IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 3.4.2019

(1) FAO No. 4097 of 2015

Rajan Goel

.. Appellant

v.

Satish Mittal and others

.. Respondents

(2) FAO No. 4098 of 2015

Rajan Goel

.. Appellant

v.

Anita Goel and others

.. Respondents

(3) FAO No. 4099 of 2015

Rajan Goel

.. Appellant

v.

Satish Mittal and others

.. Respondents

(4) FAO No. 4100 of 2015

Rajan Goel

.. Appellant

v.

Seema Mittal and others

.. Respondents

(5) FAO No. 4101 of 2015

Rajan Goel

.. Appellant

v.

Anita Goel and others

.. Respondents

(6) FAO No. 4129 of 2015

Rajan Goel

.. Appellant

v.

Anita Goel and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B. S. Rana, Senior Advocate with
Mr. Kshitij Sharma, Advocate for the appellant.

Mr. Vinod Mahendru, Advocate for the claimants in
FAO Nos. 4097 to 4101 of 2015.

Mr. Sanjeev Kodan, Advocate for
Reliance General Insurance Company Ltd.

...

AVNEESH JHINGAN, J. (Oral)

Aggrieved of the award dated 27.4.2015 passed by the Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') in MACT Case Nos. 1200 to 1205 of 2013, the present six appeals have been filed by the registered owner of the Endeavour bearing registration No. CH03-W-1786 (hereinafter described as 'the offending vehicle'). As the same arise out of same accident and one award, these are being disposed of by common order.

The grievance raised in all the appeals is that the offending vehicle was sold prior to the date of accident and the appellant has wrongly been held liable to pay the compensation.

The facts with regard to the accident are not in dispute amongst the parties. A motor vehicular accident took place on 28.5.2012. At the time of accident, the offending vehicle was being driven by one Patrick Sunil, arrayed as respondent No. 1 before the Tribunal. The Tribunal came to the conclusion that the accident took place due to rash and negligent driving of Patrick Sunil. The accident proved fatal for Ashok Kumar Goel, Ritika Goel and Vaibhav Mittal. Satish Mittal, Chahat Mittal, Seema Mittal and Harshita Goel sustained injuries in the accident. FIR No. 56 dated 28.5.2012 was registered at Police Station, Leh.

Before the Tribunal, driver of the offending vehicle, registered owner (appellant), Reliance General Insurance Company Limited and Jaspal (Yashpal Sharma), the alleged subsequent purchaser, were arrayed as respondents No. 1 to 4, respectively.

It was duly established during the claim proceedings that on the relevant date, the offending vehicle was not insured. The Tribunal considering the facts and appreciating the evidence adduced awarded compensation to the legal representatives of the deceased as well as to the injured. The driver and the registered owner (appellant) were held jointly and severally liable to pay the compensation. Aggrieved of the liability, the present appeals have been filed by the registered owner.

Learned counsel for the appellant contends that the vehicle was sold by the appellant to Yashpal Sharma on 21.2.2012. On the date of accident, he was not in possession and control of the offending vehicle. The grievance raised is that the subsequent purchaser had forged the documents and false signatures of the appellant are made for reporting DDR dated 25.4.2012 with regard to the papers of the offending vehicle having been lost. His signatures were forged and a General Power of Attorney was prepared in favour of Balwinder Singh for getting the offending vehicle transferred in the name of Yashpal Sharma on 10.9.2012. Further submission is that photograph of the appellant is not attached on the transferred document. The second limb of the argument is that the claimants have withheld the fact from whom they took possession of the offending vehicle. It is alleged that they were borrowers of the vehicle and could not claim compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). To buttress his arguments, he relies upon the cross-examination of Anita Goel wife of Ashok Kumar Goel wherein, she stated that 'vehicle in question was not a taxi, the said vehicle was of one of our family friends'. Further she stated that 'the vehicle in question was of some known person'. Reliance is also placed upon the cross-examination of Sunil Patrick wherein he stated that 'Rajan Goel is the owner of offending vehicle. He had not taken the vehicle in question directly from the owner of offending vehicle rather it was taken from Mr. Puri who is the friend of Mr. Rajan Goel and is residing at Sector 32, Chandigarh.'

Learned counsel for the appellant placed reliance upon the decision of the Supreme Court in **Ningamma and another v. United India Insurance Co. Ltd., 2009(3) R.C.R. (Civil) 435** to state that the borrower cannot file a claim petition for compensation.

Learned counsel for the respondents defended the award and argued that on the date of accident the appellant was the registered owner of the offending vehicle. He relies on the decision of the Supreme Court in **Naveen Kumar v. Vijay Kumar and others, (2018) 3 SCC 1.** It is further submitted that story of sale of the offending vehicle is a concocted one as the offending vehicle was financed by HDFC Bank and could not have been sold on 21.2.2012 as the financer had issued 'No Objection Certificate' on 4.8.2012. Learned counsel pressed into service the contents of affidavit (Ex. RW1/A) filed by Rajan Goel wherein it was stated that the documents required for transfer of the offending vehicle submitted by Yashpal Sharma were totally forged and there was no photograph of Rajan Goel.

From the perusal of the award, it evident that following issues were framed by the Tribunal:

> "1. Whether claimants Satish Mittal, Anita Goel, Chahat Mittal, Seema Mittal and Harshita Goel received injuries and Ashok Kumar Goel, Ritika Goel and Vaibhav Mittal died in a road side accident due to rash and negligent driving of respondent No. 1 while driving Endeavour No. CH03-W-1786? OPP
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> 2. Whether the claimants are entitled to compensation as prayed for ?OPP
>
> 3. Whether the driver of the vehicle in question was not holding a valid and proper driving licence? OPR-3
>
> 4. Relief."

The issue that the deceased or the injured were the borrowers of the vehicle was never pressed by the appellant before the Tribunal. For deciding the issue that the borrower of the vehicle cannot claim compensation under Section 166 of the Act, facts need to be proved, i.e.

claimants were the borrowers of the offending vehicle. It can be said to be a mixed question of fact and law. Having not pressed the said issue and failed to lead any positive evidence in support of the issue, there would be no occasion to go further into the said issue in the present appeals.

There is another aspect of the matter. The offending vehicle was financed by the bank. The same cannot be sold without having 'No Objection Certificate' from the financer. It is claimed that the offending vehicle was sold on 21.2.2012, whereas 'No Objection Certificate' was issued by the financer on 4.8.2012, i.e. almost 5-1/2 months after the alleged sale.

Further, learned counsel for the appellant vehemently argued that the signatures of the appellant on the papers for transfer of the offending vehicle in favour of Yashpal Sharma were forged. The said plea raised is of no help. On one hand he is relying upon the fact that the offending vehicle was sold to Yashpal Sharma in February, 2012 and at the same time he is raising a grievance that the offending vehicle was got transferred to Yashpal Sharma in September, 2012 by forging the documents. Not only this, there is nothing produced on record to establish that from September, 2012 till date any proceedings were taken by the appellant against the alleged forgery.

In order to avoid the liability, every possible excuse is being made by the appellant as is evident from paragraph 50 of the award wherein it was claimed by the appellant that the offending vehicle was duly insured at the relevant time. Sanpreet Pahuja, Assistant Manager, Legal, Reliance General Insurance Company Limited appeared as RW-2 and tendered his affidavit to the effect that the insurance policy being relied upon was a forged document. The policy produced showed validity period from 22.9.2011 to 21.9.2012, whereas the Insurance Company proved that the policy was issued from 22.2.2011 to 21.2.2012. It would be appropriate to note the fact that the accident took place on 28.5.2012. Not only this, Sanpreet Pahuja established before the Tribunal that even the said policy was cancelled as cheque No. 000820 dated 22.2.2011 (Ex.R-1) bounced, the dishonoured memo was produced as Ex. R-B. The notice regarding cancellation of the policy sent to the appellant was also proved vide Ex.R-C.

There is no challenge to the fact by the appellant that he continues to be the registered owner on the date of accident. The Supreme Court in **Naveen Kumar's case (supra)** has held that for purpose of the Act, the person in whose name the motor vehicle stands registered on the date of accident would be treated as the 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.".**

Further, the Supreme Court in **Prakash Chand Daga v. Saveta Sharma and others, 2019 (1) RCR (Civil) 372** has held as under:

9. The law is thus well settled and can be summarised:-

> "Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person.....
>
> Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

It has been held that as long as the seller continues to be the owner in record of the registering authority, he shall be liable to pay compensation under the Act. In such circumstances, the appellant cannot be absolved from his liability to pay compensation.

No shadow can be cast upon the findings recorded by the Tribunal with regard to the liability of the appellant to pay compensation to the claimants.

All the appeals are accordingly dismissed.

(AVNEESH JHINGAN)
JUDGE

3.4.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No