

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

FIRST APPEAL NO. 2011 OF 2016

The State of Maharashtra
Through
The Deputy Director of Health Service (Tr.)
Naidu Hospital Compound, Pune -1

**...APPELLANT
(Ori. Respondent)**

VERSUS

1. Almonisa w/o. Hakim Kureshi,
Age: 35 years, Occu. Household,
R/o. Pathrud, Tal. Majalgaon,
Dist. Beed
2. Mustkin s/o. Hakim Kureshi,
Age: 21 years, Minor,
Occu. Nil, R/o. As above
3. Seema D/o. Hakim Kureshi,
Age: 17 years, Minor, U/g. of applicant -1
Occu. Nil, R/o. As above.
4. Meena D/o. Hakim Kureshi,
Age: 13 years, Minor, U/g. of applicant - 1
Occu. Nil, r/o. As above,
5. Tamisbee w/o Abdul Raheman Kureshi,
Age 72 years, Occu. Nil.,
R/o. As above.
6. Vaijinath Bhanudas Raut,
Age: 72 years, Occu. Driver,
R/o. Sawata Mali Chowk,
Beed

...RESPONDENTS

(R.Nos. 1 to 5 Ori. Applicants)

(R.No.6 Ori. Resp.)

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Mr.C.V.Dharurkar, A.G.P. for State;
Mr. R.B. Bhosale, Advocate for Respondent Nos. 1 to 5;
Mr. S.R. Shirsath, Advocate for Respondent No.6.

CORAM: P.R. BORA, J.

Date of reserving the Judgment :12.06.2017

Date of pronouncing the Judgment: 21/07/2017

JUDGMENT:

1. The State has filed the present appeal challenging the judgment and order passed by the Motor Accident Claims Tribunal at Beed in M.A.C.P. No.54/2013, decided on 7th of July, 2015.

2. Transfer of the ownership of the vehicle sold in a public auction by the State Government whether can be distinguished from the 'sale simpliciter' is an issue raised in the present appeal .

3. Present respondent nos. 1 to 5 (hereinafter referred to as the original claimants), had filed the aforesaid claim petition claiming compensation on account of death of one Hakim Qureshi who died in a vehicular accident happened on 29th of February, 2012 having

involvement of a Jeep bearing registration No.MH-12-W-4573. Present respondent no.6 was plying the aforesaid Jeep when the alleged accident happened. The appellant i.e. the Deputy Director of Health Services was made respondent no.1 in the aforesaid claim petition since the Jeep involved in the alleged accident was registered in the name of the said respondent in the Office of the Regional Transport Office. It was the contention of the original claimants that on 29th of February, 2012, when deceased Hakim was returning to his home from village Pimpalner by an Appay Rickshaw, the said Rickshaw was dashed by offending Jeep and in the accident so happened, said Hakim received severe injuries and though he was immediately taken to the hospital at Beed, he was declared to have been died. According to the claimants, age of the deceased was 40 years on the date of the accident and he was a skilled mason and was earning around Rs.2,00,000/- (Rs. two lakhs) per annum. It was the further contention of the claimants that they all were dependent upon the income of deceased Hakim. It was alleged by the claimants that the alleged accident happened because of the negligence of the Jeep driver i.e.

respondent no.6 in the present appeal. The claimants had, therefore, claimed compensation of Rs.10,00,000/- (Rs. ten lakhs) from the driver and owner of the said Jeep.

4. The claim petition so filed was resisted by the appellant on various grounds. It was the main contention of the appellant that on the date of the accident, the said jeep was not owned by the appellant. It was the further contention of the appellant that the said jeep was sold in a public auction and was purchased in the said auction by one Shaikh Faruk Shaikh Yakub, resident of Jalna Road, Beed, along with some other vehicles for total consideration of Rs.7,75,000/-. It was the further contention of the appellants that on 1.3.2011 all the sold vehicles, including the offending Jeep, were given in possession of said Faruk. It was the further contention of the appellant that after the date of auction and from the date the possession was handed over to said Shaikh Faruk, he had become the owner of the offending Jeep. It was the further contention of the appellant that the auction purchaser was to retrieve metal from the vehicles and the

vehicles were not to be repaired and / or to be used on the road. It was the further contention of the appellant that the person who was driving the said vehicle was not an employee of the appellant and, as such, the appellant was not responsible for any wrongful act committed by the said Driver.

5. In order to substantiate the defenses raised in the written statement, one Ashok Macchindranath Pastapure had deposed before the Tribunal and Shaikh Faruk Shaikh Yakub was also examined by the appellant. Learned Tribunal, however, turned down the objections raised by the appellant and held the appellant liable to pay the amount of compensation to the claimants. Learned Tribunal has held the claimants entitled for the total compensation of Rs.5,49,000/- and has directed present respondent no.6 and the appellant to jointly and severally pay the aforesaid amount of compensation to the claimants together with interest thereon at the rate of 7.5 per cent from the date of application till realization. Aggrieved thereby, appellant has preferred the present appeal.

6. Shri Dharurkar, learned A.G.P., assailed the impugned judgment on various grounds. Learned A.G.P. submitted that ample evidence has come on record to show that on the date of the accident, the appellant was not the owner of the offending jeep. Learned A.G.P. further submitted that in his testimony before the Court PW No.1 Ashok Pastapure has provided a detailed information about selling of the offending jeep in auction to PW No.2 Faruk and about handing over of possession of the said Jeep to Shri Faruk on 1st of March, 2011. Learned Counsel submitted that nothing has come on record in the cross examination of the said witness so as to disbelieve the fact stated by him in his testimony about the auction conducted and purchase of the offending jeep in the said auction along with other vehicles by PW No.2 Faruk. Learned A.G.P. submitted that PW No.2 Faruk has also corroborated the said evidence in his testimony before the Court. Learned A.G.P. submitted that it has been deposed by PW No.2 that he had purchased 29 vehicles in the auction conducted at Health Department, Latur, on 23rd February, 2011, and Jeep No.MH-12-W-

4573 involved in the present accident was one of the vehicle purchased by him in the said auction. Learned A.G.P. submitted that in the written statement, the appellant had raised all these objections by providing all necessary particulars and in such circumstances, the claimants were under an obligation to make PW No.2 Faruk as respondent in the said matter. Learned A.G.P. submitted that when the appellant had placed on record the clinching evidence showing that on the date of the accident, the appellant was not the owner of the said vehicle and the same was purchased by PW No.2 Faruk in auction conducted on 23rd February, 2011, no liability could have been fastened on the appellant of paying the compensation to the claimants. Learned A.G.P. submitted that the Tribunal has utterly failed in appreciating the evidence on record. Learned A.G.P. referred to Section 55 of the Motor Vehicles Act and Rule 57 under the Central Motor Vehicles Rules, 1989.

7 Learned A.G.P. submitted that, in view of the provisions under Motor Vehicles Act, 1988 and the Rules, more particularly, Section 55 read with Rule 57 of Central

Motor Vehicle Rules, 1989, the transferee was under an obligation to get the vehicle transferred in his name by making necessary application under the provisions of the Act. Learned A.G.P. submitted that the Tribunal has failed in appreciating the relevant legal provisions in proper perspective which has resulted in passing illegal impugned award. He, therefore, prayed for setting aside the impugned judgment and award.

8. Shri R.B.Bhosale, learned Counsel appearing for the respondent nos. 1 to 5 i.e. original claimants, supported the impugned judgment and award. Learned Counsel submitted that on the date of the accident, in the official record, the offending jeep was standing in the name of the appellant as the registered owner of the said Jeep and, as such, the appellant only is liable to pay the amount of compensation to the present respondents. Learned Counsel placed his reliance on the judgment of the Honourable Apex Court in the case of Pushpa alias Leela and others Vs. Shakuntala and others (AIR 2011 SC 682. Learned Counsel further referred to and relied upon the judgment of the Honourable Apex Court in the case of

G.Govindan Vs.New India Assurance Co.Ltd. and others
((1999) 3 SCC 754). Learned Counsel cited one more judgment in the case of Oxide India Enterprises Vs. Suman Kumar Singh and others delivered by the Rajasthan High Court reported in 2016 (1) T.A.C. 781. Learned Counsel prayed for dismissal of the appeal.

9. I have carefully considered the submissions made on behalf of the learned A.G.P. and the learned Counsel appearing for the respondents i.e. original claimants. I have also perused the impugned judgment and the other material placed on record.

10. The occurrence of the accident on 29th February, 2012, death of Hakim Qureshi in the said accident and involvement of the Jeep bearing registration No.MH-12-W-4573 in the said accident are the facts which are not in dispute. It is also not seriously disputed that the alleged accident happened because of the rash and negligent driving of the offending jeep by respondent no.6. In so far as the amount of compensation, as has been awarded by the Tribunal also, there appears no serious

dispute. The judgment and award is challenged by the appellant State mainly on the ground that on the date of the accident, the Jeep involved in the alleged accident was not owned by it and respondent no.6 was not in the employment of the appellant State so as to hold the appellant vicariously liable for paying the compensation to the respondents i.e. original claimants and, as such, no award was liable to be passed against the appellant State.

11. In the written statement filed by the appellant before the Tribunal, it was specifically contended by the appellant that the offending jeep was sold by it in a public auction held on 23rd February, 2011, to one Shri Shaikh Faruk Shaikh Yakub, resident of Jalna Road, Beed, and the possession of the said vehicle was also handed over to him on 1st of March, 2011. It was also the contention of the appellant that due intimation in regard to the transfer of ownership of the offending vehicle in the name of the auction purchaser was also given to the R.T.O. Office.

12. In order to substantiate the defense so raised by it, one Ashok Pastapure testified before the Tribunal on

behalf of the appellant and Shaikh Faruk Shaikh Yakub who had purchased the offending jeep in the auction, was also examined by the State as its witness. Taking me through the evidence of these two witnesses, it was sought to be canvassed by the learned A.G.P. that from the evidence of the aforesaid two witnesses, it has been conclusively established by the appellant State that the offending jeep was sold in public auction held on 23rd February, 2011, to PW 2 Shaikh Faruk Shaikh Yakub and that the possession of the said jeep was handed over to said Shaikh Faruk Shaikh Yakub on 1st of March, 2011. It was, therefore, the further contention of the learned A.G.P. that no liability could have been fastened on the appellant State since on the date of accident i.e. 29.2.2012 it was not the owner of the offending jeep.

13. I am, however, not convinced with the submission so made. Even if the aforesaid facts are accepted as it is that the vehicle was sold by the appellant State to said Shri Shaikh Faruk Shaikh Yakub and the possession of the said vehicle was also handed over to said Shri Shaikh Faruk Shaikh Yakub before the date of the

accident, the fact remains that on the date of the accident in the official record still the name of the appellant State was appearing as registered owner of the offending jeep. Section 2(30) of the Motor Vehicles Act defines "Owner" in the following terms:

"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 hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

Section 50 of the Act lays down the procedure for transfer of ownership. The relevant portion of the said Section is reproduced hereinbelow:

"50: Transfer of ownership:-

(1) Where the ownership of any motor vehicle registered under this Chapter is transferred. –

(a) the transferor shall, -

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee ; and

(2) Where -

(a)

(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government, the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

14. It was sought to be canvassed by the learned A.G.P. that 'sale simpliciter' and 'sale by auction' will have to be distinguished in so far as the provisions under the Motor Vehicles Act are concerned for transfer of ownership in such cases. It was argued that for transfer of ownership if a vehicle is sold in auction, a specific provision is made vide sub-clause (b) of Section 2 of Section 50 of the Motor Vehicles Act read with Rule 57 of the Central Motor Vehicle Rules, 1989. Reading out the said provision, it was submitted by the learned A.G.P. that in case of purchase of a vehicle or acquisition of a vehicle at a public auction conducted by or on behalf of the

Government, the person succeeding to the possession of the vehicle or, who has purchased or acquired the motor vehicle, is cast with a responsibility to make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be. According to the learned A.G.P., the responsibility was on the transferee of the vehicle to make an application to the Registering Authority for the purpose of transferring the ownership of the offending vehicle in his name. Learned A.G.P. submitted that the appellant has undoubtedly proved that the offending jeep was sold in auction and the same was purchased by PW 2 Shaikh Faruk Shaikh Yakub and the possession of the said vehicle was also handed over to him. Learned A.G.P. further submitted that, in the circumstances, no blame could have been attributed on the part of the appellant State if the vehicle was not transferred till the date of the accident in the name of the person who purchased the same in a public auction conducted by the State Government.

15. The argument so advanced is fallacious. Section 50(1)(a)(i) of the Act clearly envisages and casts responsibility on the transferor of the vehicle to report the fact of transfer to the Registering authority within whose jurisdiction the transfer is to be effected and to simultaneously send a copy of the report to the transferee. Rule 57 of the Central Rules was also referred, to urge that it requires the purchaser to make an application for transfer of ownership in his name of the Government vehicle purchased by him in auction.

Rule 57, however, cannot be read to the exclusion of Rule 55 which mandates that the transferor shall report the fact of transfer of ownership to the registering authority. It makes no difference whether the Government vehicle is sold in public auction or otherwise in so far as the obligation cast upon the owner of the vehicle under Section 50(1)(a)(i) is concerned. The primary responsibility is on the registered owner of the vehicle to report the fact of transfer within 14 days of such transfer to the registering authority. The sale of the Government vehicle may be a sale simpliciter or by a public auction, obligation remains on the Government

being a transferor to report the said fact to the registering authority within the period stipulated for it. After the vehicle is purchased in public auction conducted by the State Government, the purchaser of the vehicle may or may not make an application under Section 50(2)(b) of the Motor Vehicles Act read with Rule 57 of the Central Rules, the Government, being transferor cannot be absolved from the liability of reporting the fact of transfer of ownership as envisaged under Section 50(1)(a)(i) of the Act read with Rule 55 of the Central Motor Vehicles Rules, 1989; failing which, obviously, it would continue to be the registered owner of the said vehicle and would be entitled for the liability which may arise qua third party.

16. In view of the provisions as above, it was incumbent on the part of the State to undoubtedly prove that the fact of the transfer of the ownership of the offending jeep was communicated by it to the registering authority.

17. In this context, my attention was invited by the learned A.G.P. to the letter dated 1st of March,

2011, at Exh.42-C in the record of the trial Court allegedly written by the Service Manager, Divisional Workshop, Health Services, Transport, Latur, to the Regional Transport Officer, Regional Transport Office at Pune, communicating the said authority about the auction of the old vehicles of the Public Health Department held on 23rd February, 2011, along with the particulars of the 28 vehicles sold in the said auction with a request to cancel the ownership of the Government and transfer the ownership of the said vehicles in the name of the concerned bidder from the date of delivery. It was the contention of the learned A.G.P. that as provided under Section 50 of the M.V.Act, within 14 days of the auction, the report was forwarded to the Regional Transport Office for transfer of ownership of the concerned vehicles. However, no evidence is produced on record showing that the aforesaid letter dated 1st of March, 2011, was actually delivered to the R.T.O. Office at Pune. The said document at Exh.42-C does not bear any endorsement of the R.T.O., Pune, acknowledging the receipt of the said letter. The appellants have also not provided any further particulars as to whether the said letter was sent to

R.T.O., Pune, by registered post or by which mode. Admittedly, the appellants have not placed on record any postal slip or postal acknowledgment receipt evidencing receipt of the aforesaid letter by the R.T.O. Office.

18. I have carefully perused the evidence of witness Ashok Pastapure who deposed for and on behalf of the appellant before the Tribunal. In his testimony before the Court the said witness has not even whispered about issuance of any such letter dated 1st of March, 2011, to R.T.O. Office at Pune. In his entire evidence the said witness has not deposed that the fact of the offending vehicle being sold in auction held on 23rd February, 2011, was communicated to the R.T.O. Office at Pune or to any other R.T.O. Office. The appellants have thus failed in bringing on record any evidence to establish that they have complied with the requirement as envisaged under Section 50 of the Motor Vehicles Act read with Rule 55 of the Central Motor Vehicle Rules, 1989. The appellant also could have examined any competent officer from the R.T.O. Office, Pune, to establish that the fact of the offending vehicle sold in auction was communicated to the

said office with a request to transfer the ownership of the said vehicle in the name of the bidder who had purchased the said vehicle in auction. Admittedly, no such evidence has been adduced. In absence of any such evidence, it has to be inferred that the appellant did not report the transfer of the ownership of the offending Jeep in the name of Shaikh Faruk Shaikh Yakub who had allegedly purchased the said Jeep in the auction held on 23rd Feb., 2011. The appellant, therefore, continued to be the registered owner of the said Jeep in the record of the R.T.O. Office.

19. It was further contended by the learned A.G.P. that the offending Jeep was sold in the auction held on 23rd February, 2011, to Shaikh Faruk Shaikh Yakub as a scrap material and it was not open for the said auction purchaser to again sale the said vehicle to any other person. Learned A.G.P. submitted that the auction purchaser could have only extracted the metal from the said scrapped vehicle and could not have run the said vehicle on road or sold the same to any other person. Learned A.G.P. submitted that inspite of the aforesaid

conditions if the auction purchaser had sold the said Jeep to any other person, it was at the risk of the auction purchaser and no liability can be fastened on the State Government.

20. The argument as above is also liable to be rejected in view of the evidence on record. Had it been the fact that the offending jeep along with the other vehicles was sold as a scrap material and was not to be brought in use at any point of time by the auction purchaser, the appellant must have reported the said fact to the registering authority for cancellation of the registration of the said jeep as provided under Section 55 of the M.V. Act. Admittedly, no such report as envisaged under Section 55 of the Act was made by the appellant. On the contrary, the alleged letter dated 1st of March, 2011, reveals that a request was made to cancel the ownership of the Government and transfer the said ownership in the name of the concerned bidder from the date of delivery.

21. The witness examined by the appellant,

namely, Shaikh Faruk Shaikh Yakub has also denied in his evidence before the Court that the Department has sold the vehicles to him as a scrap material and that the said vehicles were not to be sold further. Even in the alleged notice of auction there is no such clause or condition that the vehicles to be sold in the said auction were not to be resold or were not to be used on road. The appellant has, thus, utterly failed in establishing that the offending jeep was sold as a scrap material and with a condition that that it was not to be re-sold or used on the road. The material on record thus clearly reveal that for whatsoever reason the appellant continued to be the registered owner of the offending jeep in the office of the R.T.O. The respondents i.e. original claimants were, therefore, fully justified in raising the claim against the appellant i.e. the registered owner of the offending jeep.

22. As has been elaborately discussed by me hereinabove, though the appellant examined Ashok Pastapure and Shaikh Faruk Shaikh Yakub, as witnesses, has failed to establish through the evidence of the said witnesses that the ownership of the offending jeep was

transferred to Shaikh Faruk Shaikh Yakub and that the said fact was duly reported by the appellant to the registering authority.

23. In the facts and circumstances as above, the liability to pay the compensation amount as determined by the Tribunal was on the appellant i.e. the recorded owner of the offending jeep. The Tribunal has rightly cast the said liability on the appellant and I see no error in the finding so recorded by the Tribunal.

24. The Honourable Apex Court, in the case of **Pushpa alias Leela and others**, cited supra, has, in clear terms, held that in case of failure on the part of transferor to take any step for change in the certificate of registration, the transferor must be deemed to continue as owner of the vehicle for the purposes of Motor Vehicles Act even though, under civil law, he would cease to be the owner after the sale of the vehicle. Though the appellant has proved that the offending jeep was sold in a public auction to Shaikh Faruk Shaikh Yakub and the possession of the said jeep was also handed over to the said

purchaser, the appellant still continued to remain liable to third parties as its name continued in the record of the R.T.O. as the registered owner of the offending vehicle. The appellant, therefore, could not escape the liability to pay the compensation to the respondent i.e. original claimants. Shaikh Faruk Shaikh Yakub was admittedly not a party before the Tribunal and is also not party in the present appeal. In the circumstances, this Court may not go into the question of inter se liability between the appellant and the said auction purchaser. Needless to state that it would be open for the appellant to adopt appropriate proceedings against the said auction purchaser if in law it is permissible and the appellant is entitled to do so.

25. For the reasons stated above, I do not see any reason to cause any interference in the judgment and award impugned in the present appeal. The appeal, therefore, deserves to be dismissed and is accordingly dismissed, however, without any order as to the costs. Pending Civil Applications if any, stand disposed of.

. It would be open for the respondents i.e. original claimants to withdraw the amount, if any, deposited by the appellant in this Court, if already not withdrawn with interest accrued thereon.

(P.R.BORA)
JUDGE

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