

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 438 of 2008

Anil Kumar Kesharwani, aged about 41 years, S/o Shankar Lal Kesharwani, R/o Anil Agency, Bhartiya Jeevan Bima Road, Magarpara, Tehsil and District Bilaspur (CG) (Agent/Seller)

---- Appellant

Versus

1. Ku. Satyawati Kashyap D/o Geetaram Kashyap, aged about 17 years, minor through natural guardian Father, Gitaram Kashyap, Aged about 38 years, R/o village Sarwan Devri, Teh. And Distt. Bilaspur (CG).
2. Dilip Kashyap, aged about 36 years, S/o Ramnarayan @ Jagru Kashyap, R/o Karaihapara, Ratanpur, Tahsil Kota, District Bilaspur (CG).
3. Jagdish Sharma (since dead) through LR's
A-Rakesh Sharma S/o Jagdish Sharma
B-Rajesh Sharma S/o Jagdish Sharma
C-Ramesh Sharma S/o Jagdish Sharma
4. Harish Sharma (since dead) through LR's
A-Smt. Lata W/o Harish Shrma,
B-Vikash S/o Harish Sharma,
All respondents No.3A to 4B are R/o village Ratanpur, Tahsil Kota, District Bilaspur (CG).

---- Respondents

MAC No. 977 of 2008

1. Smt. Chandrakali Kashyap, aged about 45 years, W/o Shri Geetaram Kashyap.
2. Geetaram Kashyap S/o late Lalita Prasad Kashyap, aged about 48 years,
Both R/o village Sarvan Devri, Ratanpur, PS Ratanpur, District Bilaspur (CG).

---- Appellants

Versus

1. Dilip Kashyap, aged about 36 years, S/o Ramnarayan @ Jagru Kashyap, R/o Karaihapara, Ratanpur, Tahsil Kota, District Bilaspur (CG).
2. Anil Kumar Kesharwani, aged about 41 years, S/o Shankar Lal Kesharwani, Anil Agencies, near LIC office, Magarpara, District Bilaspur (CG).
3. Jagdish Sharma (since dead) through LR's
3A-Rakesh Sharma S/o Jagdish Sharma
3B-Rajesh Sharma S/o Jagdish Sharma
3C-Ramesh Sharma S/o Jagdish Sharma
4. Harish Sharma (since dead) through LR's
A-Smt. Lata W/o Harish Shrma,
B-Vikash S/o Harish Sharma,

All Respondents No.3A to 4B are R/o village Ratanpur, Tahsil Kota, District Bilaspur (CG).

---- Respondents

For Appellant-Dealer	:	Shri Hemant Gupta, Advocate.
For Appellant-Claimants	:	Shri Goutam Khetrapal, Advocate.
For Respondents 4A &B	:	Shri Raghvendra Pradhan, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

JUDGMENT

Delivered on 18/01/2018.

1. By this common award both the appeals are being disposed of as common facts & issues are involved in these appeals and arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 30.01.2008 passed by the First Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case 161 of 2005. Vide the said impugned award, the Tribunal has awarded compensation of Rs.2,50,000/- along with interest @ 6 percent per annum from the date of application. MAC No. 438 of 2008 has been filed by the Dealer of Sonalika Tractors in respect of the tractor involved in the accident (in short, the Dealer) and MAC No. 977 of 2008 has been filed by the claimants (in short, the claimants) seeking for enhancement of compensation.
3. Brief facts of the case is that, on 09.11.2005 a Tractor which is said to have been owned by Jagdish Sharma and Hires Sharma both father and son, which was purchased from the appellant in MAC No.438 of 2008, the Dealer of the Sonalika Tractors, Anil Kumar Kesharwani, met with an accident as a result of which Satyawati

Kashyap sustained grievous injuries. The Said injured Satyawati Kashyap filed an application under Section 166 of the MV Act which stood allowed vide impugned award and since the vehicle was not registered in the name of Jagdish Prasad Sharma and Hiresh Sharma and was also not insured, the liability of payment of compensation has been fastened upon the Dealer of the Tractor i.e. Anil Kumar Kesharwani.

4. Pending the appeal before this court the said injured Satyawati Kashyap has also expired on 16.09.2013.
5. The contention of the counsel for the Dealer is that the liability of compensation has been wrongly fastened upon Dealer. It is a case where he had infact sold the vehicle to the respondents-Jagdish Sharma and Hiresh Sharma on 11.10.2005 itself and it was they who were in possession of the Tractor at the time of accident and since the accident arose while the Tractor was being used and operated by the owner Jagdish Sharma and Hiresh Sharma, the liability of compensation should have been fastened upon them rather than the Dealer. It was the contention of the Dealer that the fact that vehicle was in possession of Jagdish Sharma and Hiresh Sharma is also established from the fact that the driver of the vehicle i.e. Dilip Kumar Kashyap was released on bail where the said Hiresh Sharma, son of Jagdish Sharma stood surety and took bail for the driver Dilip Kumar Kashyap.
6. It was the further contention of the Dealer that the fact that Jagdish Sharma was the actual owner of the vehicle is also established from

the fact that the trolley which was attached to the Tractor was painted with the name of Jagdish Sharma and Hiresh Sharma. According to him, it is a case where though initially the sale was made on 11.10.2005 itself but the purchaser did not get the vehicle registered immediately and it was only got registered on 27.12.2005 i.e. much after the date of accident. The entire liability has been fastened upon the Dealer only on the ground that the interim custody of the vehicle involved in the accident was taken by the Dealer. According to counsel for the Dealer, the said interim custody was taken at the instance of the possessive owner since the vehicle was not registered and it was still in the name of Dealer and that the entire payment had not been paid by the actual owner and since there was outstanding dues against the said vehicle, the interim custody was obtained on behalf of the actual owner. Thus, for all these, the findings of the Tribunal deserves to be set aside and it should have been fastened upon the actual owner, the respondents-Jagdish Sharma and Hiresh Sharma.

7. So far as the appeal of the claimants is concerned, it was the contention of the claimants that as of now the claimants in the instant case are entitled only for the loss of estate and pecuniary loss sustained during the course of treatment of the injured who later on succumbed pending the appeal before this court.
8. It was the contention of the claimants that since the entire amount awarded has already been deposited before the Tribunal, at least the same may be permitted to be released to the claimants. The

claimants relied upon the decision in case of Anil Kumar Kesharwani Vs. Ku. Satyawati Kashyap & Anr.2007 (1) CGLJ 227.

9. Having considered the contentions and submissions put forth on either side, if we peruse the evidence which have come on record, it clearly reflects that the claimants have made statement before the Tribunal proving the date of accident; the injury caused and the injury being proved by the doctor. If we peruse the record of the appeal it reflects that in the records of the criminal case the statement of two eyewitnesses who were riding bicycle and accompanying the claimant at the time of accident were recorded and those are Pratima Lashkar and Monika Dubey. Both these witnesses have categorically stated in their statements that claimant in the instant case was riding bicycle when she was hit by the tractor driven by Dilip Kumar. It was further very emphatically stated by these witnesses that on the trolley of the tractor it was written as "Sharma Welding Works, Ratanpur". Likewise, in the criminal records there is also the photographs of the vehicle involved in the accident and if we peruse the photographs which is accompanied by its negatives, it reflects that on the body of tractor one side it was written as "Sharma Krishi Farm, Bamhu" and on the other side it was written as "Sharma Welding Works".
10. Based on the said material on record, if we peruse the statement of Hiresha Sharma son of possessive owner, he has in his examination in chief, in the form of affidavit has accepted the fact that he had paid margin money for the purchase of tractor to Anil Kesharwani, Dealer of Sonalika Tractors, in the month of October, 2005. Further, from the

records what is also reflected is that the brother of Hiresh Sharma i.e. Ramesh Sharma stood as surety while the driver had been granted bail from the criminal court.

11. Though there is a categorical denial by Hiresh Sharma so far as he being the owner of the Tractor, however, he accepted the fact that he has subsequently got possession of the same tractor from Anil Kesharwani, Dealer of Sonalika Tractors. It is beyond any body's imagination that no person would purchase or take possession of a new tractor from the dealer knowing fully well that the tractor was involved in an accident and there is a criminal case pending in respect of said tractor. This fact goes against the respondents Jagdish Sharma and Hiresh Sharma.
12. So far as evidence of Anil Kesharwani is concerned, he has been constant in his stand that he has already handed over possession of the vehicle to the father of Hiresh Sharma i.e. Jagdish Sharma on 06.11.2005 itself. He further submits that he had applied for Supurdnama of the said Tractor at the behest of the possessive owner as the vehicle was a financed vehicle and documents of sale were not in possession of Jagdish Sharma at that point of time and in the capacity of Dealer he had facilitated Jagdish Sharma in getting the vehicle through him.
13. This fact seems to be a probable story for the reason that the photographs which have been taken by the police authorities immediately after the accident shows that the name of Sharma Krishi Farm, Bamhu and so also Sharma Welding Works have been painted

on the trolley. If Anil Kesharwani was the owner of the tractor in the capacity of dealer of Sonalika Tractors and the said tractor being used for the propaganda and publicity of the tractor, then the name of Sharma Krishi Farm and Sharma Welding Works would not have been painted on the trolley of the tractor.

14. In the given factual matrix of the case, this court is inclined to accept the contention of learned counsel for the appellant-Dealer that he was not actual owner and that the possessive owner of the vehicle was Jagdish Sharma at the time of accident. This opinion of this court stands fortified from the decision of Supreme Court in case of Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari, 1997 (7) SCC 481.

15. The Supreme Court in case of Dr.T.V. Jose Vs. Chacko P.M. & Ors., 2001 ACJ 2059 held as under:

“10. We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However the Appellant still continued to remain liable to third parties as his name continued in the records of R.T.O. as owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these Appeals. Roy Thomas was not a party either before MACT or the High Court. In these Appeals we cannot and will not go into the question of inter se liability between the Appellant and Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so.”

16. Similar proposition came up before the Supreme Court in case of HDFC Bank Ltd. Vs. Kumari Reshma and Ors., AIR 2015 SC 290 and in case of Purnya Kala Devi Vs. State of Assam & Anr. 2014 (4) Scale 586, wherein it is held as under :

“22.The High Court failed to appreciate the underlying legislative intention in including in the definition of "owner" a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the "owner" and not alone the registered owner. The High Court further failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control. The High Court also failed to appreciate that Section 146 of the 1988 Act requires that no person shall use or cause or allow any other person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the State Government has violated the statutory provisions of the 1988 Act.”

17. Thus, considering the overall facts and circumstances of the case and also keeping in mind the law laid down in the aforesaid cases, this court is of the opinion that the owner of the vehicle at the time of accident was infact Jagdish Sharma and his son Hiresh Sharma who have since expired and on their behalf, their legal representatives have been brought on record and it would be the legal representatives of Jagdish Sharma and Hiresh Sharma who would be responsible for payment of compensation, however, given the facts and circumstances of the case, particularly taking note of the fact that the accident is more than 12 years old i.e. of 2005 and that the entire amount awarded has already been deposited by the Dealer before the Tribunal, this court is of the opinion that ends of justice would meet if the amount lying before the Tribunal is permitted to be withdrawn by the claimants and that the Dealer of Sonalika Tractors i.e. Anil Kesharwani is granted the liberty of getting the amount recovered from the respondents-legal heirs of deceased Jagdish Sharma and Hiresh Sharma who have been brought on record by way of substitution.

18. As a result, MAC No.438 of 2008 filed by the Dealer Anil Kesharwani stands allowed in part. So far as the appeal filed by the Claimants i.e. MAC No.977 of 2008 is concerned, since the claimant in the instant case, pending the appeal before this court had expired, this court is of the opinion that the claimant shall not be entitled for any additional compensation than what has already been awarded. Accordingly, the appeal filed by the claimant i.e. MAC No. 977 of 2008 thus stands rejected.

Sd/-
(P.Sam Koshy)
Judge

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