anything to do with the use of vehicle at the time of the accident, actually he may be held to be constructively liable as the employer of the driver. What is, therefore, essential for passing an award is to find out the liabilities of the persons who are involved in the use of the vehicle or the persons who are vicariously liable. The insurance company becomes a necessary party to such claims as in the event the owner of the vehicle is found to be liable, it would have to reimburse the owner inasmuch as a vehicle is compulsorily insurable so far as a third party is concerned, as contemplated under Section 147 thereof. **Therefore, there cannot be any doubt whatsoever that the possession or control of a vehicle plays a vital role.***

*17. The question came up for consideration before this Court in **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari and Ors., AIR 1997 SC 3444** where the owner of a vehicle rented the bus to Rajasthan State Road Transport Corporation. It*

met with an accident. Despite the fact that the driver of the bus was an employee of the registered owner of the vehicle, it was held:

Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of RSRTC for operation of the bus. So far as the passengers of the ill-fated bus are concerned, their privity of contract was only with the RSRTC to whom they had paid the fare for travelling in that bus and their safety therefore became the responsibility of the RSRTC while travelling in the bus. They had no privity of contract with Shri Sanjay Kumar, the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of the driver from the owner to RSRTC, the matter may have been somewhat different. But on facts in this case and in view of Conditions 4 to 7 of the agreement (supra), the RSRTC must be held to be vicariously liable for the tort committed by the driver while plying the bus under contract of the RSRTC. The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the

servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner. The proposition based on the general principle as noticed above is adequately rebutted in this case not only on the basis of the evidence led by the parties but also on the basis of Conditions 6 and 7 (supra), which go to show that the owner had not merely transferred the services of the driver to the RSRTC but actual control and the driver was to act under the instructions, control and command of the conductor and other officers of the RSRTC.

18. *The question again came up for consideration recently before this Court in **National Insurance Co. Ltd. v. Deepa Devi and Ors.**, AIR 2008 SC 735. This Court in that case was dealing with a matter where the vehicle in question was requisitioned by the State Government while holding that the owner of the vehicle would not be liable it was opined:*

10. *Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondent Nos. 3 and 4 continued to be the registered owner of the vehicle despite the fact that the same was*

requisitioned by the District Magistrate in exercise of its power conferred upon it under the Representation of People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control thereover. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in-charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/or its officers, the owner is only entitled to payment of compensation therefore in terms of the Act but he cannot not exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that the Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and

spirit, the same should be understood from the common sense point of view.

*In so opining the Court followed **Kailash Nath Kothari (supra)**.*

The legal principles as noticed hereinbefore, clearly show that the appellant was not liable to pay any compensation to the claimants.”

13. In view of the aforesaid law laid down by the Supreme Court, I have not the least bit of hesitation in setting aside the order dated 15.12.2010 rejecting the petitioner’s application for impleadment of M/s. Rajasthan Bombay Transport Pvt. Ltd.

14. The appeal is accordingly allowed. Amended memo of parties shall be filed by the petitioner impleading M/s. Rajasthan Bombay Transport Pvt. Ltd. as party respondent. The learned Tribunal shall issue directions for the service of the newly added party.

A copy of this order be given *dasti* to the counsel for the petitioner, as prayed.

**REVA KHETRAPAL
(JUDGE)**

July 07, 2011
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