

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

247

FAO No.4977 of 2015 (O&M)

Decided on : 18.02.2016

Raj

... Appellant

Versus

Rajbala and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr.S.S.Shekhawat, Advocate
for the petitioner.

Mr.Amit Kumar Goyal, Advocate
for the respondent No.2.

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

Ajay Tewari, J. (Oral)

This appeal has been filed against the award dated 15.12.2014 passed by the Motor Accident Claims Tribunal, Bhiwani.

The brief facts are that the deceased was sitting on the mud guard of the tractor of the appellant when he died as a result of accident. Since the vehicle was not insured, the appellants were held jointly and severely responsible to pay the compensation. These are two appeals, one by the owner and second by the driver.

Learned counsel for the appellant has argued that

once the vehicle was hypothecated, it was the duty of the

respondent No.2-Insurance company to ensure that vehicle was insured and the finding of the tribunal that the appellant would be at liberty to recover damages in appropriate proceedings was wrong and liability should have been foisted on the bank.

Learned counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court in case ***HDFC Bank Ltd. Vs. Kumari Reshma and others***, wherein it has been held as under:-

25. In ***Purnya Kala Devi*** (supra), 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, Centurion Bank, was the registered owner along with respondent no.2. The respondent no. 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 the respondent no.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 the respondent no.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.

Learned counsel for the appellant is not in a position to controvert the aforesaid judgment cited by the learned counsel for the respondent. Consequently, the appeal is dismissed.

[Ajay Tewari]
Judge

18.02.2016
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