

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Decided on: 14.12.2016

1. FAO No.3839 of 2011 (O&M)

Aalianz Automobiles	Appellant
Versus	
Annu and others	Respondents

2. FAO No.3840 of 2011 (O&M)

Aalianz Automobiles	Appellant
Versus	
Parveen Kumar and others	Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Inderjit Sharma, Advocate
for the appellant (in FAO Nos.3839 and 3840 of 2011)

Mr. Arun Sharma, Advocate
for respondent No.2 (in FAO Nos.3839 and 3840 of 2011)

Mr. S.S. Kharb, Advocate
for respondent No.4 (in FAO No.3839 of 2011)

Mr. Tribhuwan Dahiya, Advocate
for respondent No.5 (in FAO No.3839 of 2015)
and for respondent No.3 (in FAO No.3840 of 2015)

REKHA MITTAL, J.

This order will dispose of FAO Nos.3839 of 2011 “*Aalianz Automobiles vs Annu and others*” and No.3840 of 2011 “*Aalianz Automobiles vs Parveen Kumar and others*”, as identical questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from FAO No.3839 of 2011.

Smt. Annu and others filed an application under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act') claiming

compensation in regard to death of Rajesh Kumar in a motor vehicular accident that took place on 08.10.2007. Randhir Singh @ Bablu – driver of the offending vehicle bearing No.DL4C-E-7053, Ashutosh Batra – owner of the said vehicle, M/s. Aalianz Automobiles (appellant herein) purchaser of the offending vehicle from Ashutosh Batra, Vikram and Ram Niwas alleged subsequent purchasers of the vehicle in question were arrayed as respondents.

The learned Tribunal in view of its findings *qua* liability recorded its conclusion in para 44 of the award that respondent No.2 was registered owner of Maruti van bearing No.DL-4CE-7053 involved in the accident. Respondent No.2 had sold the vehicle to respondent No.4 on 01.06.2007 prior to the accident which took place on 08.10.2007. In view of these findings and by relying upon the judgments referred to in various paras from 37 onwards, it was held that respondent No.2 cannot escape his liability to pay compensation but he is entitled to recover the same from the purchaser i.e. respondent No.4 (Aalianz Automobiles) to whom he had sold the vehicle, by resorting to appropriate proceedings in accordance with law.

Counsel for the appellant has not assailed findings of the Tribunal with regard to right of recovery given to the registered owner against the appellant in view of findings that the vehicle in question was sold by the registered owner to M/s. Aalianz Automobiles prior to the occurrence in question.

The sole submission made by counsel for the appellant is that as M/s. Aalianz Automobiles had sold the vehicle to Vikram – respondent No.6 on 02.06.2007 who further sold the same to Ram

Niwas – respondent No.7, the appellant should be given recovery rights against Vikram – respondent No.6 and Vikram may be entitled to recover the amount from Ram Niwas. It is further argued that once the Tribunal has decided *inter se* rights of the registered owner and the appellant, there was no reason for the Tribunal to shirk from its responsibility to decide *inter se* rights and obligations of the appellant and subsequent purchasers.

To substantiate his contention that the appellant is entitled to have recovery rights against respondent No.6, Vikram, counsel has invited attention of the Court towards evidence/materials discussed in paras 13 and 14 of the award.

Counsel representing the registered owner (Ashutosh Batra) has submitted that Ashutosh Batra filed FAO No.1974 and 1975 of 2011 that were decided by this Court whereby right of recovery of the registered owner against the appellant has been affirmed with the observations that he will not be driven to a separate suit for securing a right of recovery of the amount from the subsequent purchaser and recovery rights shall be enforced in execution after satisfying the claim of the third party. It is further argued that the appellant has failed to adduced any tangible evidence that the vehicle in question had been sold by him to Vikram or the same was sold by Vikram to Ram Niwas. In addition, it is argued that as the appellant never became a registered owner of the vehicle, it otherwise could not pass a valid title in favour of the alleged subsequent purchaser.

I have heard counsel for the parties and perused the paperbook particularly the award passed by the Tribunal.

The appellant produced on record affidavits purported to be executed by Vikram and one Randhir who allegedly acted as a mediator for sale of the vehicle by Vikram to Ram Niwas Mark RC and RD respectively, cash receipt Mark A, Delivery receipt Mark RB and Form 29 and 30 Ex.R7 and R8. Ram Niwas denied his signatures on Mark RB, Ex.R7 and R8. As the appellant failed to prove the documents in accordance with law particularly the alleged affidavit of Vikram, it is difficult to accept contention of the appellant that the vehicle in question stood sold by the appellant to Vikram on 02.06.2007, one day after it was purchased by the appellant from the registered owner – Ashutosh Batra. In this view of the matter, I do not find any error much less illegality in the findings of the Tribunal negating plea of the appellant to seek recovery rights against Vikram after discharging liability towards registered owner.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed. However, the appellant may take recourse to appropriate proceedings under law to assert his right of recovery against Vikram.

14.12.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No