

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

Reserved on: 25th July, 2012
Pronounced on: 31st August, 2012

+ **MAC.APP. 924/2006**

HARISH CHANDER Appellant
Through Mr. D.R. Bhatia, Advocate

versus

DR. PRASUN GHOSH & ORS. Respondent
Through Mr. Sushil Kumar Pandey, Advocate
along with R-1 in person

+ **MAC.APP. 47/2007**

JASWANT SINGH Appellant
Through Mr. K.R. Chawla, Advocate

versus

DR.PRASUN GHOSH & ORS. Respondents
Through Mr. Sushil Kumar Pandey, Advocate
along with the Respondent No.1 in person

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These two Appeals (MAC APP.924/2006 and MAC APP.47/2007) arise out of a judgment dated 05.10.2006 in a Claim Petition No.204/2006 preferred by Dr. Prasun Ghosh for having suffering injuries in a motor vehicle accident which occurred on 19.11.1997.
2. MAC APP.924/2006 has been preferred by Harish Chander, registered owner of bus No.DL-1P-3963 whereas MAC APP.47/2007 has been

preferred by Jaswant Singh, who is alleged to be the rightful owner and person in possession and control of the offending bus.

3. One Mohinder Singh Sachdeva was also impleaded as Respondent No.4 in the Claim Petition as he was alleged to be the purchaser of the bus from the registered owner.
4. In Para 1 of the MAC APP.924/2006, the Appellant Harish Chander (the registered owner) has given the status of the various persons involved in these Appeals, which is extracted hereunder:-

Name	Status in Claim Petition	Status in Appeal
Dr. Prasun Ghosh	Petitioner (injured)	Respondent No.1
Sh. Harish Chander (owner of the vehicle)	Respondent No.1	Appellant herein (MAC APP. No.924/2006)
Sh. Ram Lal (driver Proceeded ex-parte)	Respondent No.2	Respondent No.2.
New India Assurance Co. Ltd.	Respondent No.3 (deleted as the vehicle was not insured)	Nil
Sh. Jaswant Singh (in whose custody the vehicle was at the time of accident)	Respondent No.5	Respondent No.3
Sh. Mohinder Singh Sachdeva (to whom the vehicle was sold on GPA)	Respondent No.4	Respondent No.4.

5. For the sake of convenience, the parties shall be referred as under:-
- (i) Harish Chander (Appellant in MAC APP.924/2006) shall be referred to as “the registered owner”.
 - (ii) Jaswant Singh (Appellant in MAC APP.47/2007) shall be referred to as the “alleged rightful owner”.
 - (iii) Dr. Prasun Ghosh (the First Respondent in both the Appeals) shall be referred to as “the Claimant”.
6. As per the averments made in the Claim Petition, the Claimant is a doctor by profession; he had already completed his MS (General Surgery) on the date of the accident. On the fateful day, that is, 19.11.1997 at about 4:15 P.M. the Claimant was riding on his two wheeler No.RJ-27-5M-4820 from DDU Hospital to his house in Chander Nagar, Janak Puri. He had to take a right turn towards Chander Nagar through a gap (between the middle pavement) on Mota Singh Marg. According to the averments, he gave an indicator and started taking a right turn. No sooner had he taken the turn, a bus No.DL-1P-3963 came from the wrong side on the other carriage way and dashed against the right side of his (the Claimant’s) two wheeler. As a result of the impact, the Claimant fell down and suffered injuries. He was initially removed to Mata Chanan Devi Hospital and was later shifted to Apollo Hospital. The Claimant suffered a fracture of right shaft femur, fracture of 8th and 9th rib (right side), fracture clavicle right, dislocation of right elbow apart from abrasion and bruises on other parts of the body. He underwent successive surgeries in Apollo Hospital. As there was non-union of the femur bone; he had to undertake another surgery. The fracture of right shaft femur ultimately resulted in permanent disability to the extent of 10% on account of shortening of right lower limb by one inch (Ex.PW-5/1).

7. Dr. Prasun Ghosh (the Claimant) sought compensation of ₹10 lacs. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the bus driver. As against a claim of ₹10 lacs, the Claims Tribunal awarded compensation of ₹23,40,126/-. There is no dispute about the proposition that compensation more than claimed can be awarded. The only consideration is it should be just (See *Nagappa v. Gurudayal Singh & Ors. (2003) 2 SCC 274*). Further, the Claims Tribunal found that Harish Chander was the registered owner and Jaswant Singh was the rightful owner and in possession and control of the vehicle at the time of the accident and thus made the driver, the registered owner and the rightful owner jointly liable to pay the compensation.
8. The compensation awarded under various heads by the Claims Tribunal is extracted hereunder from Para 43 of the impugned judgment in a tabulated form:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Estimated loss of Income (12,000 x 18 months)	₹2,16,000/-
2.	Future Loss of Income (96,000/- x 18)	₹17,28,000/-
3.	Actual Medical Expenses	₹2,66,831/-
4.	Future Treatment	₹20,000/-
5.	Attendant Charges	₹29,295/-
6.	Pain & Suffering	₹30,000/-
7.	Conveyance & Special Diet	₹25,000/-
8.	Loss of Amenities of Life	₹25,000/-

	Total	₹23,40,126/-
	Rounded off	₹23,40,000/-

9. The following contentions are raised on behalf of the registered owner:-
- (i) There was contributory negligence on the part of the Claimant. Thus, the compensation awarded was liable to be reduced to the extent of the Claimant's contributory negligence.
 - (ii) The Claims Tribunal erred in assuming the loss of earning capacity to be 25% although the disability was only 10% in respect of the right lower limb. The Claimant's income was proved to have increased manifold at the time of hearing of the Appeal, thus, practically there was no loss of earning capacity. In any case, loss of earning capacity at the most should have been taken as 5%.
 - (iii) The registered owner (Appellant in MAC AP.924/206) had sold the offending bus on the basis of a Power of Attorney in favour of Respondent No.4 Mohinder Singh Sachdeva, who in turn sold the same to Jaswant Singh. Thus, the Appellant had no liability to pay the compensation. The entire liability should have been fastened on Jaswant Singh, the rightful owner.
10. The learned counsel for the alleged rightful owner supports the Appeal on the first two grounds. On the third ground, it is argued that the alleged rightful owner had nothing to do with the offending bus at the time of the accident. He merely furnished a surety bond for release of the driver on bail and took the offending vehicle on superdari. This was not enough to conclude that he (Jaswant Singh) was the rightful owner. The Claims

Tribunal erred in making him liable to pay the compensation along with the driver and the registered owner.

11. Per contra, learned counsel for the Claimant urges that the compensation awarded towards pain and suffering, conveyance, special diet and loss of amenities was on the lower side. It is contended that the overall compensation awarded is just and reasonable.

NEGLIGENCE:-

12. Regarding the manner of the accident, the Claimant averred that on 19.11.1997 he was on his way back home in Chander Nagar, Janakpuri from DDU hospital, Hari Nagar on his two wheeler No. RJ-27-5M-4820; he gave an indicator to take a right turn towards Chander Nagar (Opposite Sharma Nursing Home); a blue line bus driven by Respondent No.2 (Ram Lal) came at a very high speed on the wrong side of the road and hit him. Thus, three important averments were made by the Claimant. Firstly, that he was taking a right turn by giving an indication; secondly, that blue line bus No.DL-1P-3693 was driven in a rash and negligent manner by Respondent No.2 Ram Lal and, thirdly, that the bus came from the wrong side of the road.
13. Respondent No.2, the driver of the offending bus preferred not to contest the Claim Petition and was ordered to be proceeded ex-parte. The registered owner (Appellant in MAC.924/2006) and the alleged rightful owner (Appellant in MAC APP.47/2007) contested the Claim Petition by filing separate written statements. The registered owner simply denied the accident for want of knowledge. He stated that he sold out the bus in question to Respondent No.4 in the year 1995. It was stated that he was not even remotely concerned with the bus or the accident.

14. The alleged rightful owner (Jaswant Singh) was completely silent as to the manner of the accident. He vaguely denied the averments made in Para 23 of the Claim Petition with regard to the negligence on the part of the bus driver and the manner of the accident. Thus, it is evident that the driver has preferred not to contest the manner of the accident and the alleged rightful owner was completely evasive and did not controvert the allegations with regard to the manner of the accident either specifically or by necessary implication.
15. Before delving further into all aspects of negligence, it would be appropriate to determine whether Appellant Harish Chander was infact the registered owner and whether Jaswant Singh was the rightful owner and was in possession of the offending bus at the time of the accident or not.
16. In the written statement filed by the rightful owner it was averred that the Claimant suffered injuries on account of his own rash and negligent driving as he was driving the two wheeler at a very high speed on the carriage way which was under repair and suddenly turned towards the right to go to his residence in Chander Nagar, Janakpuri. Para 23 of the written statement is extracted hereunder:-

“23. Para No.23 of the Petition is wrong, false and denied. Each and every allegations is specifically denied.

The true facts are that on 19/11/97 one lane of the road known as S.S. Mota Singh Marg was under repair as a result closed to traffic. Whole of the traffic was confined to the other lane. Bus No.DL-1P-3963 was coming from Possengipur Village and was going on the left side of the open lane of the said road. Petitioner was riding on a two wheeler scooter. Instead of driving on the open lane, the Petitioner to avoid traffic entered the lane of the said S.S. Mota Singh Marg which was under repair. Finding that there was no other traffic on the said lane, the Petitioner accelerated his scooter and was going along side of road divider. Without taking any caution, the Petitioner on reaching

the gap of the road divider turned suddenly at fast speed towards the right to go to his residence in Chander Nagar, Janak Puri. He did not care to pay attention to the traffic coming on the left side of the open lane. He was driving his scooter rashly at high speed as there was no other traffic in the lane under repair. On turning towards right, Petitioner ran into and hit the bus. Whatever injuries the Petitioner suffered were on account of his own rash and negligent driving. The driver of the bus Sh. Ram Lal was driving it cautiously and was not to blame at all for the accident”.

17. SI Inder Raj Singh who was examined as R1W1 (by Appellant Harish Chander) proved the certified copy on record of the criminal case. The Site Plan was proved as Ex.R1W1/4, where it was clearly stated by the IO that the carriage way shown with mark XX was the bad road (that is, the road under repair). This Site Plan was prepared by the IO on 19.11.1997 itself, that is, on the date of the accident. In cross-examination on behalf of Jaswant Singh R1W1 admitted that on the date of the accident one of the carriage way was closed on account of repair and traffic of both the sides was running on one carriage way only. In cross-examination on behalf of the Claimant, the IO admitted that the offending bus was proceeding from North to South.
18. The IO stated that the bus was travelling in the wrong direction due to blockage of one carriage way. This part of IO's testimony was of his own observation. He had no motive to depose falsely against any of the parties and thus, it would be difficult to disbelieve his testimony with regard to the fact that the carriage way shown with mark XX was closed for the traffic. It is true that the IO has shown a gap at Point X in the Site Plan where the Claimant on his two wheeler took the right turn, yet I would consider it only on account of inadvertence on the part of the IO. His testimony ought not to have been rejected by the Claims Tribunal merely on the ground that the gap at Point X was not shown by him (the IO).

19. It has to be borne in mind that no replication to the written statement of Jaswant Singh was filed by the Claimant to controvert the averment with regard to one carriage way being under repair. Thus, on the basis of the evidence adduced by the parties, particularly, taking into account the IO's testimony it is established:-

- (i) That the bus No.DL-1P-3963 was moving from North to South on the carriage way meant for the traffic coming from the opposite direction.
- (ii) The carriage way for the moving of the traffic from North to South was closed due to repairs.
- (iii) The accident took place just at the gap when the Claimant who was also moving on his two wheeler from North to South took the right turn.

20. Thus, it is apparent that the offending bus as well as the two wheeler were proceeding in the same direction, that is, from North to South on two different carriage ways. The accident took place just near the gap, that is, when the two wheeler had just entered the other carriage way. It is true that Ram Lal, the driver of the offending bus has not entered the witness box to depose about the manner in which the accident took place. Thus, the Claimant's testimony that the bus was being driven in a rash and negligent manner has remained unchallenged and unrebutted. But, at the same time, as has been held by me earlier, the carriage way from which the Claimant was coming was under repair and was closed for the traffic. Thus, the Claimant was also expected to be vigilant while entering the carriage way on which traffic was moving from both the sides. Thus, in my view, there was contributory negligence to the extent of 25% on the part of the Claimant as well.

21. Thus, the tortfeasor would be liable to pay the compensation to the Claimant only to the extent of 75%.

QUANTUM OF COMPENSATION

22. The quantum of compensation has been mainly challenged on the ground that the compensation awarded towards loss of earning capacity is exorbitant and excessive.
23. The Claims Tribunal dealt with the quantum of compensation in Paras 23 to 43. Paras 23 to 27 and 31 to 33 are extracted hereunder:-

“23. The petitioner is a doctor by profession and as per the MLC prepared at Mata Channan Devi Hospital he had sustained compound fracture in the right shaft femur; fracture in the 8th and 9th rib on the right side; fracture of the clevical right side; dislocation of right elbow; lacerated wound on the right leg, hand, left hand and abrasions on right shoulder. He stated that he was thereafter, referred to Apollo Hospital on 21.11.97 and was discharged on 13.12.97. His right hand was put under plaster as he was operated upon on 21.11.97 and a pin was put in the right tibia and was put under traction. On 22.11.97 he was shifted to ICU and put under ventilator and he remained there for seven days. Another operation was performed on 6.12.97 and a nail was put on the right femur. He was confined to bed till Dec.97 and he started walking with help of crutches from Jan 98 and was able to walk with help of stick from April 98. Thereafter, since the femur was not united another operation was performed on 13.10.98 at Apollo Hospital and was discharged on 16.10.98. He started to walk with help of crutches from Feb.99. His femur was not still united and he got second opinion from AIIMS where he was advised another operation. He submitted the bills of treatment and medicines of Mata Channan Devi Hospital and Apollo Hospital.

24. The details of the bills have been filed at the time of argument amounting to ₹1,98,831/- and at time of final argument another bill of Apollo Hospital dated 28.6.00 was also filed which show his admission on 22.6.00 and discharged on 28.6.00. This is subsequent to the statement made by the petitioner in the court and it is

amounting to ₹75,000/- out of which ₹7,000/- was given as discount which comes to ₹68,000/-. The bills submitted for his treatment till when his deposition was recorded is amounting to ₹1,98,831/-.

25. In his cross examination he stated that his treatment is still continuing and he is taking physiotherapy exercise, high protein and high calcium diet. He is walking with the help of stick and have been using it from 1.4.98 till 13.10.98. After this he was put on walking braises followed by single crutch and then by walking stick.

26. He after his cross examination on behalf of respondent no.1 was again examined and he filed the bills Ex.P30 of Apollo Hospital which was objected to. It has already come in the cross examination of the witness that he was continuously undergoing treatment and even if the same was filed subsequently, it appears to be justified and it can be taken into account. As regards the bills submitted during the course of argument, these bills are supported with the discharge summary prepared at the hospital showing that he underwent an operation, the ground was non union of fractured femur with implant failure regarding which he had already deposed that doctor had advised him another operation. Therefore, the same can be considered.

27. The strict procedure and the law of evidence as contained in the Indian Evidence Act and CPC are not applicable to the proceeding before Tribunal. The procedure has flexibility to take care of ongoing treatment. Even otherwise this subsequent bills as part of future treatment can be taken into account. Accordingly, I find the bills of treatment and medicines submitted as justified keeping in view the nature of injury and treatment.

x x x x x x x x

31. It is submitted by the counsel for the petitioner that the petitioner is in the job of surgery which requires long hours to do a surgery and operation, however, due to this disability, it is very difficult for him to excel professionally as the very nature of the job is demanding physically and on account of the disability, he is not able to work for long hours, therefore, even this disability of 10% in respect to his job is 100%.

32. I have considered the same. Surgeon by its very nature requires one to carry out the surgery continuously for a longer period and it sometimes stretch to about five to eight hours and with this kind of injury, it would not be possible to do surgery for such a longer period.

Under these circumstances, I treat the disability as regards the job of the petitioner to the extent of 25%.

33. The next important question is as to how the disability would affect his future income. The petitioner has testified that at the time of accident he had just completed MS (General Surgery) and proved the certificate or registration with Rajasthan Medical Council and also proved the interview call received from employment exchange and stated that at the time of completion of his MS, he was offered the job and he would have easily earned ₹15,000/- per month.”

24. The Claims Tribunal on the basis of the letter of offer Ex.P-25 took the Claimant's potential income as ₹12,000/- per month in the pre-revised scale of ₹3150-3350. The Claims Tribunal in Paras 31 and 32 extracted above, held that the disability to the extent of 10% in case of the Claimant has to be taken as 25%. Yet, the Claims Tribunal committed an error while granting the future loss of income as ₹17,28,000/- after making deduction of one-third towards expenses on entertainment, as instead of granting compensation to the extent of 25% it granted compensation on the basis of 100% disability. This seems to be a clerical error on the part of the Claims Tribunal.
25. It is true that there may not be any co-relation between the permanent disability vis-à-vis one limb or the whole body and the loss of future earning capacity.
26. In *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of the motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and

after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

x x x x x x x

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

27. As stated earlier, the Claims Tribunal took the Claimant's income at the time of the accident to be ₹12,000/- per month. During the course of this Appeal, the Claimant was directed to produce his Income Tax Returns (ITRs) which shows that he had returned the income of ₹5,74,387 during the financial year

2010-2011, ₹ 5,23,202/- during the financial year 2009-2010, ₹3,71,265/- for the financial year 2008-2009, ₹3,01,476/- for the financial year 2007-2008, ₹2,24,731/- for the financial year 2006-2007, ₹2,14,724/- for the financial year 2005-2006, ₹1,70,588/- for the financial year 2003-2004, and ₹1,84,063/- for the financial year 2002-2003. Thus the Claimants income was gradually increasing.

28. On the basis of the ITR for the year 2011-2012, it is urged that the Claimant had an income of ₹ 18,42,000/- in that year. Thus, it is urged that there was no loss of earning capacity. The contention is misconceived.
29. The Claimant had completed his MS (General Surgery) before the date of the accident. He was offered a job of Senior Resident in General Surgery and Plastic Surgery. The Claimant completed his super-specialization in Urology a couple of years after the accident. He (the Claimant) suffered shortening of his right leg by one inch on account of the injury suffered by him. In para 32 of the impugned judgment extracted above, the Claims Tribunal had given the observation that a Surgeon has to work continuously for longer hours which may be a handicap with the Claimant on account of shortening of his right leg. Obviously, the Claimant would tire early. No expert evidence was produced by the Claimant as to the exact percentage of loss in the earning capacity. Admittedly, the Claimant is in private practice/service. I would, therefore, take the loss of earning capacity to be 10% only.
30. Taking in account the fact that at the time of the accident the Claimant was a specialized doctor who went on to complete his super-specialization and has got a very handsome income at this time, the Claimant is entitled to an addition of 50% in his potential income of ₹12,000/- per month (as per the actual offer) as accepted by the Claims Tribunal. The loss of future earning

capacity would therefore come to ₹3,67,200/- (12,000/- + 50% x 12 x 17 x 10%).

31. One-third deduction towards personal and living expenses is not required to be made in case of awarding compensation towards loss of earning capacity (*Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343).
32. The compensation of ₹30,000/- towards pain and suffering and ₹25,000/- towards conveyance and special diet is stated to be excessive by the Appellants. The same is claimed to be too meager by the Claimant.
33. It is established that the Appellant had to undergo successive surgeries on account of non union of his shaft femur right. Considering that the accident took place in the year 1997, compensation towards pain and suffering is enhanced from ₹30,000/- to ₹50,000/-. Compensation of ₹25,000/- towards special diet and conveyance and ₹25,000/- towards loss of amenities seems to be reasonable.
34. The compensation is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Estimated Loss of Income (12,000/- x 18)	₹2,16,000/-
2.	Loss of Earning Capacity	₹3,67,200/-
3.	Actual Medical Expenses	₹2,66,831/-
4.	Future Treatment	₹20,000/-
5.	Attendant Charges	₹29,295/-
6.	Pain & Suffering	₹50,000/-
7.	Conveyance & Special Diet	₹25,000/-

8.	Loss of Amenities of Life	₹25,000/-
	Total	₹9,99,326/-

35. The compensation stands reduced from ₹23,40,000/- to ₹9,99,326/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
36. The Claimant is entitled to only 75% of the compensation awarded by this Court.

LIABILITY

37. While dealing with the issue of liability, the Claims Tribunal held that Harish Chander was the registered owner and Jaswant Singh was the rightful owner. The conclusions reached by the Claims Tribunal are extracted hereunder:-

“47. As regards the liability, respondent no.2 is the driver on whose negligence the petitioner had sustained injury. There is a dispute with respect to the ownership of the vehicle in question and is to be determined as to who is liable. There is no insurance company in this case.

48. Respondent No.1 had claimed that he had sold the vehicle to respondent no.4 vide General Power of Attorney dated 22.5.95 and in consideration respondent no.1 had received a cheque bearing no.733708 dated 15.4.95 for Rs.2,30,000/- issued by respondent no.4 and it was deposited by him in Central Bank of India, Janakpuri and the amount was credited in account of respondent no.1 and respondent no.4 took possession of the bus from him. He also filed the photocopy of the General Power of Attorney as Annexure A.

49. Respondent no.4 on the other hand claimed that the ownership of the vehicle remained in the name of respondent no.1 and M/s. Sach Sons Leasing & Finance Pvt. Ltd. had entered into re-finance arrangement with respondent no.1 to enable him to pay off his earlier debt and meet other personal requirements. It is also stated that respondent no.1 had applied to STA on 16.1.98 for replacement of the

bus long after the accident and NOC was given to respondent no.1 on 13.2.98 and thereafter, the said vehicle was sold to some party at Ghaziabad.

50. Respondent no.5 also claimed that the vehicle remained in the ownership of respondent no.1 and on 3.1.96 respondent no.1 had executed the Power of Attorney in his favour by virtue of which he was authorized to get the bus released from the court. He stated that he had taken the bus from respondent no.1 for plying on route no.704 and had entrusted the same to driver Ram Lal on 19.11.97 the date of accident.

51. The petitioner had examined PW2 Jagbir from STA office who had proved from the record that the bus in question was registered in the name of Harish Chander which was surrendered on 2.2.98. he further stated that there is one application/affidavit in the file made by Harish Chander and proved the same as Ex.RX.

52. PW4 Vinod Sharma from MLO office stated that Harish Chander was the sole registered owner of the vehicle on the date of accident. He further stated that the registered owner had not submitted any document with their office informing regarding the sale of the vehicle to respondent no.4.

x x x x x x x x x x x

54. SI Inderaj Singh who is the investigating officer of the case stated that he had issued to notice U/s. 133 of the MV Act to the owner and the owner had appeared before him and gave the required particulars in writing. He proved the notice Ex.R1W1/1 given by him to the owner Jaswant Singh (respondent no.5). He further stated that Jaswant Singh had furnished the personal bail bond which was accepted by him.

55. In his cross examination he stated that the RC of the vehicle was in the name of respondent no.1 at time of accident and stated that he had not seen the permit or insurance of the bus. He stated that he cannot recollect whether he had seen the affidavit of respondent no.1 Ex.RX.

56. Respondent no.1 on the other hand in his written statement deposed that he had no connection with the vehicle as he had sold the same to respondent no.4. In his evidence by way of affidavit he stated that he had not received any notice U/s. 133 of MV Act nor he had taken the vehicle on superdari nor he had employed the driver. He

however, stated that he had subsequently came to know that the vehicle was taken on superdari by Jaswant Singh and notice was given to him. He admitted that the RC, permit and insurance continued to remain in his name in the RTO office. He also admitted that he had applied for replacement of the vehicle on 16.1.98 and even gave indemnity bond before the authority on 18.2.98 when he had deposited the permit personally before the Secretary, STA. He however, could not remember whether on 31.3.98 he had personally appeared before the authority and the NOC was issued. He admitted that he had received the cheque from M/s. Sach Sons Leasing & Finance Pvt. Ltd. but further stated that it was not on account of finance but as the cost of the bus. He admitted that he had signed all the relevant Forms and GPA to be submitted with authority and stated that he had signed the blank form at the time of sale. He stated that he had not given any Power of Attorney dated 3.1.96 to Jaswant Singh.

57. Respondent no.4 stated that he is merely carrying out the business of financing the buses and had merely financed the purchase of bus of respondent no.1.

58. In his cross examination he stated that he is not aware whether the financed amount was paid off by respondent no.1 by 8.10.97, however, admitted that the loan was cleared by 8.10.97. He denied the suggestion that he had sold the vehicle to Jaswant Singh and stated that their finance company is maintaining the accounts in the ordinary course of business.

59. R5W1 had testified that respondent no.1 was the registered owner and he was not the registered owner at any point of time and stated that he had not appointed Ram Lal to drive the vehicle but stood surety for the driver. He stated that he was not served with notice u/s. 133 of the M V Act to produce the driver, however, he after seeing the same stated that he had given the reply at point A to A meaning thereby that he had signed the same. He stated that he gave the original Power of Attorney to the police and placed the photocopy of the same on record. He denied the suggestion that he was the owner of the bus at time of accident. However, stated that the superdarinama and jamanatnama bears his signatures.

60. Respondent no.1 has claimed that he had sold the vehicle to respondent no.4 who on the other hand claimed that he had merely financed the vehicle, however, the financed amount was paid off till

8.10.97 i.e. prior to the date of accident. On the date of accident, admittedly respondent no.5 had got the vehicle released on superdari and he also got the driver of the bus released on bail. When he appeared as witness in the court, stated that he had not appointed Ram Lal as driver to drive the bus whereas, he in his written statement has categorically stated that had entrusted the bus to Ram Lal who was plying the bus. He has further stated in the written statement that he had taken the bus from respondent no.1 for plying on route no.704, meaning thereby that he was in actual control of the vehicle on the date of accident and was supervising the same and that is the reason why the investigating officer has given the notice to him and he got the vehicle released on superdari and also got the driver released on bail.....”

38. From Harish Chander's testimony as R1W2 it is evident that the registration certificate, permit and the policy of insurance continued in his name. He did not take steps to get the offending vehicle transferred in the name of Respondent No.4 or in the name of Jaswant Singh (the alleged rightful owner) as provided under Section 50 of the Motor Vehicles Act, 1988 (the Act). It is thus, established that Harish Chander was the registered owner not only on the date of the accident but even thereafter till February, 1998, when he applied for replacement of the vehicle with a new one and submitted an Indemnity Bond before the Transport Authority.
39. Section 2 (30) of the Act defines 'owner' as the person in whose name a motor vehicle stands registered and where a vehicle is subject to Higher Purchase Agreement or an Agreement of Lease, the person in possession of the vehicle under that Agreement.
40. Now turning to the question of as to who was the rightful owner and person in control of the offending bus at the time of the accident.

41. Although, Harish Chander, the registered owner claimed that the offending bus was transferred in favour of Mohinder Singh Sachdeva (Respondent No.4) in March, 1995. He deposed that a sum of ₹2,50,000/- was paid by him (Mohinder Singh Sachdeva) to him (Harish Chander) including a sum of ₹2,30,000/- by way of a cheque. He deposed that he had no connection with the bus on the date of the accident, that is, 19.11.1997. In cross examination, he admitted that cheque of ₹2,30,000/- was given by M/s. Sachsons Leasing & Finance Pvt. Ltd.. He, however, stated that this was not by way of finance to him, it was received by him as the cost of the bus. Thus, nothing substantial was brought on record to establish that the vehicle was ever sold to Mohinder Singh Sachdeva (Respondent No.4). It appears that Respondent No.4 might have been involved in the financial arrangements for the eventual purchaser of the bus.
42. As far as Jaswant Singh is concerned, he was not impleaded in the initial petition filed on 07.03.1998. His name was added by way of an amendment on 16.02.2000 as Respondent No.5 (before the Claims Tribunal). Jaswant Singh filed his written statement on 1.12.2000 and in reply to Para 15 of the Claim Petition stated as under:-

“15. Para No. 15 is false, wrong and denied. Throughout the said vehicle remained in the ownership of Respondent No.1. it may be pointed out that on 3/1/1996 the Respondent No.1 executed a Power of Attorney in favour of the answering Respondent. By virtue of said Power of Attorney the answering Respondent was authorized to get the said bus released from the court or police station in the event of the same being involved in an accident and seized by the police. Respondent No.5 had taken the said bus from respondent no.1 from plying the same on route No.704 and had entrusted it to Shri Ram Lal Driver who was plying and driving the same on 19-11-97.

It is further submitted that on 19-11-97 one lane of the road known as S.S. Mota Singh Marg was under repair and as a result closed to

traffic. Whole of the traffic was confined to the other lane Bus No.DL-1P-3963 was coming from Possengipur Village and going on the left side of the open lane of the said road Petitioner was riding on a two wheeler scooter. Instead of driving on the open lane, the Petitioner to avoid traffic entered the lane of the said S.S. Mota Singh Marg which was under repair. Finding that there was no other traffic on the said lane, the Petitioner accelerated his scooter and was going along side of road divider. Without taking any caution, the Petitioner on reaching the gap of the road divider turned suddenly at fast speed towards the right to go to his residence in Chander Nagar, Janak Puri. He did not care to pay attention to the traffic coming on the left side of the open lane. He was driving his scooter rashly at high speed as there was no other traffic in the lane under repair. On turning towards right, Petitioner ran into and hit the bus. Whatever injuries the Petitioner suffered were on account of his own rash and negligent driving. The driver of the bus Sh. Ram Lal was driving it cautiously and was not to blame at all for the accident.”

43. Thus, Jaswant Singh (the alleged rightful owner) was categorical that the bus was taken by him on the basis of the Power of Attorney given by the registered owner in his favour. He also admitted that he was plying the bus on route No.704 and had entrusted the bus to Ram Lal (driver). Although, during the course of evidence he tried to get out of this admission, but, the same is of no consequence. Otherwise also, Jaswant Singh admitted his signature on superdarinama Ex.R5W1/X1. He admitted having given reply to the Notice under Section 133 of the Act (Ex.R5W1/X).
44. SI Inder Raj Singh, the IO of the criminal case being FIR No1268/1997 registered with regard to this accident testified that the superdarinama Ex.R1W1/2 was executed by Jaswant Singh. Thus, in view of the clear admission in the written statement, it is established that Jaswant Singh was the rightful owner and the person in control of the bus at the time of the

accident. He was running this bus on route No.704 and had engaged Ram Lal (Respondent No.2) as the driver on the offending vehicle.

45. As per Section 50 (1) (b) the transferee of the vehicle is under obligation to report within 30 days about the transfer of the vehicle to the Registering Authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, and is expected to forward the certificate of registration to the Registering Authority together with prescribed fee and a copy of the report received by him from the transferor for effective transfer.
46. In *Dr. T.V. Jose v. Chacho P.M.*, (2001) 8 SCC 748, the Supreme Court ruled that the registered owner cannot escape the liability qua third party. No explanation has been given by the registered owner as to why the Registering Authority was not informed about the transfer of the vehicle. Thus, on the authority of *T.V. Jose and Pushpa @ Leela & Ors. v. Shakuntala & Ors.* 2011 (2) SCC 240, the registered owner cannot escape the liability.
47. As stated earlier, it is established that Jaswant Singh was the rightful owner and in possession and control of the vehicle at the time of the accident. He had engaged the driver Ram Lal who was driving the vehicle at the time of the accident. Thus, Jaswant Singh and also the driver Ram Lal cannot escape the liability. In fact, it is the prime responsibility of Ram Lal being the principal tortfeasor to pay the compensation. Jaswant Singh, Respondent No.3 in MAC APP.924/2006 is liable being the rightful owner and employer of Ram Lal driver of the bus. Appellant Harish Chander in MAC APP. 47/2007 is liable as the registered owner of the bus. Thus all the three are jointly and severally liable to pay the compensation of ₹7,49,494/- (₹ 9,99,326/- x 75%).

48. The amount deposited, if any, and the statutory deposit shall be released in favour of the Claimant. The Claimant shall be entitled to take execution to recover rest of the amount, if any paid within six weeks.
49. Both the Appeals are disposed of in above terms.
50. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 31, 2012
vk