

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 602 of 2018

Appellant :- Naeem Khan

Respondent :- Smt.Savitri Devi And Ors.

Counsel for Appellant :- Dhananjai Kumar Tripathi,Jai Prakash Yadav,Suresh Chandra Pandey

Counsel for Respondent :- Shiv Pal Singh

Alongwith

Case :- FIRST APPEAL FROM ORDER No. - 1196 of 2016

Appellant :- Kaleem Khan

Respondent :- Smt. Savitri Devi And 7 Others

Counsel for Appellant :- Anuj Dayal

Counsel for Respondent :- Shiv Pal Singh

Hon'ble Jaspreet Singh, J.

1. These two appeals have been filed assailing the award dated 10.02.2016 passed by the Motor Accident Claims Tribunal/Additional District Judge Bahraich in Claim Petition No.165/70/2014 wherein in a death case a sum of Rs.16,53,636/- alongwith 7% interest per annum has been awarded in favour of the claimant-respondents.

2. One appeal bearing F.A.F.O. No.602 of 2018 has been filed by Naeem Khan who was subsequently impleaded in the claim petition alleging that he was the owner of the offending vehicle. The other appeal bearing F.A.F.O. No.1196 of 2016 has been filed by Kaleem Khan who is also said to be the original owner of the alleged offending vehicle.

3. Learned counsel for the appellant in F.A.F.O.No.602 of 2018 submits that the appellant Naeem Khan has wrongly been impleaded in the proceedings; inasmuch as he had never purchased the offending vehicle nor he is the registered owner of it yet the Tribunal erred in affixing 50% of the

liability on the appellant. The other appeal which has been filed by Kaleem Khan who is represented by Shri Anuj Dayal learned counsel submits that Kaleem Khan had sold the offending vehicle on 18.01.2014 and in order to substantiate the same, documents were annexed including the sale letter and as such urged that once the offending vehicle had been sold, no liability to indemnify the award would rest on Kaleem Khan and therefore awarding 50% liability on the appellant Kaleem Khan is bad. It is in view of the aforesaid that the two appeals have been filed and primarily the issue in question is limited as to who would be liable to indemnify the award.

4. It has been pointed out by the learned counsel for the parties that Karethe, who has been impleaded as respondent no.8 has died. An application for substitution was moved, upon which notices were issued to the proposed legal heirs which as per office report dated 12.04.2022, was sufficient, accordingly the application seeking condonation of delay and substitution to bring on record the heirs of the respondent no.8 Karethe shall also stand allowed and the necessary amendment in the array of the parties shall be done by the counsel for the appellant in both the appeals during course of the day.

5. In order to answer the solitary issue involved regarding who would be liable to indemnify the award, it will be relevant to notice certain brief facts giving rise to the two appeals, first.

6. The claimant-respondents no.1 to 6 filed Claim Petition No.165/70/2014 before the Motor Accident Claims Tribunal/Additional District Judge, Court No.3, Bahraich wherein it was stated that on 26.04.2014, at around 5.00 P.M. in the evening, Sohan Lal alias Chote

Kashyap (the deceased) was going towards his fields to lockup the harvested wheat crop. While he reached the Rishiya Degree College bend a motorcyclist who was driving rashly and negligently came on the wrong side and hit Sohan Lal, who was a pedestrian, from the back. Sohan Lal was taken to the district hospital Bahraich where finding that his condition was serious, he was referred to a higher centre for treatment and Sohan Lal expired during his treatment on 11.05.2014 at Trauma Centre at Lucknow.

7. It is in this context that the claim petition was filed stating that the offending motorcycle bearing number UP 40 E-5491 was being driven by Karethe and the said vehicle belonged to Kaleem Khan. The record further indicates that initially the claim petition was filed only against Kaleem Khan but later by an amendment Naeem Khan and Karethe were impleaded as respondents no.2 and 3.

8. Kaleem Khan filed his written statement bearing paper No.Kha. 23 denying the contentions of the claim petition. However, he raised a plea that the claim petition was bad for non-joinder for necessary party; inasmuch as on 18.01.2014, he had sold the vehicle in question to Naeem Khan for a valuable sale consideration of Rs.25,000/- and as such he denied his liability in respect of any claim on account of the alleged accidental death of Sohan Lal.

9. Upon impleadment of Naeem Khan, he also filed his written statement bearing paper No.Kha.34 wherein he stated that he has been unnecessarily impleaded; inasmuch as he is neither the owner nor the purchaser of the alleged vehicle and for the aforesaid reason, no liability can be fastened on him.

10. Karethe, the respondent no.3 filed his separate written statement bearing paper Kha.35 denying the contentions of the claim petition and further denied that he had any connection with the aforesaid motorcycle nor he was driving the same and that he has been unnecessarily impleaded, accordingly no award can be passed against him.

11. The Tribunal noticing the divergent contentions of the respondents framed five issues. Upon issue no.1, the Tribunal held that the death of Sohan Lal had occurred on account of rash and negligent driving of the motorcycle bearing UP 40 E-5491 and it also concluded that the same was being driven by Karethe who was responsible as he was driving the said motorcycle rashly and negligently.

12. The Tribunal also noticed that the documents relating to the offending motorcycle were valid and the record indicated that from **04.12.2006 to 20.12.2006** the vehicle was in the name of Abhisekh Singh which was got transferred by Kaleem and in the registration certificate on the date of the accident i.e. 26.04.2014, the name of Kaleem Khan was incorporated as the registered owner. The Tribunal also recorded that the driver of the said motorcycle did not have a valid and a subsisting driving licence and also on the date of the accident the vehicle was not insured. Thereafter the Tribunal went on to compute the compensation and finally awarded a sum of Rs.16,53,636/- alongwith 7% interest per annum.

13. The Tribunal also found that since Kaleem Khan had sold the vehicle to Naeem Khan, accordingly both would be equally liable to indemnify the award. It is in this view of the matter that the award dated 10.02.2016 came

to be assailed by Naeem Khan by means of FAFO No.602 of 2018 and by Kaleem Khan by FAFO No.1196 of 2016.

14. In view of the aforesaid, the point for determination before this Court is as to who would be liable to indemnify the award in the given facts and circumstances where on the date of accident the name of Kaleem Khan was recorded as the registered owner and whether the Tribunal was justified in apportioning 50% of the liability of the award on Naeem Khan on the premise that Kaleem Khan had sold the motorcycle on 18.01.2014 to Naeem Khan.

15. This issue may not detain this Court for long; inasmuch as it is now well settled by the Apex Court in ***Prakash Chandra Daga Vs. Saveta Sharma and others; 2019 (37) LCD page 2517*** wherein it has been held that the person, who is recorded as the registered owner in the records available with the Regional Transport Officer on the date of the accident, would be liable to pay the compensation. The relevant portion of the said report is being reproduced hereinafter for ready reference:-

“5. It is true that in terms of Section 50 of the Act, the transfer of a vehicle ought to be registered within 30 days of the sale. Section 50(1) of the Act obliges the transferor to report the fact of transfer within 14 days of the transfer. In case the vehicle is sold outside State, the period within which the transfer ought to be reported gets extended. On the other hand, the transferee is also obliged to report the transfer to the registering authority within whose jurisdiction the transferee has the residence or place of business where the vehicle is normally kept. Section 50 thus prescribes timelines within which the transferor and the transferee are required to report the factum of transfer. As per sub-section (3) of said Section 50, if there be failure to report the fact of transfer, fine could be imposed and an action under Section 177 could thereafter be taken if there is failure to pay the amount of fine. These timelines and obligations are only to facilitate the reporting of the transfer. It is not as if that if an accident occurs within the period prescribed for reporting the said transfer, the transferor is absolved of the liability.

6. Chapter XII of the Act deals with the Claims Tribunals and as to how applications for compensation are to be preferred and dealt with. While considering such claims, the Claims Tribunal, in case of an accident is required to specify the amount which shall be paid by the insurer or

owner or driver of the vehicle involved in the accident or whether such amount be paid by all or any of them, as the case may be. It is well settled that for the purposes of fixing such liability the concept of ownership has to be understood in terms of specific definition of "owner" as defined in Section 2(30) of the Act.

7. In *Pushpa v. Shakuntala* [*Pushpa v. Shakuntala*, (2011) 2 SCC 240 : (2011) 1 SCC (Civ) 399 : (2011) 1 SCC (Cri) 682] the vehicle in question belonged to one Jitender Gupta who was its registered owner. He sold said vehicle to one Salig Ram on 2-2-1993 and gave its possession to the transferee. Despite said sale, the change of ownership was not entered in the Certificate of Registration. The earlier insurance policy having expired, the transferee took out fresh insurance policy in the name of original owner Jitender Gupta. In an accident that took place on 7-5-1994, two persons lost their lives. The heirs and legal representatives lodged separate claims and an issue arose as to who was liable as owner. The submissions that Jitender Gupta, the registered owner had no control over the vehicle and the possession and control of the vehicle was in the hands of the transferee and as such no liability could be fastened on the transferor were rejected by this Court. It was observed in para 11 as under : (SCC p. 244)

"11. It is undeniable that notwithstanding the sale of the vehicle neither the transferor Jitender Gupta nor the transferee Salig Ram took any step for the change of the name of the owner in the certificate of registration of the vehicle. 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 2-2-1993."

8. In the decision in *Naveen Kumar* [*Naveen Kumar v. Vijay Kumar*, (2018) 3 SCC 1 : (2018) 2 SCC (Civ) 1 : (2018) 1 SCC (Cri) 661] the legal position was adverted to and this Court observed as under : (SCC pp. 11-12, paras 13-14)

"13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression "owner" in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the "owner". However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression "owner" in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier 1939 Act. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the first respondent was the "owner" of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded [*Vijay*

Kumar v. Rakesh, 2016 SCC OnLine P&H 18767] upon a misconstruction of the judgments of this Court in *Reshma [HDFC Bank Ltd. v. Reshma*, (2015) 3 SCC 679 : (2015) 2 SCC (Civ) 379 : (2015) 2 SCC (Cri) 408] and *Purnya Kala Devi [Purnya Kala Devi v. State of Assam*, (2014) 14 SCC 142 : (2015) 1 SCC (Civ) 251 : (2015) 1 SCC (Cri) 304].

14. The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In *T.V. Jose [T.V. Jose v. Chacko P.M.*, (2001) 8 SCC 748 : 2002 SCC (Cri) 94], this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the Registering Authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled.”

9. The law is thus well settled and can be summarised : (SCC pp. 625-26, para 4)

“4. ... 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. ... Merely because the vehicle was transferred does not mean that [such registered owner] 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.” *[P.P. Mohammed v. K. Rajappan*, (2008) 17 SCC 624, para 4 : (2010) 4 SCC (Cri) 587]”

16. In light of the aforesaid dictum, a fact which is not disputed is that on the date of the accident i.e. on 26.04.2014, the vehicle in question was recorded in the name of Kaleem Khan. Though an attempt has been made to justify that Kaleem Khan had sold the motorcycle to Naeem Khan but the same is vehemently denied by Naeem Khan.

17. Be that as it may, the Tribunal clearly gave a finding while dealing with the issue no.2 that on the date of the accident, Kaleem Khan was the registered owner and once such a finding was recorded it was not open for the Tribunal to have fastened part of the liability of the compensation on Naeem Khan.

18. In light of the dictum of the Apex Court in ***Prakash Chandra Daga (supra)***, it is crystal clear that the liability to indemnify the award

would be on Kaleem Khan who was the registered owner of the offending vehicle on the date of the accident.

19. In this view of the matter, the Tribunal had erred in fastening 50% liability on Naeem Khan, accordingly this Court has no hesitation to modify the impugned award dated 10.02.2016 passed in Claim Petition No.165/70/2014 to the extent that the amount as awarded by the Tribunal will be indemnified only by Kaleem Khan who was the registered owner of the offending vehicle on the date of the accident. However, it is clarified that after indemnify the award to the claimants, it shall be open for Kaleem Khan to agitate his claim for recovery on the basis of sale of the vehicle to Naeem Khan before the regular court, subject to law of limitation and proof of transfer of vehicle and any finding on the issue recorded by the Tribunal shall not come in the way of the parties as it was recorded by the Tribunal in a summary proceedings with limited purpose to ascertain the liability qua the claimants. This has been done as Naeem Khan had disputed the purchase as well as document relating thereto which can only be examined in regular proceedings.

20. Subject to the aforesaid modification of the award, the appeal filed by Naeem Khan bearing **FAFO No.602 of 2018** shall stand **allowed** whereas the appeal filed by Kaleem Khan bearing **FAFO No.1196 of 2016** shall stand **dismissed**.

21. Any amount deposited by Naeem Khan in the appeal shall be released in favour of Naeem Khan and the entire award shall be indemnified by Kaleem Khan in the appeal filed by Kaleem Khan. If any amount is deposited before this Court, the same shall be remitted to the Tribunal to be released in favour of the claimants and any shortfall would also be paid by

Kaleem Khan to the claimant-respondents within sixty days from today. The lower court record be sent to the Tribunal concerned forthwith.

Order Dated:-19.10.2023

ank/-