

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1205 of 2012

1. Ramvashista Kurre, S/o Jagdish, Aged About 28 Years, R/O. Village - Tejpur, P.S. & Tahsil- Ramanujnagar, Distt. Surajpur C.G. (Owner)
2. Amarnath S/o Parshottam, Aged About 24 Years, Caste- Harijan, R/o. Village - Sanwa-Rawan, P.S - Patna, Tahsil- Baikunthpur, Distt. Koriya C.G. (Driver).

---- Appellants

Versus

1. Basant Prasad Soni, S/o Late Kuldeep Soni, Aged About 45 Years, Caste- Sonar, R/o. Patna, P.S. Patna, Tah. Baikunthpur, Distt. Koriya C.G. (Registered Owner of Motorcycle No. C.G. 16D / 2276).
2. Sugiya, W/o Ranjit, Aged About 75 Years, Caste -Teli, R/o. Village- Sonpur, P.S. & Tah. Surajpur, Distt. Surajpur C.G.
3. Bhagwanti Devi, W/o Late Ramnarayan Sahu, Aged About 42 Years Sonpur, Caste- Teli, R/o. Village. Sonpur, Dabripara, Police Chowki- Basdei, P.S. & Tah. Surajpur, Distt. Surajpur C.G.
4. Ram Pratap Sahu S/o Late Ramnarayan Sahu Aged About 24 Years, R/o. Village. Sonpur, Dabripara, Police Chowki- Basdei, P.S. & Tah. Surajpur, Distt. Surajpur C.G.
5. Shiv Prasad Sahu S/o Late Ramnarayan Sahu Aged About 22 Years, Caste- Teli, R/o. Village. Sonpur, Dabripara, Police Chowki- Basdei, P.S. & Tah. Surajpur, Distt. Surajpur C.G.

---- Respondents

For Appellants	:	Shri Atanu Ghosh, Advocate.
For Respondents No.3 to 5	:	Shri Sanjay Kumar Deewangan on behalf of Shri P. K. Patel, Advocate.
For Respondent Nos.1 & 2	:	Shri Manoj Mishra, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

16.07.2018

1. The appellants have preferred this appeal challenging the impugned award dated 13.09.2012 passed by the First Additional Motor Accident Claims Tribunal, Surajpur (in short 'Claims Tribunal') in Claim Case No.25/2008, wherein the learned Claims Tribunal have fastened the liability for payment of compensation on the appellant No.1 on the ground that appellant No.1 has purchased Motorcycle bearing registration no. CG16 D 2276 from its registered owner i.e., respondent No.1.
2. Brief facts of the case, are that on 12.11.2007 when deceased Ramnarayan Sahu was traveling on his Motorcycle bearing registration No. CG16 D 2276 and returning from village- Baskar to his house at the relevant time when he reached near temple of Village- Barsara, the offending vehicle bearing No. CG16 D 2276 driven by appellant No.2 was dashed to the Motorcycle of deceased- Ramnarayan Sahu.
3. In the aforementioned accident, Ramnarayan Sahu sustained grievous injuries and became unconscious. He was taken to the hospital- Surajpur from where he has been referred to Holly Cross Hospital and, thereafter, referred to M.M.I, Raipur where on 18.11.2014 during the course of the treatment deceased- Ramnarayan Sahu died. The matter was reported to

the concerned Police Station on the basis of which, criminal case was registered against appellant No.2.

4. The claimants/respondents No.3 to 5 are wife and children of deceased and respondent No.2 is mother of the deceased.
5. On account of the unfortunate and untimely death of Ramnarayan Sahu, the claimants/ respondents No.3 to 5 have filed claim application before the Competent Claims Tribunal claiming compensation of Rs.25,50,000/- as compensation against the present appellants alongwith respondent No.1 for payment of compensation.
6. Respondent No.1 after notice made his appearance and submitted his reply to the claim application that on the date of accident the offending vehicle bearing No. CG16 D 2276 was driven by appellant No.2 and it is deceased- Ramnarayan Sahu who drove his motorcycle bearing No.CG16 C 3790 rashly and negligently which was the reason of accident, and further pleaded in his reply that on 10.11.2007 the said offending vehicle was sold to appellant No.1 for consideration of Rs.26,000/- and also handed over the possession of the said vehicle and since than the appellant No.1 was using the vehicle as owner and on the date of accident i.e., 12.11.2007 the appellant was the owner of the said vehicle. He further pleaded that appellant No.1 got his name transferred in the records of R.T.O on 16.02.2007 and further stated that in criminal case appellant No.1 took the possession of the said vehicle from the Court of JMFC, Surajpur on *Supurdnama* and, thereafter, as the appellant No.1 had purchased the said vehicle before accident and became owner of the same, it is appellant No.1 who is liable for payment of compensation.

7. Appellants who are non-applicants No.2 to 5 before the learned Claims Tribunal have submitted their reply and denied the pleadings made by the claimants and further stated that the Insurance Company and owner of the other motorcycle driven by the deceased has not been made as party to the claim application and, therefore, the claim application is liable to be dismissed.
8. On the basis of the pleadings evidence and other material available on record the learned Claims Tribunal have allowed the claim application filed by the claimants and have awarded Rs.3, 50,000/- as compensation and deducted Rs.75,000/- towards contributory negligence on the part of the deceased and the compensation was awarded as Rs.2,75,000/-. The Tribunal held liable the appellants for payment of compensation to the claimants.
9. The compensation as aforementioned awarded is challenged before this Court by the appellant No.1 who was shown to be purchaser and appellant No.2 as driver of the said vehicle on the ground that on the date of accident appellant No.1 was not owner and his name was not registered on record, in fact respondent No.1 is the registered owner of the said vehicle and, therefore, the learned Claims Tribunal ought to have fastened the liability for payment of compensation on respondent No.1.
10. The claimants supported the award and submitted that the learned Claims Tribunal had rightly fastened the liability on the appellants.
11. I have heard learned counsels for the parties and perused the records. Undisputedly the documents which were placed on record show the name of respondent No.1 as registered owner in records of the Registering Authority. The applicants therein did not enter into the witness box to prove their case and, therefore, the learned Claims Tribunal have

decided the case only on the basis of evidence and material available on record.

From perusal of the registration certificate of offending vehicle No. CG16 D 2276 it is apparent that the vehicle was registered in name of respondent No.1. The order of taking custody of offending vehicle only shows that the vehicle was given in custody to appellant No.1 only on the basis of affidavit of respondent No.1. By executing the affidavit, by itself will not fulfill the requirement of law and bring the person in category of 'owner' as defined in Section 2(30) of the Act of 1988. Except the order's U/s.457 of C.P.C and affidavit of respondent No.1 there is no material to show that the appellant No.1 is owner of the vehicle as defined under Section 2(30) of Act of 1988. Even respondent No.1 not let any evidence before Tribunal.

Section 2(30) is reproduced herein below.

“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”

12.From perusal of the definition as provided under Section 2(30) of the Motor Vehicle Act, 1989 with regard to owner of the vehicle, is that, “owner” means a person in whose name a motor vehicle stands registered.

13.The issue with regard to the fastening of liability for payment of compensation in case of the transfer of the vehicle by way of payment raised for consideration before Supreme Court in the matter of **Naveen Kumar Vs Vijay Kumar And Ors**, vide order dated 6 February, 2018 in

CIVIL APPEAL NO 1427 OF 2018, while considering a number of earlier judgments have held as under:-

“In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression owner in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfillment of the object of the law. In the present case, the First respondent was the owner of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him.....”

14. In case in hand the only document filed regarding registered ownership was of respondent No.1. The respondent No.1 did not appear before the tribunal as witness to proof of transfer of ownership and giving information of transfer. Respondent No.1 was the registered owner of the vehicle and the said vehicle was not insured, but the Tribunal erroneously considering that appellant No.1 took the said offending vehicle on *Supurdnama* in the criminal proceedings from the Court of JMFC, Surajpur, fastened the liability on the appellants which is contrary to law.

15. Under the Motor Vehicle Act, when the registered owner is specifically defined then the said person in whose name vehicle is registered in the records of the Registering Authority will only be liable for payment of compensation.

16. In view of the aforementioned discussion and in the light of the judgment passed by the Supreme Court in the matter of **Naveen Kumar Vs. Vijay Kumar and Ors** (supra) I am of the considered view that the learned Claims Tribunal committed an error in fastening the liability for payment of compensation on the appellants.

17. The impugned award so far as it relates to the fastening of the liability on the appellants is hereby set aside and now, the liability for payment of compensation of Rs.2,75,000 /- awarded by Tribunal is on the respondent No.1 i.e., registered owner of the vehicle on same terms.

18. The appellant No.1 will be entitled to recover the amount of Rs.1,00,000 (one lakh) deposited by him towards award from the amount of award to be deposited by the respondent No.1.

19. In the result, the impugned award stands modified to the extent indicated hereinabove.

20. No order as to costs.

Sd /-

(Parth Prateem Sahu)

Judge