

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.5869 of 2014 (O&M)

Date of Decision.12.07.2017

Mohinder SinghAppellant

Vs

Ajitinder Pal Singh and othersRespondents

2. FAO No.6317 of 2014 (O&M)

Mohinder SinghAppellant

Vs

Varinder Kaur and othersRespondents

3. FAO No.6315 of 2014 (O&M)

Mohinder SinghAppellant

Vs

Ajitinder Pal Singh and othersRespondents

4. FAO No.9718 of 2014 (O&M)

Mohinder SinghAppellant

Vs

Gurleen Kaur and othersRespondents

5. FAO No.4673 of 2015 (O&M)

Varinder Pal KaurAppellant

Vs

Manga Singh and othersRespondents

6. FAO No.4675 of 2015 (O&M)

Ajitinder Pal SinghAppellant

Vs

Manga Singh and othersRespondents

7. FAO No.6515 of 2015 (O&M)

Ajitinder Pal Singh and anotherAppellants

Vs

Manga Singh and othersRespondents

8. FAO No.6516 of 2015 (O&M)

Gurleen Kaur (minor)

.....Appellant

Vs

Manga Singh and others

.....Respondents

Present: Ms. Meena Bansal, Advocate
for the appellant in FAO Nos.5869, 6315, 6317 & 9718 of 2014
and for respondent Nos.2 in FAO Nos.4675, 6515, 6516 &
4673 of 2015.

None for the appellant(s) in FAO Nos.4675, 6515, 6516 &
4673 of 2015 and for respondent Nos.1 and 2 in FAO
Nos.5869, 6315, 6317 & 9718 of 2014.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J.(ORAL)

C.M. No.16279-CII of 2014 in FAO No.5869 of 2014

C.M. No.17116-CII of 2014 in FAO No.6317 of 2014

For the reasons stated in the applications, delay of 55 days in
filing the appeals is condoned.

Applications are allowed.

C.M. No.26882-CII of 2014 in FAO No.9718 of 2014

For the reasons stated in the application, delay of 160 days in
filing the appeal is condoned.

Application is allowed.

C.M. No.17113-CII of 2014 in FAO No.6315 of 2014

For the reasons stated in the application, delay of 62 days in
filing the appeal is condoned.

Application is allowed.

C.M. No.20405-CII of 2015 in FAO No.6516 of 2015

C.M. No.14613-CII of 2015 in FAO No.4675 of 2015

C.M. No.14607-CII of 2015 in FAO No.4673 of 2015

For the reasons stated in the applications, delay of 292 days in

Applications are allowed.

C.M. No.20399-CII of 2015 in FAO No.6515 of 2015

For the reasons stated in the application, delay of 35 days in refiling the appeal is condoned.

Application is allowed.

C.M. No.20401-CII of 2015 in FAO No.6515 of 2015

For the reasons stated in the application, delay of 287 days in filing the appeal is condoned.

Application is allowed.

C.M. No.20403-CII of 2015 in FAO No.6516 of 2015

For the reasons stated in the application, delay of 26 days in refiling the appeal is condoned.

Application is allowed.

Main cases

This order of mine shall dispose of 8 first appeals arising out of the same accident, out of which FAO Nos. 5869, 6315, 6317 & 9718 of 2014 are at the instance of the owner namely Mohinder Singh of the offending vehicle challenging the liability and FAO Nos.4675, 6515, 6516 & 4673 of 2015 are at the instance of the claimants seeking enhancement. The accident took place on 24.11.2000 allegedly on account of rash and negligent driving of the driver of Mahindra Pickup bearing registration No.PB-03J-9096.

As per the facts pleaded in the claim petition, Ajitinder Pal Singh along with wife Varinder Kaur, daughters Gurleen Kaur and Jasleen Kaur was travelling in Uno car bearing registration No.PB-15A-5317 and unfortunately met with an accident with the aforementioned Mahindra

Pickup, resulting into death of Jasleen Kaur, aged 6 years, injuries to Varinder Kaur, Gurleen Kaur and the Ajitinder Pal Singh. Varinder Kaur had suffered multiple fractures, much less, injury on hip joint.

Learned counsel appearing on behalf of the appellant-owner submits that the appellant-Mohinder Singh had sold the Mahindra Pickup to Jaswinder Kaur wife of Sadhu Singh son of Gurdial Singh, resident of village Sandhu Kalan, Tehsil Tapa, District Barnala, who was arrayed on account of application under Order 1 Rule 10 CPC and did not contest the case, despite having been served through publication, in essence, was proceeded ex parte, vide agreement dated 14.07.2008, Ex.R1 and witnesses of the agreement namely Ram Singh and Labh Singh have been examined, in essence, the agreement has been proved. No evidence contrary to the same has been examined, much less, the driver Manga Singh was also not employee of the appellant. In fact, in the written statement, he denied to be employee of Mohinder Singh. The accident had taken place after almost two years i.e. on 24.11.2010 and the vehicle was not insured by Jaswant Kaur, therefore, the liability cannot be fastened upon the appellant.

The Motor Accident Claims Tribunal by relying upon the ratio decidendi culled out by Hon'ble Supreme Court in **P.P. Mohammed Vs. K. Rajappan and others 2008(17) SCC 624** had fastened the liability upon the owner i.e. the appellant, driver-Manga Ram and Jaswant Kaur whereas it should have been fastened upon Jaswant Kaur as the conscious possession of the vehicle was handed over to Jaswant Kaur.

In order to buttress her aforementioned contentions, relies upon the ratio decidendi culled out by this Hon'ble Court in **Ravi Kumar Vs. Jitender Lathar and others 2014 Vol. CLXXV PLR 275** wherein this

Hon'ble Court while referring to the judgment rendered by Hon'ble Supreme Court in **PP Mohammed's case** (supra), had fastened the liability upon the subsequent owner, thus, urges this Court for modification of the award viz-a-viz fastening of the liability upon the appellant i.e. Mohinder Singh.

The cross-examination of both the witnesses have been proved to the hilt regarding the contents of the agreement, much less, there is no contrary evidence to form any opinion of not having sold the vehicle. At the best, Jaswant Kaur or the driver Manga Singh would have come forward to belie statements of the aforementioned witnesses. In the absence of the same, presumption is liable to be drawn against the subsequent vendee.

There are appeals filed by the claimants seeking enhancement of compensation. The Tribunal has awarded a sum of ₹3 lacs for death of Jasleen Kaur, aged 6 years and for injuries suffered by Gurleen Kaur, aged 11 years, awarded a sum of ₹1,08,716/-, out of which ₹10,000/- has been awarded towards pain and suffering for 10 days hospitalization, ₹2000/- each for transportation expenses and attendant charges and ₹89,716/- for medical expenses. Ajitinder Pal Singh was granted a sum of ₹21,171/- for injuries suffered by him and a compensation of ₹1,98,511/- was awarded to Varinder Kaur including ₹1,79,511/- for medical expenses, ₹10,000/- towards pain and suffering, ₹5000/- towards special diet and ₹2000/- each for transportation expenses and attendant charges. The contention in the ground of appeal is that the amounts under the heads of pain and suffering, special diet and transportation have been assessed on lower side, thus, there is scope for enhancement.

I have heard learned counsel for the parties and appraised the

paper book. In the first place, the argument of Ms. Meena Bansal, learned

counsel appearing on behalf of the erstwhile owner, Mohinder Singh, appears to be incorrect by relying upon the ratio decidendi culled out by Hon'ble Supreme Court in **P.P. Mohammed's case** (supra) wherein it has been held that so long as the name of the erstwhile owner stands in the records of the RTO despite the fact that the possession having been passed on to the subsequent vendee, such person would be liable to the third party. But on going through the ratio decidendi culled out in judgment of this Court in **Ravi Kumar's case** (supra), I am of the view that this Court while going through the judgment in **P.P. Mohammed's case** (supra) has held that where the subsequent purchaser is a party, that ought to be taken as sufficient to anchor the liability on the subsequent purchaser irrespective of the fact whether there had been a transfer of registration or not. The liability cast on the registered owner in such eventuality is erroneous where there was a transfer of vehicle by delivery under Section 19 of the Sale of Goods Act. The relevant paragraphs of the aforementioned judgment reads as under:-

“1. The appeal in FAO No.4690 of 2007 is at the instance of the driver who was admittedly a purchaser of the vehicle by delivery on 09.10.1993 from the registered owner. The accident took place subsequently on 05.11.2003 . Registered owner as well as the subsequent purchaser who was also incidentally the driver, were made parties. The Tribunal has made registered owner also liable. The judgment is erroneous, for transfer of owner of a motor vehicle took place by delivery under Section 19 of the Sale of Goods Act. Registration is only a facilitative provision provided under Section 50 of the Motor Vehicles Act and in cases where the subsequent purchaser was not a party, Courts have made registered owners liable. But however if the subsequent purchaser is himself a party that ought to be taken as sufficient to anchor the liability on the subsequent purchaser irrespective of the fact whether there had been a transfer of registration or not. The liability cast on the registered

owner is erroneous in a case where there was a transfer of vehicle by delivery to the driver on 09.10.2003 that is prior to the accident.

2. *This Court has had an occasion to deal with the liability issue in case where the registration was not transferred to a subsequent purchaser. In **Ashutosh Batra Vs. Annu and others 2011 (3) PLR 113**, I have made the registered owner liable in a case where the owner was allowed recovery from the subsequent purchaser. In **P.P. Mohammed Vs. K. Rajappan and others (2008) 17 SCC 624**, the Court was making a subsequent purchaser also liable. This, according to the learned counsel appearing on behalf of the driver who became the owner, ought to make the liability of the subsequent purchaser to be shared by the earlier owner. The Supreme Court was not laying down any proposition that a subsequent purchaser who is not a registered owner cannot be made liable. There is no valid ground to assail the liability caused on the subsequent purchaser who was incidentally a driver as held in the decision of Supreme Court in **Vasantha Vishwanathan and others Vs. V.K. Elayalwara and others 2001(8) SCC 133**. I dismiss the appeal in FAO No.4690 of 2007 filed by the driver/subsequent purchaser before the accident.*

3. *This will, therefore, dispose of the appeal filed in FAO No.4090 of 2007 filed by the registered owner. The appeal filed by the registered owner is allowed. The liability shall be only on the subsequent purchaser.”*

It is basically a sale by virtue of agreement dated 14.07.2008, which has been proved to the hilt through the testimony of aforementioned two witnesses i.e. Labh Singh and Ram Singh, that the vehicle had actually been transferred to Jaswant Kaur. For the sake of brevity, the examination-in-chief, much less, the cross-examination reads as under:-

“Evidence by way of affidavit of RW-2, Labh Singh

1. *That I am one of the marginal witness of the Agreement dated 14.7.2008 vide which he respondent No.2 Mohinder Singh son of Gajjan Singh, resident of VPO Bhunder, Tehsil and District Bathinda, sold the offending vehicle Mohindra*

Pick-up bearing Regd. No.PB-03-J-9096 to one Jaswinder Kaur wife of Shri Sadhu Singh son of Shri Gurdial Singh, resident of Sandhu Kalan, Tehsil Tapa, District Barnala on 14.7.2008. The said agreement was duly executed between the parties in my presence and in the presence of one Ram Singh son of Maghar Singh, resident of Mandi Kalan. At the time of execution of Agreement, the respondent No.2 also handed over the possession of above said vehicle to the said Jaswinder Kaur. I have identified my signatures as well as signatures of Mohinder Singh respondent No.2, Jaswinder Kaur purchaser and said Ram Singh on the said agreement dated 14.7.2008. The parties have signed in my presence. After signing by the parties and marginal witnesses, the same was duly attested by Notary Public.

2. That the respondent No.2 Mohinder Singh has now no concern or connection with the offending vehicle.

Xxxxxx Cross examination by learned counsel Sh. A.S. Grewal, Adv. for the claimant.

I am not a summoned witness. I have seen the RC of the Mahindra Pick-up and as per the record, Mohinder Singh is the registered owner of the Mahindra Pick-up. Volunteered. Mohinder Singh has sold the said vehicle to Jaswinder Kaur. I do not know about the terms settled regarding 15th August 2008. It is wrong to suggest that Mohinder Singh never sold the vehicle in question to Jaswinder Kaur and he got prepared Ex.R-1 to avoid his liability. It is wrong to suggest that I have deposed falsely.”

Evidence by way of affidavit of RW-3, Ram Singh

1. That I am one of the marginal witness of the Agreement dated 14.7.2008 vide which he respondent No.2 Mohinder Singh son of Gajjan Singh, resident of VPO Bhunder, Tehsil and District Bathinda, sold the offending vehicle Mohindra Pick-up bearing Regd. No.PB-03-J-9096 to one Jaswinder

Kaur wife of Shri Sadhu Singh son of Shri Gurdial Singh, resident of Sandhu Kalan, Tehsil Tapa, District Barnala on 14.7.2008. The said agreement was duly executed between the parties in my presence and in the presence of one Labh Singh son of Babu Ram, resident of VPO Bhunder, District Bathinda. At the time of execution of Agreement, the respondent No.2 also handed over the possession of above said vehicle to the said Jaswinder Kaur. I have identified my signatures as well as signatures of Mohinder Singh respondent No.2, Jaswinder Kaur purchaser and said Ram Singh on the said agreement dated 14.7.2008. The parties have signed in my presence. After signing by the parties and marginal witnesses, the same was duly attested by Notary Public.

2. *That the respondent No.2 Mohinder Singh has now no concern or connection with the offending vehicle.*

Xxxxxx Cross examination by learned counsel Sh. A.S. Grewal, Adv. for the claimant.

I am not a summoned witness. I have seen the RC of the Mahindra Pick-up and as per the record, Mohinder Singh is the registered owner of the Mahindra Pick-up. Volunteered. Mohinder Singh has sold the said vehicle to Jaswinder Kaur. I do not know about the terms settled regarding 15th August 2008. It is wrong to suggest that Mohinder Singh never sold the vehicle in question to Jaswinder Kaur and he got prepared Ex.R-1 to avoid his liability. It is wrong to suggest that I have deposed falsely.”

In the absence of any cross-examination, the testimony of the

aforementioned witnesses has gone unimpeached and therefore, it cannot be believed that the delivery of the vehicle was not passed on. During the course of arguments, reference has also been made to the fitness certificate whereby the vehicle had been given a certificate till 2014. No contrary evidence has come on record to show that the amount for obtaining fitness certificate was being paid by Mohinder Singh, thus, presumption is liable to be drawn against Jaswant Kaur. Her absence in the proceeding is also a pointer to this effect. No sane person would remain away from the proceedings of the Court in case such a heavy liability is intended to be fastened upon him/her, particularly, when there is no truth in it.

Resultantly, I am of the view that finding of the Motor Accident Claims Tribunal in fastening the liability upon the appellant-Mohinder Singh is not correct whereas the entire liability should have been on the driver and the subsequent owner jointly and severally, thus, the award of the MACT is modified to the above extent. The appeals filed by the owner in FAO Nos.5869, 6315, 6317 & 9718 of 2014 are allowed.

As regards the appeals filed on behalf of the claimants seeking enhancement of compensation, I am of the view amount of ₹3 lacs on account of death of Jasleen kaur, aged 6 years has rightly been assessed by the Tribunal and there is no scope for enhancement. The appeal in FAO No.6515 of 2015 is, therefore, dismissed.

The appeals in FAO Nos.4675 and 6516 of 2015 for enhancement of claim for injuries suffered by Ajitinder Pal Singh and Gurleen Kaur respectively are also liable to be dismissed, for, keeping in view the fact the natures of injuries suffered by the respective claimants in the aforementioned appeals, the amounts assessed at ₹21,171 and

₹1,08,716/- are fair and just. Accordingly, FAO Nos.4675 and 6516 of 2015 are also dismissed.

As regards the appeal for enhancement of compensation for injuries suffered by Varinder Kaur in FAO No.4673 of 2015, it has been stated that she had suffered multiple fractures and injury on hip joint and remained hospitalized from 24.11.2010 to 07.12.2010. I am of the view that the amount provided towards pain and suffering to the tune of ₹10,000/- is on lesser side. It should have been ₹50,000/-. I will also enhance the amount for special diet and attendant charges to the tune of ₹20,000/- and ₹10,000/- respectively. Resultantly, the appellant-Varinder Kaur shall be entitled to another sum of ₹63,000/- over and above the amount what has already been provided by the Tribunal. This amount shall also attract interest @6% from the date of filing of the appeal till the date of payment. The liability shall be on the driver of the offending vehicle at the time of accident and the subsequent purchaser i.e. proforma respondents i.e. Manga Singh and Jaswinder Kaur jointly and severally.

The award passed by the Tribunal for assessing the compensation qua Varinder Kaur is modified and the appeal in FAO No.4673 of 2015 is allowed to the above extent.

(AMIT RAWAL)
JUDGE

July 12, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No