

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP. No. 49 of 2013

Sri R. K. Bhattacharjee,
son of late D. K. Bhattacharjee,
college Road, P.O. Dharmanagar,
North Tripura

..... Claimant-petitioner

-V E R S U S-

1. Smt. Swapna Begum,
wife of late Makaraddas @ Makaradwaz Ali
 2. Smt. Ajijan Begum,
wife of late Masud Ali
 3. Sri Rahul Ali,
son of late Makaraddas @ Makaradwaz Ali
- all are residents of Bongaon (Ishabpur), P.O. & P.S.
Kailashahar, Unakoti
4. Smt. Suruchi Saha, wife of late Nitai Saha, Abmassa, P.O & P.S.
Ambassa, Dhalai
 5. Sri Nitai Saha, son of Sri Raimohan Saha, resident of Ambassa, P.O &
P.S. Ambassa, Dhalai
 6. The State of Tripura, represented by the Secretary, Home Department,
Government of Tripura, New Capital Complex, P.O. Kunjaban, West
Tripura, PIN- 799006
 7. The Director General of Police, Government of Tripura, Police Head
Quarter and P.O: Agartala, PIN- 799001, West Tripura
 8. The Commandant, 3rd Bn. Tripura State Rifles, P.O. AD. Nagar,
Agartala, West Tripura
 9. The District Transport Officer, Kailashahar, P.O. Kailashahar, Unakoti
 10. The District Transport Officer, Ambassa, P.O. Ambassa, Dhalai
 11. M/S Rajarshi Motors (TATA) BK Road, P.O. Agartala, PIN: 799001,
West Tripura

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. C. S. Sinha, Advocate.
For the respondents	:	Mr. G. K. Nama, Advocate.
Date of hearing & judgment & order	:	11.06.2015
Whether fit for reporting	:	Yes

JUDGMENT & ORDER (ORAL)

This is a petition under Article 227 of the Constitution of India, questioning the legality of the order dated 30.11.2012, delivered in Misc (Rev) 163 of 2010 arising from T.S. (MAC) 134 of 2000 by the Motor Accident Claims Tribunal, West Tripura, Agartala, Court No. 1.

[2] The claimants, the respondents No. 1, 2 and 3, hereinafter would be referred as the respondent-claimants if it is so required, instituted a claim under Section 166 of the Motor Vehicle Act, 1988 in the Motor Accident Claims Tribunal, West Tripura, Agartala, Court No. 1 for death of Makardwas @ Makarddas Ali on 12.02.1998, which occurred in a road traffic accident while he was returning towards Ambassa from Champarai Para through K.C. Road by the Escort Vehicle No. TRO2-1502 (Truck).

[3] The victim was a Lance Naik in the Tripura State Rifle. When the said vehicle reached in a place between Pati

Rai and Jaraham Para, some unknown extremists started firing on the said vehicle. As the vehicle involved in the accident did not take care to cross the danger zone like other two vehicles which were the part of that fleet, had fallen in the target range of the unknown extremists who fired bullets on the said vehicle. As a result the victim along with other TSR Jawans received fatal injuries and died on the spot. On inquiry, the tribunal awarded a sum of Rs. 4, 68,334/- along with interest at the rate of Rs. 6% per annum w.e.f. 08.03.2000, the date of institution of the claim till realisation.

[4] It is the admitted position that nobody has challenged the award either by filing an appeal or by launching other proceeding. But one review petition was filed by the respondent No. 5 who was the O.P No. 5 in the proceeding before the tribunal, for the reason that he was saddled with the liability of making the payment of the award as the owner of the said vehicle.

[5] It appears from the judgment and award dated 01.07.2010 delivered in T.S. (MAC) 134 of 2000 that the observation as under noted has been made by the tribunal:

"On perusal of case record it appears that O.P. No. 1 did not file any written objection. However, O.P. No. 1 filed a petition on 26.04.2001 for striking out her name as one R. K. Bhattacharje, O.P. No. 6, was the

owner of the offending vehicle i.e. TR02-1502. The said O.P. No. 6 has also filed a similar petition before this tribunal on 10.08.2001 for striking out his name on the plea that he sold out the offending vehicle to one Nitai Saha, i.e. O.P. No. 6. But O.P. No.6 did not appear and the case was proceeding ex-parte against him vide order dated 26.03.2008”.

[6] It is to be noted that the tribunal has wrongly referred R. K. Bhattacharje as the O.P. No. 6, whereas, he is the O.P. No. 5 in the proceeding. On the basis of such observation, the respondent No. 6 herein has been saddled with the liability of payment of the award.

[7] The respondent No. 6 being aggrieved by the said direction as returned by the judgment dated 01.07.2010, filed the said review petition being Misc (Rev) 163 of 2010 in the tribunal stating inter alia that one Suruchi Saha, wife of Sri Nitai Saha, Ambassa, P.O. & P.S. Ambassa, Dhalai, was the owner of the said vehicle being TR02-1502 (Truck). Who has been impleaded as the O.P. No. 1 in the proceeding.

[8] It has been further asserted that in terms of Section 2(30) of the Motor Vehicle Act, 1988, the owner shall invariably mean “registered owner” on the date of accident i.e. 12.02.1998. Sri R. K. Bhattacharjee, the petitioner herein and the respondent No. 5 in the review proceeding, was admittedly the registered owner on the day of accident. According to the review petitioner, the vehicle was

transferred on 18.04.1998 to Smt. Suruchi Saha and that has been reflected in the Registration Book. A copy of the Registration Book was enclosed with the review petition as Annexure-1.

[9] The petitioner herein filed an objection against the said petition seeking the review of the judgment and award dated 01.07.2010 as delivered in T.S (MAC) 134/2000 and contended that he was the owner of that vehicle till 19.04.1997, when the said vehicle was sold out to the review petitioner, Netai Saha and he further contended in his objection that he did not sell that vehicle to Smt. Suruchi Saha, the respondent No. 4 herein, the wife of the respondent No. 5, the review petitioner. But it is not known to him whether Nitai Saha had subsequently transferred the said vehicle in the name of Smt. Suruchi Saha. He has contended in no uncertain terms that on 19.04.1997, after receiving the consideration amount to the extent of 1,25,000/-he issued the sale receipt wherein, it has been categorically recorded that the petitioner shall remain responsible for any liability till 19.04.1997 for the use of the said vehicle. A copy of the said receipt was enclosed with his objection filed in the review proceeding.

[10] Since on 19.04.1997, Nitai Saha, respondent No. 5 herein became the absolute owner of the vehicle, it was his

duty to keep the vehicle insured in terms of the law. According to the petitioner the tribunal by the judgment and award dated 01.07.2010 had rightly saddled the liability of the payment to Nitai Saha, the respondent No. 5 hereinafter as at the relevant point of the accident, he was the owner-in-possession of the said vehicle.

[11] In the objection it has further been stated that all the documents relating to the vehicle including its keys and other accessories were received by Nitai Saha from the petitioner on 19.04.1997. The petitioner has contended that on 26.08.1997 he had intimated the said transfer to the District Transport Officer, Kailashahar, North Tripura. A copy of the said intimation has also been enclosed with the objection. All these records have been taken into consideration in the review proceeding

[12] By the impugned order the tribunal reviewed the judgment and held as under:

"I agree with the submission of learned counsel of the review petitioner that there is apparent error committed by my learned predecessor in relying upon the copy of unregistered sale deed submitted by the respondent No. 5, R. K. Bhattacharjee in fixing the responsibility upon the review petitioner for making payment of the awarded amount of compensation. As per Section 2(30) of the M.V. Act, owner of the vehicle means a registered owner and that as per the Annexure-1 i.e copy of the Registration Book of the

offending vehicle TR-02-1502 (Truck) the respondent No. 5, R. K. Bhattacharjee has been shown as its registered owner and not the review petitioner Nitai Saha or his wife Smt. Suruchi Saha. From the copy of the said Registration Book it reveals that it was only on 18.04.1998 Smt. Suruchi Saha became the registered owner of the offending vehicle which is admittedly after the vehicular accident that had occurred on 12.02.1998.

So, in view of this factual position, the review petitioner Nitai Saha cannot be held liable for making payment of the compensation amount which according to me an error apparent on the face of the impugned judgment dated 01.07.2010 passed by my learned Predecessor in T.S. (MAC) 134 of 2000. The error which was committed by my predecessor amenable to correction under the powers exercisable by this tribunal under Section 114 of the CPC and the law laid down by our parent High Court in W.P.(C).No. 76 of 2008.

As such the review application filed by the petitioner is allowed.

Consequently, it is ordered that the respondent No. 5, Shri R. K. Bhattacharjee shall pay the amount of compensation to the tune of Rs. 4,68,334/-to the claimant petitioners Smt. Swapna Begum, Smt. Ajijan Begum and Shri Rahul Ali instead of the review petitioner Shri Nitai Saha with simple interest at the rate of 6% per annum till the date of filing of the petition on 08.03.2000 until the actual payment is made.

The claimant petitioners shall get the amount of compensation in equal share.

Copy of this judgment/order shall form part of the impugned judgment dated 01.07.2010 passed in Case No. T.S. (MAC) 134 of 2000.

[13] The impugned order dated 13.11.2012 has been questioned in this proceeding fundamentally on two aspects.

Whether the tribunal was correct in exercising the power of review and whether the interpretation of the tribunal as regards the owner as defined under Section 2(30) of the M.V. Act is sustainable?

[14] It is apparent that 'owner' has been defined in the M.V. Act not alone on the title, even on possession. A person can be deemed to be owner of a motor vehicle if he is in exclusive possession of that vehicle by any agreement or otherwise. While reviewing the judgment and award dated 01.07.2010, the tribunal did not at all consider that aspect. Apart that, even though that claim proceeding was proceeding ex-parte against Nitai Saha, the respondent No. 5 herein by virtue of the order dated 26.03.2008, he was allowed to adduce new documents along with the review petition having no pleading filed by him in the proceeding. Based on these documents, the impugned finding has been returned by the tribunal in the review proceeding. .

[15] The aspect of the possession and transfer of the vehicle has emerged from the document filed by the petitioner, but that was not at all considered. The impugned finding has been returned entirely on the basis of interpretation of the 'owner' as 'the registered owner'. According to this Court such interpretation cannot be

sustained being de-horse of Section 2(30) of the MV Act, which reads as under:

“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;

[16] This observation has gathered its analogy also from a decision of the Delhi High Court **Anand Sarup Sharma v. P. P. Khurana and Others**, reported in **1989 ACJ 577**. It has been held in **Anand Sarup Sharma v. P. P. Khurana and Others** that:

“9. It is not disputed that the property in the scooter had passed from Wadhwa (seller) to Khurana (buyer) at least, on 15.12.1968 when the final receipt was executed. The price has been paid. Possession had been delivered before this sale. The sale in all respects was, thus, complete on 15.12.1968, i.e., before the date of accident. The property in the scooter had passed to the buyer.

10. Is there any provision in the Motor Vehicles Act. 1939 to postpone the transfer of the property from seller to the buyer, though the transfer is complete under the Sale of Goods Act, till some other event takes place?

Section 2(19) of the Act defines ‘owner’ as under:

“Owner” means, where the person in possession of motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject

of a hire-purchase agreement, the person in possession of the vehicle under that agreement.

11. This definition does not include a registered owner in its ambit. It does not indicate at all that a registered owner would continue to be owner of the vehicle even after he has sold it till it was registered in the name of the transferee.

12. The contention of the learned counsel for the appellant is that the seller would remain owner till the time the ownership of the scooter was not transferred in the name of the buyer in the records of the registering authority. Seller would cease to be the owner only after the vehicle was registered in buyer's name. In support of his contention he relied on section 22 and 31 of the Act, Section 22 and relevant portion of Section 31 read:

Section 22. Necessity for registration. (1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

Section 31. Transfer of ownership (1) Where the ownership of any motor vehicle registered under this Chapter is transferred:

(a) The transferor shall (i) within fourteen days of the transfer, report the fact of transfer 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.

(ii) Within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)—(A) a no objection certificate obtained under

Section 29-A or (B) in a case where no such certificate has been obtained,-

(I) A receipt obtained under sub-Section (2) of Section 29-A or (II) a postal acknowledgement received by the transferor if he has sent an application in this behalf by registered post acknowledgment due to the registering authority referred to in Section 29-A,

Together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted.

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

13. We have carefully examined the above provision. In our considered opinion these provisions do not have the effect of postponing the transfer of property from seller to the buyer till the transferor and transferee make the requisite report and the vehicle is registered in the name of the transferee. Section 22 simply imposes a statutory obligation. It prohibits the driving of any vehicle by any person unless the vehicle is registered. Non-compliance of these provisions does not have the effect of postponing the transfer of property in the vehicle from seller to buyer. To take a contrary view would result in absurd result. If a buyer after purchase does not use the vehicle he is the owner. But if after one year he uses it he ceases to be the owner. It is not and cannot be the law.

14. Opening words of section 31 "where the ownership of any motor vehicle registered under the Chapter is transferred "make clear that transfer of

ownership has to precede the reports required to be made under section 31. Section 31 does not prohibit the transfer of a motor vehicle till the reports are made. These provisions only cast an obligation on the transferor and the transferee to report to the Registering Authority concerned regarding the transfer of the vehicle after the transfer has already taken place. These provisions have nothing to do with the ownership of the vehicle as such. They merely provide for regulations of use of motor vehicles in public places. Their non-compliance attracts penalties.

15. In vimal Roy's case, 1972 ACJ 314 (Delhi), a Division Bench of this court held as under:

"The penalty for contravention of the provisions of the Act or the Rules made thereunder is contained in Section 112 and other provisions occurring in Chapter IX of the Act. It is, however, significant that there is in particular no provision of law stating that the registration of a motor vehicle is a condition precedent for any transfer of the vehicle or that in the absence of registration, the sale would be void or ineffective. On the other hand, an analysis of section 31 of the Act shows that it presupposes a valid and subsisting transfer by the registered owner of the vehicle to another person and the transferor is enjoined upon a duty within 14 days after the transfer to report the transfer to the authority and the transferee is within 30 days required to report the transfer to the authority. The endorsement of the transfer in the records of the registering authority is, therefore, not a condition precedent to the transfer, nor does it deal with the legality or validity of the transfer which must be determined by other provisions of the law. Should any person, in disregard of the provision of law, fail to intimate the transfer to the authority or drive the vehicle in a public place without a certificate of registration, he runs the risk of incurring the penalties provided by the Act, but his title to the purchase of the vehicle undoubtedly remains unaffected, nor does the

title remain in suspense during the grace period allowed for effecting endorsements of registration.

On a perusal of the provisions of the Motor Vehicles Act, it cannot be denied that the registration certificate is a very important piece of evidence to show the ownership of the vehicle, particularly as the person making an application is required to produce the vehicle before the authority for inspection and without a registration certificate, a person would normally find it useless to own the vehicle if he cannot drive it in any public place and so, in his own interest, the transferee will take steps to have the particulars of the transfer endorsed on the certificate of registration. However, failure to do so cannot be deemed to militate against the validity and legality of the passing of the title in the vehicle so transferred or to expose the innocent seller who may have done his all to complete the transfer to legal liabilities for acts and omission in respect of the vehicle subsequent to the transfer. Moreover, the certificate of registration is not document of title it is issued to the owner of the vehicle, that is that person by whom the vehicle is kept and used and although provision is made for changes of ownership to be recorded in the book, the name appearing in it may not be of the legal owner of the vehicle, the registration book is evidence of title and its absence at the time of sale should put a purchaser on enquiry."

16. This decision was followed by a Division Bench of Madhya Pradesh High Court in Balwant Singh v. Jhannubai, 1980 ACJ 126 (MP). Same view was taken by the Orissa High Court in A.N. Choudhury v. Debahuti Pattnaik, 1979 ACJ 455 (Orissa). Even the Full Bench of Andhra Pradesh High Court accepted this view in Kondaish's case, 1986 ACJ (AP). In any case this question stands settled by the decision of the Supreme Court in Panna Lal v. Chand Mal, 1980 ACJ 233 (SC). It was held that Section 31 permits that transfer of ownership but the statute casts an obligation on the transferee to report to the registering authority concerned regarding the transfer. It is thus clear that

transfer of ownership in the records of registering authority is not a condition precedent for sale”.

[Emphasis supplied]

No legislative change has been made in the new act. As such, the analogy which is scaffolded by the cogent reasons stands equally good and persuasive.

[17] From a bare reading of the judgment and award dated 01.07.2010, it appears that no such inquiry was made for non-participation of the respondent No. 5 in the proceeding. Such inquiry ought to have been avoided in the review proceeding in the backdrop that the claim proceeding was ex-parte against the respondent No. 5 by virtue of the order dated 26.03.2008.

[18] Hence, the impugned judgment and order dated 30.11.2012 delivered in Misc (Rev) 163 of 2010 arising from T.S. (MAC) 134 of 2000 stands quashed and set aside. However, this Court is persuaded to hold that proper inquiry should be made by the tribunal over the aspect of the ownership of the vehicle involved in the accident.

[19] The said inquiry shall remain only to the issue which is formulated as under:

Whether the O.P. No. 1 or the O.P. No. 5 or the O.P. No. 6 was the owner of the vehicle bearing

registration No. TRO2-1502 (Truck) in terms of Section 2 (30) of the M.V. Act on day and time of the accident.

Needless to say, that whomsoever is determined by the tribunal as the owner of the said vehicle involved in the accident shall make the payment of the compensation to the claimants.

[20] Having regard to the purpose of substantive ends of justice, the order dated 26.03.2008 passed in T.S. (MAC) 134/2000 is vacated. The O.P. No. 6, the respondent No. 5 herein, shall therefore be entitled to take all such pleas relating to the ownership of the vehicle. There shall be no alteration or modification in the quantum of the award as passed by the tribunal for the reasons that none has challenged that award in any manner and it has reached its finality in the course of time. In short, the tribunal shall only ascertain the person responsible for making payment of the compensation as determined, to the claimants and nothing more.

[21] Having held thus, the judgment and award dated 01.07.2010 is interfered with, to a limited extent. The finding that Nitai Saha O.P.No. 6 was the owner of the offending vehicle on the day of accident and he shall pay the amount of compensation, is quashed. For determination of the issue as framed above the claim proceeding being T.S. (MAC) 134/2000 is remanded to the

tribunal for passing the judgment and award in terms hereof.

[22] Accordingly, this petition stands allowed to the extent as stated above. Send down the LCRs forthwith. No order as to costs.

JUDGE

A. Ghosh