IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4202 of 2012 (O&M)
Date of Decision: December 06, 2017

Kulwant Singh and another

...Appellants

Versus

Sunita Devi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Prabha Sharma, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for Mr. Sanjeev Goyal, Advocate for respondent no.5.

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ANITA CHAUDHRY, J.

This appeal is by the legal heirs of Ram Swaroop who was owner of the offending vehicle. Notice was given to all the respondents. Only the counsel representing the insurance company had appeared. No-one appeared for the driver or the claimants.

The submission on behalf of the appellants is that though the Tribunal had given a clear finding that the vehicle had been sold and the sale was complete and actual possession of the vehicle had been transferred to Shyam Lal, the driver of the truck but still the owner was made liable to pay the amount as the driving licence was found to be fake and recovery rights were given to the insurance company. It was urged that there was ample material on the record to show that it was Shyam

Lal who had taken *Superdari* of the vehicle and Shyam Lal had lodged a DDR that he had lost the registration book and he had accepted in the application given to the Court that truck had been sold to him and simply because the vehicle stood in the name of Ram Swaroop (since deceased), the father of the appellants, the liability could not be placed upon them. Reliance was placed upon ***Purnya Kala Devi Vs. State of Assam and another 2014(2) RCR (Civil)591, Dr. T.V. Jose Vs. Chacko P.M. @ Thankachan 2002(1) RCR (Civil) 120, HDFC Bank Ltd. Vs. Kumari Reshma and others 2015 (a) PLR 366*** and ***Ravi Kumar Vs. Jitender Lathar and others 2014(33) RCR (Civil) 922***.

It was urged that in ***Purnya Kala Devi's*** case (supra) a Three Judges Bench had held that a person shall be construed as owner who has actual control and possession of the vehicle. It was urged that in ***HDFC Bank's*** case (supra) though the case related to a finance company and there was a hypothecation agreement and the bank was a registered owner but it was the borrower who was in actual control and possession and the owner was exonerated and the liability to satisfy the award was placed upon the borrower. It was urged that the owner had furnished an affidavit and Shyam Lal had also given an affidavit that he had purchased the truck in 2008 and all the formalities had been done and the papers had been submitted but unfortunately the vehicle was not transferred and they had produced the complete set of documents. It was urged that a computer operator in RTO Office (RW-2) had been summoned with the record and in their record all the paper work was complete.

The accident had taken place on 13.04.2009. The official who had come with the record from the RTO office had mentioned that the affidavit given by Ram Swaroop to Shyam Lal seeking transfer was dated 30.07.2008. He had stated that all the forms and affidavits were available on the record. He had also stated that the transfer application was filed in their office on 15.06.2009 after the accident and it was transferred in the name of Shyam Lal, a week later.

It appears that on the basis of the evidence produced, the Tribunal rightly held that it was a case of sale. Shyam Lal had sworn an affidavit on 04.04.2009 that he had purchased the vehicle from Ram Swaroop and he was in possession of the vehicle. In that case, only because in the record maintained by the registering authority Ram Swaroop was shown as owner, he could not have been made liable. A three Judges Bench in ***Purnya Kala Devi's*** case (supra) had held that *the person who is in possession of the vehicle and actual control,would have construed as owner*. Considering the enormous evidence produced by the appellants, the finding recorded by the Tribunal has to be faulted with. Once it was held that the vehicle had been sold to Shyam Lal and the possession was with Shyam Lal, the liability to pay the compensation could not have been placed upon Ram Swaroop or his legal heirs. The finding is set aside. It is held that since the licence hold by Shyam Lal was found to be fake, therefore, the insurance company was rightly granted recovery rights but the award needs to be modified and it is held that the recovery of the compensation by the insurance company would be from respondent no.4 i.e. Shyam Lal to whom the vehicle had been sold. The appeal is allowed. The award is modified.

(ANITA CHAUDHRY)
JUDGE

December 06, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No