

UNREPORTED

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

+ MAC. APP. 449/2009

KRISHAN GOPAL

..... Appellant

Through: Mr. Arun Yadav, Advocate

versus

SANKAR @ SANKAR LAL & ORS. Respondents

Through: Mr. Javed Hashmi, Advocate
for the respondent No.6

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Date of Decision : May 10, 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?

ORDER (ORAL)

: REVA KHETRAPAL, J.

CM No.13162/2009

This is an application praying for condonation of 366 days' delay in filing the appeal. In view of the ground given in the application, which is supported by the affidavit of the appellant, the delay is condoned.

The application stands disposed of.

MAC. APP. 449/2009

1. With the consent of the parties, the appeal is taken up for final hearing at the admission stage.
2. The short question which arises for consideration in the present appeal is whether the impugned award is liable to be set aside on the prayer of the registered owner of the offending vehicle on the ground that the registered owner of the vehicle had sold the vehicle to the respondent No.6 (arrayed as the respondent No.1 in the claim petition) prior to the date of the accident.
3. The relevant facts are that on 28.07.2007, one Smt. Munni Devi was hit by a speeding scooter bearing No.DL-7SAA-2598, which was being driven by one Mohd. Abid in a zigzag and rash and negligent manner. Smt. Munni Devi (hereinafter referred to as “the deceased”) sustained injuries which proved to be fatal. An FIR bearing No.188/07 was registered at Police Station Civil Lines in respect of the said accident. The husband of the deceased and her children filed a claim petition under Sections 166 and 140 of the Motor Vehicles

Act, 1988 for grant of compensation on account of her death in the aforesaid road accident. The driver of the offending scooter in the written statement filed by him before the Claims Tribunal admitted the factum of accident but claimed that the accident had occurred due to the negligence of the deceased herself. The appellant, who was arrayed as the respondent No.2 in the claim petition, took the preliminary objection that he had sold his scooter to the respondent No.6 much prior to the accident and that the vehicle was duly insured at the time of the sale.

4. The Claims Tribunal after holding that the deceased had died due to the rash and negligent driving of the offending scooter, being driven by the respondent No.6 held as follows:

*“20. **ISSUE NO.2:-** It has already been held that the respondent no.1 was the driver of the offending vehicle, who is principally liable to pay compensation.*

21. The respondent no.2 is admittedly the registered owner of the vehicle on the date of accident which is also corroborated by the certified copy of RC, Ex.P-12. However, the respondent no.2 has taken up a defence that he had sold the scooter to respondent no.1 prior to the date of accident and is not liable to pay the compensation. Though the respondent no.2 has

failed to step into the witness box but the delivery receipt, cash receipt and form 29 and 30 as seized by the police, copies of which are Ex.P-8 to Ex.P-11 which clearly prove the defence of respondent no.2 that on the date of accident, the actual owner of the vehicle was respondent no.1

22. *It has been held by the Hon. Supreme Court in the case of **P.P. Mohammed Vs. K. Rajappan & Others** 2003 ACJ 1595 (SC) that when the ownership of the vehicle has not been transferred in the records of RTO, the registered owner shall continue to be liable to pay compensation to the third parties.*

23. *It has been held in the case of **T.V. Jose Vs. Chacko P.M.** 2001 ACJ 2059 SC that even though under law there may be transfer of ownership of vehicle but that itself would not absolve the vehicle in whose name the vehicle stands in the RTO records, they are liable to a third person.*

24. *Since the respondent no.2 is admittedly the registered owner, he is vicariously liable to pay the compensation. The liability to pay compensation of both the respondents is held to be joint and several."*

5. Aggrieved by the aforesaid findings of the Claims Tribunal, the appellant, who is the registered owner of the offending scooter, has preferred the present appeal. It is contended by Mr. Arun Yadav, the learned counsel for the appellant that the impugned award is liable to be set aside in view of the fact that the Claims Tribunal after reaching

the right conclusion that the respondent No.6 was the actual owner of the vehicle on the date of the alleged accident erred in holding the appellant liable to pay compensation, though the appellant had sold the vehicle to the respondent No.6 much prior to the date of the accident.

6. The learned counsel for the respondent No.6, Mr. Javed Hashmi, on the other hand, sought to support the award by contending that the Supreme Court had already settled the issue of liability of the registered owner in the case of *T.V. Jose Vs. Chacko P.M.* 2001 ACJ 2059 (SC) and *P.P. Mohammed Vs. K. Rajappan & Others* 2003 ACJ 1595 (SC).

7. This Court is inclined to agree with the aforesaid submission of the learned counsel for the purchaser in view of the fact that recently an identical question was decided by the Supreme Court in the case of *Pushpa @ Leela & Ors. vs. Shakuntala & Ors.*, Civil Appeal No.6924/2005 decided on January 12, 2011 reported in *2011 ACJ 705*, which was formulated in paragraph 1 of its judgment as follows:

“1. Whether in the fact and circumstances of the case the liability to pay the compensation

amount as determined by the Motor Accident Claims Tribunal was of the purchaser of the vehicle alone or whether the liability of the recorded owner of the vehicle was coextensive and from the recorded owner it would pass on to the insurer of the vehicle?”

8. In the aforesaid case, the offending truck, as noted by the Apex Court, had a little history of its own. It earlier belonged to one Jitender Gupta, who was its registered owner. Jitender Gupta sold the truck to Salig Ram and gave its possession to the transferee. Despite the sale of the vehicle by Jitender Gupta to Salig Ram, the change of ownership of the vehicle was not entered in the certificate of registration. After the earlier policy issued by M/s. New India Assurance Co. Ltd. in favour of Jitender Gupta had lapsed, another policy was taken out by Salig Ram from M/s. Oriental Insurance Co. Ltd. in the name of Jitender Gupta, the registered owner of the truck. It was during the subsistence and period of validity of this insurance policy that the accident took place. The Claims Tribunal held that there was no privity of contract between Salig Ram, the owner of the truck and the Insurance Company, M/s. Oriental Insurance Co. Ltd. Hence the insurance policy was of no use for the purpose of

indemnifying Salig Ram. In short, Salig Ram alone was liable for payment of the compensation amount to the claimants. An appeal against the judgment and award made by the Claims Tribunal was preferred before the Himachal Pradesh High Court, which was dismissed. On further appeal, after examining at length the provisions of law with regard to ownership of motor vehicles, as incorporated in Section 2(30) of the Motor Vehicles Act, 1988 and Section 50 thereof, the Supreme Court held that it was undeniable that notwithstanding the sale of the vehicle neither the transferor Jitender Gupta nor the transferee had taken any step for the change of the name of the owner in the certificate of registration of the vehicle. It further held that in view of this omission, Jitender Gupta must be deemed to continue as the owner of the vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale on February 02, 1993. Significantly, in arriving at the aforesaid conclusion, the Supreme Court relied upon its earlier decisions in *Dr. T.V. Jose vs. Chacko P.M. (2001) 8 SCC 748* and *P.P. Mohammed vs. K. Rajappan & Ors. (2008) 17 SCC 624*. The relevant portion of the

judgment of the Supreme Court in *Pushpa's* case (*supra*) is reproduced hereunder:

*“12. The question of the liability of the recorded owner of a vehicle after its sale to another person was considered by this Court in **Dr. T.V. Jose vs. Chacko P.M. (2001) 8 SCC 748.** In paragraphs 9 and 10 of the decision, the Court observed and held as follows:*

*“9. Mr. Iyer appearing for the Appellant submitted that the High Court was wrong in ignoring the oral evidence on record. He submitted that the oral evidence clearly showed that the Appellant was not the owner of the car on the date of the accident. **Mr. Iyer submitted that merely because the name had not been changed in the records of R.T.O. did not mean that the ownership of the vehicle had not been transferred.** Mr. Iyer submitted that the real owner of the car was Mr. Roy Thomas. Mr. Iyer submitted that Mr. Roy Thomas had been made party-Respondent No. 9 to these Appeals. He pointed out that an Advocate had filed appearance on behalf of Mr. Roy Thomas but had then applied for and was permitted to withdraw the appearance. He pointed out that Mr. Roy Thomas had been duly served and a public notice had also been issued. He pointed out that Mr. Roy Thomas had chosen not to appear in these Appeals. He submitted that the liability, if any, was of Mr. Roy Thomas.*

10. We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. ***There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However the Appellant still continued to remain liable to third parties as his name continued in the records of R.T.O. as the owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these Appeals.*** Mr. Roy Thomas was not a party either before MACT or the High Court. In these Appeals we cannot and will not go into the question of inter se liability between the Appellant and Mr. Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so.”

(Emphasis added)

13. Again, in ***P.P. Mohammed v. K. Rajappan and Ors. (2008) 17 SCC 624***, this Court examined the same issue under somewhat similar set of facts as in the present case. In paragraph 4 of the decision, this Court observed and held as follows:

“4. These appeals are filed by the Appellants. The insurance company has chosen not to file any appeal. The question before this Court is whether by reason of the fact that the vehicle has been

*transferred to Respondent 4 and thereafter to Respondent 5, the Appellant got absolved from liability to the third person who was injured. This question has been answered by this Court in **T.V. Jose (Dr.) v. Chacko P.M.** wherein it is held that even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person. We are in agreement with the view expressed therein. Merely because the vehicle was transferred does not mean that the Appellant stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person.”*

(Emphasis added)

14. The decision in **Dr. T.V. Jose** was rendered under the Motor Vehicles Act, 1939. But having regard to the provisions of Section 2(30) and section 50 of the Act, as noted above, the ratio of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount. Further, since an insurance policy in respect of the truck was taken out in his name he was indemnified and the claim will be shifted to the insurer, Oriental Insurance Company Ltd.

15. *Learned Counsel for the insurance company submitted that even though the registered owner of the vehicle was Jitender Gupta, after the sale of the truck he had no control over it and the possession and control of the truck were in the hands of the transferee, Salig Ram. No liability can, therefore, be fastened on Jitender Gupta, the transferor of the truck. In support of this submission he relied upon a decision of this Court in **National Insurance Company Ltd. v. Deepa Devi and Ors. (2008) 1 SCC 414**. The facts of the case in Deepa Devi are entirely different. In that case the vehicle was requisitioned by the District Magistrate in exercise of the powers conferred upon him under the Representation of the People Act, 1951. In that circumstance, this Court observed that the owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remained under requisition, the owner did not exercise any control over it: the driver might still be the employee of the owner of the vehicle but he had to drive the vehicle according to the direction of the officer of the State, in whose charge the vehicle was given. Save and except the legal ownership, the registered owner of the vehicle had lost all control over the vehicle. The decision in Deepa Devi was rendered on the special facts of that case and it has no application to the facts of the case in hand.*

16. *In light of the discussion made above it is held that the compensation amount is equally*

realisable from Respondent No. 3, Oriental Insurance Company Ltd. and it is directed to make full payment of the compensation amount as determined by the Claims Tribunal to the Appellants within two months from the date of this judgment.”

9. In view of the aforesaid, there is no merit in the present appeal.

The same is accordingly dismissed.

**REVA KHETRAPAL
(JUDGE)**

May 10, 2011
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