

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

FAO No.2565 of 2007 (O&M) with
XOBJ No.69-2008
Date of decision:05.07.2016

HARJIT SINGH

... Appellant

Versus

RAMESHWAR DASS AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr. Amandeep Sharma, Advocate,
for Mr. P.S. Khurana, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent No.5.

Mr. Ashok Khubbar, Advocate
for respondent No.1.

AMOL RATTAN SINGH, J.

1. This is an appeal, by the owner of a truck, while traveling in which the claimant (respondent No.1 herein) suffered injuries, including amputation of his leg, for which he was awarded a total compensation of Rs.5,11,600/- along with interest at the rate of 6% per annum, thereupon.
2. Cross-objections have also been filed to the aforesaid appeal, by the claimant/respondent No.1, seeking that he be awarded compensation as prayed for by him in the claim petition, for an amount of Rs.11 lacs.

respondent No.1-claimant (hereinafter referred to as claimant) stated that on 07.03.1992 he was going to Ambala in truck no.HNC 7487, along with one Pardeep Kumar and Harbhajan Singh. The truck, it was stated, was being driven at a high speed in a rash and negligent manner, by respondent No.1, Shamsher Singh (now represented by his LRs). When the truck reached near village Khudda, the driver tried to overtake a tractor trolley, without caring for the fact that another truck was coming from the opposite direction and as such, it was not possible to overtake the tractor trolley. Consequently, in the process of overtaking, the truck is stated to have hit the tractor trolley and overturned, resulting in multiple injuries to the claimant. He was taken to the civil hospital, Ambala, from where he was referred to the PGI, Chandigarh. Despite treatment in hospital, eventually he had to be operated on and his leg amputated below the knee.

Thus, he was disabled for life and, at the time of filing of the claim petition, was stated to be still undergoing treatment.

4. It was further contended that the claimant had been selected to join as an Assistant Sub Inspector in the Haryana Police but after the accident he could not join service and his entire future was marred.

Otherwise, it was stated that he was self-employed and was running an electronic goods shop, with his monthly income being Rs.3,000/- per month.

Consequently, on the above facts, a claim under Section 166 of the Motor Vehicles Act, 1988, was filed.

5. Upon notice issued, respondent No.1 filed his written statement taking preliminary objections of non-joinder of necessary parties, that is the driver, owner and Insurance Company of the tractor trolley. On merits it

was contended that though the accident had taken place, it was not the fault of respondent No.1, as he was driving the vehicle at a controlled speed on the correct side of the road, but had taken place because the tractor trolley suddenly stopped, without any signal.

The factum of the claimant being taken to Ambala and the amount spent on his treatment etc. was denied.

6. The original co-owner of the truck, i.e. the father of the present appellant, who was impleaded as respondent No.2, filed a separate reply, again stating that the accident was not caused because of the rash and negligent driving of respondent No.1. Thereafter, upon the death of respondent No.2, a fresh joint written statement was filed on behalf of his LRs along with respondent No.2-A, Ravinder Singh @ Randev, again taking preliminary objections of non-joinder of necessary parties, as also mis-joinder, in view of the fact that the truck had been sold to one Subhash Chand, on 17.9.1991.

On merits, the accident itself was denied and it was further stated that the accident was actually caused by the driver of another truck, bearing registration No. HNE 1469 and that a criminal case had also wrongly been registered against the truck bearing registration HNC 7487, i.e. against Respondent no.1.

7. Respondent No.3 was the Insurance Company with which truck no.HNC 7487 was insured, which also filed a separate written statement, firstly denying the contents of the claim petition and further pleading that the claimant was traveling in a goods vehicle at his own risk and as such the Insurance Company was not liable to pay any compensation.

8. Upon replications having being filed, the following issues were

framed by the learned Tribunal:-

“i) Whether accident in question was caused due to rash and negligent driving of truck no.HNC-7487 by respondent No.1 causing injuries to the claimant? OPP.

ii) To what amount of compensation the claimant is entitled to, and if so from whom? OPP.

iii) Whether respondent no.3/Insurance company is not liable to pay the amount of compensation as alleged? OPR-3.

iv) Relief.”

9. Thereafter, upon the driver of the vehicle in question also having died, his LR's were brought on record, but since they never appeared before the Tribunal, they were proceeded against ex parte.

10. The claimant examined a Record Keeper of the Civil Hospital, Ambala City, who proved his admission to that hospital and the reference to the PGI, Chandigarh.

He also examined one Constable Baldev Singh who had registered the FIR. Dr. P.K. Nigam proved the disability certificate and Dr. S. Bhowmik, from the Department of Orthopaedics, PGI, Chandigarh, proved the discharge summary of the claimant. Constable Harbhajan Singh, who was an eye witness of the occurrence, also stepped into the witness box. The claimant also examined himself as PW6.

11. Respondents No.2(a) to 2(g) (LR's of Respondent no.2) and Respondent no.2-A examined one Anil Kumar and proved Ex.RW2/A, showing that truck no.HNC 7487 had been sold by the father of respondents no.2(a) to 2(g) to Subhash Chand, on 5.9.1991, about 6

months before the accident.

The co-owner of the truck at the time when proceedings were ongoing before the Tribunal, i.e. respondent No.2-A, Ravinder Singh @ Randev, testified as RW1, in support of the written statement filed by respondents No.2(a) to 2(g) and himself. This respondent also testified to prove an application moved before the Illaqa Magistrate, for release of the truck in question (Ex.RB), a copy of the police report on the said application and a copy of the order releasing the vehicle on 'sapurdari'.

The respondents also tendered into evidence a copy of a recovery memo of tractor No.HRE-3469 and a copy of the statement of RW3 recorded on 21.12.1998, in the earlier proceedings before the Tribunal, leading to the passing of an earlier award, ex parte.

12. It needs to be noticed here that the claim petition was initially decided by the learned Tribunal on 9.3.1999 and an ex parte award was passed in favour of the claimant, only in the presence of respondent No.3 i.e. the United India Assurance Company. Thereafter, respondents No.1, 2 and 2-A moved an application before the Tribunal for setting aside the said ex parte award, which was allowed and consequently the claim petition was re-heard and eventually decided by the Award now impugned, dated 31.3.2005.

13. The Insurance Company not having lead any evidence, the Tribunal, on appraisal of the evidence including the testimony of the claimant, the FIR got lodged by PW5, i.e. Constable Harbhajan Singh, along with the testimony of the said witness, eventually came to the conclusion that the accident had occurred due to the rash and negligent driving of respondent No.1.

14. As regards the issue of compensation, it was found that after being discharged from the PGI, Chandigarh, after one month of his admission there, and the amputation of his leg, he continued his treatment with Dr. C. Lall at Ambala Cantt. for more than two months. He also visited Jaipur for an artificial foot transplant but the same failed to work properly, on account of which he had to purchase a new artificial foot from M/s Jeewan Orthopaedics, Yamunanagar, for Rs.8,000/-. That artificial leg also did not work properly, due to which the claimant had to visit the said M/s Jeewan Orthopaedics for about two years. The contention of the claimant was that the leg was still not working properly and required replacement and that such artificial legs require constant replacement after every one and a half years.

15. As regards the claimants' contention that he had been selected to be appointed as an ASI in the Haryana Police, an order passed by this Court in CWP No.10248 of 1991 and in a connected CWP 12225 of 1990, were also noticed by the Tribunal, along with his call letter for appearing in the physical test for the post of ASI.

16. It was held on the basis of statement of the doctors that the claimant had suffered a permanent orthopaedic disability to the extent of 70% and as regards the amount that he was actually earning, it was assessed to be Rs.3,000/- per month. Accordingly, assessing his loss of future income, considering the 70% disability, it was held to be Rs.2,100/- per month (Rs.25,200/- per annum), to which a multiplier of 18 was applied, as per the 2nd Schedule to the Motor Vehicles Act, 1988, thereby arriving at Rs.4,53,600/-, by way of loss of compensation on account of permanent disability.

Loss of actual income on account of forced rest was assessed at Rs.18,000/- (Rs.3,000/- x 6), for pain and suffering Rs.15,000/-, for reimbursement of medical expenses Rs.10,000/- and for special diet Rs.5,000/-.

Thus, a total of Rs.5,11,600/- was awarded as the total compensation to the claimant, by the learned Tribunal.

17. On the issue of liability to pay the compensation, the learned Tribunal placed reliance upon a judgment of the Supreme Court in **National Insurance Company Limited Vs. V. Chinnamma and others (2005) (15) (1) PLR 98**, to hold that the insurance company would not be liable to make payment of the compensation, the claimant being a gratuitous passenger traveling in a goods vehicle.

As regards the liabilities of respondent No.2 and 2-A, it was found that the said two respondents, i.e. the late Kirpal Singh (father of the present appellant) and Ravinder Singh respectively, had sold the truck in question to Subhash Chand on 17.9.1991, as per an agreement, Ex.RW2/A and had also executed a general power of attorney in favour of the said Subhash Chand, on the same date.

It was also found that, in fact, it was Subhash Chand who had moved an application, Ex.RB, before the Illaqa Magistrate, for getting the vehicle released on 'sapurdari' and the vehicle was actually released to him, vide order Ex.RD.

However, as the release order in favour of Subhash Chand was on the basis of the general power of attorney executed in his favour by the registered owners of the truck, Subhash Chand was held to be not the actual owner of the vehicle but only the GPA holder of the registered

owners and consequently, citing the law from three judgments of the Allahabad, Orrissa and Kerela High Courts, it was held that respondents No.2 and 2-A were liable to pay the compensation.

18. Before this Court, Mr. Amandeep Sharma, learned counsel appearing for the appellant, submitted that admittedly, even as per his own statement, the claimant was traveling in a goods vehicle as a passenger, by his own choice, and therefore, he cannot claim compensation from the owner of the truck, who had no knowledge of his driver having allowed a passenger to travel in the truck. In any case, the claimant being fully aware that he was travelling in a goods vehicle, as a passenger, he himself was negligent in doing so and consequently, no compensation was payable to him.

Learned counsel next submitted that the truck having been admittedly sold to Subhash Chand vide the agreement dated 17.9.1991 (Ex.RW2/A) and Subhash Chand having been proved to have also got the truck released on 'sapurdari', the appellant (as the LR of his father), along with the co owner, i.e. Ravinder Singh, cannot be held liable to pay the compensation.

In this regard, learned counsel relied upon the judgment of this Court in **Labh Singh Vs. Smt. Sunehri Devi (AIR 1988 P & H 149)**, wherein while absolving the insurance company of its liability, upon the vehicle having been transferred to another person, it was held that the liability to pay compensation, other than the driver of the vehicle, would fall upon the real owner of the vehicle, whether or not he was the registered owner thereof.

Learned counsel further cited a judgment of the hon'ble

Supreme Court, in **Panna Lal Vs. Shri Chand Mal (1980 ACJ 233)**, on the same issue.

19. Learned counsel next referred to Section 50 of the Motor Vehicles Act, to submit that the onus to have the registration of the vehicle transferred to his name, is upon the transferee and not the transferor, and as such, with the said Subhash Chand not having got the vehicle transferred to his own name within the 30 days stipulated in Section 50 (1)(b) of the Act of 1988, the appellant and the other co-owner cannot be held liable to pay the compensation.

20. Mr. Sharma next submitted that since, admittedly, the claimant, even as per his own testimony, as duly noticed in para 15 of the impugned Award, was travelling in the truck along with his goods, hence, it being a goods vehicle, the claimant cannot be deemed to be a gratuitous passenger and as such, eventually it is the liability of the insurance company to pay the compensation and not that of either the appellant and other co-owner, nor even of Subhash Chander.

He therefore prayed that the appeal be allowed and whatever compensation has been awarded by the Tribunal, be foisted upon the insurance company or the aforesaid Subhash Chand, with the appellant and the other erstwhile co-owner of the truck absolved of the liability.

21. Mr. Ashok Khubbar, learned counsel appearing for respondent no.1- the cross objector (claimant), on the other hand submitted that as regards the liability, of course the claimant can have no objection if the insurance company is held liable to pay the compensation.

However, he submitted that as regards the liability between the appellant and the aforesaid Subhash Chand, the Tribunal had correctly

held that it was the registered owners and not a perspective transferee of the vehicle, who would be liable to pay the compensation.

22. As regards the quantum of compensation, Mr. Khubbar contended that the Tribunal has wholly erred in firstly not taking into account the fact that the claimant had been selected to be appointed as an ASI in the Haryana Police, and on account of the accident his entire career and in fact, his life itself, as regards status, further chances of promotion, higher income as a police official/officer etc., had all been ruined.

Even on the merits of what has been awarded, de hors the aforesaid selection, as per learned counsel it is wholly inadequate, in view of the fact that it is not believable that the claimant would have spent only Rs.10,000/- on the long drawn treatment from various hospitals, including money spent on artificial limbs time and again and the requirement of expenditure for such a limb in the future too.

Learned counsel still further submitted, that even under the other heads of compensation, i.e. transportation, special diet, pain and suffering etc., the compensation awarded is wholly inadequate.

Thus, he submitted that compensation to the tune of 11 lacs, as claimed in the claim petition, deserves to be awarded to the claimant-cross objector.

23. Mr. Neeraj Khanna, learned counsel for the insurance company (respondent No.5 herein), submitted that as regards the company, the Tribunal correctly held, as per law settled, that the insurer cannot be held liable to pay compensation in respect of the death or injury to a gratuitous passenger, unless additional premium, to cover such like passengers, has

been paid by the insured, at the time of purchasing the insurance policy.

That not having been done in the present case, learned counsel submitted that the insurance company cannot be held liable to pay the compensation, and as such, the impugned award does not require to be interfered with on that aspect. He cited the judgment of the Supreme Court in Chinnamma's case (supra), to the above effect.

24. Having considered the arguments of learned counsel, as also the award of the learned Tribunal, the first thing that needs to be settled is the issue of liability to pay the compensation already awarded by the Tribunal, and as to whether on the issue of negligence, the Tribunal made any error in its Award.

Though learned counsel for the appellant has submitted that the criminal case was also registered falsely against the driver of the truck in which the claimant was traveling, I find no merit in that argument, inasmuch as, the Tribunal has duly considered the testimonies of the claimant, as also a Constable traveling as a gratuitous passenger in the said vehicle, i.e. one Harbhajan Singh (PW5), at whose instance the FIR was registered and who testified as an eyewitness and further, also examined the contents of the FIR (Ex.P2 before the Tribunal), and eventually concluded that the accident was indeed caused by the negligence of respondent No.1. Nothing has been pointed out by learned counsel for the appellant to show that such finding was perverse in any manner, either from the testimonies of the witnesses, or from any other mis-interpretation of such testimonies, in the Award.

Of course, the fact that the testimonies are not on record, the records of this case having been burnt in the fire incident of January

2011, that took place in the record room of this Court, may have hampered learned counsel in his arguments, but even so, I see no perversity in the conclusion arrived at by the learned Tribunal, from a perusal of the Award. Hence that finding is not interfered with.

25. As regards assessment of compensation, the Tribunal has noticed that, as a matter of fact, a direction had been issued by this Court in CWPs 10248 of 1991 and 12225 of 1990, directing the State of Haryana to take the petitioner in service, forthwith, on the post of an ASI, subject to the final decision of the petition. However, thereafter the Tribunal simply concluded that it was obvious therefrom that the claimant was of good physical health and as such must have been earning an income of Rs.3,000/- from the electronics goods shop that he was shown to have been running. Accordingly, the loss of income, on account of the permanent disability, was calculated accordingly, awarding a compensation of Rs.4,53,600/- under that head.

The issue of the claimants' selection as an ASI, as claimed by him, shall be taken up further ahead.

26. Having considered the aforesaid reasoning of the Tribunal, this Court is of the opinion that as regards loss of income from the electronics goods shop that the claimant was shown to be running, possibly, in fact, such compensation was excessive, in view of the fact that the loss of a leg would not amount to 70% loss of income from running a electronics goods shop. Such loss may amount to 20% of income or so, on account of restricted mobility, but with the mind and every other limb luckily intact, it is not possible to accept that there would be loss of 70% income from running such a shop.

However, it is seen that other than the loss of income caused by the permanent disability, no compensation has been awarded on account of the loss of amenities of life resulting from the disability. In **Raj Kumar vs. Ajay Kumar (2011) 1 SCC 343**, the hon'ble Supreme Court had laid down the criteria for grant of compensation in cases of permanent disability arising from a motor accident.

Keeping in view the parameters laid down in that judgment, as regards the loss of earning to the claimant, I see no reason firstly to hold that he was earning more than Rs.3,000/- per month, (though argued otherwise by his learned counsel), in view of the fact that his admitted earnings, even as per the claim petition, were only Rs.3,000/- per month. Consequently, the annual income being Rs.36,000/-, loss of future earnings would be 20% of that amount thereby coming to a loss of Rs.7200/- per annum, to which a multiplier of 17 would be applicable in terms of the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another (2009) 6 SCC 121**, the claimant being 28 years of age (and not 18 as applied by the Tribunal). Thus, the total loss of income that the appellant was actually earning, would amount to Rs.1,22,400/- and not Rs.4,53,600/- as awarded by the Tribunal.

No doubt in Schedule I of the Employees Compensation Act, 1923, amputation of a limb below the knee is shown to result in a loss of earning capacity to the extent of 50% for a workman. The claimant, however, not being a workman in a factory etc., but being a person running his own small business, the aforesaid loss of earning capacity of 20% is considered appropriate, by this Court.

However, the above amount being only assessed as per the loss of future income on account of his disability, it is to be seen as to what would be the compensation to be awarded to the claimant on account of the loss of amenities of life, resulting from his disability.

27. Needless to say, the loss of leg cannot fully be quantified in terms of money and it is only an attempt to compensate for such loss that a lump-sum amount is awarded to any person unfortunate enough to have lost a limb. Accordingly, a sum of Rs.2.5 lacs is awarded to the claimant, for the permanent loss of his leg.

As regards reimbursement of medical expenses, no doubt the claimant must have incurred expenses on his treatment, but up to the stage of the amputation, he having been treated in a government hospital, and furthermore bills of only Rs.3,000/- having been proved before the learned Tribunal, I find no ground to increase the compensation of Rs.10,000/- awarded by the Tribunal under that head.

That having been said, it is also seen that no amount whatsoever was awarded by the Tribunal for the purchase of a good prosthetic limb, to the claimant. The price of a good prosthetic limb would not be less than Rs.1 lac, even going up to Rs.3 lacs and more, but the accident having taken place in the year 1992, a compensation of Rs.1 lac is awarded for the purchase of such prosthetic limb, to the claimant.

28. As regards pain and suffering, the amount of Rs.15,000/- awarded by the Tribunal is obviously wholly insufficient. For the kind of pain and suffering the claimant went through, starting from the trauma of the accident, hospitalisation, operation undergone, amputation, running around to different cities for a prosthetic limb etc. and for the sheer agony

and actual pain of the accident and the amputation. Thus the amount for pain and suffering is enhanced to Rs.1 lac from the Rs.15,000/- awarded by the Tribunal.

Transportation expenses of Rs.10,000/- are kept intact, as awarded by the Tribunal, but the compensation for special diet, is increased from Rs.5,000/- to Rs.10,000/- in the circumstances, keeping in view the fact that obviously a large amount must have been spent by him to keep himself healthy on account of the accident and the amputation etc.

Consequently, the compensation now awarded by this Court is as follows:-

Sr. No.	Heads	Compensation
1	For loss of future income	Rs.1,22,400/-
2	For loss of amenities of life as a result of handicap	Rs.2,50,000/-
3	Pain and suffering	Rs.1,00,000/-
4	Medical expenses	Rs.10,000/-
5	Transportation expenses	Rs.10,000/-
6	Special diet	Rs.10,000/-
7	Loss of income for hospitalisation and compulsory bed rest	Rs.18,000/-
	Total	Rs.5,20,400/-

Thus, the aforesaid compensation is Rs.8,800/- more than what was awarded by the Tribunal, to the claimant (present Cross-Objector).

29. As regards the issue of paying compensation to the claimant, on the ground that he could not be appointed as an ASI in the Haryana Police, on account of the accident, it is seen that the learned Tribunal noticed that an interim order had been passed in favour of the claimant in the writ petition filed by him before this Court, directing that he be appointed as an ASI forthwith, such appointment being eventually dependent upon the

outcome of the writ petition.

Firstly, the final order in the writ petition was never brought on record by way of evidence, by the appellant before the Tribunal. Secondly, this Court, considering the fact that the claimant has lost a leg and consequently this plea taken by him may have some merit, has called for the file of CWP No.10248 of 1991 (filed by the claimant before this Court) and has seen that the writ petition was actually dismissed on 10.1.1992, i.e. before the accident took place, along with other writ petitions filed by different persons, with the judgment recorded in CWP 5093 of 1991.

Hence, as a matter of fact, the appellant not bringing to the notice of the Tribunal the factum that his writ petition had actually been dismissed before the accident took place, is obviously an adverse inference to be taken against him, even to the extent that he misled the Tribunal. Yet, for the reason that he has lost a leg, he is not being penalised by this Court, because other than the fact that the said ground has not been taken by the appellant (in the main appeal presently), he obviously not being in knowledge of it, but because the fact that a person has lost his leg, he needs to be treated with sympathy.

Though, in civil appellate jurisdiction, this Court would not call for any other evidence, even in the form of Court records, without any application in that regard having been made by either party, yet in view of the circumstances, it was necessary to even call for such record by reference to order 41 Rule 27 (b) CPC, even at the time of deciding the appeal, after judgment had been reserved.

Thus, this Court having seen that, in fact, the interim order for appointment as an ASI was also not in the claimants' writ petition but in a

connected writ petition of another petitioner, no benefit, whatsoever, is due to the petitioner for only non-selection as an ASI, that not having been on account of the accident.

30. Lastly, the question of liability to pay the compensation has to be obviously determined.

In Chinnamma's case (supra), while citing from the judgment in **New India Assurance Ltd. Vs. Asha Rani (2003) 2 SCC 223**, it was held that even the owner of goods, while traveling in a goods carriage vehicle, would not be covered under Section 147 of the Act of 1988, as regards the liability of the insurer to indemnify the insured. In the present case, no doubt the claimant was stated to have been carrying his luggage with him. However, the Tribunal found that to be an afterthought with no corroboration thereto. Otherwise also, even if such luggage was with the claimant, it would not amount to goods carried in a transport vehicle, as held by the Tribunal also. In any case, even if it were goods, the insurance company cannot be held to be liable, in view of the fact that no additional premium is shown to have been paid to cover passengers traveling in the truck insured.

In **Sanjeev Kumar Samrat Vs. National Insurance Company Limited (2014) 14 SCC 243**, the Supreme Court, while referring to an earlier judgment in **National Insurance Company Limited Vs. Cholleti Bharatamma (2008) 1 SCC 423**, observed that the reference to any injury to “any person” in Section 147 (1)(b), would only mean a third party and “not a passenger traveling in a goods carriage, whether gratuitous or otherwise”. (Reference paragraph 16 in Samrats' case).

31. Consequently, the accident having taken place before

14.11.1994, i.e. before the amendment in the Section 147 of Act of 1988, the insurance company, i.e. respondent No.5 herein, cannot be held liable to compensate the claimant. (Any such liability after 14.11.1994 is not being commented upon, that issue not arising in this case).

32. The question then is, as to whether the present appellant, i.e. the son of the original co-owner of the vehicle, or in other words, the person impleaded as a co-owner before the learned Tribunal, i.e. respondent No.2 and his other co-owner, respondent No.2-A, (before the Tribunal), are liable to pay the compensation, or whether it is Subhash Chand, to whom it was claimed that the vehicle was actually sold, vide an agreement dated 17.9.1991, and in whose favour a general power of attorney is also stated to have been executed by the aforesaid two respondents.

As already noticed, the Tribunal eventually held that since Kirpal Singh and Ravinder Singh were the registered owners of the vehicle, the liability to pay the compensation would fall upon them. However, learned counsel for the appellant, other than referring to Section 50 of the Act of 1988, to show that the onus to actually get the registration transferred to his name is that of the transferee (after the original owner has informed the competent authority of such transfer), has also relied upon a judgment of hon'ble Supreme Court in Panna Lal's case (supra) AIR 1980 SC 871, wherein it was held that it is the duty of the transferee to apply to the registering authority for getting the transfer effected in his name, (in terms of Section 31 of the Motor Vehicles Act, 1939). Learned counsel, therefore, submitted that the same provision being reflected as Section 50, in the Act of 1988, the ratio of the judgment would still hold.

It is seen that though the said judgment was in the context of

the issue of a refund of sale price and not in the context of a motor vehicle accident claim, however, reference can also be made to the judgment of the Supreme Court in Pushpa Vs. Shakuntla (2011) 2 SCC 240, wherein a similar issue had come up before the Apex Court. However, in that case, the essential difference was that the insurance company that had insured the original owner, had not been absolved of its liability, (as has been held by this Court), and secondly, the transferee of the vehicle in question, had been duly impleaded as a respondent before the Tribunal. Thus, after noticing the provisions of Section 50 of the Act of 1988, that neither the transferor nor the transferee had taken any steps to transfer the registration of the vehicle, and hence, the registered owner would be deemed to continue as such owner, but with the control of the vehicle having shifted to the “prospective transferee”, it was held by their Lordships that the transferor could not be held liable to pay the compensation. However, since he continued to be the owner of the vehicle and the insurance policy was issued in his name, eventually the insurance company was directed to pay the compensation, in that case.

33. In the present case, though, from the circumstances, as also noticed by the Tribunal, the control of the vehicle seems to have shifted to the transferee, i.e. Subhash Chand, with him having also sought the release of the vehicle on sapurdari, from the Court, yet he was never even sought to be impleaded at any stage, either by the claimant or by the registered owners who were impleaded as respondents, before the Tribunal.

Very surprisingly, even in this appeal, though the main plank of the arguments of learned counsel, is to the effect that the liability to pay compensation must shift on to the aforesaid Subhash Chand, i.e. the

transferee, despite the registration certificate not having been transferred to his name, the said Subhash Chand has not even been sought to be impleaded as a respondent in this appeal, by the legal representative of the registered owner, i.e. by the appellant.

Thus, with Subhash Chand never having been heard at any stage, (not having been impleaded as a party), in such circumstances, this Court has no option but to hold that there is a non-joinder of a necessary party, in this appeal filed by the LR of the registered owner of the vehicle qua the issue of liability to pay compensation, and as such, the appeal of the appellant to that extent has to be dismissed, he being the LR of the registered co-owner. Thus, the registered owners of the 'offending vehicle' would have to be the persons upon whom the liability to pay compensation would have to be foisted, as was done by the learned Tribunal.

As regards the total compensation, it also having been enhanced by this Court to the small extent of Rs.8800/-, the appeal has to be dismissed on the issue of quantum of compensation also.

34. Consequently FAO No.2565 of 2007 is dismissed. Cross Objection No.69 of 2008 is partly allowed to the above extent.

Both the parties are left to bear their own costs.

05.07.2016
SwarnjitS

(AMOL RATTAN SINGH)
JUDGE