

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

MACA.No. 626 of 2014 ()

AGAINST THE AWARD IN OPMV 1458/2007 of M.A.C.T., KOTTAYAM DATED
05-11-2011

APPELLANT/1ST RESPONDENT:

BABY VARGHESE
THADATHIMAKKAL HOUSE, MANARCADU P.O, KOTTAYAM

BY ADV. SRI.ALEX.M.SCARIA

RESPONDENTS/PETITIONERS & 2ND RESPONDENTS:

1. ANITHA ROY, PULINTHANATHU HOUSE, PAMPADY,
KOTTAYAM- 686514

2. THAKKU MATHEW ROY (MINOR)
PULINTHANATHU HOUSE, PAMPADY
KOTTAYAM-686514, REPRESENTED BY NEXT FRIEND
ANITHA ROY (1ST RESPONDENT HEREIN)

3. THARUN (MINOR)
PULINTHANATHU HOUSE
PAMPADY KOTTAYAM, REPRESENTED BY NEXT
FRIEND ANITHA ROY (1ST RESPONDENT HEREIN)

4. P.V MATHEW
PULINTHANATHU HOUSE, PAMPADY, KOTTAYAM-686514

5. MARIAMMA MATHEW
PULINTHANATHU HOUSE, PAMPADY, KOTTAYAM-686514

6. K.A JOHN ALIAS ROY, KARIMPANNUR HOUSE,
KUZHIPURAYIDOM, MANNARCADU P.O, KOTTAYAM-686008

R1-R5 BY ADV. SRI.C.A.MAJEED
R1-R5 BY ADV. SRI.K.H.ASIF
R1-R5 BY ADV. SMT.RAAGA R.RAMALAKSHMI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 27.3.2015, THE COURT ON 22.5.2015 DELIVERED THE
FOLLOWING:

RKC

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

M.A.C.A No.626 of 2014

Dated this the 22nd day of May, 2015

JUDGMENT

Asha, J.

The 1st respondent in O.P(MV) No. 1458/2007 on the file of the Motor Accident Claims Tribunal, Kottayam, who is the registered owner of the offending vehicle is the appellant in this case. The issue raised in this appeal is regarding the liability if any on the part of the registered owner of a motor vehicle in a case where the accident occurred subsequent to the transfer of ownership of the vehicle but before effecting/taking steps for any alterations in the records of the registering authority. According to the appellant, he cannot be saddled with the liability when the user of the vehicle was not under his possession or control, just because his name was not substituted in the registration certificate, by the name of the transferee who was in actual and physical possession and user of the vehicle and at whose negligence the accident occurred.

2. The factual circumstances leading to this appeal are as follows:

Deceased Roy Mathew was riding a kinetic Honda scooter along the K-K road on 2/1/2006 at 11.45 p.m, when an Ambassador car with registration no. KL4/D 9310 driven by one Sri K.A John-the 6th respondent in the appeal, which came in the opposite direction, knocked him down, causing fatal injuries to him. He succumbed to the injuries at KMC hospital, Vadavathoor, on the same day. Respondents 1 to 5 in this appeal, who are the legal heirs of the deceased Roy Mathew, filed claim petition before the Tribunal, seeking compensation towards the death caused by the motor vehicle accident. The appellant herein was the 1st respondent and the 6th respondent herein was the 2nd respondent before the Tribunal. They filed separate written statements opposing the claims. In the written statement filed by the appellant, it was stated that he had sold the vehicle to one Andrews K. Abraham as per sale agreement dated 2/6/2004 and handed over physical possession of the Ambassador car to him; the said Andrews K. Abraham sold the car to Sri. K.A.John- the 6th respondent, as per sale agreement executed on 28/7/2004; appellant had already entrusted Sri.Andrews K. Abraham- the transferee of the vehicle- to carry out all the formalities required on transfer of the vehicle by proper intimation to the authorities.

He further stated that consequent to the accident, the vehicle was seized by the police; 6th respondent got the vehicle in his custody from the police station, on executing kychit, admitting that he was the owner of the car at the relevant time. The 6th respondent herein filed written statement disputing the negligence on his part while alleging negligence on the part of the deceased himself. The Tribunal found that accident occurred due to the negligence of the 6th respondent, who was driving the vehicle at the relevant time and passed an award for a sum of Rs.7,72,000/- towards compensation. As the appellant continued to be the registered owner as per the records of registering authority, appellant was directed to pay the compensation. However he was permitted to realize the same from the 6th respondent.

3. The evidence before the Tribunal consisted of oral evidence by way of the testimony of PW1 and PW2 and documentary evidence through Exts.A1 to A7 on behalf of the claimants and testimony of RW1 to 3 and documents Exts.B1 to B3 on behalf of 1st respondent/appellant. Ext B1 is the agreement dated 2.6.2004, by which the appellant sold the vehicle to Andrews K. Abraham. Ext.B2 is the agreement by

which the said Andrews K. Abraham had sold the car to Sri. K. A. John-the 6th respondent herein. Ext.B3 is the kychit executed by the 6th respondent for getting the car released in his custody from the police station, after the accident. In order to prove the sale, appellant examined Sri. Andrews K. Abraham as RW1. The Sub Inspector of Police, Mannarkkad Police Station was examined as RW3 in order to prove the kychit executed by the 6th respondent in Crime Number 1/2006 to get the car released to him. The Tribunal found that the appellant had not taken any steps for getting the particulars of transfer entered in the records of the Registering authorities and had not taken any steps to intimate the transfer of ownership of the vehicle to the Regional Transport Authority. On account of this the appellant himself continued to be the registered owner of the car as per the records kept in the office of the registering authorities. Interestingly none of these respondents have taken any steps for getting the vehicle insured also and hence there was no insurance coverage for the vehicle at the relevant time.

4. The Tribunal found that the appellant continued to be the owner of the vehicle within the meaning of the definition of that term under Section 2 (30) of the Motor Vehicles Act, 1988

(hereinafter referred to as 'the Act'), according to which, '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 arrangement of lease or an agreement of hypothecation the person in possession of the vehicle under that agreement. Going by the definition, the Tribunal found that the 1st respondent himself is the owner of the car. It was further found that Section 50 of the Act mandates that a transferor shall report the factum of transfer of vehicle within a period of 14 days of the transfer in the prescribed form to the registering authority within whose jurisdiction the transfer is to be effected, simultaneously sending a copy of the same to the transferee. It also mandates the transferee to report the transfer of the vehicle within a period of 30 days of the transfer to the registering authority within whose jurisdiction he resides, or conducts business and to forward the certificate of registration to that registering authority together with the prescribed fee and copy of the report from the transferor, in order that the particulars of transfer be entered in the certificate of registration and on such receipt of a report or application, the duty of the registering

authority to cause the transfer of ownership to be entered in the certificate of registration and to communicate the same to the transferor and to the original registering authority. The Tribunal found that the accident occurred solely because of the negligence on the part of the driver of the ambassador car-the 6th respondent herein. It was therefore held that the appellant, who is the registered owner of the car and the 6th respondent –the driver of the car, were liable to pay the compensation. Appellant was directed to pay the compensation and was permitted to recover the same from the 6th respondent.

5. We heard Sri. Alex M.Scaria, the learned Counsel for the appellant & Smt. Raaga R. Ramalaxmi, the learned Counsel for respondents 1 to 5. There was no appearance for the 6th respondent.

6. Sri. Alex Scaria vehemently argued, relying on a large number of judgments, in support of his contention, that the registered owner not in possession and control of the vehicle cannot be saddled with any liability. According to him in the circumstance where the vehicle is already transferred and it is in possession of the 6th respondent, he will not come within the class of persons given in Section 2 since the context in this case

is different, on account of transfer of ownership of the vehicle and registered owner in this particular case cannot come under the definition of owner, since he had already parted with its possession. According to him Section 2 has to be construed as a whole, beginning with “unless the context otherwise requires” and the circumstances of the case requires a different construction excluding registered owner from the definition of owner, just because his name continues in the name of the registering authority. On the other hand, Smt. Raaga, relying on the judgments of **Pushpa@ Leela & others Vs Sakunthala and others** [(2011) 2 SCC 240] and **Sreekumar Vs Abdeen & others** [2013(3) KHC 329], contended that the issue is covered by the said judgments wherein it is held that the registered owner is liable for the accidents occurred notwithstanding the transfer of vehicle and therefore the impugned award is not liable to be interfered with.

7. We have gone through the pleadings, evidence on record, the findings of the Tribunal and examined the rival contentions on either side. Now we will examine the relevant provisions in the Motor Vehicles Act, 1988 (hereinafter referred to as the ‘Act’ for short) and the judgments cited by either side.

8. The term 'owner' is defined under Section 2(30) of the Act. Section 2 begins as follows:

"2. Definitions.— In this Act, unless the context otherwise requires,—

(1) "area", xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx;"

The term 'Owner' is defined under Section 2(30) :

(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;"

9. Therefore the definition of owner under Section 2(30) has to be read as follows:

In this Act, unless the context otherwise requires, 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;"

Registration of the vehicle is dealt with in Chapter IV of the Act.

Section 50 deals with transfer of ownership as follows:

"50. Transfer of ownership.—(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,—

(a) the transferor shall,—

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may

be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)—

(A) the no objection certificate obtained under Section 48; or

(B) in a case where no such certificate has been obtained,—

(I) the receipt obtained under sub-section (2) of Section 48; or

(II) the postal acknowledgement received by the transferor if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in Section 48, 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 has the residence or place of business where the vehicle is normally kept, as the case may be, 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.

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(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority."

Chapter XI of the Act deals with insurance of motor vehicles against third party risks. Section 146 mandates that a motor vehicle shall be insured before it is used in a public place. It reads as follows:

146. Necessity for insurance against third party risk.—(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

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Section 147 provides for the requirement and limit of policy as follows:

“147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
 - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person ¹[, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
 - (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—
 - (a) engaged in driving the vehicle, or
 - (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
 - (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the

property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

Contravention of any of the provisions contained in the Act is punishable. Section 177 reads as follows:

177. General provision for punishment of offences.—Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

Driving a vehicle, which is not insured, is specifically made punishable under Section 196 .

196. Driving uninsured vehicle.—Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

10. It can be seen that the legislature has made it mandatory to get the vehicle insured before the same is taken to a public place, in order to protect the third parties from the injuries or death that may be caused on account of such vehicle. It is also made mandatory that whenever there is a transfer of vehicle, intimation shall be given to the registering authorities within the prescribed time. In the light of the above provisions, we will examine the judgments cited.

11. In **Jose vs Chacko 2001 (3) KLT 633 (SC) :** [(2001)8SCC 748] the Apex court was considering the question

of liability where the offending vehicle got involved in an accident subsequent to the transfer of its ownership, but at a time alterations were not effected in the records of the registering authority. There the accident occurred on 9th April, 1987. Appellant Jose claimed that he had sold the offending car on 7th May, 1986 to Smt. Bhavani, who in turn sold it to one Sri Aboobacker on 12th May, 1986 who again sold it to one Sri George Matthew on 18th August, 1986. Despite all this the name of the appellant Jose continued unaltered in the records of the registering authority. Moreover there was coverage of insurance policy also for the vehicle for the period from 25th November, 1986 to 24th November, 1987, that also issued in favour of the appellant. After analysing the evidence on record, the Tribunal held that the appellant was not liable as the vehicle was already sold. It further held that the insurance company was also not liable as the policy was not issued in the name of the real owner. The High Court reversed the said finding and found that being the owner of the car, appellant was liable. The insurance company was exonerated since the policy was found to be act only policy. Before the Apex Court the appellant contended that the real owner of the car was Mr.Roy Thomas, who was

impleaded as respondent No.9 in the appeal before the apex court. Though the Apex Court agreed with the contention that there can be transfer of title by payment of consideration and delivery of the car and that the evidence on record revealed the transfer of ownership of the car, it was held that the appellant cannot escape from the liability to third parties as his name continued in the records of the registering authority as the owner. The Apex Court observed that Sri Roy Thomas was impleaded as a party only in the appeal before the Supreme Court and therefore the question of inter-se liability between them-appellant and Roy Thomas cannot be gone into. The insurance company was also held not liable since the policy did not cover the liability of the occupants of the car.

12. In **P.P. Mohammed v. K. Rajappan** [(2008) 17 SCC 624], the Apex Court considered a case where the accident occurred on 21.6.1977, subsequent to transfer of the vehicle, where also no alterations were effected in the records of the registering authority in respect of owner. Before the Tribunal claim petition was originally filed against the registered owner, driver and insurance Company. In the written statement, the registered owner stated that he cannot be held liable since the

vehicle was already transferred to the 4th respondent. Driver in his written statement stated that the vehicle was owned by 5th respondent, who had purchased the vehicle from 4th respondent. (The 4th and 5th respondents were impleaded subsequent to the filing of the written statement in 1986). The Tribunal held that the registered owner was not liable as he had already transferred the vehicle to the 4th Respondent, who, in turn transferred it to 5th Respondent. The Tribunal, held that the driver and Respondent no. 5 were liable. The 4th respondent was also held liable. It absolved the insurance company also, as the sale of the vehicle was not intimated. In appeal, the High Court held that the registered owner alone was liable, as his name continued to be in the records and directed the insurance company to indemnify him. The Registered owner approached the apex court. Following the judgment in **T.V. Jose (Dr.) v. Chacko P.M.** [(2001)8SCC 748], Apex Court held that merely because the vehicle was transferred, that does not mean that the registered owner/the appellant stood absolved of his liability to a third person and that so long as his name continues in the records of RTO, he remains liable to a third person. The Apex Court further considered the question regarding the liability if

any, of the Respondents 4 and 5 to pay compensation. The Apex Court observed that in the judgment in **Rajasthan SRTC v. Kailash Nath Kothari** [(1997) 7 SCC 481], it was held that the person who is in actual possession of the vehicle would be liable to pay the compensation. However it further found that the question whether the original owner gets absolved of his liability to a third party was not an issue considered therein and that the only question which was considered therein was whether due to the terms and conditions of the contract, the Rajasthan State Road Transport Corporation, was not liable. Therefore the Apex Court found that the question arising in this case is relating to the right of the registered owner vis a vis those of the transferees. It was thereupon held that the appellant as the person, in whose name registration continued, remained liable to a third person. At the same time, the person in actual possession was also found liable. However in view of the fact that respondents 4 and 5 were impleaded only on 12.11.1986, whereas the accident occurred on 21.5.1977, the claim against them were held barred by limitation.

13. In **Pushpa @ Leela v. Shakuntala** [(2011) 2 SCC 240], Apex Court considered the question whether the liability to

pay the compensation amount was of the purchaser of the vehicle alone or whether the liability of the registered owner of the vehicle was co-extensive and whether the insurer was liable to indemnify the registered owner in such an event. The legal heirs of one Premchand filed the claim petition for compensation towards the death which occurred when the truck in which he was travelling on 7.5.1994, accompanying goods overturned, on account of the negligent driving of one Roop Ram, the driver, causing death of all the 3 persons in the truck including the driver. The truck was originally owned by one Jitender Gupta. He sold the truck to one Salig Ram on 2-2-1993 and handed over its possession to the transferee. At that time the truck was covered by an insurance policy taken out by Jitender Gupta from New India Assurance Company Ltd, i.e from 25-2-1992 to 24-2-1993. Despite the sale of the vehicle by Jitender Gupta to Salig Ram, the change of ownership of the vehicle was not entered in its certificate of registration. Even after this Salig Ram took out an insurance policy for the truck from Oriental Insurance Company Ltd in the name of Jitender Gupta, which was valid from 8-12-1993 to 7-12-1994 i.e when the accident occurred on 7-5-1994, the truck had valid coverage of policy. The Tribunal

held that Jitender Gupta had since ceased to be the owner of the vehicle after its sale to Salig Ram on 2-2-1993 and no liability can be fastened on him for payment of compensation to the claimants. It further held that even though an insurance policy for the truck was available, since the policy was in the name of Jitender Gupta, who was no longer the owner of the truck on the date the policy was taken out and there was no privity of contract between Salig Ram, the owner of the truck and the insurance company, insurance company need not make any payment. The claimants filed appeals before the High Court and the same were dismissed. While considering the appeals filed by the claimants, the Apex Court found that the Tribunal and the High Court addressed the question of the liability of the registered owner of the vehicle on the basis of Section 157 of the Act, which has no relevance to the issue, as Section 157 of Act deals with "Transfer of certificate of insurance. Apex Court found that the question was to be decided with reference to Section 2(30) which deals with the definition of "owner " and Section 50 of the Act, which deals with the procedure for transfer of ownership. Apex Court found that neither Jitender Gupta nor Salig Ram took any steps as provided in Section 50, to

intimate the transfer of the vehicle and to get the entries in the records of registering authority altered. It was therefore held that 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. Apex Court relied on para 9 and 10 of the judgment in **T.V. Jose (Dr.) v. Chacko P.M** [(2001)8 SCC 748] and **P.P. Mohammed v. K. Rajappan** [(2008)17SCC 624]. In para 9 and 10 of **T. V. Jose (Dr)** (supra), it was held that there can be transfer of title by payment of consideration and delivery of the car. On the basis of evidence on record, it was found that ownership of the car had been transferred. However, the appellant still continued to remain liable to third parties as his name continued in the records of RTO as the owner. The subsequent transferee Mr Roy Thomas was not a party either before MACT or the High Court and therefore the Apex Court did not go into the question of inter-se liability between the appellant and Mr Roy Thomas. In **P.P. Mohammed's** case (supra), the Apex Court considered a similar issue and following **Dr. T. V. Jose** (supra) held that merely because the vehicle was transferred, it does not mean that the appellant 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. In para 14, the Apex Court held as follows:

“The decision in T.V. Jose (Dr.) was rendered under the Motor Vehicles Act, 1939. But having regard to the provisions of Section 2(30) and Section 50 of the Act, as noted above, the ratio of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount. Further, since an insurance policy in respect of the truck was taken out in his name he was indemnified and the claim will be shifted to the insurer, Oriental Insurance Company Ltd.”

The plea of insurance company to absolve it, relying on **National Insurance Co. Ltd. v. Deepa Devi** [(2008) 4 SCC 414] was rejected distinguishing the facts of the case therein as the vehicle therein was requisitioned by Govt.

The facts arising in the present case are similar, except for the fact that there is no insurance coverage for the vehicle.

14. In **Sreekumar vs Abdeen and others- [2013 (3) KLT 542] : [2013 (3) KHC 329]**, a learned Single Judge of this court elaborately considered the issue as to whether the

registered owner is liable to satisfy the award in case he had sold the vehicle prior to the accident and whether the jurisdiction to adjudicate on the dispute between the registered owner and de-facto owner regarding ownership of the vehicle involved in the accident lies with the Tribunal. It also considered and held that 'any person' occurring in section 174 of the Act includes registered owner who had transferred the vehicle prior to the accident. There the offending vehicle was a scooter which did not have any insurance coverage. There the accident occurred on 31. 5. 2004, while the 2nd respondent was riding the scooter. The appellant claimed that he had sold the vehicle to one Mr. Shine as per sale letter dated 25th of October 1998, who in turn sold it to the 2nd respondent in the appeal in the year 2000. But the appellant continued to be the owner as per the records of the registering authority. The Tribunal held that appellant, being the registered owner of the vehicle as on the date of accident, cannot escape the liability and held that he along with respondents 2 and 3 were liable to pay compensation to the claimant. The question which came up for consideration before the court was regarding the jurisdiction of the civil court under Section 175 of the Act to adjudicate the inter-se dispute

between the transferor and transferee i.e between the registered owner and de-facto owner. On the basis of evidence on record, this Court found that there was transfer of the vehicle by the registered owner to the de-facto owner before the accident. This Court found that transfer of motor vehicle is governed and regulated by the provisions of the Sale of Goods Act and accordingly the transfer was complete on passing of consideration and delivery of possession of the vehicle. Relying on the judgment in P.P. Mohammed Vs K Rajappan and others - 2008 (17) SCC 624 and Pushpa@ Leela & others Vs Sakunthala and others 2011 (2) SCC 240, this court found that the appellant, in whose name the registration of the vehicle continued, was liable towards the claimant notwithstanding the transfer of the offending vehicle. In that view of matter this Court found that under Section 174 of the Act the registered owner can be given the right to recover the amount if any, realised from him by the claimant, from the de-facto owner, as provided in Section 174 of the Act, after considering the provisions contained in Section 174 of the Act which provides that where any amount is due from any person under an award, the claims Tribunal may, on an application made to it by the

person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue. The words 'any person' occurring in Section 174 of the Act was thereupon interpreted to include the registered owner who had transferred the vehicle prior to the accident. Seeing that Section 175 of the Act ousts jurisdiction of the civil court to decide any question relating to any claim for compensation, as may be adjudicated upon by the Tribunal, this Court found that the Tribunal alone has jurisdiction to adjudicate on the dispute between the registered owner and the de-facto owner regarding ownership of vehicle involved in the accident and arising in a claim petition pending before it. The 2nd respondent therein did not dispute his ownership over the vehicle at the time of accident. This Court therefore declared the right of recovery of the registered owner-appellant, of the amount realised from him from the 2nd respondent-the de-facto owner under Section 174 of the Act.

In the light of the law laid down in the above cases, the findings of the Tribunal in the case before us cannot be faulted. As several judgments were cited, we are examining the relevancy of

those judgments also.

15. A Division Bench of this Court in **United India insurance company Ltd vs Jameela Beevi** [1991 (1) KLT 832 [: [1991 KHC 211] considered the question regarding liability, where the owner claimed that the ownership was transferred to another person much before the accident and the insurance company contended that it need not indemnify, since the vehicle was driven by a person without license and hence there was violation of policy condition. There the claim petition was filed by respondents 1 to 7 in the appeal by Insurance Company, alleging that the accident occurred on account of negligent driving by 8th respondent. 9th respondent claimed that the vehicle was transferred to 8th respondent much before the accident. But he was not registered as owner. As per Ext R4 document the vehicle was agreed to be sold to 8th respondent. After referring to the provisions contained in Sale of Goods Act as well as the provisions contained in the document Ext.R4, this court found that the document in question was an agreement for sale of the motor vehicle subject to certain conditions to be fulfilled. It was found that the property in the goods could have been transferred only on fulfilment of such conditions stated in Ext.R4 agreement

and the ownership was not passed from the buyer on payment of balance consideration, subsequent to which alone the seller was to execute the documents. It was found that the sale/transfer of vehicle is governed by the provisions contained in Sale of Goods Act. Property in the goods were not transferred. In the absence of payment of the full consideration, it was held that the transferor continued as the owner and therefore he was liable to pay compensation. In the absence of evidence on record, the contention of insurance company to absolve it from indemnifying, was also repelled.

16. A Division Bench of this Court in **Said Mohammad vs Rema** [1995 (2) KLT 343] considered the question regarding the liability of the registered owner vis a vis the de-facto owner in a case where the accident occurred subsequent to the transfer of ownership of the vehicle. It was a case where passengers sustained injuries when the bus capsized due to the negligent driving. The injured passengers filed claim petitions against the registered owner of the bus, the driver and the insurer. The real owner was impleaded thereafter when it was submitted on behalf of the registered owner that he had already sold the vehicle. The Tribunal held that the actual owner of the vehicle at

the time of accident who had employed the driver who was driving the offending vehicle was liable to pay compensation. In appeal, this court considered the earlier judgments of this court wherein it was held that the liability to pay compensation in accident cases is that of the transferee owner of vehicle if the registered owner had transferred its ownership before the accident. It was observed that in **Khunji Raman vs Saramma** [1986 KLT 742], **Swaminathan Vs Jayalakshmi** [1987 (2) KLT 292] and in **United India insurance company Ltd vs Jameela Beevi** [1991 (1) KLT 832] this Court held that the actual owner can be different from the registered owner and if it is proved that the registered owner has transferred the vehicle to a different person the tortious liability will have to be borne by the transferee despite non transfer of the registration. After analysing the definition of owner provided in the Motor Vehicles Act, 1939 and in the Act 1988, this court found that under the old Act ownership of a vehicle rested mainly on the strength of possession. But it was held that the change in the definition in the new Act was not sufficient to change the tortious liability of the actual owner of vehicle, because liability to pay compensation to victims of motor accident is not the creation of

the Act. It was held that right to get compensation was recognised in common law and the said right remains unaffected by the advent of the Act except that Chapter 12 of the Act lays down the procedure for adjudication upon claims for such compensation. This Court held that everybody is entitled to get compensation from the person who caused the act or injury to him and the common law recognises that master of such person also is liable to pay the compensation under the theory of vicarious liability. In paragraph 6 of the judgment it was observed that Section 2 of the Act starts with a preface that every definition is subject to alteration or change in accordance the context because it starts with the words “unless the context otherwise requires”. Therefore it was held that if a particular context warrants departure from the contours of the definition legislature permitted such departure to be made. In the context of that case mulcting the registered owner with the pecuniary liability of the tortious act of somebody else’s servant or employee would result in manifest injustice to him. It was therefore held that when a registered owner has no vicarious liability for paying compensation, for, the driver of the vehicle would then have been acting in the course of employment of the

actual owner. Therefore a departure from the definition was held required to be resorted to, in that context.

17. Similarly a learned Single Judge of this court in **Thomas C. J Vs Aliakutty & others** [2009(1) KHC 463], considered a case where the accident occurred 15 days after the vehicle was sold and possession was handed over by the registered owner to the purchaser. Tribunal held the registered owner liable as his name continued in the registration certificate. In appeal, this Court found that evidence on record was sufficient to prove the sale and handing over possession. Apart from that as per the terms of agreement, purchaser undertook to meet any liability subsequent to purchase. Therefore the registered owner was absolved from the liability.

18. In the present case the Tribunal has found that the vehicle was already transferred by the appellant much prior to the accident. But appellant's name continued to be as the owner as per the records of the registering authority. It was in those circumstances that the Tribunal found the appellant as well as the person who was driving the vehicle liable for payment of the compensation. At the same time the Tribunal permitted the appellant to recover the amount from the driver/owner of the

vehicle at the time of accident.

19. In certain cases the Apex Court has held that the registered owner cannot be saddled with the liability when the vehicle was not under the control or possession of the registered owner. Some of such cases where the vehicles were requisitioned by statutory authorities or when it was hired by like authorities are the following:

20. In **National Insurance Co. Ltd. v. Deepa Devi**, [(2008) 1 SCC 414], the question considered was who would be liable to pay compensation when the accident occurred at a time when the offending vehicle was under requisition by the State for the purpose of deploying personnel in election duty and the vehicle had a valid coverage of insurance policy. The accident leading to the claim petition before the Tribunal occurred on 17-11-1993. A Maruti Gypsy owned by 3rd respondent (before the Apex Court), was involved in an accident causing fatal injuries to one Satish kumar. His legal heirs filed claim petition. The car was having insurance coverage based on policy issued by appellant in favour of 3rd respondent. At the relevant time the vehicle was requisitioned for election duty under the provisions of Representation of Peoples Act. Accident occurred while the

Sub-Divisional Magistrate, Rampur was travelling in the said vehicle. The legal heirs of Satish kumar filed claim petition seeking compensation. The registered owner, Govt, Sub Divisional Magistrate and the Insurance Company were made parties. The Tribunal held that the Insurance company was not liable to indemnify the owner of the vehicle towards the said accident. In appeal the High Court held that the owner of the vehicle, the State Government and the Insurance Company were all jointly and severally liable to pay the compensation. The Insurance Company assailed the judgment before the apex court, relying on Rajasthan SRTC v. Kailash Nath Kothari and referring to the definition of “owner” under Section 2(30) of the Act 1988 and the purpose for which the contract of insurance was entered into for the vehicle. Respondents 4 and 5 opposed the said contention relying on Guru Govekar v. Filomena F. Lobo [(2008) 3 SCC 1] wherein it was held that the registered owner will continue to be liable. After discussing the definition of ‘owner’ given in Section 2(19) of the Act 1939 and that given in Act 1988, the Apex court, in para 10 of its judgment held as follows:

“10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondents 3 and 4 continued to be the registered owners of

the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of the power conferred upon him under the Representation of the People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control thereover. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/or its officers, the owner is only entitled to payment of compensation therefore in terms of the Act but he cannot not (sic) exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view."

21. **Guru Govekar** case (supra) was distinguished as the vehicle was not handed over in this case voluntarily. It was considering the definition of "owner" under the 1939 Act. Therein the car was handed over to a mechanic for carrying out certain electrical repairs, when the accident occurred. There insurer was held liable to pay the compensation for the accident, which occurred in a public place due to the negligence of the mechanic who was engaged by the repairer, by virtue of the provisions contained in Section 94 of the Act, wherein it is

provided that no person shall use or cause or allow any other person to use a motor vehicle in a public place, unless there is a policy of insurance in force in relation to the use of the vehicle. Apex Court found that when a vehicle is requisitioned, the owner of the vehicle has no other alternative but to hand over the possession to statutory authority. The case of **Rikhi Ram v. Sukhrania** [(2003)3 SCC 97] was also distinguished. There the plea of the owner disowning his liability since he had transferred the ownership of the vehicle was negated, in view of the provisions of Sections 94 and 95 of the 1939 Act, whereby the motor vehicles have to be insured before it is used in a public place. Following the judgments in **RSRTC Vs Kailash Nath Kothari** [(1997) 7 SCC 481] (supra), and after discussing the judgments of certain High Courts -**National Insurance Co. Ltd. v. Durdadahya Kumar Samal** where the vehicle was requisitioned by the Collector for election duty and the owner was not held liable; in the light of the judgments in 1988 (2) TAC 25 (Ori) : **New India Assurance Co. Ltd. v. S. Ramulamma** 1989 ACJ 596.); in **Chief Officer, Bhavnagar Municipality v. Bachubhai Arjanbhai** [AIR 1996 Guj 51], it was held that the State shall be liable to pay the amount of compensation to the

claimants and not the registered owner of the vehicle and hence not the insurance company.

22. In **Rajasthan Road Transport Corporation Vs Kylasnath Kothari and others [1997 (7) SCC 43]:[1997 KHC 1048]**, the Hon'ble Supreme court held that the expression 'owner' must include a person who is in the actual possession or control of and under whose directions and commands the driver is obliged to operate the vehicle. There the vehicle which was involved in the accident was hired by RSRTC from its owner, Sanjay Kumar. The vehicle was plying on the route specified by RSRTC. An agreement was executed between Rajasthan Road Transport Corporation (RSRTC for short) and owner of the bus, in which condition-no.15- was incorporated to the effect that upon the accident of the bus taking place the owner of the bus shall be liable for the loss, damages and liabilities relating to the safety of the passengers and that the Corporation shall not be liable for any accident and if the Corporation is required to make any payment or incur any expenses through some court or under some mutual compromise, the Corporation shall be able to recover such amounts from the owner of the bus after deducting the same

from the amounts payable to him. There the accident occurred on 17th July, 1981 when the bus was being driven by Gopal, the driver employed by the owner of the bus, on a route specified by RSRTC. The bus happened to be swept away while it was being driven over the bridge, as a result of the flood in the river, on account of which several passengers died. When the claim petition came seeking compensation, the registered owner Sri Sanjay Kumar took the contention that he was not vicariously responsible for the negligent driving of the driver. At the same time the RSRTC took the contention that the driver of the vehicle was not an employee of RSRTC but of the owner and that on the basis of conditions number 5 to 15 in the agreement with the owner, it was claimed that they were not liable to pay any compensation. The insurance company also took the plea that its liability cannot exceed 75%. On the basis of evidence adduced before the court below, it was found that the liability to pay compensation for an accident caused by the bus hired by RSRTC cannot be fastened on the appellant. There was evidence to prove that the driver of the bus was simply obeying the orders of the Corporation as well as other officers appointed by the Corporation. Referring to the definition of 'owner' given under

section 2 (19) of the Act it was held that in the circumstances of the case, the same has to be construed in such a way that the expression 'owner' must include in a given case the person who has the benefit of actual possession and control of the vehicle. It was found that the vicarious liability of owner for the tort committed by somebody during the course of his employment would be a question of fact in each case as to on whom the vicarious liability can be pursued. In para 17, it was held as follows:

"17. The definition of 'owner' under Section 2(19) of the Act 1939 is not exhaustive and therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of "owner" to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident."

23. The Apex Court examined the contention of the RSRTC that it was not the owner of the vehicle and hence the

liability to pay compensation for an accident caused by the bus hired by it, cannot be fastened on it, with reference to the Conditions stipulated in the agreement. It was found that undisputedly, the bus was hired by the RSRTC and it was running on a route based on a permit granted to RSRTC in its name and otherwise the bus could not have been plied on that route. It was also admitted that the fares were collected by the conductor of the bus, who was an employee of the RSRTC and the conductor was collecting the fare for and on behalf of the RSRTC. The bus was given on hire to RSRTC along with the driver and the driver had to ply the bus under the instructions of RSRTC. In view of conditions 4 to 7 of the agreement, the RSRTC was held to be vicariously liable for the tort committed by the driver while plying the bus. Observing that the general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption, it was held that if the original employer is able to establish that when the servant was lent, the effective control

over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner. On the basis of evidence adduced and on the basis of the conditions stipulated in the agreement, it was found that the owner had not merely transferred the services of the driver to the RSRTC but actual control also, and the driver was to act under the instructions, control and command of the conductor and other officers of the RSRTC. Even though condition No.15 of the agreement executed between RSRTC and the bus owner, Shri Sanjay Kumar, stipulated that the owner will be liable for the accidents, it was held that the second part of Condition No.15 made it abundantly clear that the RSRTC did not completely shift the liability to the owner of the bus because it provided for reimbursement to it in case it has to pay compensation arising out of an accident. It was held that RSRTC cannot escape its liability under Condition No.15 of the agreement to pay compensation for the accident.

24. In **Godavari Finance Company Vs Degala Satyanarayanamma and others** [2008 (5) SCC 107]:[2008 (2) KLT 429], the Honourable Supreme Court considered the question of liability of a financier of the motor vehicle. There the vehicle was subjected to a hire purchase agreement, but going by the definition of `owner', it was held that the person who is in possession of the vehicle alone would be liable to pay damages. It was also held that the financier cannot be treated as the owner. There the mini truck, was involved in an accident on 29th May 1995. It was purchased by one Praveen, on being financed by the appellant. The loan was discharged by 4th respondent. The vehicle was subjected to a hire purchase agreement with the appellant on 6th February 1995 and the same stood cancelled with effect from 10th November 1995. The registration was in the name of 4th respondent-Praveen Kumar. The possession of the vehicle was all along with the said Praveen. Claim petition was filed seeking compensation towards death caused on account of accident caused by the vehicle. The appellant financier was impleaded alleging that he was liable to pay compensation. The Tribunal found that the appellant financier was liable. The name of the financier was incorporated in the registration book. At the

same time, the vehicle continued to be registered in the name of the 4th respondent-Praveen. The case of the financier-appellant was that the vehicle was solely with the 4th respondent as on the date of accident. But the Tribunal rejected that contention. Appeal before the High Court was dismissed. In the appeal before the Supreme Court the contention was that a financier who is in possession of the vehicle alone comes under the definition of 'owner', which, under Section 2 (30) of the Act means only a registered owner. There was no case for the parties that the financier was in possession and control of the appellant at the time of accident. On 10th November, 1995 the hire purchase agreement was cancelled and the same was intimated to the Deputy Transport Commissioner. Appellant's name happened to be entered in the registration book, just because he happened to be the financier and the vehicle was the subject matter of hire purchase agreement. Apex Court found that under Section 2(30) of the Act owner of the vehicle, which is the subject matter of hire purchase agreement, alone should be the person in possession of the vehicle under that agreement. Therefore incorporation of the name of financier in the registration certificate, cannot, by itself, be decisive of

determination as to the ownership of the vehicle. It was found that the presumption regarding ownership cannot be drawn in such circumstances and the circumstances warranted a different interpretation as provided in the Section, which begins with the expressions 'unless the context otherwise requires'. The Apex Court further held that the Tribunal was required to hold an enquiry into the claims and determine the person who would be liable to make the compensation. Use of motor bike is definite and for entertaining a claim for compensation ordinarily when the driver of the vehicle uses the same, he remains in possession or control thereof. Owner of the vehicle may also be held to be constructively liable as the employer of the driver. It is therefore essential to find out the liabilities of the persons who are involved in use, or the persons who are vicariously liable, before passing an award. Referring to judgment of the Apex Court in **Rajasthan State Road Transport Corporation vs Kylasnath Kothari** [1997 (7) SCC 481], it was found that the general proposition of law and presumption arising therefrom that an employer, that is the person who has a right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his

employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, then the original owner can avoid the liability and the temporary employer or the hirer must be held vicariously liable for the tort committed by the employees concerned in the course of his employment while under the command and control of the hirer despite the fact that the driver continues in the payrolls of the original owner. But on the basis of the evidence on record the Apex Court found that the owner had not merely transferred the services of the driver to the RSRTC; but actual control also; and driver was to act under the instructions, control and command of the conductor and officers of the RSRTC. It further considered the decision rendered in **National Insurance Company Ltd vs Deepa Devi and others** [2007 (14) SCALE 168]. There it was held that owner of the vehicle would not be liable in the peculiar circumstances of the case as the owner did not have any control over the driver, since the vehicle was requisitioned by the statutory authority under Representation of Peoples Act. In the light of the legal principles evolved in **Rajasthan State Road Transport Corporation Vs**

Kylasnath Kothati others [1997 (7) SCC 481] and **National insurance company Ltd vs Deepa Devi and others** [2007 (14) SCALE 168, the Apex Court held that respondents 3 and 4 continued to be the owner and he cannot refuse or abide by the order of requisitioning authority as held in **Deepa Devi's** case. It was held that if in a given situation the statutory definitions contained in the Act are attacked, as it cannot be given effect to in the letter and spirit, the same has to be construed in the commonsense point of view and in that view of the matter it was found that appellant was not liable to pay any compensation to the victims.

25. The learned Counsel for the appellant heavily relied on this judgment in support of his contention that a different definition is warranted in his case, than that is given in subsection 30, applying the pre-face of Section 2. It is clear from the facts of this case that mere hypothecation alone will not vest ownership on the financier; only a person in possession of the vehicle on the basis of the hypothecation agreement alone is the owner. On the basis of evidence on record it was proved that the financier company was not in possession of the vehicle notwithstanding the hypothecation. Therefore contention raised

based on this judgment cannot be accepted.

26. Similarly heavy reliance is placed on RSRTC case also. That was a case where procedures as contained in Section 50 was not required to be observed.

27. Recently the Apex Court in **HDFC Ltd Vs Kumari Reshma & others (2014 KHC 4757)** considered a case where the Tribunal directed the financier Bank to pay the compensation. The accident occurred on account of negligent driving of a motorcycle, which was under an agreement of hypothecation with the Bank. As per the terms of agreement the borrower was to get the vehicle insured failing which, the financier was to get the same insured. The Tribunal held that the financier was liable to get it insured when the borrower neglected and therefore it was the financier to pay compensation. The Apex Court found that as per the provisions in the agreement of hypothecation, the possession of the vehicle was always with the borrower and going by the definition of 'owner' under Section 2(30) of the Act, only if the financier was in possession of the vehicle, as per the agreement of the hypothecation, he will become the owner. It was further found that the borrower took delivery of the vehicle from the dealer

without even making the due payment and obtained possession of the same on the same day and the accident occurred while it was in possession of the borrower. After referring to a large number of decisions and after examining the provisions in the hypothecation agreement, the Apex Court found that the borrower was in possession and control of the vehicle and he had taken delivery of the vehicle without making full payment and plied the vehicle on road without getting the same insured, contrary to the provisions in Section 146 of the Act. In such circumstances, the findings of the court below were set aside and the financier was absolved.

28. **Guru Govekar v. Filomena F. Lobo** [(1988) 3 SCC 1], was a case where the accident occurred when the offending car was entrusted with the mechanic for repair and an employee of that mechanic who did not have any license, was driving it, causing injuries to the claimant who sought compensation . The insurer, the owner, the mechanic and his employee were all held liable to pay compensation. Further it was held that the insurer is liable to pay the compensation found to be due to the claimant as a consequence of the injuries suffered by her in a public place on account of the car colliding with her on account of the

negligence of the mechanic who had been engaged by the repairer who had undertaken to repair the vehicle by virtue of the provisions contained in Section 94 of the Act which provides that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII of the Act. Any other view will expose innocent third parties to go without compensation when they suffer injury on account of such motor accidents and will defeat the very object of introducing the necessity for taking out insurance policy under the Act.

29. In the judgment **Rikhiram Vs Sukhrania** [(2003) 3 SCC 97], the Apex Court considered the question whether the insurance company gets absolved, where an accident occurred subsequent to the transfer of the vehicle and that fact is not intimated to the insurer. Finding that the legislature has made the provisions for insurance in order to protect the 3rd parties in the event of injury or death on account of the vehicles, the Hon'ble Supreme Court held that the liability of insurer does not cease on transfer of the vehicle or for want of intimation as to

transfer.

30. The learned counsel relied on the judgment of the Jammu and Kashmir High Court reported in **Javeed Ahamad Shah v. Parveena Banoo and Others** [2010 KHC 6645]. There also the question considered was whether the registered owner is liable to pay compensation when the accident occurred subsequent to the transfer of ownership. Under Section 39 of the M.V Act, 1988 (J. and K.) it is mandatory that the owner of the motor vehicle should get the alterations effected in the registry on transfer of the ownership. The authorities also have to make the entries on the basis of such request by the transferor/transferee. Relying on the judgments of the Supreme Court in **Rajasthan SRTC v. Kailash Nath Kothari**, **T.V. Jose (Dr.) v. Chacko P.M** and **P.P. Mohammed v. K. Rajappan** etc. held that the registered owner of the vehicle involved in a vehicular accident continues to remain liable to pay compensation to the victims of the accident/legal representatives of the victim. It was also held that the transferee of the vehicle who is in actual possession and control of the vehicle shall also be liable to pay compensation. In that case the Tribunal had directed that the compensation shall be payable by the

registered owner and the transferee in possession of the vehicle in equal proportion. The High Court found that the apportionment of the liability between the registered owner and the owner in possession was not correct. It was thereafter held that in case the sale of the vehicle was proved and it was found that actual possession and control of the vehicle on the date of the accident was on the transferee, the direction could have been to the transferee. It was held therein that the principle laid down by the Supreme Court in various cases was that even though the liability to pay compensation was on the registered owner, the liability of person in possession and control of the vehicle did not get extinguished and the transferee is responsible to pay the compensation. However seeing that the accident took place about 10 years back and the claim petition was allowed long before, the High Court did not find it proper to ask the claimants to go for further litigation. In such circumstances, the registered owner was given liberty to initiate appropriate proceedings from the person in possession and control of the vehicle.

31. In **Sitaram Motilal Kalal v. Santanuprasad Jaishanker Bhatt** [AIR 1966 SC 1697] : [1966 KHC 684], the

Apex Court considered the issue regarding the vicarious liability of the owner of a motor vehicle. The injured, who had to undergo amputation of one of his legs in a motor car accident, sought compensation. The vehicle belonging to the appellant (first defendant) was entrusted to the second respondent for being plied as a taxi. At the time of the accident, it was driven by the third defendant to whom it had been handed over by the second defendant for the purpose of taking a driving test to obtain a driver's license. Trial Judge found that the owner was not liable, but respondents 2 and 3 were. High Court held owner also liable. After scanning the evidence on record, the Apex Court found that the 2nd defendant was the servant of the owner-1st defendant and the 3rd defendant was a servant of the 2nd defendant. Evidence was available to show that the 2nd defendant was present when the vehicle was borrowed for taking the test and he had willingly allowed the 3rd defendant to drive the vehicle for the purpose. Applying the dictum laid down in Ricketts' case 1915 (1) K B 644, Beard vs London General Omnibus company 1900 (2) QB 240, Trust company Ltd vs DeSilva 1956 (1) WLR 376, Englehart's case 1897 (1) QB 240, Law of Torts by John Salmond, Smith vs Martin and Kingston-

upon-Hull corporation 911-2K B775, Samson vs Aitchison 1912 AC 844, Barwick vs English Joint Stock Bank 1867 (2) Ex 259, Orm Road vs Crossville Motor Services Ltd 1953(2)All ER 753, etc. on the question of vicarious liability of owner, over the acts of agents, the Apex Court found that there was no proof that the 2nd defendant was authorised to coach the cleaner so that the cleaner might become a driver and drive the taxi. The act of the defendant was found not to be on the owner's business but either on the business of the 3rd defendant or that of the 3rd and 2nd defendants together. It was found that there was no evidence to prove that the owner had even impliedly authorised to do the act and the act involved did not come within any of extension of the doctrine of scope of employment. Accordingly the appeal was allowed and the appellant owner was held not liable to pay the compensation, upholding the judgment of the trial court.

32. But it can be seen that, that was not a case where the parties were governed by provisions like those in the Motor Vehicles Act, 1988 and there is considerable deviation in a catena of subsequent judgments.

33. In **State of Maharashtra Vs Kanchanmala Vijaysing Shirke** [(1995) 5 SCC 659], the Apex Court was

considering a case where the accident occurred when the jeep belonging to State Govt. dashed against a scooter of one Vijay Singh, resulting in his death. At the relevant time the jeep was being driven by a clerk in engineering fishing project division, who was not the driver. Claim petition was filed alleging that the accident caused due to the negligence of the clerk, who was driving the vehicle with the consent of the driver and both of them were liable to pay compensation. In the written statement of the driver it was alleged that the clerk snatched the keys of the vehicle and he was driving the vehicle without consent from the driver and that he did not have any license. The Tribunal found that the clerk had snatched the keys and that he was driving the jeep unauthorisedly. Therefore it was held that State or the driver did not have any liability. But the High Court, on analysis of evidence on record found that the vehicle was being driven for official purposes, with the consent of the driver, since the driver had consumed alcohol. Therefore the State Government, the driver and the clerk who was driving the vehicle were all found jointly and severally liable to pay compensation. In the appeal by State Government, the Apex Court found that the finding of the High Court on the basis of

evidence on record was not liable to be reversed. After discussing the issue regarding the liability of master for the acts of servant, with reference to a catena of decisions including Salmond's Law of Torts (Twentieth Edn.) p. 458, para 739 of Halsbury's Laws of England, Fourth Edn., Vol. 16, London County Council v. Cattermoles (Garages) Ltd.(1953) 2 All ER 582, Ilkiw v. Samuels (1953)WLR 991, Ricketts Vs Thomas Tilling Ltd (1915)1 KB 644, Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. (P) Ltd. (1977) 2 SCC 745, para 14, etc, the Apex Court, in para 18 and 19, held as follows:

“18. The facts of the present case disclose and demonstrate that an authorised act was being done in an unauthorised manner. The accident took place when the act authorised was being performed in a mode which may not be proper but nonetheless it was directly connected with “in the course of employment”— it was not an independent act for a purpose or business which had no nexus or connection with the business of the State Government so as to absolve the appellant-State from the liability.

19. The crucial test is whether the initial act of the employee was expressly authorised and lawful. The employer, as in the present case the State Government, shall nevertheless be responsible for the manner in which the employee, that is, the driver and the respondent executed the authority. This is necessary to ensure so that the injured third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation. If the dispute

revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. In the present case, it has been established beyond doubt that the driver of the vehicle had been fully authorised to drive the jeep for a purpose connected with the affairs of the State and the dispute is only in respect of the manner and the mode in which the said driver performed his duties by allowing another employee of the State Government, who was also going on an official duty, to drive the jeep, when the accident took place. Once it is established that negligent act of the driver and respondent was "in the course of employment", the appellant-State shall be liable for the same."

34. The learned counsel for the appellant seeks for an interpretation of the definition clause as done in the Division Bench judgment of this Court, **Said Mohammad vs Rema reported in 1995 (2) KLT 343**. We have already seen the judgments of the Apex Court in **Jose vs Chacko** [2001 (3) KLT 633 (Supreme Court)], **P.P. Mohammed v. K. Rajappan** [(2008) 17 SCC 624], **Pushpa v. Shakuntala** [(2011) 2 SCC 240], etc. wherein the liability of the registered owner is considered elaborately even after the sale of the vehicle, with reference to the definition of 'owner' in Section 2(30), requirement of intimation mandated by Section 50 and the

requirement of getting the vehicle insured, under Section 146 of the Act 1988. On consideration of these provisions as well as the judgments, we are of the view that there is no special context in this case which requires a different meaning or definition for the word "owner". The deviation from the definition given is sought on the ground that the sale of the vehicle is already effected and possession is handed over. But a deviation is called for only in a case the statutory provisions and procedures are observed and not in a case the provisions are violated. In a case where the appellant or the transferees did not perform their obligations under the statute as provided in Section 50 of the Act, to report transfer of vehicle within 15 days of transfer, and the further requirement to get the vehicle insured before it is used or permitted to be used in a public place, it cannot be said that the definition of 'owner' requires a different meaning or interpretation. The provisions for intimation of transfer, getting the vehicle insured, etc. are intended for the protection of the innocent third parties in the event of getting injured by negligent driving of vehicles. In the present case itself it can be seen that the violation of these provisions have caused inordinate delay in getting the award executed and even after several years of the

accident and even the award, the claimants are compelled to languish after suffering the loss of the breadwinner of the family.

35. We find that the judgments referred to by the counsel for the appellant in support of his contention that the appellant does not have any vicarious liability when the driver was not under his control or vehicle was not in his possession or that the definition clause required another interpretation in cases where accident occurred after the sale or that the Apex Court did not have any occasion to consider cases of this nature which required to construe the definition of owner differently, cannot be applied in the present case, in the light of our findings with reference to the provisions in the Act 1988.

36. The learned Counsel relied on the judgments in **Municipal Corporation of Delhi Vs Gurnam Kaur** (1989)1 SCC 101-para11, **Amit Das V State of Bihar** (2000)5 SCC 488 para 20, **Supreme Court Employees Welfare Association Vs Union of India & others** (1989)1 SCC 187-para 22, **S.K. Muhboob Ali Vs DGP, CRPF, New Delhi** (2005)192 ELR 143 (AP), in support of his contention that the decisions of the Supreme Court which do not consider the liability of the registered owner in the proper perspective are not binding and

cannot be followed. It is also argued that a decision which does not deal with the legal issue raised cannot be considered as law under Article 141 of the Constitution of India.

37. According to the learned counsel, in the light of the judgments in **Sitaram Motilal Kalal Vs Santanuprasad Jaisankar Bhat** [AIR 1966 SC 1697]:(1966 KHC 684), **United India Insurance Company Vs Jameela Beevi**-1991 (1) KLT 832:1991 KHC 211, **Javeed Ahmed Shah Vs Parveen Banoo & others** - 2010 KHC 6645, **United India Insurance Company Ltd, Cherthala Vs Remani C. K.**, 2013(4) KLT 445: 2013(4) KHC 340, **State of Maharashtra Vs Shirke** [(1995) 5 SCC 529], **Thomas C. J Vs Elaiakutty & others** [2009 KHC 463], **Godavari Finance Company Vs Degala Satyanarayanamma and others** [2008 (5) SCC 107], **RSRTC Vs Rajnath Kothari** [(1997) 7SCC 481], **National Insurance Company Vs Deepa Devi** [(2008) 1 SCC 414] etc, there should be vicarious liability, in order to make one liable to pay compensation.

38. According to the learned Counsel the mere fact that the appellant's name continues in the registration certificate does not make him liable. According to him the judgments rendered otherwise, in **Jose (Dr), Pushpa@Leela, Javeed**

Ahmad Shah, Lili Bora Vs Nishi Rani Hazarika & others [AIR 2007 Gauh 65]: [2007 KHC 7184], Godavari Finance Company, whereby the registered owner is made liable irrespective of the transfer of vehicle are not correct. He relied on the judgments in **Thomas C.J Vs Eliakutty** [2009 (1) KHC 463] and **Godavari Finance Company Vs Degala Satyanarayamma and others** [2008 (5) SCC 107]:**[2008 (2) KLT 429]:[2008 KHC 295]** to contend that the registered owner cannot be made liable. Yet another contention is that the registered owner like the appellant will not have any vicarious liability when the vehicle is not under his control as he has already transferred the vehicle.

39. In support of his contention that the definition of owner needs a different interpretation as the said Section 2 begins with the expressions :‘unless the context otherwise requires’, he relies on **M/s Pandey & Co Builders Pvt Ltd Vs State of Bihar & another** [2006 KHC 269]:[(2007) 1 SCC 467], **Ramesh Mehta V Sanwal Chand Singvi** [(2004) 5 SCC 409]: [2004 KHC 1032], **Mukesh K. Tripathi Vs Senior Divisional Manager, LIC** [(2004) 8 SCC 387]: [2004 KHC 1588], **Godavari Financiers** (supra), **National Insurance Co Vs Deepa Devi**

[(2008) 1 SCC 414] and **Lila Bora** (supra).

40. We have already found that the circumstances of this case do not warrant us to go in search of the meaning of owner, in this case. The definition i.e Section 2(30) of the Act provides for circumstances where possession of vehicle is not with the registered owner, on the basis of agreements of lease, hypothecation, etc. But it did not choose to provide for a circumstance where the possession is divested from the registered owner on account of sale or agreement for sale, apparently because of Section 50. There is therefore no other 'context' available in this case, warranting an interpretation of meaning of owner other than what is provided in subsection (30) of Section 2 of the Act, for those who violate statutory procedures. Moreover the Tribunal has permitted recovery of the amount from the de-facto owner. In the light of the judgment in **Sreekumar Vs Abdeen**, there is nothing wrong in the award passed by the Tribunal. In the circumstances of the case we are not going into the questions whether the decisions of the Apex Court are not law under Article 141, or per in curium, etc. as contended by the learned counsel for the appellant.

41. However we are constrained to notice that the claimants have not received any amount towards the compensation so far despite the fact that the death occurred on 2.1.2006; accident was found to be on account of the negligent driving of the offending car by the 6th respondent and an award has already been passed permitting the 1st respondent (appellant herein) to recover the same from the 6th respondent on deposit being made. It is also disheartening to note that there was no insurance policy in respect of the offending vehicle despite the mandatory provisions contained in Section 146 of the Motor Vehicles Act, 1988, to get the motor vehicle insured before it is used in a public place, as provided in Section 147.

In the above circumstances we do not find any merit in the appeal. Hence we dismiss the same. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR

Judge

Sd/-

P.VASHA

Judge

rtr/

/true copy/

P.S to Judge