

\$~3 to 6 (*common order*)

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

Decided on: 14th September, 2017

+ **MAC.APP. 524/2008**

SIDHARTH KHETRAPAL Appellant

Through: Mr. Sanjay Rathi, Advocate with
Mr. Animesh Mishra & Mr. Ashish
Khatri, Advocates

versus

MOHD.HANIF & ORS. Respondents

Through: Ms. Noopur Singhal, Advocate with
Mr. Rishal Vij, Advocate for R-2.
Mr. Ashish Kalra, Advocate for R-3.

+ **MAC.APP. 525/2008 & CM APPL 29516/2016 & CM
APPL 29517/2016**

SHELLY KHETRAPAL & ORS. Appellants

Through: Mr. Sanjay Rathi, Advocate with
Mr. Animesh Mishra & Mr. Ashish
Khatri, Advocates

versus

MOHD.HANIF & ORS. Respondents

Through: Ms. Noopur Singhal, Advocate with
Mr. Rishal Vij, Advocate for R-2.
Mr. Ashish Kalra, Advocate for R-3.

+ **MAC.APP. 526/2008**

SHELLY KHETRAPAL Appellant

Through: Mr. Sanjay Rathi, Advocate with

Mr. Animesh Mishra & Mr. Ashish
Khatri, Advocates

versus

MOHD.HANIF & ORS. Respondents

Through: Ms. Noopur Singhal, Advocate with
Mr. Rishal Vij, Advocate for R-2.
Mr. Ashish Kalra, Advocate for R-3.

+ **MAC.APP. 527/2008 & CM APPL 29515/2016**

NUPUR KHETRAPAL Appellant

Through: Mr. Sanjay Rathi, Advocate with
Mr. Animesh Mishra & Mr. Ashish
Khatri, Advocates

versus

MOHD.HANIF & ORS. Respondents

Through: Ms. Noopur Singhal, Advocate with
Mr. Rishal Vij, Advocate for R-2.
Mr. Ashish Kalra, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. These four appeals have been preferred by four sets of claimants on whose accident claims, registered as (MACT Case Nos.235-238/2007), the Motor Accident Claims Tribunal (the tribunal) had held inquiry and passed a common judgment dated 21.07.2008 awarding compensation, holding the first (Mohd. Hanif) and third respondents (Mohd. Sahid) respectively liable, jointly and

severally, to pay, the second respondent (Chand Ram) having been exonerated even though the offending vehicle described as tractor bearing registration No.HR-26-D-3361 (the offending vehicle) was registered (and continues to be registered) in his name. The claimants, who were successful in establishing their respective cases for compensation under Section 166 of the Motor Vehicles Act, 1988 before the tribunal have felt aggrieved for the reason that the registered owner of the offending vehicle has been let off, their contention urged and pressed, at the hearing, on these appeals being that he also should have been held responsible jointly and severally, his liability being vicarious.

2. The background facts may be noted at this stage.

3. On 19.11.2000, Rajesh Khetrpal along with members of his family, they including Sidharth Khetrpal, Nupur Khetrpal and Shelly Khetrpal was returning from Sushant Lok, Phase-II, Gurgaon in Haryana to Delhi, he driving his Maruti Zen car, bearing registration No.DL-4C-K-1205 (the car). The car had reached the T-point in the vicinity of Golf Club, Gurgaon when it came to be involved in a collision with the tractor, driven by the first respondent Mohd. Hanif, (hereinafter referred to as “the driver”). As a result of the said collision, the occupants of the car, particularly the four aforementioned persons, suffered injuries, Rajesh Khetrpal dying in the consequence. The four claim petitions instituted on 08.10.2002 were based on the averments that the accident had occurred due to negligent driving of the tractor by the said Mohd. Hanif (“the driver”).

4. It is not in dispute that on the relevant date, the tractor was registered in the name of the second respondent Chand Ram, (“the registered owner”). The claimants, however, had also impleaded the third respondent Mohd. Sahid with the averment that the offending vehicle had been got released by him on *superdari*, he having claimed himself to be “the owner of the offending vehicle”. Though provision was made in the petitions for the insurer of the offending vehicle to be impleaded, this contingent upon disclosure of the particulars by the concerned parties, it came to be eventually revealed that there was no insurance cover respecting third party risk in respect of the offending vehicle.

5. The second respondent, the registered owner of the tractor, contested, *inter alia*, by stating that the offending vehicle had already been sold by him to the third respondent, for consideration, reliance being placed on documents evidencing said sale on 09.10.2000, *i.e.*, prior to the date of the accident (19.11.2000).

6. The tribunal clubbed all the four cases and held inquiry in the course of which, besides the claimants, the said second respondent (registered owner) also led evidence by examining himself (RW1) on the basis of his affidavit (Ex.RW1/1) proving on record certain documents relating to the sale.

7. The third respondent, by his pleadings, took the position that the offending vehicle had been purchased by him after the accident. He, however, would not enter into the witness box nor examine any

witness nor bring on record any documents showing the sale/purchase of the vehicle on any specific date.

8. By the impugned judgment dated 21.07.2008, the tribunal awarded compensation in the four claim cases. It may be added here that amongst the claimants (in Suit No.238/2007) on account of death of Rajesh Khetrapal, the fifth claimant/appellant (Ramesh Khetrapal) was the father. He has since died during the pendency of these appeals. An application (CM Appl.29517/2016) has been moved to bring on record his legal representatives in terms of Order XXII Rules 3 & 9 of the Code of Civil Procedure, 1908 (CPC), prayer also being made through accompanying application (CM Appl.29516/2016) for delay in such regard to be condoned.

9. There is no contest to the prayer made in the aforesaid applications. Since one of the claimants had died, it is but natural that his legal representatives should be allowed to step in. For reasons set out in the application, the delay is condoned and the prayer to bring on record the legal representatives of deceased fifth appellant (Ramesh Khetrapal) substituting him is allowed. Since the computation of the compensation and its apportionment is not in dispute, it is quite natural that the share falling in favour of the deceased fifth appellant in MAC App.525/2008 will go in equal proportions to his legal representatives.

10. It may also be added here that one of the claimants, *i.e.*, Nupur Khetrapal, (appellant in MAC App.527/2008), was a minor at the time of institution of these proceedings, she having been represented through her next friend and legal guardian. She has turned major over

the period and consequently her application (CM Appl.29515/2016) is granted, permitting her to prosecute the matter on her behalf in her own independent rights. It may also be added that she was also one of the claimants (second appellant) in Suit No.238/2007, from which the appeal relating to claim on account of death of Rajesh Khetrpal (MAC APP.525/2008) arises. The order permitting her to prosecute her interest in these proceedings in her own independent rights, upon attaining majority, will inure in her favour in such context as well.

11. The contention of the appellants respecting the liability of the second respondent on account of he being the registered owner of the offending vehicle is based on the provisions of Sections 2(30) and 50 of the Motor Vehicles Act, 1988 and the judgments reported as *Rulda Singh & Ors. vs. Amarvir Kaur & Ors., III (2009) ACC 201 (Punjab & Haryana)*, *Banesingh vs. Leelabai & Ors., 2009 ACJ 126 (Madhya Pradesh)*, and *Pushpa @ Leela & Ors. vs. Shakuntala & Ors., (2011) 2 SCC 240 (SC)*. It may be added here that the cases of *Rulda Singh* (supra) and *Banesingh* (supra) were decided by learned single judges of Punjab & Haryana High Court and High Court of Madhya Pradesh respectively.

12. The expression “owner” is defined in Section 2(30) of the Motor Vehicles Act, 1988 as under:-

“2(30) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation,

the person in possession of the vehicle under that agreement.”

13. Section 50 of the Motor Vehicles Act, 1988, to the extent it is relevant here, may be quoted as under:-

“50. Transfer of ownership.— (1) Where the ownership of any motor vehicle registered under this Chapter is transferred,—

(a) the transferor shall,—

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)—

(A) the no objection certificate obtained under section 48; or

(B) in a case where no such certificate has been obtained,—

(I) the receipt obtained under sub-section (2) of section 48; or

(II) the postal acknowledgment received by the transferee if he has sent an application in this behalf by registered post acknowledgment due to the registering authority referred to in section 48,

together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5):

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him under section 177.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority.”

14. Argument of the appellants is that the expression “owner” as defined in Section 2 (30) of the Motor Vehicles Act, 1988 is to be kept

in mind while construing the provision contained in Section 50 which relates to “*transfer of ownership*”. It is the contention of the appellants that if the ownership of the vehicle is transferred, there is statutory liability cast on the transferor, who would generally be the registered owner, to send intimation to the registering authority within the period specified (depending on whether the transfer is within the same State where the vehicle is registered or outside) about such transfer. Reliance is placed on the admission of the second respondent during the course of his testimony as RW1 that he had not given any information as required by law to the registering authority after the sale which he claims to have been effected on 09.10.2000.

15. Reliance is placed on the decision of the Supreme Court in *Pushpa @ Leela* (supra) wherein it was held that the person who continued to be the owner of the vehicle was liable to pay the compensation determined under the Motor Vehicles Act, 1988 even though under civil liability he might have ceased to be the owner after sale. It is pointed out that in *Rulda Singh* (supra), a learned single judge of Punjab & Haryana High Court had held that the liability in such fact-situation could be fastened only against the registered owner of the vehicle while the “*un-registered transferee*” could not be called upon to pay, though also observing that the registered owner would be entitled to recover the amount from the transferee. Similar view was taken in *Banesingh* (supra) by a learned Single Judge of High Court of Madhya Pradesh against the backdrop of the fact that the registered

owner had failed to move appropriate application for getting the offending vehicle transferred in the record of the transport authority.

16. *Per contra*, it is argued on behalf of the second respondent (the registered owner) that the evidence before the tribunal during the inquiry into four claim cases had clearly brought out that the vehicle had been sold by him for consideration to the third respondent. It is pointed out that the evidence to such effect adduced by the second respondent has remained un-impeached in so far as the third respondent is concerned, its effect and import being adverse to his interest. It was also submitted that the fact that the third respondent had failed to bring any evidence to the contrary, there is no reason why the claimants, who are third parties, should be allowed to agitate otherwise. The learned counsel for the second respondent submitted that the definition of the expression “owner” as appearing in Section 2 (30) only guides that ordinarily the person in whose name the vehicle stands registered is to be construed as the owner. But this, in her submission, cannot be the decisive factor in construing the issue of vicarious liability. She argued that the definition of the word “owner” raises presumption on basis of registration but such presumption is rebuttable. Her submission further is that in terms of Section 50, in case there is a default by the transferor, or the transferee, to send the requisite intimation of the transfer of the vehicle or sale, only the consequences appearing in Sub-section (3) would follow, there being nothing in the said provision of law to indicate that such consequences would include the assumption that the registered owner continues to

be vicariously liable or responsible for the use of the vehicle or damage caused in its wake. She placed reliance on *Godavari Finance Company vs. Degala Satyanarayanamma & Ors.*, (2008) 5 SCC 107, and a decision of the Full Bench of this Court reported as *Anand Sarup Sharma vs. P.P. Khurana & Ors.*, AIR 1989 Delhi 88 (FB).

17. It is clear from the statutory provision quoted earlier that in the event of default the law does not envisage any consequences beyond what are conceived in sub-section (3) of Section 50 particularly, on the part of the registered owner of the vehicle to give intimation within the prescribed time to the registering authority about the sale of the vehicle by him.

18. An accident claim case is maintained under the provisions of the Motor Vehicles Act, 1988 which is essentially the law of torts codified for such purposes, the prime regime being represented by the 12th Chapter. Section 168 of the Motor Vehicles Act, 1988 being germane to the issue raised in these appeals, may be quoted to the extent relevant here, as under:-

“168. Award of the Claims Tribunal.— (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be

paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be”.

19. It is clear from the afore-quoted provision of Section 168 that the claims tribunal, after inquiry into the application for compensation, may grant the award specifying as to the person who is bear the responsibility to pay, such person inclusive of “*the insurer or owner or driver of the vehicle involved in the accident or by all or any of them.*” Noticeably, the law does not refer to the registered owner, but simply uses the expression “owner”.

20. The fact that the owner may be a person distinct from the registered owner cannot be denied. In the context of provision contained in Section 31 of the erstwhile Motor Vehicles Act, 1939, also governing the subject of “transfer of ownership”, which was a similarly worded clause as contained in Section 50 the Motor Vehicles Act, 1988, a Full Bench of this Court in *Anand Sarup Sharma vs. P.P. Khurana & Ors.*, AIR 1989 Delhi 88, had observed as under:-

“13. We have carefully examined the above provisions. In our considered opinion, these provisions do not have the effect of postponing the transfer of property from the seller to the buyer till the transferor and transferee make the requisite report and the vehicle is registered in the name of the transferee. Section 22 simply imposes a statutory obligation. It prohibits the driving of any vehicle by any person unless the vehicle is registered. Non-compliance of these provisions does not have the effect of postponing the transfer of property in the vehicle from buyer to seller. To take a contrary view would result in an absurd result. If a buyer after purchase does not use the vehicle he is the

owner. But if after one year he uses it he ceases to be the owner. It is not and cannot be the law.

14. Opening words of section 31 "where the ownership of any motor vehicle registered under the Chapter is transferred" make clear that transfer of ownership has to precede the reports required to be made under section 31. Section 31 does not prohibit the transfer of a motor vehicle till the reports are made. These provisions only cast an obligation on the transferor and the transferee to report to the registering authority concerned regarding the transfer of the vehicle after the transfer has already taken place. These provisions have nothing to do with the ownership of the vehicle as such. They merely provide for regulations of use of motor vehicles in public places. Their non-compliance attracts penalties."

(emphasis supplied)

21. As observed earlier, the liability on account of damage or injury (including death) caused due to negligent driving of a motor vehicle is essentially a liability in tort. The person at the wheel of the motor vehicles is, generally speaking, the principal tort-feasor. The liability of the owner arises because he is the person who either employed or permitted the driver to be at the wheel of the vehicle at the relevant point of time, such liability being "vicarious". In this context, further observations of Full Bench of this Court in *Anand Sarup Sharma* (supra) to the following effect are enlightening:-

"23. A decree or award, in our opinion, can never be made against a person who has sold the vehicle prior to the date of accident. A driver is always liable if the death or bodily injury is caused due to his rash and negligent driving. This is also the rule that an employer, though guilty of no fault of himself, is liable for damage done by a fault or negligence of his servant acting in the course of his employment on the

principle that an owner is victoriously liable for the rash and negligent act of his servant. The buyer cannot by any stretch of arguments be termed as the servant of the seller. The seller, therefore, cannot be held liable for the tortious act of the purchaser or his servant, committed during the course of this (purchaser's) employment. The purchaser, in view of the provisions of section 94, no doubt, is barred by statute from using the vehicle without getting it insured. The consequence of non-compliance of the statutory obligation can lead to two consequences, namely, (i) criminal liability and (ii) tortious liability. However, the seller in no case would be liable either under tort or under the statute. This non-compliance by the buyer would not make the seller liable for damages. The fact that he continues to be the registered owner would not make any difference so far as his liability to pay compensation under tort or statute is concerned."

(emphasis supplied)

22. In *Godavari Finance Company vs. Degala Satyanarayanamma & Ors.*, (2008) 5 SCC 107, the question raised was as to whether the financier in whose name the vehicle stood registered, or the owner, were to be held liable to pay the compensation arising out of an accident. It is in that context that the Supreme Court observed thus:-

"12. Section 2 of the Act provides for interpretation of various terms enumerated therein. It starts with the phrase "Unless the context otherwise requires". The definition of "owner" is a comprehensive one. The interpretation clause itself states that the vehicle which is the subject matter of a hire-purchase agreement, the person in possession of vehicle under that agreement shall be the owner. Thus, the name of financier in the registration certificate would not be decisive for determination as to who was the owner of the vehicle. We are not unmindful of the fact that ordinarily the

person in whose name the registration certificate stands should be presumed to be the owner but such a presumption can be drawn only in the absence of any other material brought on record or unless the context otherwise requires.”

x x x

15. An application for payment of compensation is filed before the Tribunal constituted under Section 165 of the Act for adjudicating upon the claim for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Use of the motor vehicle is a sine qua non for entertaining a claim for compensation. Ordinarily if driver of the vehicle would use the same, he remains in possession or control thereof. Owner of the vehicle, although may not have anything to do with the use of vehicle at the time of the accident, actually he may be held to be constructively liable as the employer of the driver. What is, therefore, essential for passing an award is to find out the liabilities of the persons who are involved in the use of the vehicle or the persons who are vicariously liable. The insurance company becomes a necessary party to such claims as in the event the owner of the vehicle is found to be liable, it would have to reimburse the owner inasmuch as a vehicle is compulsorily insurable so far as a third party is concerned, as contemplated under Section 147 thereof. Therefore, there cannot be any doubt whatsoever that the possession or control of a vehicle plays a vital role.”

(emphasis supplied)

23. It is noted that the decision in *Pushpa @ Leela & Ors. vs. Shakuntala & Ors.*, (2011) 2 SCC 240 (SC) is later in terms of time vis-à-vis the decision in *Godavari Finance Company vs. Degala Satyanarayanamma & Ors.*, (2008) 5 SCC 107 and does not take note of the said previous ruling.

24. For the reasons set out hereinafter, this court does not find the rulings in *Rulda Singh* (supra) and *Banesingh* (supra) to be laying down correct proposition of law.

25. The registration of the vehicle in the name of an individual is of import. It generally proceeds on the presumption that the person in whose name the vehicle is registered is the person responsible for its use. This attracts to him the vicarious liability. But then, it being a rebuttable presumption, it cannot be a thumb rule that in all cases the registered owner must be held accountable. If the registered owner can show, by credible evidence, like in the present case, that he had no control over the vehicle or that the vehicle was with someone else, over whom, or use of the vehicle by whom, he had no control, he cannot be held accountable, the liability in such case shifting on to the person who had the control over the vehicle.

26. In the present case, the delivery receipt (Ex.RW1/4) dated 09.10.2000, duly acknowledged by the third respondent affirms that he had received possession of the vehicle on sale from the second respondent. This coupled with the agreement (Ex.RW1/3) and, more importantly, the statement recorded by the court of Chief Judicial Magistrate on 27.02.2000 (Ex.RW1/26) giving no objection in favour of the third respondent for release of the vehicle in his favour, as was the prayer of the latter to the said court, which evidence has gone unimpeached in so far as the third respondent is concerned, leaves no room for doubt that the vehicle had actually been sold by the second

respondent unto the third respondent, for consideration, on 09.10.2000.

27. In above facts and circumstances, the tribunal has correctly held the third respondent to be the person vicariously liable, rightly exonerating the second respondent of any responsibility.

28. For the foregoing reasons, the appeals are found to be devoid of substance and, therefore, dismissed.

SEPTEMBER 14, 2017
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R.K.GAUBA, J.



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