

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. FAO No.5295 of 2002 (O&M)
Date of decision: 29.05.2018

Udai Bhan Appellant

Versus

Pushpa Devi and others Respondents

2. FAO No.1737 of 2003 (O&M)

Janu alias Jan Mohd. Appellant

Versus

Udai Bhan and others Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Kulbhushan Sharma, Advocate
for the appellant in FAO No.5295 of 2002 and
for respondent No.1 in FAO No.1737 of 2003.

None for respondents No.1 to 7 in FAO No.5295 of 2002 and
none for respondents No.2 to 8 in FAO No.1737 of 2003.

Mr.R.S.Sihota, Advocate
for respondent No.8 in FAO No.5295 of 2002 and
for the appellant in FAO No.1737 of 2003

Avneesh Jhingan, J.

This order shall dispose of FAO No.5295 of 2002 and FAO No.1737 of 2003 as both these appeals are against a common award passed by the Tribunal.

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsels, subject to all just

exceptions.

The owner and driver of truck bearing registration No.HNU-9881 (for short, 'the offending truck') respectively are in appeal against award dated 05.09.2002 passed by Motor Accidents Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal').

A motor vehicular accident took place on 18.05.1999. The said accident proved fatal for Bhu Dev. The accident occurred due to rash and negligent driving of the offending truck. In a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the legal heirs of Bhu Dev, owner of the offending vehicle was arrayed as respondent No.1 and driver Janu alias Jan Mahammad driver was arrayed as respondent No.2. The Tribunal awarded compensation of Rs.1,92,000/- to the claimants. Both respondents No.1 and 2 were held jointly and severally liable to pay compensation.

In appeal filed by Udai Bhan, the plea taken is that the offending truck was already sold to Janu alias Jan Mahammad earlier to the date of the accident and Udai Bhan should not be held liable to pay compensation. The contention raised is that the Tribunal has ignored the sale agreement between Udai Bhan and Janu alias Jan Mahammad.

In appeal filed by Janu alias Jan Mahammad, the contention raised is that he had not purchased the offending truck. He was merely driver, hence, he is not liable to pay compensation.

Both the parties have not disputed the fact that on the date of accident, the truck was registered in the name of Udai Bhan, it is also not disputed that Janu alias Jan Mahammad was driving the said offending

vehicle. In view of these facts, the contention raised in both the appeals cannot be accepted. It would be pertinent to note here that the said vehicle was not insured.

Supreme Court in its decision in **Naveen Kumar vs. Vijay Kumar and others, 2018(3) SCC 1** has held that for purpose of Motor Vehicles Act, 1988, the person in whose name the motorcycle vehicle stands registered would be treated as an owner. The relevant portion of the judgment is quoted below:-

“12 The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression ‘owner’ in Section 2 (30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the ‘owner’. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. 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 fulfilment 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. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi."

In view of the abovesaid decision, the contention raised by learned counsel for Udai Bhan cannot be accepted and he cannot be absolved from the liability to pay compensation. The appeal filed by Janu alias Jan Mahammad is also dismissed. He was the driver at the time of accident and it was because of his rash and negligent driving that the accident took place. In such circumstances, driver and owner are jointly and severally liable to compensate the claimants.

Both the appeals are hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

29.05.2018

anju

1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No