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

Decided on: 12th October, 2017

+ **MAC APPEAL No. 971/2014 & CM No. 17726/2014**

PRAMOD JAIN

..... Appellant

Through: Mr. Randhir Jain, Mr.
Dhananjai Jain & Mr. Bhoop
Singh, Advs.

versus

KRISHAN CHANDRA KUMAR & ANR.

..... Respondent

Through: Mr. Abhay Singh, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant herein was impleaded as second respondent in accident claim case (MACP No. 54/2011) instituted by the first respondent (the claimant) on 23.03.2010 seeking compensation under Section 166 of Motor Vehicles Act, 1988 for injuries suffered in a motor vehicular accident that had occurred on 27.02.2010 statedly involving negligent driving of Maruti car bearing registration no. DL 6CB 4446. The second respondent herein was impleaded as first respondent in the claim proceedings before the tribunal he having been described as the driver of the said maruti car at the time of the accident. Both the appellant and the said second respondent Chhatarpal contested the claim case by filing their respective written statements. The appellant was impleaded on the basis of averments

that he is the registered owner of the said Maruti car and therefore, would be vicariously liable. He, by his written statement, however, sought to explain that he had already sold the vehicle in question on 06.12.2009 for consideration against formal documents including delivery receipt (Ex.R1W2/2) handing it over to the said Chhatarpal (second respondent) and, therefore, was not liable.

2. During the course of inquiry, evidence was led by all sides including the claimant, the appellant and the second respondent in the appeal. The tribunal, however, rejected the contention of the appellant and held him liable to pay the compensation, jointly and severally, with the second respondent proven to be the driver of the offending vehicle. It is the above said decision which is questioned by the appeal at hand.

3. Though having appeared through counsel on being served with the notice at an earlier date, the second respondent Chhatarpal has remained absent from these proceedings and there is no appearance on his behalf when the appeal is taken up for hearing. The evidence does show that the car has been registered throughout in the name of the appellant. But then, by his testimony appearing as his own witness (R1W1), on the strength of his affidavit (Ex.R1W1/A), he proved on record before the tribunal that he had sold the car for consideration to the second respondent (Chhatarpal) handing over its possession and control on 06.12.2009. The documents which he proved with regard to such transaction of sale included delivery receipt (Ex.R1W2/2). The word of the appellant was corroborated by that of Raju Chauhan (R1W2).

4. Pertinent to note here that by his written statement Chattarpal (second respondent) had pleaded that he was not responsible as he had no connection with the vehicle, he not being the registered owner thereof. Yet, he also pleaded that he was driving the vehicle in question “at a very normal speed” following the traffic norms and he also had blown the horn but the petitioner did not care. It is inherent in his pleadings that the second respondent does not refute that he was the driver of the car at the relevant point of time having its control.

5. The second respondent appeared as his own witness (R1W1) on the strength of his affidavit (Ex.R1W1/A). In the said affidavit, he reiterated his stand that the accident had occurred due to negligence of the claimant and further that he was not the registered owner of the vehicle in question. Crucially, during his cross-examination by the counsel representing the appellant, he (R1W1) admitted that he is signatory to the delivery receipt dated 06.12.2009 (Ex.R2W1/1).

6. From the above facts and circumstances it is clear that the appellant had proved that he had sold the vehicle, for consideration, handing it over to the second respondent Chhatarpal on 06.12.2009. It may be that there is lapse on appellant’s part in not giving any formal intimation to the registering authority about such sale. But then, this would not detract from the fact that appellant was left with no right, title or interest in the car after its sale.

7. It appears that the tribunal has simply gone by the fact that the car continues to be registered in the name of the appellant so as to fasten liability on him. This was not a correct approach. In similar fact situation, after tracing the relevant law on the subject, this Court

by judgment dated 14.09.2017 in MAC Appeal No. 524 of 2008 Sidharth Khetrapal v/s Mohd.Hanif & Ors., ruled as under:-

“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.”

8. In above facts and circumstances, the appeal is allowed, the impugned judgment to the extent it fastened the liability to pay against the appellant is set aside.

9. By order dated 31.10.2014, the appellant was directed to deposit Rs. 2,00,000/- with the Registrar General as a pre-condition to the stay against execution of the award. The said amount along with statutory amount, if also deposited, shall be refunded to the appellant.

R.K.GAUBA, J.

OCTOBER 12, 2017

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