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

Decided on: 25th September, 2017

+ **MAC APPEAL No. 676/2015**

SUBODH KUMAR YADUVANSHI Appellants

Through: **Mr. S.C. Singhal, Adv.**

versus

GUDDO DEVI & ORS. Respondents

Through: **Mr. Arun Srivastava & Ms.**

Anupama, Adv. for R-1 to 4.

Mr. R.S. Kundu, Adv. for R-5.

Ms. Babita Seth, Adv. for R-6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Rakesh Kumar, a pedestrian while crossing road at about 9.15 p.m. on 04.08.2009 in the area of Uttam Nagar, was hit by a motor vehicle described as motorcycle bearing registration no. DL 4SAE 5718 (the motorcycle) and suffered injuries that proved fatal. His wife and other members of the family dependent on him, they being first to fourth respondents (collectively, the claimants) instituted accident claim case (MACP 306/2009) on the averments that the accident had been caused due to negligent driving of motorcycle by the fifth respondent herein (the driver). The motorcycle on the relevant date was registered with the transport authority in the name of the appellant (the registered owner). In the accident claim case, the said driver and registered owner were impleaded as first and second respondents respectively, the third respondent being Sangram Kesari Samal (the

sixth respondent in the appeal), he having been described as the “owner in possession” .

2. The appellant, upon being served with the notice, contested, *inter alia*, by pleading that he could not be held accountable since he had already sold the motorcycle to the sixth respondent (Sangram Kesari Samal) on 17.07.2007 for consideration. He appeared in evidence as his own witness (R2W1) to affirm on oath such facts. The sixth respondent had also filed written statement on 29.10.2010 in which he took the plea that having purchased the motorcycle in July, 2007 from the appellant herein, he had further sold the same to Ram Avtar Gupta, the father of the driver (fifth respondent herein), within fifteen days of the transaction handing over all the necessary documents including insurance papers to him. He (the sixth respondent) also appeared as his own witness (R3W1) deposing on the strength of his affidavit (Ex.R3W1/A) affirming such facts disowning his liability, the position taken by him being that the vehicle was in the control of the said Ram Avtar Gupta whose son was the driver at the relevant point of time.

3. After inquiry, the tribunal upheld the case of the claimants that the accident had occurred leading to the fatal injuries being suffered by Rakesh Kumar, due to negligent driving of the motorcycle. The tribunal determined the compensation by judgment dated 14.07.2015 awarding it in the sum of Rs. 28,78,216/- though, taking note of the evidence of the appellant (R2W1) on one hand and that of the sixth respondent (R3W1) on the other, observing that the appellant herein

was the “principal tortfeasor” and the driver (fifth respondent here) was “vicariously liable”. Apparently, the error in such description, holding the driver vicariously liable and the registered owner as the principal tortfeasor was inadvertent.

4. Be that as it may, the registered owner challenges by the present appeal the direction holding him liable to pay the compensation referring primarily to the admission of the sixth respondent in the pleadings and in the course of evidence about he having purchased the motorcycle from him on 17.07.2007 for consideration, much prior to the date of accident (04.08.2009).

5. On being noticed, the sixth respondent raised the above noted contentions about he having already sold the motorcycle to the father of the fifth respondent within fifteen days of its purchase from the appellant in July, 2007. It is in that context that directions were given to the investigating officer by order dated 06.10.2016, calling for report to have clarity as to whether the owner or driver of the offending vehicle had been prosecuted for offence under Section 196 of Motor Vehicles Act, 1988, since the submissions on all sides had made it amply clear that the motorcycle was not covered by a valid or effective insurance policy in respect of third party risk on the date of accident. On 29.11.2016, the investigating officer of the corresponding criminal case, registered vide FIR No. 258/2009 of police station Najafgarh, Delhi appeared and submitted that though the report under Section 173 of Code of Criminal Procedure, 1973 (chargesheet) had been filed against the fifth respondent, the registered owner of the

motorcycle had not been prosecuted for the offence constituted on account of absence of valid insurance cover.

6. In terms of the directions that had been earlier given the fifth respondent (the driver) and his father had appeared in the court on 29.11.2016 and submitted that the motorcycle had been purchased from the sixth respondent. Against the said backdrop, both the appellant and fifth and sixth respondents sought opportunity to settle the dispute amicably. The matter was adjourned several times thereafter. On 27.04.2017, the counsel appearing for the appellant, on one hand, and the counsel for fifth respondent (driver), on the other, submitted that “without prejudice” to their respective contentions they were agreeable to pay to the claimants immediately, amounts of Rs. 2,00,000/- each and that further amount of Rs. 3,00,000/- each would be paid by 17th May, 2017. It is clear from the proceedings recorded thereafter, and also the submissions made today, that pursuant to the said undertaking, the appellant has paid so far the total amount of Rs. 5,00,000/- to the claimants, while the fifth respondent has paid an amount of Rs. 1.50,000/- to the claimants. The counsel representing the fifth respondent submits that on account of poor financial conditions he is unable to pay any further amount.

7. The matter has been heard against the above backdrop. At the hearing, the counsel for sixth respondent submitted that he had filed an application under Order I Rule 10 (2) of the Code of Civil Procedure, 1908 (CPC) before the tribunal seeking impleadment of Ram Avtar Gupta, the father of the fifth respondent on the averments that the

vehicle had been sold to him by the sixth respondent in 2007 much before the accident. The said application, however, was dismissed by the tribunal by order dated 08.11.2011, primarily taking note of the fact that the vehicle was registered in the name of the appellant, reference to which fact had been made even by the proposed additional party Ram Avtar Gupta on notice of such application being given to him. He concedes that the order dated 08.11.2011 was not challenged by any appeal before this Court.

8. In the face of admission of the sixth respondent not only in the pleadings before the tribunal but also in the course of evidence during inquiry, *inter alia*, by his own statement, appearing as witness (R3W1), it is clear that the ownership of the motorcycle had changed hands on 17.07.2007, upon it being sold, for consideration, by its registered owner (the appellant) in favour of the said party (the sixth respondent). In this view of the matter, fastening the liability against the appellant by the impugned judgment is legally impermissible.

9. Similar issues had arisen before this Court in a batch of matters led by MAC Appeal no. 524/2008 titled *Sidharth Khetrapal vs. Mohd. Hanif & Ors.* which was decided by a common judgment rendered by this Court on 14.09.2017. After tracing the relevant law on the subject, including with reference to provisions contained in Section 2 (30) of the Motor Vehicles Act, 1988 which defines the expression “ownership” and Section 50 which relates to “transfer of ownership” and after noting the decisions of the Supreme Court in *Godavari Finance Company vs. Degala Satyanarayanaamma & Ors.*, (2008) 5

SCC 107 and of a full bench of this Court in *Anand Sarup Sharma vs. P.P. Khurana & Ors.*, AIR 1989 Delhi 88, distinguishing the decision of the Supreme Court in *Pushpa @ Leela & Ors. vs. Shakuntala & Ors.*, (2011) 2 SCC 240 (SC) and of learned single judges of Punjab and Haryana High Court and Madhya Pradesh High Court reported as *Rulda Singh & Ors. vs. Amarvir Kaur & Ors.*, III (2009) ACC 201 (Punjab & Haryana) and *Banesingh vs. Leelabai & Ors.*, 2009 ACJ 126 (Madhya Pradesh), this Court held 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”.

10. Since in the present case, there is clear admission on the part of sixth respondent that he had purchased the motorcycle from the appellant on 17.07.2007, for consideration, no further evidence was required. Even if the vehicle had continued to be shown registered in the name of the appellant, in the face of the fact that after such sale, the appellant had no control over the vehicle, it having gone into the hands of the sixth respondent, the liability cannot be fastened against

the appellant. The impugned judgment insofar as it fastened the liability against the appellant, is, thus, set aside.

11. Coming to the contention of the sixth respondent that he had sold the vehicle in favour of Ram Avtar Gupta, the father of the driver (fifth respondent herein), it must be added that in view of the law clarified by this Court in the decision of *Sidharth Khetrapal* (supra), the order dated 08.11.2011 rejecting the application of the sixth respondent for impleadment of Ram Avtar Gupta as a party under Order I Rule 10 (2) CPC was incorrect. While it is true that the said order was not challenged by any appeal, the fact remains that incorrect disposal of the said application has only added further confusion to the dispute. Impleadment of Ram Avtar Gupta on such application would have forced the hand of Ram Avtar Gupta to come with his own pleadings so that the entire set of facts could be clarified and the truth reached. It cannot be ignored that in the course of hearing on this appeal when called upon to appear, some half-hearted admissions were made as shown by the proceedings recorded on 29.11.2016 respecting purchase of the motorcycle by Ram Avtar Gupta from the sixth respondent. However, the said half-hearted admissions are deficient as the date of purchase of the motorcycle by Ram Avtar Gupta from the sixth respondent was not sought to be clarified by any party. This would be crucial to determine the liability.

12. In the above facts and circumstances, justice demands that further inquiry into the issue as to whether the sixth respondent was the owner of the motorcycle on the date of the accident or as to

whether he had sold it in favour of Ram Avtar Gupta on a date anterior thereto be held. For such purposes, the order dated 08.11.2011 rejecting the application of sixth respondent under Order I Rule 10 (2) CPC is set aside. Ram Avtar Gupta stands impleaded as a party respondent for purposes of further inquiry before the tribunal into the above mentioned issue.

13. It is made clear that the inquiry being remitted would be restricted to the above specified issue and shall not be construed by any side so as to revive the proceedings arising out of the claim petition on the questions of involvement or negligence or determination of the compensation.

14. Since the appellant did not take appropriate steps in terms of Section 50 of Motor Vehicles Act, 1988, and since he has already paid Rs. 5,00,000/- in terms of interim directions to the claimants, he would also have some stake in the further inquiry as above. Similarly, the claimants have not received the entire compensation awarded by the tribunal. They would also need to participate in the further inquiry. The above issue, however, would need to be determined only on the basis of evidence to be allowed to be adduced by the sixth respondent, on one hand, and by Ram Avtar Gupta, on the other, with regard to the ownership of the motorcycle.

15. The limited inquiry as per above mentioned directions is entrusted to the tribunal for it to be commenced leading to fresh adjudication of the above-mentioned issue at an early date. For such purposes, the parties are directed to appear before the tribunal on 26th

October, 2017. Needless to say since it is the sixth respondent who says that he had sold the motorcycle to Ram Avtar Gupta prior to the date of accident, the burden of proof in above context shall be placed at his door. He, thus, will have to lead evidence on the subject first. After the sixth respondent has submitted his evidence, Ram Avtar Gupta (newly added respondent) will be given opportunity to lead evidence in rebuttal, if any.

16. The amount of Rs. 5,00,000/- paid by the appellant to the claimants in terms of interim directions in this appeal shall be recoverable either from the sixth respondent or from the fifth respondent and his father Ram Avtar Gupta, as the case may be, in the light of decision that is to be rendered by the tribunal in the limited inquiry. In the event of sixth respondent succeeding in proving the sale of the vehicle by him in favour of Ram Avtar Gupta, prior to the date of accident, he shall have to be exonerated.

17. This decision, however, shall not be construed as exonerating the fifth respondent, since he stands held liable as the principal tortfeasor, he being the driver on account of whose negligence the accident had occurred. For this reason, the claimants are at liberty to continue pursuing the execution of the impugned award against him notwithstanding the continuation of the inquiry involving the other parties.

18. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 25, 2017/nk