

IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH

FAO No. 839 of 2015 (O&M)

Decided on: January 29, 2015

Shiv Nath

.. Appellant

Versus

Harpreet Kaur and others

.. Respondents

Coram: Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. Jaswinder Singh, Advocate, for the appellant.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mahavir S. Chauhan, J.

Civil Miscellaneous No. 2254- C-II of 2015:

Heard on the application for condonation of delay in filing the appeal.

02. In view of the submissions made at the bar and circumstances enumerated in the application, which are supported by affidavit of Amar Dass, son of the appellant, delay in refiling the appeal is condoned.

F.A.O. No. 839 of 2015:

03. Who, the appellant—the registered owner of the offending vehicle, or respondent No. 6, Rajinder Gir to whom, the offending vehicle is stated to have been sold – but the change of ownership has not been incorporated in the record of the registering authority and in the Registration Certificate, is liable to pay the amount of compensation as awarded by Motor Accident Claims Tribunal, Fast Track Court, Ropar (here-in-after referred to as ‘the tribunal’)

vide award dated September 25, 2014 in favour of respondents No. 1 to 5 (applicants before the learned tribunal), is the short question involved in this appeal brought by the registered owner of the vehicle bearing registration No. PB-65-R-9606 (here-in-after referred to as 'the offending vehicle'), i.e. Shiv Nath.

04. Sh. Jaswinder Singh, Advocate, learned counsel appearing for the appellant argues with vehemence that the learned tribunal has committed an error of fact and law by burdening the appellant with the liability to pay the amount of compensation to respondents No. 1 to 5 inspite of the proven fact that the offending vehicle was sold by respondent No.2 (appellant herein) to respondent No. 1 on February 28, 2013 and an affidavit in regard to this sale was sworn by appellant on 02.03.2013, whereby the appellant has conveyed that he has no objection if the registration of the offending vehicle is transferred in the name of respondent No. 6 and at the time of the unfortunate occurrence the offending vehicle was being driven by respondent No. 6, Rajinder Gir.

05. Though factum and manner of accident are not in dispute yet it may be apposite to state that applicants claimed compensation by alleging loss of dependency caused by premature termination of life of Manjit Singh, who was working as Preacher (Pathi) at Gurudwara Kartsar Sahib, Village Padiala, in a motor vehicle accident caused by respondent No. 1 by rash and negligent driving of the offending vehicle at or around 09.00 p.m. on July 07, 2013.

06. Learned tribunal framed issues, received evidence, afforded an opportunity of hearing to the contesting parties, appraised the evidence and while awarding compensation amounting to Rs. 7,87,243/- in favour of respondents No. 1 to 5, held the appellant and respondent No.1 jointly and

severally liable to pay compensation.

07. To find an answer to the riddle involved herein, it would be of benefit to refer to relevant provisions of the Motor Vehicles Act, 1988 (for short – 'the Act').

Section 168 of the Act deals with the Award of the Claims Tribunal. It reads thus :-

"168. Award of the Claims Tribunal - (1) On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim, or as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) Where an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

Sub-section (30) of Section 2 of the Act defines "owner", which reads as under:-

"Owner" means a person in whose name a motor vehicle stands registered, and where such person is 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."

Sub-sections (1) and (3) of Section 50 of the Act *ibid* provide for the manner in which "Transfer of ownership" shall take place and read thus:-

"(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 transferee 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 was 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.

(2) Where -

(a)

(b)

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make

an application under sub-section (2) (hereinafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under Section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5) :

Provided that action under Section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount."

08. It is, thus, seen that Section 168 of the Act provides that the Tribunal, on an application filed under Section 166 of the Act claiming compensation, shall, after enquiring into the claim etc., may make an award determining the amount of compensation specifying the person to whom such compensation shall be paid. It shall also specify while making the award as to the amount which shall be paid by the insurer, the owner or the driver of the vehicle involved in the accident or all or any of them. In case, the offending vehicle is not insured, then in that situation, the owner or the driver of the said vehicle shall be made liable to pay the awarded amount. The word "owner" as defined under Section 2(30) of the Act would mean such a person in whose name the vehicle stands registered. Section 50 of the Act provides for various requirements of law which are required to be observed before the name of the registered owner is substituted by name of the transferee and the registration certificate is amended incorporating such change.

09. A conjoint reading of the aforesaid provisions would show that the owner is a person in whose name the motor vehicle stands registered with the registering authority and the transfer of the vehicle takes place only when the requirements prescribed under the Act are complied with and the registering authority enters the change of ownership in its records. It is, thus,

needless to state that reference to the term "owner" in Section 168 of the Act is to the registered owner of the vehicle.

10. It has remained undisputed that notwithstanding sale of the vehicle, neither the appellant (the registered owner), nor the transferee, took any steps for the change of name of the owner in the records of Registering Authority and the certificate of registration of the offending vehicle. To put the things straight, on the day of the occurrence appellant was recorded as owner of the offending vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale in favour of Rajinder Gir in the year 2013.

11. The question of the liability of the recorded owner of a vehicle after its sale to another person was considered by the Apex Court in **Dr. T.V. Jose v. Chacko P.M., 2002(1) R.C.R.(Civil) 120 : (2001) 8 SCC 748**. In paragraphs 9 and 10 of the judgment, the Apex Court observed and held as follows :

"9. Mr. Iyer appearing for the Appellant submitted that the High Court was wrong in ignoring the oral evidence on record. He submitted that the oral evidence clearly showed that the Appellant was not the owner of the car on the date of the accident. Mr. Iyer submitted that merely because the name had not been changed in the records of R.T.O. did not mean that the ownership of the vehicle had not been transferred. Mr. Iyer submitted that the real owner of the car was Mr. Roy Thomas. Mr. Iyer submitted that Mr. Roy Thomas had been made party-Respondent No. 9 to these Appeals. He pointed out that an Advocate had filed appearance on behalf of Mr. Roy Thomas but had then applied for and was permitted to withdraw the appearance. He pointed out that Mr. Roy Thomas had been duly served and a public notice had also been issued. He pointed out that Mr. Roy Thomas had chosen not to appear in these Appeals. He submitted that the liability, if any, was of Mr. Roy Thomas.

10. We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of

consideration and delivery of the car. The evidence on record shows 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 R.T.O. as the owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these Appeals. Mr. Roy Thomas was not a party either before MACT or the High Court. In these Appeals we cannot and will not go into the question of inter se liability between the Appellant and Mr. Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so."

12. Again, in **P.P. Mohammed v. K. Rajappan & Ors., (2008) 17 SCC 624**, Supreme Court examined the same issue under somewhat similar set of facts as in the present case and held as follows :

"4. These appeals are filed by the appellants. The insurance company has chosen not to file any appeal. The question before this Court is whether by reason of the fact that the vehicle has been transferred to Respondent 4 and thereafter to Respondent 5, the appellant got absolved from liability to the third person who was injured. This question has been answered by this Court in T.V. Jose (Dr.) v. Chacko P.M. wherein it is held that even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person. We are in agreement with the view expressed therein. Merely because the vehicle was transferred 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."

13. The decision in Dr. T.V. Jose (supra) 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.

14. The statement of law as enunciated in ***Dr. T.V. Jose v. Chacko P.M.*** and ***P.P. Mohammed v. K. Rajappan & Ors.*** (supra), has been reiterated in **Pushpa @ Leela v. Shakuntala, 2011(2) SCC 240, Vipin Kumar Sharma v. Jagwant Kaur, 2005(4) R.C.R.(Civil) 40, Rulda Singh & others vs. Amarvir**

Kaur and others, 2009(1) R.C.R.(Civil) 690 and Darshan singh versus Kewal Mohan and others, FAO No. 10082 of 2014 decided by this Court on December 15, 2014.

15. On the basis of above-cited decisions, the inescapable conclusion is that the appellant, whose name, admittedly, continued in the records of the registering authority as the owner of the offending four wheeler, was equally liable for payment of the compensation amount.

16. The appellant has based his contention on application, Annexure A-1, attached with this appeal which is dated 29.4.2014. This application is found to be of no help to the appellant because had this application been filed by the appellant on the date viz 29.04.2014, then there was no reason for the appellant to conceal the same from the learned Tribunal while appearing as RW-4 nor is there any reference to this application in the award of learned Tribunal.

17. In the light of the above discussion, it cannot be said that the appellant is not liable to pay the amount of compensation as awarded by the learned Tribunal. Once it is found that the appellant cannot escape his liability to pay the amount of compensation, there is no merit in this appeal and it is accordingly dismissed. However, it shall be open to the appellant to take recourse to appropriate proceedings in accordance with law to recover the amount of compensation, if any paid by it in compliance of the directions of the learned tribunal or in execution of the impugned award, from the auction purchaser.

Civil Miscellaneous Nos. 2255-56-CII of 2015

18. Appeal challenging award dated September 25, 2014 having been dismissed, these applications seeking stay of operation of the impugned award

and for production of additional evidence are rendered infructuous and are disposed of accordingly.

[Mahavir S. Chauhan]
Judge

January 29, 2014
tripti