

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

**CR no.543 of 2017 (O&M)
Date of Decision: 27.02.2019**

Puran Chand through LRs

...Petitioner

Vs.

Rimpy Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Anshul Mangla, Advocate, for the petitioner.
Mr. Navjot Singh, Advocate, for respondents no.1 and 2.

Amol Rattan Singh, J (Oral)

Learned counsel for the petitioner has made a statement today that respondent no.4, i.e. Partap Goel son of Puran Chand, is not a contesting respondent and therefore service upon him of the notice issued, may be dispensed with.

Ordered accordingly on the aforesaid statement, with it made clear that, naturally, any order passed in this petition will not be binding upon respondent no.4.

By this petition, the petitioners challenge the order of the learned Motor Accident Claims Tribunal, Panchkula, dated 13.12.2016, by which their application filed under Order 1 Rule 10 read with Section 151 of the CPC, seeking to implead one Kashmir Singh son of Malook Singh and Jaki Ahmed son of Hassinuddin as respondents in the claim petition, has been rejected.

The contention of the petitioner is that their father, the late Puran Chand, having sold the vehicle stated to be involved in the accident,

firstly to Kashmir Singh and he thereafter having sold it to Jaki Ahmed, and Jaki Ahmed eventually having taken the vehicle on *sapurdari* in the criminal proceedings initiated against the driver of the tractor, obviously he is the person who owns the tractor and therefore is a necessary party to be impleaded as a respondent.

The learned Tribunal on the other hand, while rejecting the application has held that earlier an application had been filed “by applicants” for impleadment of 'one Puran Chand', with that application having been allowed, after which another application was filed by “these applicants” (present petitioners) for framing an additional issue, with that application also allowed, the additional issue being as to whether Puran Chand was the owner of the tractor bearing registration no.HR20-2282, in terms of sub-section (3) of Section 2 of the Motor Vehicles Act, 1988. That issue was framed on 21.11.2016 and therefore, if any such application for impleadment of other persons who are contended to be the owners was to be filed, it should have been done at that time itself.

Hence, holding that the applications being filed time and again was only to delay the proceedings, the impugned order was passed rejecting such application.

The Tribunal also held, while citing a judgment of this Court in **S.S. Sodhi v. Chander Vikas**, 2007 (1) PLR 75, that it is only the registered owner as is liable to indemnify the claimants and in case the vehicle has been sold to another person, appropriate proceedings in a civil court would

be available to such registered owner.

Learned counsel for the petitioner reiterates that the aforesaid persons, Kashmir Singh and Jaki Ahmed, being the subsequent purchasers of the tractor in question, it is actually they who are liable to pay the compensation if it is eventually awarded by the Tribunal and consequently, they are necessary parties.

In support of his contention, learned counsel relies upon two judgments of coordinate Benches of this Court, in **J.S. Choudhary Proprietor of Ambala Finlease Corps v. Ritu Devi and others**, 2011(2) PLR 397 and **Gurbax Kaur v. Kanwaljit Singh @ Mor and others**, 2015 (1) PLR 601, wherein in the first case, it was held as follows:-

“5. In all cases, where the plea of ownership is in question, the first attempt must be to see who is the registered owner. If the registered owner denies ownership and pleads transfer to a 3rd party but the transferee is not made a party, the Tribunal may call upon any party to direct the impleadment and if the evidence shows admission of transfer by the transferee, the Tribunal will be justified in making the transferee alone as liable. If there is a policy of insurance, no matter the fact of transfer is not notified to the insurer but the insurer is a party in proceedings, the Tribunal will also be justified in making the insurer liable to answer the claim of a third party, by virtue of the provisions under Section 157(1) of the Motor Vehicles Act, constituting the deeming provisions for transfer of policy of insurance. If the transferor is impleaded and he denies the transfer but the Tribunal finds prima facie evidence of transfer, such as proof of delivery, payment of consideration and the contract details, evidence of transfer through the fact of who applied for custody of the vehicle from Criminal Court, evidence of driver etc., the Tribunal will again be justified in making the award against the transferee. However, if

the issue of transfer itself becomes contentius and the Tribunal is unable to gather materials regarding the transfer, it is better left alone for independent adjudication before appropriate forum. The Tribunal shall in such cases, pass the award against the registered owner, leaving it open to him to adopt recoveries before the appropriate forum, if in law, he is entitled to a course that the Supreme Court adopted in T.V. Jose's case (supra).”

From Gurbax Kaurs' case, he relies on the following:-

“2. It is an undisputed fact that during pendency of claim petition, an application under Order 1, Rule 10 read with Section 151 CPC was moved by the claimant, to implead Sajjan Singh, owner of the offending vehicle no.PB-02Q-9676, as respondent no.2 Gurmukh Singh, had sold away the said vehicle registered in his name, about 10 years prior to the accident. The insurance policy was also issued by the insurance company in the name of Sajjan Singh. The said fact was also admitted by Gurmukh Singh respondent no.2 when appeared in the witness-box. But vide order dated March 02, 2009, the aforesaid application was dismissed by observing that claim petition is at its penultimate and even respondents have closed their evidence. Further, it was observed that allowing of application at that stage would amount to reopening of the case but the reasons assigned by the learned Tribunal while dismissing the application are erroneous. There is no provision in law that such an application cannot be allowed if the proceedings are at its final stage. Moreover, rules and procedures are meant for the advancement of justice to the parties and to adjudicate upon the matter in controversy judiciously and effectively and not to scuttle down the rights of any of the parties. Thus, mere fact that respondents had closed their evidence or that the case was at its penultimate, is no ground to dismiss the application. Hence, the said order is required to be set aside whereby application under Order 1, Rule 10 CPC, moved by the claimants be treated as stands allowed.

3. xxx xxx xxxx

4. The dismissal of the application is also not legally justified. It appears that learned Magistrate has acted in a hurried manner to dispose of the claim petition, first by dismissing the application under Order 1,

Rule 10 CPC and then by making the said ground, dismissed the claim petition, which is not the intention of the beneficial legislation. No proper opportunity can be said to have been afforded to the claimant to prove her claim.” (Emphasis applied by this Court)

He thus submits that the Tribunal wholly erred in dismissing the application, further pointing to the fact that the application earlier filed under Order 1, Rule 10 of the CPC to implead Puran Chand, was actually not by the present petitioners (LRs of Puran Chand), who has been referred to as the applicant in paragraph 6 of the impugned order, but was filed by the claimants themselves.

Having considered the matter, including the judgments of the coordinate Benches relied upon by the learned counsel for the petitioner, in my opinion this petition cannot succeed, for the reason that the father of the petitioner is not denied to be the registered owner of the vehicle in question and consequently in any case he has to be treated to be a tortfeasor for the purposes of the claim petition before the Tribunal, even in terms of the ratio of the judgments of the Supreme Court in **Naveen Kumar v. Vijay Kumar and others** (2018) 3 SCC 1 and **Prakash Chand Daga v. Saveta Sharma & Ors.** 2019 (1) RCR (Civil) 372. In the former case, it was held by their Lordships as follows:-

“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 1939 Act. 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.

13. The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50 (3) but will not invalidate the transfer of the vehicle. In T.V. Jose, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the

records of the Registering Authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled.”

That being so, for the purposes of a claim petition, a registered owner of a vehicle has to be presumed to be a tortfeasor and therefore, even impleadment of a single tortfeasor is sufficient to discharge the claim of the claimants, if it is otherwise found to be sustainable on merits.

Any claim that the registered owner may have qua subsequent purchasers of the vehicle in question, would be adjudicable in separate proceedings *inter se* such persons in a civil court, as has been rightly held by the Tribunal by relying upon a judgment of this Court in S.S. Sodhis' case (*supra*).

As regards the judgment of this court relied by learned counsel for the petitioner, the ratio contained therein has to be held to be no longer applicable, in view of what has been held by the Supreme Court in the judgments cited hereinabove.

Secondly, the application having been filed at such a stage of the proceedings before the Tribunal, with the claim petition having been filed in the year 2013, and the father of the 'present petitioners' (LRs of Puran Chand) having been impleaded in the year 2015 and he having filed a written statement, I see no reason to interfere with the impugned order, with of course the petitioners at liberty to take their remedies against any subsequent purchasers that they contend the vehicle was sold to, as regards the reimbursement of the compensation if any is awarded to the respondents

-claimants.

In view of the above, this petition is dismissed.

27.02.2019

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(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes