

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

Reserved on: 1st March, 2012
Pronounced on: 5th March, 2012

+ **MAC. APP. No.130/2011 & CM. APPL No.17923/2011**

INDIA LEASE DEVELOPMENT LTD. Appellant

Through: Mr.G.P.Thareja, Advocate

Versus

SAVITA & ORS. Respondents

Through: Mr.Nitin Yadav and Mr. Hameed
Sheikh, Advocates for
Respondents No.1, 3 & 5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant India Lease Development Ltd. impugns a judgment dated 04.01.2011 whereby a compensation of ₹7,41,000/- was awarded in favour of Respondents No.1 to 5.
2. The contentions raised on behalf of the Appellant are:
 - i) The Appellant was the financier and lessor of Vehicle No.DL-2CB-2575 leased to the Seventh Respondent (Anil Kumar). According to Section 2(30) of the Motor Vehicles Act where a vehicle is subject to Hire Purchase Agreement or an Agreement of Lease, the person in possession of

the vehicle under that agreement is liable as owner thereof and not the Financier.

- ii) The deceased was travelling as a pillion rider on a two-wheeler without wearing any helmet. Therefore, the deceased has contributed to the accident and his consequent death.
- iii) There was clerical mistake in the computation of loss of dependency as the Claims Tribunal, on account of clerical mistake, took the same as ₹2,719/- and rounded it off to ₹2,750/- instead of ₹ 2,179/- to calculate the total loss of dependency.
- iv) The Appellant moved an application to implead Vijay Kumar as he had obtained the vehicle on *superdari* and was in actual possession of the vehicle. He was liable being the rightful owner of the offending vehicle; the Claim Petition was bad for non-joinder of necessary party.

3. Section 168 of the Motor Vehicles Act enjoins the Claims Tribunal to hold an inquiry into the claim, make an award determining just compensation and specifying the person or persons to whom the compensation shall be paid. The Claims Tribunal is under an obligation to specify the amount which shall be paid by the insurer or owner or the driver of the vehicle. The term “owner” is defined under Section 2(30) of the Act, which is extracted hereunder:

”(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 of hypothecation, the person in possession of the vehicle under that agreement;“

4. A bare reading of the provision shows that in relation to a motor vehicle which is the subject of an agreement of lease or an agreement of hypothecation etc., the person in possession of the vehicle under that agreement would deem to be the owner of the vehicle. The Appellant proved on record an Agreement of Lease Ex.R4W1/2, through its authorized representative Yogesh Kumar, which was valid for a period of two years. Yogesh Kumar testified that the Seventh Respondent(Anil Kumar) defaulted in payment of installments and ultimately made payment of all outstanding lease charges and approached the Appellant for transfer of the vehicle in the records of the registering authority in his name. He deposed that the Appellant issued a sale letter dated 16.08.1995, also signed Form 29 and 30 and recorded the transfer of ownership of the motor vehicle as per the Motor Vehicles Act. He deposed that the Seventh Respondent (Anil Kumar) assured the Appellant that he would take necessary steps for effecting transfer of the vehicle in the records of the registering authority. Thus, it is evident that the lease agreement was no longer subsisting between the Appellant and the Seventh Respondent.

Admittedly, the vehicle stood registered in Appellant's name. Even if it is assumed that the Appellant executed documents for transfer of the vehicle, yet no information was sent to the registering authority within a period of 14 days as provided under Section 50 of the Act. Section 50 (i) is extracted hereunder:

"50. Transfer of ownership-(1)

(a).....

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and"

5. Thus, the lease agreement had come to an end in the year 1995, and the accident occurred in the year 1998, therefore, in the absence of any intimation to the registering authority, the Appellant continued to be the registered owner of the vehicle. The learned counsel for the Appellant relies on the judgment in *Godavari Finance Co. v. Degala Satyanarayanamma & Ors*, AIR 2008 SC 2493 in support of the contention that in case of an agreement of lease, the person in actual control of the vehicle is liable. In view of the facts stated above, since the lease agreement had come to an end, the Appellant cannot escape the liability being the registered owner. *Godavari*

Finance Co.(supra) will not come to the rescue of the Appellant.

6. The Claims Tribunal relied on *Dr. T.V. Jose v. Chacko P. M.*, AIR 2001 SC 3939. Para 49 of the impugned judgment is extracted hereunder:

“49. In Dr. T.V. Jose’s case (supra), Dr. T.V. Jose was the registered owner of the offending vehicle which had met with an accident on 9/4/1987. The LRs of the deceased had filed a claim petition against Dr. T.V. Jose, the driver of the offending vehicle and the insurance company. The plea of Dr. Jose was that he had sold the offending vehicle on 7/5/1986 to Smt. Bhawani. She had further sold it to Aboobacker. Sh. Aboobacker had sold the offending vehicle to Roy Thomas on 18/8/1986. Thus, Dr. Jose claimed that on the date of accident he was not owner of the offending vehicle. The driver had claimed that Dr. Jose was the owner. Since the insurance policy, which was in the name of Dr. Jose, was an act policy only, therefore, the insurance company had put forth the plea that it was not liable. Dr. Jose had appeared before the MACT and had examined Smt. Bhawani, her son, Aboobacker and George Methew to substantiate his defence. The driver produced the evidence that Dr. Jose was still the owner of the offending vehicle. The tribunal held that Dr. Jose was not the owner. The insurance company was also exonerated. The driver was held liable to pay the compensation. The driver and LRs of the deceased had preferred the appeal. The Hon’ble Kerala High Court had held that Dr. Jose was the owner and was liable to pay the compensation. Dr. Jose challenged that judgment. The Hon’ble Supreme Court, in para 10 of the judgment observed as under:

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 the RTO. There can be transfer of title by payment of consideration and delivery of the car. However, the appellant still continued to remain liable to third parties as his name continued in the records of RTO as owner. The appellant could not escape that liability by merely joining Mr. Roy Thomas in these appeals. Mr. Roy Thomas was not a party. In these appeals we cannot and will not go into the question of inter se liability between the appellant and 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."

7. A reference may be made to a judgment in *Pushpa alias Leela & Ors. v. Shakuntala & Ors*, AIR 2011 SC 682, wherein it was held that in the absence of taking any steps by the registered owner for transfer of the vehicle, the registered owner would continue to be liable. Since the Seventh Respondent has not come forward to deny the execution of the sale letter and Form 29 and 30 for transfer of the vehicle, he is proved to be the rightful owner of the vehicle. He too cannot escape the liability and would be liable to pay the compensation to the Claimants along with the registered owner.
8. It is urged by the learned counsel for the Appellant that the PW2 Ranbir Singh admitted in his cross-examination that the deceased was not wearing a helmet at the time of the accident.

Thus, argues the learned counsel, the deceased has contributed to the accident. PW2 has explained the manner of the accident. The deceased and PW2 were on the extreme left side of the road when the offending vehicle came from the opposite direction and dashed against the scooter. Simply because the deceased was not wearing a helmet and violated the terms of the Motor Vehicles Act, it cannot be said that he contributed to the accident. The contention is devoid of any merit and is rejected.

9. As far as non-joinder of Vijay Kumar, who is claimed to be the subsequent purchaser from the Seventh Respondent, is concerned, no evidence was produced by the Appellant except that he got the possession of the vehicle from the police when he was the owner of the vehicle. Of course, the Seventh Respondent vide a written statement claimed that he had transferred the same in favour of one Rajesh Kumar. The Seventh Respondent who was the Respondent No.2 before the Claims Tribunal did not produce any evidence in support of his defence and was ordered to be proceeded ex parte. Otherwise also, even if he had transferred and given physical delivery of the vehicle to any third person, the Seventh Respondent, or for that matter, the Appellant could avail appropriate remedy against him on proof of such facts. The Claim Petition, in the circumstances, cannot be said to be bad for non-joinder of Vijay Kumar.

10. Para 34 of the impugned judgment reveals that there is a clerical mistake in computing the loss of dependency. The deceased income was taken to be ₹2,905/-. On deducting 1/4th towards his personal living expenses, the loss of dependency would come to ₹2,179/-. On applying appropriate multiplier, the loss of dependency would come to ₹4,44,516/- (₹2179 X12 X17).
11. The Claims Tribunal granted a compensation of ₹1,50,000/- on account of loss of love and affection. The loss of love and affection cannot be measured in terms of money. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹25,000/- (in total to all the claimants) under the head of loss of love and affection. I would follow the same. The compensation under the head of loss of love and affection is reduced from ₹1,50,000/- to ₹25,000/-. On adding ₹10,000/- each towards loss of consortium, funeral expenses and loss to estate, the overall compensation comes to ₹4,99,516/-.
12. The compensation is re-computed as under:

S.No.	Head of Compensation	Granted by the Claims Tribunal	Granted by this Court
1.	Loss of Dependency	₹5,61,000/-	₹4,44,516/-
2.	Loss of Love and Affection	₹1,50,000/-	₹25,000/-

3.	Funeral Expenses	₹10,000/-	₹10,000/-
4.	Loss to Estate	₹10,000/-	₹10,000/-
5.	Loss of Consortium	₹10,000/-	₹10,000/-
	Total	₹7,41,000/-	₹4,99,516/-

13. The compensation thus stands reduced from ₹7,41,000/- to ₹4,99,516/- which shall be apportioned amongst the Respondents No.1 to 5 in the same percentage as directed by the Claims Tribunal. The Appellant and the Seventh Respondent are jointly and severally liable to pay the compensation. The amount of compensation has already been deposited by the Appellant India Lease Development Ltd. which shall be released to the Respondents No.1 to 5.
14. The excess sum of ₹2,41,484/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal will be refunded to the Appellant India Lease Development Ltd.
15. The Appellant shall be at liberty to take appropriate proceedings against the Seventh Respondent as advised.
16. The Appeal is allowed in above terms.
17. The statutory amount shall also be returned to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MARCH 05, 2012
pst