

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3307 of 2005 (O&M)
Date of decision 04.08. 2015.

Radhey Shyam Gupta

..... Appellant.

versus

Archana & Ors.

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Nitin Goyal Advocate for
Mr. Sanjeev Gupta, Advocate for the appellant.
Mr. J.S.Mehandiratta, Advocate for respondent No.1 to 5.
Ms. Maninder Kaur, Advocate for respondent No.8.

K.C.PURI, J.

This is an appeal directed by Radhey Shyam Gupta appellant against the Award dated 16.03.2005 passed by Shri Kamal Kant, learned Motor Accident Claims Tribunal, (Fast Track Court), Karnal vide which claim petition was partly accepted and claimants were held entitled to claim Rs.3,70,000/- on account of death of deceased Amardeep Singh in a motor vehicular accident on 30.12.1988.

2. The facts as gathered from the record are that on 30.12.1998 deceased Amardeep Singh was driving Maruti Car bearing registration

No. HR-14-0046 and was going from Karnal to village Uchana with his friend Pawan Kumar which was on due left hand side of the road and that too at normal proper and moderate speed and when the Maruti Car reached near ITI Chowk on G.T. road, Karnal, in the meanwhile, all of a sudden, a truck bearing registration No. HR-07-8434 being driven by its driver rashly, carelessly and negligently, came from the opposite direction and hit the Maruti Car from the front side and due to impact of the accident deceased received serious, grievous and multiple injuries and died at the spot. The accident in question took place on account of rash and negligent driving of the truck by respondent No.1. FIR No.1260 dated 31.12.1998 under Sections 279 and 304-A of the IPC was registered and an amount of Rs.30lacs was claimed as compensation.

3. Respondent No.1 was reported to have died and his legal heir respondent No.2 was brought on record, who also proceeded ex-parte on 24.4.2003 by the Tribunal.

4. Respondent No 3 registered owner of the Maruti Car filed written statement raising preliminary objections regarding maintainability, locus standi and misjoinder of necessary parties and non-joinder of necessary parties etc. It has been pleaded that Pawan Kumar Gupta had purchased the Maruti Car from Roshan-answering respondent on 18.2.1998 and, therefore, the answering respondent has no concern with the Maruti Car in any manner and said Pawan Kumar Gupta had got released the Maruti Car on superdari in his name and intentionally did not get the Maruti car transferred in his name. Denying other averments answering respondent prayed for dismissal of the claim petition.

5. Respondent No. 4 has filed separate written statement and took up preliminary objection regarding maintainability, locus standi, misjoinder and nonjoinder of necessary parties. He has pleaded that he is not the owner of the Maruti Car. However, he admitted the factum of accident and alleged that the accident has taken place due to rash and negligent driving of the truck. Denying other averments respondent No.4 prayed for dismissal of the claim petition.

6. Replication to the written statements was not filed. From the pleadings of the parties, the following issues were framed-

- 1 Whether the accident in question causing death of Amardeep Singh was the result of use of vehicle bearing registration No. HR-07-8434 and/or vehicle bearing registration No. HR-14-0046 ?
OPP
- 2 If issue No.1 is proved, whether the claimants are entitled to compensation, if so, how much and from whom ? OPP
- 3 Whether the petition is not maintainable in its present form ? OPR
- 4 Whether the claimants have no locus standi to file and maintain the present petition ? OPR
5. Whether the petition is bad for misjoinder of unnecessary party and nonjoinder of necessary party, as alleged ?OPR
6. Relief.

7. In support of their case, claimant Smt. Archana widow of the deceased herself appeared as PW-1 and also examined Pawan Kumar respondent No.4 as PW-2.

8. In rebuttal respondent No.3 has himself stepped into the witness box as RW-2 and has also examined Ahlmad of the Court of Chief

Judicial Magistrate, Karnal.

9. The Tribunal, regarding issue No.1, held that accident has taken place due to negligent driving of truck and Maruti Car. The amount of compensation was calculated as Rs.3,70,000/-. The Tribunal has held that respondent No.2 being legal heir of respondent No.1 driver and registered owner of the truck and respondent No.3 being registered owner of the car are held liable to pay the amount of compensation. The issue was decided accordingly.

10. Feeling dissatisfied with the above said Award dated 16.03.2005 passed by Shri Kamal Kant, learned Motor Accident Claims Tribunal, (Fast Track Court), Karnal the appellant Radhey Shyam Gupta, registered owner of Maruti Car bearing registration No. HR-14-0046 has directed the present appeal.

11. I have heard learned counsel for the appellant and have gone through the records of the case.

12. Learned counsel for the appellant has submitted that it is proved from the record that vehicle was sold to Pawan Kumar. The vehicle was taken on superdari by Pawan Kumar. The Maruti Car in question was in possession and control of Pawan Kumar and as such the appellant cannot be held liable to pay the amount of compensation.

13. In reply to the above noted contention, counsel for Pawan Kumar has supported the Award. It is submitted that appellant has failed to prove selling of the vehicle and the appellant has rightly been held liable to pay the amount of compensation.

14. I have considered the submissions made by both the sides and have gone through the records of the case.

15. The learned Tribunal has held that since Radhey Shyam Gupta is a registered owner and as such he is liable to pay the amount of compensation. The Tribunal has also returned finding that Radhey Shyam Gupta has failed to prove that vehicle was sold. However, the learned Tribunal has misread and misinterpreted the evidence on the file. The Tribunal has itself held that Pawan Kumar has taken into possession the vehicle on superdari. The case of the claimant is that Pawan Kumar was traveling with the deceased in the car in question and as such Pawan Kumar was in effective possession and control of the vehicle otherwise Radhey Shyam Gupta has produced on record a superdarinama on the file in which Pawan Kumar has mentioned that he has purchased the vehicle from Radhey Shyam Gupta through affidavit. This Court in authority **Ravi Kumar vs. Jitender Lathar and others FAO Nos.4090, 4690 and 3516 of 2007 decided on 12.03.2014** held that subsequent purchaser is himself a party despite transfer of registration or not, then subsequent purchaser in respect of the fact that where transfer of vehicle has not taken place, is liable to pay the amount of compensation. The liability of registered owner was erroneous in a case where there was a transfer of vehicle by delivery to the subsequent purchaser. The transfer of ownership of a motor vehicle took place by delivery under Section 19 of the Sales of Goods Act. It has been further observed by this Court that registration is only a facilitative provisions provided under Section 50 of the Motor Vehicles Act and in

cases where the subsequent purchaser was not a party, in that case registered owner can be held liable but in case the subsequent purchaser himself is a party, in that case, he cannot be escaped from the liability to pay the amount of compensation. Three Judges Bench of Hon'ble Apex Court in authority **HDFC Bank Ltd. vs. Kumari Reshma and others reported in 2015 (1) PLR 366** held that a person who is in possession and control of the vehicle is liable to pay the amount of compensation. In the said case, bank was a registered owner but the vehicle was in possession and control of the borrower who has not insured the vehicle. So, accepting the appeal of the bank, it was held that a person in possession of the vehicle is liable to pay the amount of compensation. The factum of possession of offending vehicle by the appellant, in the shape of superdarinama and application for taking the vehicle on superdari clearly show that Pawan Kumar has himself pleaded that he is the owner of the vehicle and has purchased the vehicle through affidavit. That transaction has taken place prior to the accident. The admission made by Pawan Kumar in the shape of superdarinama and application is sufficient to conclude that he is the owner of the vehicle. The trial Court has ignored these documents on the ground that no specific amount has been mentioned. The admission is the best piece of evidence other than an explanation.

16. So, in these circumstances, the appeal preferred by the appellant stands accepted. The Award vide which the appellant has been held liable to pay the compensation amount is set aside and it is held that Pawan Kumar was the owner of the vehicle at the time of accident and he

shall share the responsibility to pay the amount of compensation along with respondents, namely, Amarjit Kaur, legal heir of owner of truck in question.

17. Consequently, the appeal stands disposed of in the terms mentioned above.

18. A copy of this judgment be sent to the Tribunal for strict compliance.

**(K.C.PURI)
JUDGE**

**August 04 , 2015
sv**