

In the High Court of Punjab and Haryana at Chandigarh

**Cross Objection No. 72-CII-2014 in/and
F.A.O No. 896 of 2013 (O&M)
Date of Decision: 20.12.2017**

Baldev Singh

.....Appellant

Versus

Husandip Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gulzar Mohammad, Advocate
for the appellant.

Mr. Narinder Sharma, Advocate
for respondents No. 1 to 6/cross-objectors.

None for respondent No. 7.

ANITA CHAUDHRY, J

This is an appeal by the registered owner seeking his discharge and the cross-objections are by the claimants seeking enhancement.

Harjinder Kaur died in an accident which occurred on 24.5.2007. Kuldeep Singh along with his wife Harjinder Kaur were going on a scooter. They met with an accident at about 6.30 P.M. The motor cycle driven by respondent No. 3 came at a fast speed and hit the scooter driven by Kuldeep Singh. Harjinder Kaur fell on the left side of the road and respondent No. 3 fell on the road. Harjinder Kaur was in the process of getting up when a tractor trolley loaded with sand driven by respondent No. 1 came at a high speed and crushed her. The trolley driver left the vehicle and sped away. The claim petition was filed against the owner-driver of the tractor and owner of the motor cycle.

the tractor and the motor cycle were responsible and the liability of payment of compensation was placed upon respondents No. 1 to 3. The vehicles were not insured.

The Tribunal took the income of the deceased to be Rs. 3,000/- per month and applied the multiplier of 13 and awarded compensation of Rs. 4,78,000/- which included Rs. 10,000/- for funeral expenses. The claimants were the children of the deceased.

An argument had been raised before the Tribunal that respondent No. 2 had sold the vehicle to respondent No. 1 and the liability should not have been fixed upon him. The Tribunal held that the liability of the registered owner would continue since the registration was in his name and if he had sold the vehicle, he should have informed the authorities and his remedy was to get the *inter se* liability decided under the ordinary civil law.

The submission on behalf of the appellant-Baldev Singh is that he was the registered owner but he had sold the tractor to respondent No. 7- Sanjay and he had admitted in his written statement that the vehicle was purchased by him on 28.3.2007 whereas the accident had occurred in May 2007. The counsel had also referred to the fact that the *Supardari* of the vehicle had not been taken by him and the counsel had referred to receipt Ex. R-1. It was urged that Jasbir Singh RW-3 was a marginal witness to the sale and he had stepped into the witness box and had stated that Sanjay Kumar had purchased the tractor from Baldev Singh and he had signed the receipt Ex. R-1. The counsel had also referred to the statement made by Baldev Singh. It was also submitted that after the sale, the possession was

with the driver and the vehicle was in possession and control of Sanjay and

therefore the registered owner could not be made liable. Reliance was placed upon *Vasantha Viswanathan versus V.K.Elayalwar 2001(4) R.C.R. (Civil) 469* and *HDFC Bank Ltd. versus Kumari Reshma and others 2015(3) SCC 679*.

On the other hand, the submission was that the Apex Court in *Dr. T.V.Jose versus Chacko P.M. alioas Thankachan, 2001 AIR (SC) 3939* had dealt with the issue and the registered owner would be liable. It was urged that they have also filed the cross-objections seeking enhancement and the Tribunal had failed to apply the correct multiplier nor it had awarded future prospects.

The question which has arisen for consideration is whether the award is liable to be set aside on the prayer made by the registered owner on the ground that he had sold the vehicle to Sanjay arrayed as respondent before the Tribunal prior to the date of accident.

The registered owner had taken a plea that he had sold the vehicle on 28.3.2007. It is admitted case that the registering authority concerned was not informed. It is necessary to notice the judgments on the subject.

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 *T.V. Jose's* case (supra) that even though under law 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?"

In the aforesaid case, the offending truck, as noted by the Apex Court, had a little history of its own. It earlier belonged to one Jitender Gupta, who was its registered owner. Jitender Gupta sold the truck to Salig Ram and gave its possession to the transferee. Despite the sale of the vehicle 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

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*** had held the registered owner to be liable. It was 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, ***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. I also find that the vehicle was taken on *Supardari* not by Sanjay but by Baldev Singh. The records were called to ascertain this fact. It was Baldev Singh who had furnished the *Supardari* of the tractor and trolley and an order was made by the Judicial Magistrate Ist Class on 28.5.2007. The copy of the *Supardarinama* has been made a part of the record. A wrong fact had been stated during the submissions led by the appellant. I assume that the counsel were not properly briefed.

Since the liability to pay the compensation would remain on the registered owner of the tractor as ordered by the Tribunal, I find no infirmity in the order passed by the Tribunal.

The appeal filed by Baldev Singh is dismissed.

Now coming to the cross-objections by the claimants. The deceased was a house wife and the claimants were the children. The prayer made by the claimants was that there should have been an increase towards future prospects. There is no merit in the assertion as when the notional income is taken there could be no addition towards future prospects. The Tribunal had applied the correct multiplier. Since the husband was not one of the claimants, therefore, there could be no further addition.

The cross-objections filed by the claimants are dismissed.

The appeal as well as the cross-objections are dismissed.

(ANITA CHAUDHRY)
JUDGE

December 20, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes