

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

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+ M.A.C.M.A. No.1277 of 2015

% Dated 12.04.2016

**# Apna Finance (Idea) Ltd.,
Rep. by its Managing Director.**

... PETITIONERS

VERSUS

\$ Uppalapati Ramana and others.

...RESPONDENTS

! Counsel for the Petitioners: Sri Prabhakar Sripada

**^ Counsel for the Respondents:Sri Nimmagadda Satyanarayana
for Respondents 1 to 4.**

>HEAD NOTE:

? Cases referred

[1] 2008 (3) ALD 18 (SC)

2(2015) 3 Supreme Court Cases 679

3 Criminal OP No.28807 of 2005

4 (2014) 14 SCC 142: (2015) 1 SCC (Cri) 304: (2015) 1 SCC (Civ) 251

5 (1997) 9 SCC 103: 1997 SCC (Cri) 610

6 Centurian Bank Ltd. v. Reshma 2013 SCC OnLine MP 8349

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No. 1277 of 2015

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ORDER :

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This Appeal is filed by the financier/2nd respondent before the Tribunal of the offending vehicle against the Award dated 29.10.2009 in M.V.O.P.No.370 of 2006, wherein the Motor Accidents Claims

Tribunal-cum-District Judge, FAC II Addl. District Judge, Ongole, awarded an amount of Rs.4,00,000/- along with interest at 9% per annum from the date of petition till realization and with costs in favour of the respondents 1 to 4, who are claimants before the Tribunal, against the appellant and respondents 5 and 6 herein, who is 1st and 3rd respondents before the Tribunal.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the MVOP before the Tribunal.

It is the case of the petitioners before the Tribunal that the 1st petitioner is the wife, 2nd petitioner is the daughter, 3rd petitioner and 4th petitioner are the parents of the deceased Chakrapani, respectively, who was aged about 30 years died in a motor vehicle accident that occurred on 13.06.2006 at about 5.30 p.m when he was proceeding to petrol bunk near Konamki village on his motor bike, the car bearing No. TN 20F 4444 belonging to the respondents 1 and 2 being driven by its driver in a rash and negligent manner dashed against the motor cycle of the deceased. As a result of which, the motor cycle of the deceased was thrown 30 meters away and the deceased fallen to ground by raising up to 50 feet and received multiple injuries. Immediately he was shifted to Government Hospital, Chilakaluripet and from there to the Guntur Government Hospital, Guntur, where he was succumbed to injuries. The said accident was registered as Crime No.85 of 2006 of Martur P.S under Section 304-A IPC and that the respondents are jointly and severally liable to pay compensation.

3. The 1st and 3rd respondents, who are owner and driver of the lorry respectively, remained *ex parte*. The 2nd respondent financier of the 1st respondent filed written statement denying the averments made in the petition including the manner of accident, involvement of the vehicle and that he took a plea that the 1st respondent purchased

the offending vehicle by availing finance from the 2nd respondent and that the offending vehicle was under seizure which was seized by the Inspector of Police, Meenambakkam Airport Police Station, Chennai in Cr.No.21/2005 in SC No.69 of 2005 before the Chief Judicial Magistrate, Alandur even from December 2005 and that the vehicle was even now in police station. It is stated that R2 is not the registered owner of the offending car bearing No. TN 20 F 4444 as contemplated by Section 2(30) of the Motor Vehicles Act. Therefore, no liability can be fastened against the 2nd respondent and that the 2nd respondent had no possession or control over the vehicle and that the person who drove the vehicle was not employed by the 2nd respondent and that 2nd respondent initiated arbitration proceedings for recovery of the balance amount due under the finance agreement and an Award dated 01.05.2006 was passed by the arbitrator directing 1st respondent to pay a sum of Rs.1,90,594/-. As such, the claim against 2nd respondent is not maintainable and that the claim made by the petitioners is excessive and arbitrary.

4. Basing on the evidence of P.Ws.1 and 2 and Exs.A1 to A8, the Tribunal awarded an amount of Rs.4,00,000/- against the appellant and respondents 5 and 6 herein. Aggrieved by the same, present appeal is filed.

5. Heard Sri Prabhakar Sripada, learned counsel for the appellant and Sri Nimmagadda Satyanarayana, learned counsel for the respondents 1 to 4.

6. Learned counsel for the appellant submits that even according to the respondents 1 to 4, appellant is the financier of the offending car. Learned counsel for the appellant also contended that as per Section 168 of the Motor Vehicles Act, financier cannot be made liable to pay compensation as he is not the owner of the offending vehicle as per Section 2(30) of the Motor Vehicles Act. In support of

his contention, he relied on the decision reported in **Godavari Finance Co. v. Degala Satyanarayanamma and others**^[1], **HDFC Bank Limited v. Reshma and others**^[2] and **Mohammed Ashrar v. State rep. by the Inspector of Police, Meenambakkam Police Station, Chennai**^[3]. He also contends that alleged crime vehicle was in police custody on the alleged date of accident.

7. On the other hand, learned counsel for the respondents/claimants submits that the appellant has not produced any material to show that the offending car bearing No. TN 20F 4444 was not under their control and that they are not owners of the offending vehicle. No documentary evidence is produced by the appellant to show that it is financier of the offending vehicle. In the absence of the same, the tribunal held that the appellant is liable to pay compensation, which cannot be interfered with.

8. The Tribunal dealt with the contention raised by appellant in the Award. The relevant paragraph reads as under:

“It is the core contention of R2 that the vehicle was purchased by R1 under finance and thereby R2 doesn’t come within the meaning of ‘owner’ U/s.2(30) of the MV Act, thereby, R1 alone is liable. R2 raised several contentions that the vehicle has been in the custody and seizure of Meenambakkam Airport Police, Chennai in Cr.No.21/2005 in SC 69/2005 before the CJM, Alandur even from December, 2005, that the vehicle was even now in police station for which there is absolutely nothing on record.”

The Tribunal also found that the appellant has not placed any material evidencing that the alleged crime vehicle was financed by it to the 5th respondent herein and the alleged crime vehicle is still in the name of 5th respondent herein and not seized and operated by the appellant and that the 6th respondent-driver is engaged by the 5th respondent herein and not by the appellant, though appellant has to *prima facie* establish by production of records available with it to avoid its liability along with R5 and R6 herein. The Tribunal, basing on the

evidence of P.W.2, who is an eye witness to the accident, Ex.A1, the First Information Report, Ex.A4 Motor Vehicle Inspector's report, Ex.A5, copy of charge sheet filed against the driver of the offending car held that the accident had occurred due to rash and negligent driving of the 6th respondent-driver herein.

9. Admittedly, even in the appeal, the appellant has not adduced any evidence in support of their contentions by following proper procedure. Since the appellant has not adduced any evidence in support of its contention, the Tribunal cannot be faulted and said finding of the Tribunal cannot be said to be erroneous, as contended by the learned counsel for the appellant.

10. Section 2(30) of the Act of 1988 reads as follows:

2(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 the agreement;

A plain reading of the above said provision makes it clear that a person in whose name a motor vehicle stands registered is the owner of the vehicle and, where motor vehicle is the subject of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under that agreement is the owner.

In **HDFC Bank Ltd., v. Reshma and others (supra)**, the Hon'ble Supreme Court held as follows:

"24. In *Purnya Kala Devi* ^[4] a three-Judge Bench has categorically held that the person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted to the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control. There is reference to Section 146 of the Act that no person shall use or cause or allow any other person to use a motor vehicle in a public place without insurance as that is the mandatory statutory requirement under the 1988 Act. In the instant case, the predecessor-in-interest of the appellant, Centurian Bank, was the registered owner along with Respondent 2. Respondent 2 was in

control and possession of the vehicle. He had taken the vehicle from the dealer without paying the full premium to the insurance company and thereby getting the vehicle insured. The High Court has erroneously opined that the financier had the responsibility to get the vehicle insured, if the borrower failed to insure it. The said term in the hypothecation agreement does not convey that the appellant financier had become the owner and was in control and possession of the vehicle. It was the absolute fault of respondent 2 to take the vehicle from the dealer without full payment of the insurance. Nothing has been brought on record that this fact was known to the appellant financier or it was done in collusion with the financier. When the intention of the legislature is quite clear to the effect, a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there is evidence on record that Respondent 2, without the insurance plied the vehicle in violation of the statutory provision contained in Section 146 of the 1988 Act, the High Court could not have mulcted the liability on the financier. The appreciation by the learned Single Judge in appeal, both in fact and law, is wholly unsustainable.”

In the aforesaid decision, it was a case where the owner of the vehicle was in control and possession of the vehicle, and the owner plied the vehicle without obtaining insurance policy, it was held that the financier is not liable to pay compensation.

In **Godavari Finance Co. v. Degala Satyanarayanamma and others (supra)**, the Hon’ble Supreme Court held that in case of a motor vehicle which is subjected to a hire purchase agreement, the financer cannot ordinarily be treated to be the owner. The person who is in possession of the vehicle, and not the financer being the owner would be liable to pay damages for the motor accident. The said judgment is considered in **HDFC Bank Ltd., v. Reshma and others (supra)**. However, in *Purnya Kala Devi v. State of Assam (supra)* referred to in **HDFC Bank Limited v. Reshma and others (supra)**, it was clearly held that the registered owner should not be held liable if the vehicle is not in his possession and control. The Apex Court in the aforesaid decision also relied on the judgment reported in **Mohan Benefit (P) Ltd., v. Kachraji Raymalji**^[5] wherein it is held as follows:

“9. As we find from the judgment^[6] of the High Court, it has placed reliance on *Mohan Benefit (P) Ltd. v. Kachraji Raymalji*. In the said

case, the second respondent was the registered owner of the truck and the appellant was the “legal owner of the vehicle as per hire-purchase agreement”. The claim petition stated that at the time of the accident, the first respondent was driving the truck owned by the second respondent and the appellant and they had become liable, jointly and severally, to pay the damages claimed. The Tribunal, on the basis of the evidence led before it came to the conclusion that hire-purchase agreement was not the only document executed between the appellant and the second respondent. It had awarded damages against the appellant and the second respondent. The award passed by the Tribunal was affirmed by the High Court holding that the real documents executed between the parties at the time of the alleged loan had been kept back from the Court with ulterior motives and in that situation, all possible adverse inference should be drawn against the appellant therein; and that the hire-purchase agreement that was produced could not be made the basis for deciding the relationship between the parties nor could it be pressed into service for proving that the transaction was only of hypothecation in the garb of hire-purchase agreement.”

The facts in the aforesaid case (***Mohan Benefit (P) Ltd.***) and in the present case are almost similar. In the instant case, no evidence is led in by the appellant before the Tribunal to substantiate its contention that the alleged crime vehicle was financed by it. The Tribunal has rightly drawn adverse inference against the appellant by holding that though plea is taken with regard to loan taken by the owner of the alleged vehicle i.e., 5th respondent herein, no such material is produced either before the Tribunal. The appellant has not filed any loan agreement alleged to have been executed between it and the 5th respondent, owner of the offending vehicle. The definition under Section 2(30) of the Act of 1988 is very clear with regard to the ‘owner’ means, a person in whose name the motor vehicle stands and registered and in respect of hypothecation agreement, lease or hire-purchase agreement, ‘owner’ contextually means the person in possession of the vehicle under that agreement. As such, in the absence of material produced by the appellant, it cannot be said that the appellant is not liable to pay compensation.

In view of the aforesaid premises, I do not find any force in the contentions of the learned counsel for the appellant that the financier is not liable to pay compensation and also I do not find any infirmity in the order passed by the Tribunal.

Accordingly, this MACMA is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

12.04.2016.

Note: LR copy to be marked.
B/o.KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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- [1] 2008 (3) ALD 18 (SC)
- [2] (2015) 3 Supreme Court Cases 679
- [3] Criminal OP No.28807 of 2005
- [4] (2014) 14 SCC 142: (2015) 1 SCC (Cri) 304: (2015) 1 SCC (Civ) 251
- [5] (1997) 9 SCC 103: 1997 SCC (Cri) 610
- [6] Centurian Bank Ltd. v. Reshma 2013 SCC OnLine MP 8349