

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 2849 OF 2016
WITH
CA/10611/2016 IN FA/2849/2016**

M/S. SAURASHTRA CEMENT LTD
VERSUS
LIMBAJI LAXMAN RATHOD AND OTHERS

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Advocate for Appellant : Mr Bolkar Yogesh B
Advocate for Respondents 2,3,4-7 : Mr. P S Chavan

...

WITH

X-OBJST/34586/2016 IN FA/2849/2016

LIMBAJI LAXMAN RATHOD AND OTHERS
VERSUS
M/S. SAURASHTRA CEMENT LTD AND OTHERS.

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Mr P S Chavan advocate for the cross objection
petitioners.

Mr Y B Bolkar Advocate for respondents.

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CORAM : V.K. JADHAV, J.

Dated: March 08, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Osmanabad, dated 19.12.2015 in MACP No.106/2010, original respondent no.1 registered owner preferred this

appeal and the original claimants have filed cross objection to the extent of quantum of compensation is concerned.

3. Brief facts, giving rise to the present appeal are as under :-

a] On 8.11.2009 at about 7.30 p.m., deceased Subhash was proceeding alongwith one Deepak Alure on his motor cycle from Solapur to Andoor and on way near Bhairunath Poultry Farm in Khanapur Area, one lancer car bearing registration No.MH-01/CA-9725 coming from opposite direction gave dash to the motor cycle by going to the wrong side of the road. In consequence of which, deceased Subhash suffered injuries and died on the spot. The pillion rider also sustained severe injuries. The claimants are the legal representatives of deceased Subhash approached the Tribunal by filing MACP No.106/2010 for grant of compensation under various heads.

b] It has been contended in the claim petition that deceased Subhash was working as Head Master in Zilla

Parisahd Yevati, Tq. Tuljapur. Dist. Osmanabad on monthly salary of Rs.23,287/-. He was the only earning Member of the Family and the claimants were entirely depending on his income. They have restricted their claim at Rs.25.00 lacs.

c] The appellant/registered owner strongly resisted the claim petition by filing written statement at exh.20. It has been contended that he sold said lancer car to one Prakash Rikme of Zawbawadi, Mumbai on 8.8.2007 for a consideration and executed a delivery note and also handed over possession of the said car to him on the same day. Thereafter, said Prakash Rikame sold said car to one Gulam Jilani, Mumbai and handed over the possession of the said car to him after executing necessary documents. Thereafter, said Gulam Jilani sold said car to respondent Dattatraya Dubey of Solapur on 4.11.2009 and also executed a delivery note to that effect and handed over the possession to him on the same day i.e. on 4.11.2009. It has been contended that, from 4.11.2009 said car was in the possession of the said Dattatraya Nandkumar Dubey and he was

using the same. It has been contended further that, on the date of accident i.e. 8.11.2009 when said car was in possession of respondent Dattatraya, accident had taken place. His driver respondent Hussain Bagwan was driving the said car. It has been contended that in view of the above facts and circumstances the appellant registered owner has no any concern with the said car and thus not liable to pay the compensation to the claimants.

d] Respondent no.2 Dattatraya though duly served with the notice, failed to appear before the Tribunal and hearing of the claim petition ordered to proceed ex-parte against him.

e] The claimants adduced oral and documentary evidence in support of their contentions. The appellant has also adduced oral and documentary evidence to substantiate his defence. The learned Member of the Tribunal, Osmanabad by its impugned judgment and award allowed the claim petition and thereby directed the respondents no.1 and 2 to pay compensation of

Rs.22,49,500/- including No Fault liability to the claimants with interest @ 7% p.a. from the date of application till realization of the entire amount. Being aggrieved by the same, the respondent no.1 registered owner has preferred the appeal and the claimants have preferred cross objection to the extent of quantum of the compensation.

4. The learned counsel for the appellant submits that the vehicle involved in the accident was sold to one Prakash Rikme on 8.8.2007 for a consideration of Rs.2,46,000/- and accordingly delivery note was executed in his favour. Further possession of the said car was handed over to him on the date of execution of the delivery note. Said delivery note is duly proved by the appellant and the same is marked at exh.56. On 13.8.2007 said car was sold to one Gulam Jilani by Prakash Rikme under the delivery note and accordingly said vehicle was delivered to him on the date of execution of the delivery note itself. Furthermore, on 4.11.2009 said Gulam Jilani sold aforesaid car to the present respondent Dattatraya and handed over the

possession of the said car to him. Said Gulam Gilani had sold the vehicle to respondent Dattatraya Dubey under an agreement and said agreement is duly proved by the appellant-registered owner and marked at exh.59. Learned counsel submits that the accident had taken place when the car was in possession of respondent Dattatraya as a owner thereof. Thus, the appellant has no any concern with the said car and the Member of the Motor Accident Claims Tribunal has erroneously fastened the liability on the appellant to pay compensation on the ground that the appellant is the registered owner of the vehicle and his name remained in the record of the registering authority as owner of the vehicle.

The learned counsel for the appellant submits that, the expression owner as defined in the Motor Vehicles Act, 1988 must be construed in wider sense. Expression owner means the person who has actual possession and control over the vehicle and under whose directions and commands the driver is obliged to operate the vehicle. Learned counsel submits that, in a case where the vehicle is given on hire or if the

Government has taken control of the vehicle under certain provisions of the Act, pertaining to the requisition of the vehicles, the Government held responsible to pay the compensation on the ground that, the Government has taken control over the said vehicle under requisition and thus liable to pay the compensation. Similarly, in case of a vehicle taken on hire, the person or authority who has taken the vehicle on hire basis made responsible to pay the compensation while answering the claim of compensation under the provisions of Motor Vehicles Act. Learned counsel submits that, in the instant case, the appellant is on better footing. He has sold vehicle prior to the accident and said vehicle passes from one person to another person under delivery note. The appellant had lost his control over the said vehicle and the accident had taken place when driver employed by respondent -Dattatraya was driving said car involved in the accident.

Learned counsel for the appellant in the alternate submits that, if this Court is not inclined to consider the grounds raised by the appellant, in that event, so far as cross objection preferred by the claimant to the

extent of quantum is concerned, the Tribunal has awarded just and reasonable compensation under the pecuniary and non-pecuniary heads. The learned counsel submits that, deceased Subhash was working as Head Master at the time of his accidental death. The claimants have not examined any witness to show chances of his future promotion. In absence of any evidence and particularly in regard to the age of deceased Subhash was above 45 years, there is no question of considering his future prospects and addition in his income under that head. Learned counsel submits that, so far as quantum of compensation is concerned, no interference is required, there is no substance in the cross appeal.

5. Learned counsel in order to substantiate his contention places his reliance on following cases :-

1. Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari reported in 1997 AIR (SC) 3444.
2. National Insurance Co. Ltd., Vs. Deepa Devi and others reported in 2008 AIR (SC) 735.
3. Purnya Kala Devi Vs. State of Assam and another reported in 2014 (14) SCC 142.

4. Managing Director KSRTC Vs. New India Assurance Co. Ltd., and another reported in 2016 (5) Mh.L.J. 305.

6. Learned counsel for respondent-original claimants submits that the appellant remained as a registered owner and the appellant has not taken any steps for change of name of owner in the certificate of registration. Furthermore, on perusal of the delivery note at exh.58, even though, vehicle was initially sold to one Prakash Rikme, when said Prakash Rikme sold the said vehicle to one Gulam Jilani in the delivery note exh.58 name of present appellant registered owner is shown as a transferor. Learned counsel submits that, the appellant must be deemed to be continued as a owner of the vehicle.

7. Learned counsel submits that the tribunal has not considered the future prospects of deceased Subhash. The Tribunal has considered age of deceased Subhash as 45 years at the time of his accidental death and failed to make an addition in his income towards future prospects. Furthermore, the tribunal has also

erroneously applied multiplier '11' instead of multiplier '14'. Even though there are 7 member/claimants, the tribunal has erroneously applied $1/3^{\text{rd}}$ of deductions towards personal and living expenses of deceased Subhash instead of $1/5^{\text{th}}$. Learned counsel submits that, Tribunal has awarded very meager amount under the head of loss of love and affection though there are four minor claimants and aged parents of deceased Subhash. Learned counsel submits that, the tribunal ought to have awarded the interest @ 9% p.a. instead of 7% p.a. Learned counsel submits that the tribunal has not awarded any amount towards loss of estate. Admittedly, the appellant is registered owner of the vehicle when said vehicle involved in the accident.

8. In a case Rajasthan State Transport Corporation Vs. Kailash Nath Kothari, (supra) relied upon by the learned counsel for the appellant, in the facts of the case alongwith the bus involved in the accident, some other buses hired by the Rajasthan State Road Transport Corporation, and agreement to that effect was executed between Rajasthan State Road Transport

Corporation and owner of the bus specifying permission of hiring bus. In paragraph no.17 of the judgment in the facts of the said case, the Supreme Court has observed that expression owner as defined under the Act must be construed in a wider sense in the facts and circumstances of the given case (emphasis supplied). The supreme Court has further observed that expression owner must include, in a given case, the person who has actual possession and control of the vehicle under whose directions and commands the driver is obliged to operate the bus. In the facts of the said case, it is further observed that confining meaning of “owner” to the registered 'owner' only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening the liability in case of accident.

9. In the instant case, it is not a case of hire and according to the appellant he has sold the vehicle involved in the accident to some other person prior to the accident.

10. In view of the provisions of section 2 (30) of the Motor Vehicles Act, 1988 definition of term owner is as below :-

2. (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;

11. By referring this definition, the Supreme Court in case of Pushpa alias Leela and others Vs. Shakuntala and others reported in AIR 2011 Supreme Court page 682 relied upon by the learned counsel for respondent-original claimant, by referring the case of Dr. T.V.Jose Vs. Chacko P.M. (2001) 8 SCC 748, the Supreme Court has observed that in escapable conclusion is that whose name continued in the records of the registering authority as the owner is liable for the payment of compensation amount.

12. In case of National Insurance Company Vs. Dipadevi and others, Purna Kala Devi Vs. State of Assam and another and Managing Director KSRTC Vs. New India Assurance Com. Ltd. and another (supra)

relied upon by learned counsel for appellant, the question before the Supreme court was about the accident caused by a private vehicle while plying under the Government requisition order and under the directions or the control of the Government of its officers by considering the provisions of Assam Requisition and Control of the Vehicles Act, 1968 and definition of the owner in the Motor Vehicle Act, 1939, the Supreme Court held that, owner of such a private vehicle though is registered owner on the record shall not be liable for the compensation and consequently, insurer shall not have a liability to reimburse the amount of compensation from such a owner. The Supreme Court held that, under the provisions of the said Act State of Assam is liable to pay the compensation as said vehicle was plying under the Government requisition order.

13. In a case of Pushpa @ Leela and others, in paragraph no.15 of the judgment, the Supreme Court has distinguished facts of aforesaid case of National Insurance Company Ltd., Vs. Dipa Devi and others and

held that decision of Dipa Devi was rendered on special facts of that case and it has no application to the facts of the case in hand. It is necessary to be mentioned here that facts of the case of Pushpa @ Leela and ors are identical to the facts and circumstances of the instant case.

14. So far as case of KSRTC Vs. New India Assurance Company Ltd., and another is concerned, the question involved in the said case is about lease agreement entered into by registered owner with KSRTC. In the facts of the said case, the Supreme Court held that registered owner, insurer as well as KSRTC would be liable to make payment of compensation jointly and severally to the claimants and KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants on stipulation of the agreement from the owner or insurer.

15. Thus, in view of the ratio laid down in a case Pushpa @ Leela and others [AIR 2011 Supreme Court]

682 and Dr.T V Jose Vs. Chako P.M. AIR 2001 SCC page 3939 supra, I find no case in favour of the appellant and appellant being a registered owner is liable to pay compensation.

16. In case of P P Mohammad Vs. K. Rajappan and others reported in (2008) 17 Supreme Court Cases page 624 relied upon by learned counsel for respondent, wherein the Supreme Court observed that even though ownership is transferred, the person in actual possession of the vehicle as well as the person in whose name the vehicle stood in RTO records, would be liable to the third party to pay the compensation.

17. So far as quantum of compensation is concerned, I am not inclined to consider future prospects of deceased Subhash. Though, deceased Subhash was working as Head Master at the time of his accidental death and though in official record his age on that date was available, the claimants have failed to prove the age of the deceased at the time of his accidental death. The learned Member of the Tribunal has considered age of

the deceased on the basis of his age as mentioned in the postmortem report. The claimants have also not examined any witness from his department to substantiate their contentions about future prospects. The learned Member of the Tribunal has therefore, rightly considered the salaried income of the deceased for the purpose of determination of the compensation, however, the tribunal has committed mistake while deducting 1/3rd amount from the income of deceased towards his personal and living expenses. There are in all 7 claimants and as per the ratio laid down in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another reported in AIR 2009 Supreme Court 3104, where number of the dependent family members exceed six, 1/5th of the deductions towards personal and living expenses of the deceased is required to be made. Furthermore, in consonance with the age of deceased as considered by the tribunal, relevant multiplier would be '14' instead of '11'. In view of the above, compensation under the head of future loss/dependency is required to be re-determined.

18. So far as compensation under non-pecuniary heads such as loss of consortium is concerned, the learned Member of the tribunal has awarded just and reasonable compensation under the said head, however, the tribunal has awarded only Rs.75,000/- for loss of love and affection though there are four minor claimants. It would be just and appropriate to grant Rs.1,00,000/- (Rs. One lac) i.e. Rs.25,000/- each to the minor claimants. The claimants are also entitled for amount of Rs.20,000/- towards loss of estate. The same is not awarded by the Tribunal. So far as interest awarded by the Tribunal @ 7.5% p.a. is concerned, the same requires modification. The learned Member of the Tribunal ought to have awarded interest @ 9% instead of 7.5% p.a.

19. In view of the above discussion, break up of compensation under various heads which include compensation awarded by the Tribunal can be broadly categorized as under :-

1	Loss of income/dependency (As against compensation of Rs.20,49,300/- awarded by the Tribunal)	Rs.31,29,840/-
2	Loss of consortium (as Awarded by the tribunal)	Rs.01,00,000/-
3	Loss of love and affection Rs.25,000/- each for minor claimants (as against Rs.75,000/- awarded by the tribunal)	Rs.01,00,000/-
4	Loss of Estate	Rs.20,000/-
5	Funeral Expenses (as awarded by the Tribunal)	Rs.25,000/-
	TOTAL	Rs.33,74,840/-

20. The claimants are entitled for the same and the judgment and award passed by the tribunal requires modification to that extent.

21. At this stage, learned counsel for the appellant submits that though the tribunal has held the appellant/registered owner and respondent Dattatraya jointly and severally liable to pay the compensation, the appellant may be placed at liberty to recover the amount if paid to the claimants from the Respondent Dattatraya. In the case of T.V. Jose and anr. Vs. Chacko P.M. in case of KSRTC Vs. New India Assurance Co. Ltd., the Supreme Court has granted such liberty to registered owner. So, in view of the same, the appellant registered owner is entitled to recover the said amount from

respondent Dattatraya, if the amount is entirely paid by the appellant to the claimants. Accordingly, I proceed to pass the following order.

O R D E R

- I. First Appeal is hereby partly allowed. No costs.
- II. Cross objection is hereby partly allowed. No costs.
- III. The judgment and Award passed by the Member, Motor accident Claims tribunal, Osmanabad dated 19.12.2015 in MACP No.106/2010 is hereby modified in the following manner :-
 - a) The respondents no. 1 and 2 do pay compensation of Rs.33,74,840/- (Rs.Thirty Three lacs seventy four thousand eight hundred and forty only) including the 'No Fault Liability' amount of Rs.50,000/- to the claimants with interest @ 9% p.a. from the date of application till realization of the entire amount.
- IV. In case, if the amount is paid by the appellant-registered owner in total to the claimants, the appellant registered owner is at liberty to recover the amount from the Respondent Dattatraya s/o Nandkumar Dubey.

V. Rest of the Judgment and Award stands confirmed.

VI. Award be drawn up as per the above modifications.

VII. First Appeal and Cross Objection accordingly disposed of. Pending civil application, if any, also stands disposed of.

sd/-

(V.K. JADHAV, J.)

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aaa/-