

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1147 OF 2017

1. Smt. Somna Goswami, aged about 26 years, Wd/o. Late Pranay Kumar, Goswami, Occupation, House Wife.
2. Kumari Shreejoni, aged about 11 month, D/o Late Pranay Kumar Goswami, Minor through her nature guardian Mother Appellant No.1 Smt. Somna Goswami.
3. Smt. Kalpana Goswami, aged about 56 years, W/o Pranav Kumar Goswami.
4. Pranav Kumar Goswami, aged about 61 years, S/o Phanipushan Goswami.

Appellant No.1 to 4 are R/o 714, Pocket-5, Phase-1, Mayur Vihar, New Delhi-91.

... Appellants

versus

1. Shubhashish Pal, S/o Nupurchand Pal, Occupation- Engineer & Driver of Vehicle, R/o M.L. Soni, Santi Vihar Colony, Daganiya, Raipur (C.G.)
2. Vaibhav Jain, S/o Vimal Jain, aged about 30 years, Proprietor, M/s Vaibhav Jain Motor, Near Hotel Piccadely, G.E. Road, Raipur.
3. Hindustan Motor Private Limited, through the Managing Director Hindustan Motor Private Limited, R/o Rajendra Nath Mukharjee Road, Kolkata- 700001 (W. Bengal)

... Respondents

MISC. APPEAL (C) NO. 1306 OF 2007

Vaibhav Jain, S/o Shri Vimal Jain, aged about 30 years, Proprietor M/s Vaibhav Motors, Near Hotel Piccadely, G.E. Road, Raipur.

... Appellant

versus

1. Smt. Somna Goswami, aged about 26 years, Wd/o. Late Pranay Kumar, Goswami, Occupation House Wife.
2. Kumari Shreejoni, aged about 11 months, D/o Late Pranay Kumar Goswami, Minor through her natural guardian Mother Respondent No.1 Smt. Somna Goswami.
3. Smt. Kalpana Goswami, aged about 56 years, W/o Pranav Kumar Goswami.
4. Pranav Kumar Goswami, aged about 61 years, S/o Phanibhusan Goswami.

No.1 to 4 are R/o 714, Pocket-5, Phase-1, Mayur Vihar, New Delhi-91.

5. Shubhashish Pal, S/o Nupurchand Pal, Occupation- Engineer & Driver of Vehicle, R/o House No. 504/1216 of M.L. Soni, Shanti Vihar Colony, Daganiya, Raipur (C.G.)
6. Hindustan Motors Private Limited, through the Managing Director Hindustan Motors Private Limited, R/o Rajendra Nath Mukherjee Road, Kolkata- 700001 (W. Bengal)

... Respondents

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- Mr. A.L. Singroul, Advocate, for Appellant-Claimants in M.A.(C) No. 1147/2017.
 - Mr. Kishore Bhaduri and Mr. Rakesh Dubey, Advocates, for Appellant-Vaibhav Motors in M.A.(C) No. 1306/2007.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/11/2017

1. These two appeals arise out of the same award passed on 10.8.2007 in Claim Case No. 26/2007 by the Eight Additional Motor Accident Claims Tribunal (F.T.C.), Raipur, which shall henceforth be referred to as 'the Tribunal'.
2. Brief facts of the case are that the deceased in the instant case is Pranay Kumar, aged around 32 years, who shall henceforth be referred to as 'the deceased'. He was working as a Territory Manager for Hindustan Motors Private Limited (which is one of the Respondents in both the present appeals) which shall henceforth be referred to as 'the Manufacturer'. The Appellant-M/s Vaibhav Motors in M.A.(C) 1306/2007 is the Dealer, Vaibhav Jain being its Proprietor, and they shall henceforth be referred to as 'the Dealer'. They were dealing with the sales and promotion of the cars manufactured by the Manufacturer, one such car being sold by the Dealer was Mitsubishi Lancer car. The Manufacturer had sent a consignment of cars to Raipur to the Dealer for its sale and the deceased being the Territory Manager and one Shubhashish Pal (who is one of the Respondents in both the present appeals), being the Service Engineer attached to the Dealer and Manufacturer, had taken a new Mitsubishi Lancer car, with a temporary registration no. CG04-RPRTC-0478, for a test drive on 22.4.2004 and met with an accident and in the process the deceased succumbed to the injuries caused to him in the accident.

3. The Appellants in M.A.(C) No.1147/2017 are the Claimants, who shall henceforth be referred to as 'the Claimants'. The Claimants being the legal representatives of the deceased had filed a claim application under Section 166 of the Motor Vehicles Act, 1988, before the Tribunal claiming compensation against the Dealer and the Manufacturer.

4. Vide the impugned award dated 10.8.2007, the Tribunal has awarded a total compensation of Rs.18,48,000/- to the Claimants with interest thereon at the rate of 7.5% per annum with effect from 1.6.2006 and has fastened the liability for payment of compensation jointly and severally upon the Dealer and the Manufacturer. Hence, these appeals.

5. M.A.(C) No.1306/2007 is an appeal preferred by the Dealer and M.A.(C) No.1147/2017 is an appeal preferred by the Claimants seeking for enhancement of the compensation awarded.

6. It is pertinent to mention at this juncture that the Manufacturer had also assailed the impugned award by a separate appeal i.e. M.A.(C) No. 23/2008 and the said appeal stood dismissed vide order dated 18.6.2014. Since the appeal of the Manufacturer had already been dismissed on 18.6.2014, the liability of the Manufacturer being held jointly and severally liable for the payment of compensation to be paid stands affirmed.

7. So far as the appeal of the Dealer is concerned, i.e., M.A.(C) No.1306/2007, contention of the learned Counsel appearing for the Dealer is that the liability has been erroneously fastened jointly upon the Dealer and Manufacturer. According to the learned Counsel for the Dealer, it is a case where the vehicle was owned by the Manufacturer and the dealership of the Dealer was being used by the Manufacturer for the sale of their product i.e. Mitsubishi Lancer car. That until the sale is complete with a customer, the vehicle, for all practical purposes, remains owned by the Manufacturer and, therefore, for the accident, till the sale is complete, the

liability of payment of compensation shall remain upon the Manufacturer alone and not on the Dealer. To further buttress his argument, learned Counsel for the Dealer submits that the deceased and the Service Engineer, Shubhashish Pal, who was driving the vehicle at the time of accident, were both employees of the Manufacturer, which all the more establishes the fact that the vehicle was under the control and possession of the representatives of the Manufacturer and which also establishes the contention of the Dealer that the person responsible for the payment of compensation would be the Manufacturer.

8. Learned Counsel for the Dealer further to substantiate his contentions, refers to Section 2(30) of the Motor Vehicles Act, i.e., the definition of 'owner', which for ready reference is reproduced herein under:

"2. Definitions. -- xxx xxx xxx
(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 that agreement."

9. Learned Counsel for the Dealer thus submits that the plain perusal of the aforesaid definition of 'owner' would also not bring within its ambit the Dealer. According to him, there has been no transaction which could be brought within the purview of sale between the Manufacturer and Dealer and till the sale is complete with a customer, the exclusive owner of the vehicle would be the Manufacturer and not the Dealer. In support of his contentions, learned Counsel for the Dealer relies upon the two judgments of the Guwahati High Court reported in **AIR 2007 Guwahati 65 (Smt. Leela Bora v. Nishirani Hajarika)** and **AIR 2007 (N.O.C.) 1152 Guwahati (Smt. Purnaya Kala Devi v. State of Assam and Others)**.

10. Thus, for all these contentions, the learned Counsel for the Dealer submits that the impugned award fastening the liability upon the Dealer holding them to be jointly and severally liable for the payment of compensation, is erroneous and thus prays for the setting aside or the modification of the award to the extent of the liability being shifted exclusively upon the Manufacturer.

11. Per contra, learned Counsel for the Claimants opposing the appeal of the Dealer submits that the liability has rightly been fastened jointly upon the Dealer and the Manufacturer, as there was an agreement between the Manufacturer and the Dealer and that as per the agreement, the entire responsibility of the vehicle falls upon the dealer the moment the vehicle stands delivered at the premises of the dealer and after delivery of the vehicle at the dealer's point, the dealer becomes the possessive owner of the vehicle though it may not be the registered owner.

12. Learned Counsel for the Claimants submits that they have also filed an appeal i.e. M.A.(C) No. 1147/2017 for enhancement of the compensation awarded, as the income towards future prospects has not been taken into consideration and the deduction made also should have been $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ as made by the Tribunal so also the compensation under the conventional heads deserves suitable enhancement considering the total number of Claimants. Learned Counsel for the Claimants thus prayed for the rejection of the appeal of the Dealer and for allowing the appeal of the Claimants by enhancing the compensation suitably.

13. Having considered the rival contentions put forth on either side and on perusal of record, some of the facts which are undisputed are:

- (i) the accident which occurred on 22.4.2004;
- (ii) the resultant death of the deceased on account of the said accident;
- (iii) the deceased being the employee of the Manufacturer;
- (iv) the vehicle involved in the accident being driven by Shubhashish Pal, a Service Engineer, who again was an employee of the Manufacturer;
- (v) the Appellant in M.A.(C) 1306/2007 being the Dealer of the Manufacturer;
- (vi) the vehicle involved in the accident being Mitsubishi Lancer car with a temporary registration no. CG04-RPRTC-0478;

Undisputedly, the vehicle stood delivered by the Manufacturer to the Dealer and the accident occurred during the test drive.

14. When we look into the liability aspect it is necessary first to refer to the agreement entered into between the Manufacturer and the Dealer. The dealership agreement is marked as Exhibit D-2 and Exhibit D-7. Clause 3(b) of Exhibit D-2 and Clause 4 of Exhibit D-7 refers to the liability of the Manufacturer and the Dealer pursuant to the delivery being made at the dealer's point by the Manufacturer. For ready reference, the said clauses are reproduced herein under:-

“3(b). After the motor vehicles are despatched/ delivered the Company's liability in respect of any defect in the motor vehicle will be limited to the Company's obligations under the warranty clause and the Company will have no other liability and all liabilities other than the one under warranty as aforesaid shall be to the account of the Dealer.”

“4. After the motor vehicles are delivered, the Company's liability in respect of any defect in the motor vehicle will be limited to the Company's obligation under the warranty clause and the Company will have no other liability. All liabilities other than the one under warranty as aforesaid shall be to the account of the Dealer.”

15. In view of the afore given factual matrix of the case, this Court has no hesitation in reaching to the conclusion that the moment the vehicle is delivered to the Dealer by the Manufacturer, the Dealer becomes the possessive owner of the vehicle.

16. It is trite at this juncture to refer to a judgment of the Hon'ble Supreme Court in the case of **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari and Others, 1997 (7) SCC 481**, wherein the Hon'ble Supreme Court in paragraph 17 has held as under:-

“17. ...If the *original employer* is able to establish that when the servant was lent, the *effective control* over him was also transferred to the hirer, the original owner can avoid his liability and the *temporary employer or the hirer*, as the same may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner. The proposition based on the general principle as noticed above is adequately rebutted in this case not only on the basis of the evidence led by the parties but also on the basis of Conditions 6 and 7 (*supra*), which go to show that the *owner* had not merely transferred the services of the driver to the RSRTC but actual control and the driver was to act under the *instructions, control and command* of the conductor and other officers of the RSRTC.”

In the light of the aforesaid judgment, when we refer to the definition of the 'owner' under Section 2(30) of the Motor Vehicles Act it would reveal that the person who is in possession of the vehicle would also fall within the ambit of the owner.

17. In the given facts of the case, this Court has no hesitation in reaching to the conclusion that the finding of the Tribunal in making the Dealer and the Manufacturer jointly and severally responsible for the payment of compensation is proper, legal and justified and the same does not warrant any interference. The appeal of the Dealer, i.e., M.A.(C) No.1306/2007, thus deserves to be and is accordingly rejected.

18. So far the appeal of the Claimants seeking enhancement of the compensation is concerned, i.e. M.A.(C) No.1147/2017, the monthly income of the deceased which has been assessed by the Tribunal is Rs.14,086/- and which is on the basis of the salary certificate, Exhibit D-8. Taking into account a recent Larger Bench's decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited v.**

Pranay Sethi & Others¹, the Claimants shall also be entitled for 40% of the monthly income towards the future prospects while computing the compensation. Thus, adding 40% to the monthly salary the amount would come to Rs.19,720/- (Rs.14,086 + Rs.5634) and yearly income would be Rs.2,36,640/- (Rs.19,720 x 12) which if multiplied applying the multiplier of 16 the amount would come to Rs.37,86,240/- (Rs.2,36,640 x 16) of which if 1/4th is deducted towards personal expenses, the amount would come to Rs.28,39,680/- (Rs.37,86,240-Rs.9,46,560). Thus, the loss of dependency which the Claimants have suffered would be Rs.28,39,680/-, instead of Rs.18,03,000/- as assessed by the Tribunal. As far as the compensation under the conventional heads is concerned, taking into consideration the entire facts and circumstances of the case, this Court is of the opinion that the amount of compensation awarded by the Tribunal that of Rs.45,000/- seems to be justified and does not warrant interference and the same is affirmed. Thus, making the total compensation payable to the Claimants at Rs.28,84,680/- (Rs.28,39,680 + Rs.45,000).

19. Further, considering the entire facts and circumstances of the case, particularly the fact that the appeal of the Claimants being an old matter, this Court quantifies the interest on the amount of compensation at 6% per annum, instead of 7.5% as was fixed by the Tribunal, which shall be payable with effect from 1.6.2016 for the same reason as is envisaged in paragraph 18(2) of the impugned award.

20. It is accordingly ordered that the Claimants shall be entitled for a total compensation of **Rs.28,84,680/-** with interest thereon at the rate of 6% per annum with effect from 1.6.2016 and the liability for payment of compensation shall remain jointly and severally upon the Dealer and the Manufacturer.

1 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017

21. As a consequence, the appeal of the Dealer i.e. M.A.(C) No.1306/2007 stands dismissed and the appeal of Claimants i.e. M.A.(C) No.1147/2017 stands allowed. The impugned award stands modified accordingly.

/Sharad/

Sd/-
(P. Sam Koshy)
Judge