

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 1309 of 2005

Mahesh Ram Patel, aged about 38 years, S/o. Shri Vasudeo Patel,
R/o. Sarangarh, Tahsil Sarangarh, District Raigarh (CG)

---- Appellant

Versus

1. Hemlal Sahu, aged about 55 years, S/o. Shri Chintamani Sahu, R/o. Village Lailunga, Tahsil Gharghoda, District Raigarh (C.G.)
2. Padamandas, aged about 23 years, S/o. Shri Kundandas, R/o. Village Bakaruma, Thana and Tahsil Patthalgaon, District Raigarh (CG)
3. Minor Raghvendra Sahu, aged about 13 years, S/o. Shri R. Sahu, Through: His father Shri R. Sahu @ Lallu Sahu, R/o. Village Lawan, Tahsil Balaudabazar, District Raipur (CG)

---- Respondents

MA No. 181 of 2006

Mahesh Ram Patel, aged about 38 years, S/o. Shri Vasudeo Patel,
R/o. Sarangarh, Tahsil Sarangarh, District Raigarh (CG)

---- Appellant

Versus

1. Hemmithila, aged about 32 years, S/o. Late Vidyachand Sahu,
2. Minor Chamanlata, aged about 12 years, S/o. Late Vidyachand Sahu,
3. Minor Dilip Kumkar, aged about 10 years, S/o. Late Vidyachand Sahu,
4. Minor Dinesh Kumar, aged about 8 years, S/o. Late Vidyachand Sahu,
5. Minor Naresh Kumar, aged about 5 years, S/o. Late Vidyachand Sahu,
Through all mother Hemmithila and R/o. Village Kotba, Tahsil Patthalgaon, District Raigarh (CG)
6. Padmandas, aged about 23 years, S/o. Shri Kundandas, R/o. Village Bakaruma, Thana and Tahsil Patthalgaon, District Raigarh (CG)
7. Minor Raghvendra Sahu, aged about 13 years, S/o. Shri R. Sahu, Through his father Shri R. Sahu @ Lallu Sahu, R/o. Village Lawan, Tahsil Balaudabazar, District Raipur (CG)

---- Respondents

For Appellant	:	Mr. Roop Naik, Advocate
For Respondents	:	Mr. Manoj Kumar Sinha, Advocate

Hon'ble Shri Justice P. Sam Koshy

C.A.V. ORDER

Reserved on 11/08/2017

Delivered on 29/08/2017

1. These are two appeals filed under Section 173 of the Motor Vehicle Act assailing the award dated 18.02.2005, passed in Motor Accident Claims Tribunal, Raigarh (C.G.) in Claim Case Nos.12/2002 and 01/2003.
2. The appellant herein was the non-applicant No.3 before the Tribunal and that he was held to be the owner of the vehicle at the time of accident, though he was not a registered owner. Vide the said impugned award, the Tribunal has held that the present appellant who was the non-applicant No.3 before the Tribunal as well as the respondent No.7 in M.A. No. 181/2006 and the respondent No.3 in M.A. No. 1309/2005 jointly being held liable for payment of compensation to the tune of Rs.1,51,800/- in Claim Case No. 12/2002 and Rs.29,000/- in Claim Case No. 01/2003 with an interest @ 9% per annum from the date of application.
3. The brief fact in the instant case is that on 25.06.1996 deceased Vidhyachand Sahu and one more person namely Hemlal Sahu was travelling in a Jeep bearing registration No. MP-23-D-1808 and the non-applicant No.6 in appeal No. 181/2006 Padman Das was the driver of the said Jeep and the present appellant and one minor Raghuvendra Sahu were the owners of the said Jeep. The driver Padman Das drove the vehicle at a great speed in a rash and negligence manner. As a result of which, the Jeep turned turtle and met with an accident resulting in the grievous injuries sustained by Vidhyachand Sahu, who later succumbed to his injuries and Hemlal Sahu also sustained injuries. Legal representative of deceased

Vidhyachand Sahu and the injured Hemlal Sahu filed two separate claim cases, which were registered as Claim Case No.12/2002 and Claim Case No. 01/2003 respectively. During the proceedings the stand of the present appellant was that he was not the owner of the said Jeep at the time of accident and that the Jeep was in fact owned by one Raghuvendra Sahu, who was the actual registered owner. The present appellant totally denied the accident, the responsibility and the liability in respect of the claim raised by each of the claimants and it was also the contention of the appellant that he has been wrongly and unnecessarily impleaded as a party to the claim cases. After the pleadings were completed and the evidence were recorded, the Tribunal vide impugned award passed a common order allowing the claim case and holding the present appellant along with minor Raghuvendra Sahu responsible for payment of compensation jointly and severally awarding compensation as has been mentioned in paragraph no.2 of this order.

4. It is this award which is under challenge by the present appellant holding him jointly and severally responsible for payment of compensation. The contention of the appellant is that minor Raghuvendra Sahu was in fact the registered owner of the said vehicle involved i.e. Jeep bearing registration No. MP-23-D-1808 and that there was no document whatsoever to prove that the present appellant was the actual owner of the vehicle. Neither was there any evidence which has been adduced by the claimants or any other party to establish the ownership of the present appellant with which the liability could have been shifted. It was also contention of the appellant that once when it has been established before the Tribunal that the registered owner was a different person, then the liability of payment of compensation ought to have been automatically transferred upon the said person instead of holding the appellant also jointly and severally liable for payment of compensation particularly when there is no documentary proof to establish the ownership of the present appellant. It was prayed for exonerating the appellant from the liability of payment of

compensation. The counsel for the appellant relied upon the decision of 1997 ACJ 260 (KERALA) in this regard.

5. Per contra, the counsel for the claimants submitted that it is a case where the present appellant was the actual owner of the vehicle and was also the possessive owner except for the fact that the registered ownership could not be transferred on the name of the present appellant. He further submits that the original registered owner Raghuvendra Sahu had in fact sold the vehicle to the present appellant and since then it was the present appellant who was in possession of the vehicle and who was also operating the vehicle at the relevant point of time and therefore there is no illegality committed by the Tribunal below while fastening the liability for payment of compensation upon the registered owner as well as on the possessive owner of the offending vehicle.
6. Having heard the rival contentions put forth on either side and on perusal of the record some of the admitted factual position is that the appellant was the person who had obtained the Supurdnama of the vehicle which was seized by the police authority after the accident. That for obtaining the Supurdnama, the appellant had used the affidavit of the registered owner. Further on a query being put to the counsel for the appellant, he also admitted the fact that it was the appellant, who had furnished the bail bond on behalf of the driver of the offending vehicle after the accident. What is also an admitted position is an affidavit which was filed by the present appellant, while obtaining the Supurdnama of the vehicle he had made a categorical statement on oath of having purchased the vehicle from Raghuvendra Sahu on 05.02.1996 for an amount of Rs.1,25,000/- and since then he was in possession of the said vehicle. In addition the other documents to establish that the appellant is the actual owner stands established also from the document i.e. bond which was executed by the present appellant while obtaining the vehicle on Supurdnama.
7. So far as the judgment, which has been cited by the Kerala High Court is concerned, this Court is of the opinion that the facts of the

said case is distinguishable so also the judgment for the single reason that the said case the sale of the vehicle was not complete or concluded whereas in the present case, it was a concluded sale between Raghuvendra Sahu and the present appellant and which also stands establish from the document furnished by the appellant while getting the vehicle on Supurdnama.

8. Once when the sale is completed, according to the provisions of Sale of Goods Act notwithstanding the fact that there was no mutation in the registration certificate in favour of the transferee. The transferee still becomes its owner. In 1996 ACJ 477, the Kerala High Court in some what similar circumstances held as under:-

“6. Section 2 of the Act which contains various definitions starts with a preface that every definition is subject to alteration or change in accordance with the context. This is evident from employment of the words “unless the context otherwise requires” in the prefatory portion of the section. The definition is, therefore, not exhaustive in regard to every context. If a particular context warrants departure from the contours of a definition, legislature permitted such departure to be made. The context here is such that mulcting the registered owner with the pecuniary liability of the tortious act of somebody else's servant or employee would result in manifest injustice to him. When a registered owner is not the real owner of the vehicle on the date of accident that registered owner has no vicarious liability for paying compensation, for, the driver of the vehicle would then have been acting in the course of the employment of the actual owner. So in the present context, a departure from the definition has to be resorted to.”

9. Considering the aforesaid factual matrix of the case, this Court is of the opinion that no strong case has been made out by the appellant calling for any interference with the impugned award and further this Court is of the opinion that the findings of the Tribunal is proper, legal and justified in the given factual matrix of the case. As a result, both these appeals i.e. M.A. Nos. 1309/2005 and 181/2006, being devoid of merits, deserve to be and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge