

In the High Court of Punjab and Haryana at Chandigarh

1. F.A.O No. 2671 of 2015 (O&M)
Date of Decision: 20.12.2017

Naresh KumarAppellant

Versus

Ishwar Singh and othersRespondents

2. F.A.O No. 2674 of 2015 (O&M)

Naresh KumarAppellant

Versus

Rani and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vishal Nehra, Advocate
for the appellant.

Mr. Abhimanyu Kalsi, Advocate for
Mr. Rajnikant Upadhyay, Advocate
for respondent No. 1/claimant
(in FAO-2671-2015).

Mr. Surinder Gaur, Advocate
for respondents No. 1 to 4-claimants
(in FAO-2674-2015).

None for the owner-driver.

ANITA CHAUDHRY, J

These are two appeals filed by the owner in two claim petitions disputing his liability as he had sold the vehicle prior to the accident and claims that the responsibility of payment of compensation could not be placed upon him.

registered owner and he had sold the vehicle to Jaipal on 20.10.2011 and the accident had taken place on 5.12.2011 and they had examined the witnesses and the affidavit had been produced. The counsel further contends that the vehicle was not insured and the Tribunal has misread the evidence and had wrongly placed the responsibility of payment of compensation upon respondents No. 1 and 2. The counsel had referred to the statement made by Naresh and the statement made by Criminal Ahlmad RW-2 who had stated that the application for *Supardari* was filed by Jaipal as GPA of the owner. The counsel also submits that since the ownership had not been changed in the records of the registering authority, therefore Jaipal was shown as GPA of the owner. Reliance was placed upon ***H.D.Chandrappa versus Hanumakka and others 2014 ACJ 402.***

No submissions were made by the claimants. It was only stated that no amount had been paid to them.

I have gone through the authority referred to by the appellant but the same is not applicable. There the driver of the vehicle was the son of the transferee who admitted that his father had purchased the vehicle seven years ago and it was held that non-compliance of the mandate of Section 50 of the Motor Vehicles Act does not invalidate the sale of vehicle.

It has been held by the Hon'ble Supreme Court in the case of ***P.P. Mohammed Vs. K.Rajappan & Others 2003 ACJ 1595 (SC)*** that when the ownership of the vehicle has not been transferred in the records of RTO, the registered owner shall continue to be liable to pay compensation to the third parties.

It has been held in the case of ***Dr. T.V.Jose versus Chacko***

there may be transfer of ownership of vehicle but that itself would not absolve the vehicle in whose name the vehicle stands in the RTO records, they are liable to a third person.

The Supreme Court in the case of ***Pushpa @ Leela & Ors. vs. Shakuntala & Ors., Civil Appeal No.6924/2005*** decided on January 12, 2011 reported in ***2011 ACJ 705***, which was formulated in paragraph 1 of its judgment as follows:

"1. Whether in the fact and circumstances of the case the liability to pay the compensation amount as determined by the Motor Accident Claims Tribunal was of the purchaser of the vehicle alone or whether the liability of the recorded owner of the vehicle was coextensive and from the recorded owner it would pass on to the insurer of the vehicle?"

The vehicle belonged to one Jitender Gupta, he was its registered owner. Jitender Gupta sold the truck to Salig Ram and gave its possession to the transferee. Despite the sale by Jitender Gupta to Salig Ram, the change of ownership of the vehicle was not entered in the certificate of registration. After the earlier policy issued by M/s. New India Assurance Co. Ltd. in favour of Jitender Gupta had lapsed, another policy was taken out by Salig Ram from M/s. Oriental Insurance Co. Ltd. in the name of Jitender Gupta, the registered owner of the truck. It was during the subsistence and period of validity of this insurance policy that the accident took place. The Claims Tribunal held that there was no privity of contract between Salig Ram, the owner of the truck and the Insurance Company, M/s. Oriental Insurance Co. Ltd. Hence the insurance policy was of no use for the purpose of indemnifying Salig Ram. In short, Salig Ram alone was liable for payment of the compensation amount to the claimants. An appeal

against the judgment and award made by the Claims Tribunal was preferred before the Himachal Pradesh High Court, which was dismissed. On further appeal, after examining at length the provisions of law with regard to ownership of motor vehicles, as incorporated in Section 2(30) of the Motor Vehicles Act, 1988 and Section 50 thereof, the Supreme Court held that it was undeniable that notwithstanding the sale of the vehicle neither the transferor Jitender Gupta nor the transferee had taken any step for the change of the name of the owner in the certificate of registration of the vehicle. It further held that in view of this omission, Jitender Gupta must be deemed to continue as the owner of the vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale on February 02, 1993. Significantly, in arriving at the aforesaid conclusion, the Supreme Court relied upon its earlier decisions in **Dr. T.V. Jose's** case (supra) and **P.P. Mohammed vs. K. Rajappan & Ors. (2008) 17 SCC 624**. The relevant portion of the judgment of the Supreme Court in **Pushpa's** case (supra) is reproduced hereunder:

"12. The question of the liability of the recorded owner of a vehicle after its sale to another person was considered by this Court in Dr. T.V. Jose vs. Chacko P.M. (2001) 8 SCC 748. In paragraphs 9 and 10 of the decision, the Court observed and held as follows:

"9. Mr. Iyer appearing for the Appellant submitted that the High Court was wrong in ignoring the oral evidence on record. He submitted that the oral evidence clearly showed that the Appellant was not the owner of the car on the date of the accident. Mr. Iyer submitted that merely because the name had not been changed in the records of R.T.O. did not mean that the ownership of the vehicle had not been transferred. Mr. Iyer submitted that the real owner of the

car was Mr. Roy Thomas. Mr. Iyer submitted that Mr. Roy Thomas had been made party-Respondent No. 9 to these Appeals. He pointed out that an Advocate had filed appearance on behalf of Mr. Roy Thomas but had then applied for and was permitted to withdraw the appearance. He pointed out that Mr. Roy Thomas had been duly served and a public notice had also been issued. He pointed out that Mr. Roy Thomas had chosen not to appear in these Appeals. He submitted that the liability, if any, was of Mr. Roy Thomas.

10. We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However the Appellant still continued to remain liable to third parties as his name continued in the records of R.T.O. as the owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these Appeals. Mr. Roy Thomas was not a party either before MACT or the High Court. In these Appeals we cannot and will not go into the question of inter se liability between the Appellant and Mr. Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so."

(Emphasis added)

13. Again, in P.P. Mohammed v. K.Rajappan and Ors. (2008) 17 SCC 624, this Court examined the same issue under somewhat similar set of facts as in the present case. In paragraph 4 of the decision, this Court observed and held as follows:

"4. These appeals are filed by the Appellants. The insurance company has chosen not to file any appeal. The question before this Court is whether by reason of

the fact that the vehicle has been transferred to Respondent 4 and thereafter to Respondent 5, the Appellant got absolved from liability to the third person who was injured. This question has been answered by this Court in T.V. Jose (Dr.) v. Chacko P.M. wherein it is held that even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person. We are in agreement with the view expressed therein. Merely because the vehicle was transferred does not mean that the Appellant stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

This Court in ***Sugar Singh versus Mehar Singh 2014 RCR (Civil) 719*** held that the liability cast on the registered owner was always to ensure that the claim is not defeated by the only fact that the actual owner was not before it. It was a case where the transferee was not a party and the registered owner was proceeded with and it was held that the registered owner would continue to be liable and provided for a remedy to the registered owner to proceed independently for action against the transferee. The liability of the registered owner continues till the registration continues in his name even after the vehicle stood sold or transferred. The remedy of *inter se* liability of registered owner and transferee can be discharged under the ordinary civil law and I would refer to a Division Bench Judgment reported as ***Vipin Kumar Sharma versus Jagwant Kaur and others 2005(4) RCR (Civil) 40***.

The question has been addressed a number of times and it would be the registered owner who would pay the amount to the claimants and he has an independent right under the civil law to recover the same from

the person to whom it is allegedly sold. So long as his name continues in the RTO's record, he would remain liable to a third person.

The liability to pay the compensation would remain on the registered owner and I find no infirmity in the order passed by the Tribunal.

In view of the above, both the appeals are dismissed.

(ANITA CHAUDHRY)
JUDGE

December 20, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes