



2026:AHC:185203

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 3576 of 2008

M/S Kanchan Automobiles

.....Appellant(s)

Versus

Smt. Rita Kushwaha And Others

.....Respondent(s)

Counsel for Appellant(s)	: Vishal Tandon
Counsel for Respondent(s)	: Santosh Kumar, Shyam Sunder Mishra, Usha Srivastava, Vikram Bahadur Yadav, Brijesh Tiwari, Radhey Shyam Yadav, Seema Pandey, Vivek Shukla

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard Sri Vishal Tandon, learned counsel for the appellant, and Sri Vivek Shukla, learned counsel for the respondent. None has appeared on behalf of respondent no. 2 even in the revised call.

2. The present First Appeal From Order is being filed against the judgment and award dated 18.9.2008 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No. 3, Kanpur Dehat, in MACP No. 413 of 2006, titled *Smt. Rita Kushwaha Vs. Chandra Shekhar and Others*.

Brief facts of the appeal

3. The respondent-claimant instituted a claim petition before the learned Tribunal stating that on the morning of 23.08.2006 she, along with other co-villagers, had gone on a tractor belonging to respondent Chandra Shekhar for taking bath in the holy river situated in District Fatehpur. It was stated that while the tractor was being taken for the said purpose, it overturned, as a result of which the claimant and other persons travelling on the tractor sustained injuries. It was further stated that on the date of accident the tractor was not registered with the Transport Department and its registration was subsequently made with the RTO. The claimant sustained serious injuries in the accident and, according to her case, both her legs became paralysed, resulting in permanent disability. The learned Tribunal, after considering the evidence on record, allowed the claim petition and awarded

a sum of Rs.2,71,150/- along with interest at the rate of 6% per annum. The entire liability for payment of the awarded amount was fastened upon the appellant. Aggrieved by the said award, the present appeal has been filed.

Submissions on behalf of the appellant

4. Learned counsel for the appellant submitted that the learned Tribunal has committed an error in fastening the entire liability upon the appellant. It was argued that on the date of accident the tractor was not in possession or control of the appellant. Prior to the accident, the tractor had already been sold by the appellant, through its tractor agency, to respondent no.2 Chandra Shekhar and the tractor was in his possession and control on the date of accident. It was further submitted that the pleadings as well as the evidence brought on record clearly establish that the appellant had neither possession nor control over the tractor at the time of accident. Therefore, merely because the vehicle had not been registered in the name of respondent Chandra Shekhar on the date of accident, the appellant could not have been held liable for payment of compensation.

5. Learned counsel further submitted that another claim petition arising out of the same accident, relating to the death of Smt. Sia Dulari, was instituted as MAC No.350 of 2006, Suresh @ Chutkan and others Vs. Chandra Shekhar and others. The said claim petition was decided by the learned Tribunal by judgment dated 19.08.2008, wherein, after considering the entire material relating to ownership and possession of the offending tractor, the learned Tribunal held respondent Chandra Shekhar liable for satisfying the award.

6. It was argued that the aforesaid judgment dated 19.08.2008 was passed prior to the impugned judgment dated 18.09.2008. Therefore, the finding regarding ownership and liability recorded in the earlier judgment, arising out of the same accident and concerning the same offending tractor, could not have been ignored while deciding the subsequent claim petition. Learned counsel submitted that the principle underlying res judicata and consistency of findings in respect of the same issue arising from the same transaction also requires consideration by this Court.

Submissions on behalf of the respondent-claimant

7. Per contra, learned counsel for the respondent-claimant submitted that

the learned Tribunal has rightly fastened the liability upon the appellant. It was argued that the sale certificate/sale letter in favour of respondent Chandra Shekhar was issued only on 26.08.2006, whereas the accident had taken place on 23.08.2006. Similarly, the offending tractor was registered with the RTO only on 02.09.2006 in favour of Chandra Shekhar, i.e. subsequent to the accident.

8. It was submitted that the appellant failed to produce any reliable document before the learned Tribunal to establish that ownership of the tractor had already been transferred in favour of respondent Chandra Shekhar before the date of accident. On the contrary, the sale letter and the registration certificate were brought on record by respondent Chandra Shekhar himself.

9. Learned counsel therefore submitted that in the absence of any documentary evidence establishing transfer of ownership before 23.08.2006, the learned Tribunal rightly held the appellant liable for payment of compensation. It was also submitted that the documents produced before the Tribunal were not disputed by the appellant and, therefore, the finding recorded by the Tribunal does not call for interference.

10. Heard Learned Counsels and perused the impugned judgment and award dated 18.9.2008 passed by Motor Accident Claims Tribunal / Additional District Judge, Court No.3, Kanpur Dehat and carefully examined the records. Before advertng to issue raised in this appeal, this Court finds that sole question for consideration in this appeal is:-

Whether the appellant, on the facts and evidence available on record, can be held liable to satisfy the award when the offending tractor, though not registered in the name of respondent Chandra Shekhar on the date of accident, was allegedly already in his possession and control?

Meaning of "owner" under the Motor Vehicles Act

Before considering the rival submissions, it would be appropriate to examine the meaning of the expression "owner" under the Motor Vehicles Act, 1988.

11. Section 2(30) of the Motor Vehicles Act defines "owner" to mean the person in whose name a motor vehicle stands registered. It further provides

for the guardian where such person is a minor and, in relation to a motor vehicle which is the subject of a hire-purchase agreement, lease or hypothecation, the person in possession of the vehicle under such agreement. The Supreme Court has noticed this definition in ***Vaibhav Jain v. Hindustan Motors Pvt. Ltd., 2024 INSC 652.***

12. However, Section 2 itself begins with the expression "unless the context otherwise requires". Thus, the statutory definition cannot be applied mechanically in every situation. The Supreme Court, while considering the question of liability arising out of an accident, has held that the expression "owner" is not necessarily confined to the categories specifically mentioned in Section 2(30). Where the context requires, a person having command or control over the vehicle may also be treated as the owner for the purpose of fixing tortious liability.

Actual possession, control and constructive possession

13. In ***Godavari Finance Company v. Degala Satyanarayanaamma, (2008) 5 SCC 107***, noticed and followed in ***Vaibhav Jain*** (supra), the Supreme Court observed that ordinarily the person in whose name the registration certificate stands should be presumed to be the owner, but such presumption is not conclusive where other material is available or the context otherwise requires. The Court further emphasised that possession or control of the vehicle plays an important role in determining liability.

14. The concept of constructive possession also requires consideration. Constructive possession does not mean mere physical possession. A person may be treated as being in constructive possession where, though the vehicle may physically be with another person, the former retains the legal or effective right of control over its use.

15. In ***Vaibhav Jain*** (supra), the Supreme Court considered the position of a dealer who was in constructive possession of a vehicle. The Court ultimately held that the dealer could not be made liable because the vehicle, at the time of accident, was actually under the command and control of the manufacturer through its own employees. Thus, the decisive consideration was not merely who had physical or constructive possession, but who had effective command and control over the vehicle at the relevant time.

16. The Supreme Court specifically held that the concept of "owner" is not

limited to the categories mentioned in Section 2(30) and, where the context so requires, a person at whose command or control the vehicle is may be treated as its owner for fixing tortious liability.

Principles from the cases noticed in Vaibhav Jain (supra)

The following judgments noticed by the Supreme Court are relevant:

- (a). ***Godavari Finance Company v. Degala Satyanarayanamma, (2008) 5 SCC 107*** – registration in a person's name ordinarily raises a presumption of ownership, but possession and control are relevant where the context otherwise requires.
- (b). ***Rajasthan State Road Transport Corporation v. Kailash Nath Kothari, (1997) 7 SCC 481*** – the person having actual possession and control of the vehicle and under whose direction and command the driver operates may be treated as owner for fixing vicarious liability. The principle was, however, considered in the context of the definition under the old Motor Vehicles Act.
- (c) ***National Insurance Co. Ltd. v. Deepa Devi, (2008) 1 SCC 414*** – where the vehicle was requisitioned by the State and the registered owner had lost control over it, liability could not simply be fastened upon the registered owner on the basis of registration alone.
- (d) ***Guru Govekar v. Filomena F. Lobo, (1988) 3 SCC 1*** – the question of liability of the owner in circumstances where the vehicle is in possession of another was also considered.
- (e) ***Ramesh Mehta v. Sanwal Chand Singhvi, (2004) 5 SCC 409*** – where the context makes the statutory definition inapplicable, the expression has to be understood having regard to the context.

The most important principle for the present case, however, is that the question is not merely who was the registered owner on the date of accident, but who, in the circumstances proved on record, had ownership, possession and effective command/control over the vehicle at the relevant time.

Finding in the present case

17. In the present case, it is not disputed that the accident occurred on

23.08.2006. It is also not disputed that the tractor was not registered on the said date. The registration was subsequently made on 02.09.2006. The sale letter in favour of respondent Chandra Shekhar is stated to have been issued on 26.08.2006, i.e. three days after the accident. Thus, if the sale letter is treated as the document constituting the transfer of ownership, the documentary evidence would indicate that such transfer took place after the accident. However, the question before this Court cannot be decided merely on the basis of the date of the sale letter or the subsequent registration certificate. The Court has to examine who was in actual possession and control of the tractor on 23.08.2006.

18. The appellant's specific case is that the tractor had already been sold and delivered to respondent Chandra Shekhar before the accident and that, on the date of accident, it was in his possession and control. The appellant has also relied upon the earlier judgment dated 19.08.2008 passed in MAC No.350 of 2006, arising out of the same accident, wherein the learned Tribunal held Chandra Shekhar liable for satisfying the award. On the other hand, the respondent relies upon the fact that the sale letter was issued on 26.08.2006 and the vehicle was registered on 02.09.2006.

19. In my considered view, the subsequent issuance of the sale letter and registration certificate cannot by themselves conclusively establish that the appellant continued to have actual possession and control of the vehicle on the date of accident. The relevant question is the factual position existing on 23.08.2006. The principle laid down in ***Vaibhav Jain (supra)*** supports this approach. The Supreme Court has attached importance to the person who had actual command and control over the vehicle at the time of accident. In that case also, the Court examined whether the vehicle was under the control of the dealer or the manufacturer through its employees and, finding that the manufacturer retained command and control, fastened liability accordingly.

20. Therefore, if the evidence on record establishes that before 23.08.2006 the tractor had been delivered to and was being used under the command and control of Chandra Shekhar, the mere fact that the formal sale letter was subsequently issued or registration was subsequently made would not, by itself, be sufficient to fasten tortious liability upon the appellant. It is evident from the pleadings in M.A.C. P No.350 of 2006 that the said tractor at the time of accident was driven by Lalu son of Chandra Shekhar

Effect of the earlier award

21. There is another important circumstance. The accident in question gave rise to another claim petition relating to the death of **Smt. Sia Dulari. In MAC No.350 of 2006, Suresh @ Chutkan and others v. Chandra Shekhar and others**, the learned Tribunal, by judgment dated 19.08.2008, considered the question of liability and held Chandra Shekhar liable for satisfying the award. The said finding was recorded in proceedings arising from the same accident and concerning the same offending vehicle. The said judgment was passed before the impugned judgment dated 18.09.2008.

22. Strictly speaking, the technical requirements of Section 11 CPC must be satisfied before the doctrine of res judicata can be applied. However, even where technical res judicata may not strictly apply because of differences in parties or causes of action, a finding concerning the same material issue arising from the same accident cannot be lightly ignored, particularly when it has already been adjudicated by the competent Tribunal. At the least, such earlier finding is a relevant circumstance requiring consideration to maintain consistency in adjudication arising from the same occurrence.

23. In the present case, the earlier judgment assumes greater significance because it relates to the same tractor, the same accident and the liability of Chandra Shekhar. If that judgment has attained finality, there should ordinarily be a strong reason for recording a contrary finding in another claim arising from the very same accident.

Conclusion

24. Thus, applying the principles laid down by the Supreme Court in Vaibhav Jain v. Hindustan Motors Pvt. Ltd., 2024 INSC 652, the decisive consideration is the position of ownership coupled with possession and effective command and control of the vehicle at the time of accident.

25. In the present case, the learned Tribunal appears to have placed excessive reliance upon the subsequent sale letter and registration of the vehicle without adequately examining the appellant's specific case that the tractor had already been delivered to respondent Chandra Shekhar and was in his possession and control on the date of accident. It was imperative on part of it to consider that said tractor could not have been driven by Lalu unless its possession and control had been delivered to Chandra Shekhar.

Further, the earlier judgment dated 19.08.2008 arising from the same accident, wherein Chandra Shekhar was held liable to satisfy the award, was also a relevant circumstance which required due consideration.

26. Accordingly, the finding of the learned Tribunal fastening the entire liability upon the appellant cannot be sustained merely on the ground that the formal sale letter and registration were subsequent to the accident. The liability has to be determined with reference to the actual possession, control and command over the offending tractor on the date of accident. If the evidence on record establishes, as pleaded by the appellant, that Chandra Shekhar had already obtained possession and control of the tractor before 23.08.2006, the liability for payment of compensation would fall upon him and not upon the appellant merely because the vehicle continued to stand unregistered on the date of accident.

27. The appeal would, therefore, require consideration/modification of the award to the extent of liability, while the other findings of the learned Tribunal concerning the accident, injury, disability and quantum of compensation may be maintained unless independently challenged and found erroneous.

28. Accordingly, the appeal is ***partly allowed***. The impugned judgment and award passed by the learned Tribunal is modified to the extent that the liability to satisfy the award of Rs.2,71,150/- along with interest at the rate of 6% per annum shall be upon respondent no.2, Chandra Shekhar, and the appellant shall not be liable to satisfy the said award.

29. The remaining findings recorded by the learned Tribunal regarding the accident, injuries, permanent disability and quantum of compensation are affirmed.

10. The amount, if any, deposited by the appellant before the learned Tribunal pursuant to the impugned award shall be dealt with in accordance with law

September 3, 2026
Mukesh

(Anil Kumar-X,J.)