

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: March 21, 2017

+ **MAC. APP. 249/2009 & C.M.7269/2009**

M/S. GURU NANAK MILL STORES Appellant

Through: Mr. Inderjit Singh Kapur and Ms.
Purnima Sharma, Advocates

versus

ORIENTAL INSURANCE CO. LTD. & ORS. Respondents

Through: Mr. A.K. Soni, Advocate for
respondent No.1

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Appellant is the registered owner of Maruti Esteem Car, which was involved in a road accident on 6th October, 2001. Vide impugned Award of 28th January, 2009, Motor Accident Claims Tribunal (*hereinafter referred to as 'Tribunal'*), has directed respondent-Insurer to pay the awarded amount of ₹2,31,072/- with interest @ 9% *per annum*, with a right to recover it from appellant, who is registered owner of vehicle in question.

The facts already noticed in impugned Award need no reproduction as the only question which arises in this appeal is of liability to pay the

awarded amount. Suffice to note that appellant had apprised the learned Tribunal that vehicle in question was sold by appellant to *M/s. Islam Motors* in July, 2001. Pertinently, the accident in question took place on 6th October, 2001. On behalf of appellant, its owner-*Ajinder Singh (R2W2)* had deposed. There is evidence of his brother-*Kamaljeet Singh (R2W1)*, which corroborates the version put forth by appellant.

On an application by appellant, learned Tribunal had impleaded the actual owner i.e. *M/s. Islam Motors* in whose possession the vehicle in question was at the time of accident. It is brought to the notice of this Court that the *superdari* of vehicle in question was taken by *M/s. Islam Motors* after the accident. On the liability aspect, learned Tribunal has opined that even if the vehicle in question was taken on *superdari* by *M/s. Islam Motors*, still the liability to pay the compensation is of appellant, who continues to be the registered owner of vehicle in question on the day of accident. It is noted in impugned Award that there is no documentary proof of sale of car in question by appellant to *M/s. Islam Motors* except that cheques were issued by *M/s. Islam Motors* in favour of appellant as sale consideration. It is pertinent to note that impugned Award takes note of the fact that the vehicle in question actually stood transferred in name of one *Shakeel* on 30th January, 2003 i.e. after the accident in question. Learned Tribunal has concluded that there is collusion between appellant and *M/s. Islam Motors* (respondent No.4 herein). Learned Tribunal has viewed with suspicion the fact that though the payment of sale of car in question was made in July, 2001, its delivery was given on 16th September, 2001. So, learned Tribunal has held that the

primary liability to pay the awarded compensation is of appellant and recovery rights have been granted to respondent-Insurer.

The challenge to impugned Award qua the liability aspect by learned counsel for appellant-owner is on the ground that the factum of sale of the vehicle in question stood proved from the evidence led and the stand of appellant is fortified by the fact that in the post accident period i.e. in January, 2003, the vehicle in question actually stood transferred to one *Shakeel* by *M/s. Islam Motors* after the release of this vehicle on *superdari*. It is submitted by appellant's counsel that the finding of collusion is unwarranted as appellant had bonafidely sold the vehicle in question to *M/s. Islam Motors* and when the vehicle in question had met with an accident, appellant was infact not the owner of this vehicle and so, the liability to pay the compensation is of *M/s. Islam Motors* and if any recovery rights are to be granted, it ought to be granted against respondent No.4- *M/s. Islam Motors*. It is pointed out that as per the *superdarinama (Ex.DW2/D)*, the *superdari* of vehicle in question was taken on the next day of the accident by filing an application before the criminal court by asserting that this vehicle was driven by driver of *M/s. Islam Motors* and so, it is submitted that appellant be absolved from the liability to pay the awarded amount as the liability is of respondent No.4- *M/s. Islam Motors*.

As per order of 14th May, 2010, respondent No.4-*M/s. Islam Motors* was duly represented by counsel, but at the final hearing of this appeal, none has appeared on its behalf.

On the other hand, learned counsel for respondent-Insurer supports

impugned Award and submits that the legal position is crystal clear that the registered owner of vehicle is liable to pay the awarded amount. To submit so, he relies upon Supreme Court's decision in *Oriental Insurance Company Limited v. Meena Variyal*, (2007) 5 SCC 428. Nothing else is urged on behalf of either side.

During the course of hearing, it was pointed out that in impugned Award, the date of accident is incorrectly recorded as 6th January, 2001 whereas the accident in question had taken place on 6th October, 2001.

Upon hearing and on perusal of impugned Award and evidence on record and the decision cited, I find that although there is delivery receipt (Ex.DW2/A), which clearly indicates that vehicle in question had changed hands and it was delivered to one *Paras Jaitely* on behalf of *M/s. Islam Motors*, and the *superdari* of vehicle in question was also taken by said *Paras Jaitely* on behalf of *M/s. Islam Motors*, but the legal position as reiterated by Supreme Court in *P.P. Mohammed v. K.Rajappan and others*, (2008) 17 SCC 624 is that in law, the liability to pay compensation is of the person in whose name the registration of vehicle is and by mere transfer of vehicle, such person is not absolved of his liability to pay compensation to third person. Aforesaid legal position is reiterated by Supreme Court in a later decision in *Pushpa @ Leela and Others v. Shakuntala and Others*, (2011) 2 SCC 240.

By applying the afore-noted dictum of Supreme Court to the facts of instant case, I find that impugned Award does not suffer from any illegality or infirmity. However, since appellant has been able to prove that the vehicle in question was actually sold to respondent No.4- *M/s.*

Islam Motors in July, 2001 and the accident in question had taken place in October, 2001, therefore, appellant would be well within its rights to recover the compensation paid by it from respondent No.4- *M/s. Islam Motors* in accordance with the law.

With aforesaid liberty, this appeal and the application are dismissed.

MARCH 21, 2017

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**(SUNIL GAUR)
JUDGE**