

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment delivered on: 23rd April, 2019**

+ **MAC.APP. 746/2013**

M/S NUTECH SECURITY PRINTERS

...Appellant

Through: Mr. Ajay Kohli, Ms.
Pooja Vohra, Advocates.

versus

1. SMT GEETA DEVI
2. SHRI BABU RAM PANDEY
3. SHRI JAI SINGH
4. THE ORIENTAL INSURANCE COMPANY LTD.
5. SHRI SARDAR SINGH
6. M/S PRAVEEN TRANSPORT COMPANY ... Respondents

Through: Mr. A.K. Mishra
Advocates for R-1 and R-
2, R-3. Mr. J.P.N. Shahi
with Ms. Komal Dhingra,
Advocate for R-4.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The instant appeal is arising out of the impugned award dated 16.02.2013 in MACT Case No. 575/01 passed by Mr. Prem Kumar Barthwal, Presiding Officer, MACT (SE-01), Saket Courts, New Delhi (*henceforth referred to as the Tribunal*) whereby compensation of Rs. 2,29,500/- (Rupees Two Lakhs Twenty Nine Thousand and Five

Hundred Only) alongwith interest at rate of 7.5% p.a. from the date of filing of petition till the date of its realization was granted in favour of Claimant No.1 and 2 (*Respondent No.1 and 2 herein*).

2. The brief facts stated are that on 09.06.1999 at about 9:30 A.M. Smt. Geeta Devi alongwith her two sons Sushil and Vakil were going towards Masjid Malka, while they were crossing the road near Khanpur Market, a truck bearing No. DL-1LB-0144 (*hereinafter called as offending vehicle*) driven by Respondent No.3, Jai Singh in rash and negligent manner hit her son Sushil. As a result of forceful impact Sushil fell down and sustained multiple grievous injuries and was taken to A.I.I.M.S. Hospital and was declared brought dead. An FIR, FIR No. 313/1999 under Section 279, 304A IPC was got registered at Police Station Ambedkar Nagar, Delhi. Initially the petition was filed under Section 166 and 140 of Motor Vehicle Act, but during course of the proceedings, on request of petitioners, said petition was converted into Section 163-A of the Motor Vehicle Act, 1988 on 23.08.2004.

3. Thereafter, claim petition was filed on 11.08.1999 against Jai Singh Respondent No.3 driver of the offending vehicle, Appellant M/s Nutech Security Printers (Owner), Respondent No.4 The Oriental Insurance Company, insurer of the offending vehicle and Respondent No.5 Sardar Singh by the claimants.

4. Respondent No.3, driver filed written statement and denied the entire allegation made by the claimants.

5. Thereafter, Appellant filed written statement and stated that initially offending vehicle was owned by M/s Nutech Security

Printers, Appellant but the same was sold to M/s Praveen Transport Company on 06.05.1999 and leased to Mr. Sahab Singh vide lease agreement dated 10.08.1994. The physical possession, use and control of the said vehicle was with Mr. Sahab Singh from 10.08.1994 to 06.05.1999 and thereafter with M/s Praveen Transport Company. Hence, the Appellant is not liable to pay any compensation and denied entire allegation made in the claim petition.

6. Insurance Company respondent No.4 filed its written statement and submitted that the offending vehicle was not insured with it on the date of accident. Jai Singh respondent No.3 denied all allegations made in the claim petition.

7. Respondent No.5 filed written statement and submitted that he has no concern with the accident as he was neither driver nor owner of the truck at the relevant time.

8. On the basis of the pleadings of the parties, issues were framed on 20.02.2003 by the Ld. Tribunal.

9. In support of their claim petition, Claimant/Respondent No.1 Smt. Geeta Devi mother of the deceased filed her affidavit Ex.PW1/A and examined herself as PW1. Thereafter, petitioner's evidence was closed on 27.04.2011.

On the other hand, driver respondent No.3 has not adduced any evidence. The Appellant filed its affidavit Ex.RW2/A in support of its defence and examined two witnesses i.e. Shri Ashok Das, Assistant General Manager, M/s Nutech Security Printers as RW2 and Shri Gyan Chand, Dealing Clerk, MLO as RW3 who deposed that M/s Nutech Security Printers Company was engaged in the business of

lease and finance, the offending vehicle was leased to Mr. Sahab Singh vide lease agreement dated 10.08.1994 and the physical possession, use and control of the said vehicle was with Mr. Sahab Singh from 10.08.1994 to 06.05.1999 and thereafter with M/s Praveen Transport Company. Therefore, Appellant is not liable to pay any compensation. Thereafter, Appellant/Respondent No.2 herein closed his evidence on 03.10.2012.

The Respondent No.4/Insurance Company examined two witnesses i.e. Shri Jagat Ram, Asst. Manager, M/s Oriental Insurance Company Ltd as R3W1 and Shri Mahender Singh, LDC, Transport Department, MLO as R3W2. Thereafter, Respondent No.4/Insurance Company's evidence was closed on 09.05.2012.

The Respondent No.5 did not adduce any evidence.

10. On the basis of pleadings and evidence led by the parties, impugned award was passed.

Aggrieved from the impugned award, appellant has preferred the present appeal.

11. The Appellant has challenged the impugned Award on the following grounds: -

- i. That the Ld. Tribunal failed to appreciate the fact that prior to date of the alleged accident on 09.06.1999, appellant had already sold the offending vehicle to Respondent No.6.
- ii. That Ld. Tribunal failed to appreciate that on date of the alleged accident actual control, use and possession in respect of the said vehicle was with M/s Praveen Transport Company.

- iii. That Ld. Tribunal failed to appreciate the fact that release of the offending vehicle, on superdari, from the Court of Ld. M.M., was obtained by M/s. Praveen Transport Company after the same had been impounded by the police in relation to FIR No.313/1888 under Section 279, 304 IPC, P.S. Ambedkar Nagar, Delhi.
 - iv. That Ld. Tribunal failed to appreciate that claimant No.1 before Ld. Trial Court had filed an application under Order I Rule 10 read with Order VI Rule 17 of the Code of Civil Procedure wherein the claimant/respondent No.1 herein relied on the statement of the driver of the offending vehicle that is respondent No.3 herein, that the owner of the said vehicle was Mr. Sahab Singh.
 - v. That Ld. Tribunal failed to appreciate that as per law the person who is in possession of the vehicle is liable to pay compensation and not the financier. The Appellant placed its reliance on *M/s. Godavari Finance Co. V. Degala Satya Narayanamma & Ors* 2008 (6) SCALE 364.
12. Per contra, learned counsel for the Claimants submitted that there is no infirmity in the impugned award passed by Ld. Tribunal except the amount awarded is very meager and the compensation award be enhanced. The respondent No.1 and 2 placed reliance upon the Judgment of the Apex Court In *Naveen Kumar v. Vijay Kumar & Others* SLP (C) No.18943/2016 and *Krishan Gopal & Anr. V. Lala & Ors* 2013 IX (S.C) 193.
13. This Court vide order dated 14.08.2013 allowed M/s Praveen

Transport Company/Respondent No.6 to be one of the party who has refused to accept the summons. Consequentially, Respondent No.6 was deemed to be served on 22.08.2017 and he failed to contest the present appeal.

14. The plea of the Appellant that the offending vehicle was leased out and was subsequently sold to Respondent No.6 M/s Praveen Transport Company and liability, if any, arises is not of the Appellant losses its significance in presence of the Appellant's own document Ex.R3-2/B.

The Appellant in its written statement (at paragraph 2 of the affidavit) stated that the Appellant M/s Nutech Security Printer was engaged in business of leasing and finance. The said offending vehicle was owned by Appellant at earlier point of time and the same was sold to M/s Praveen Transport Company on 06.05.1999. Praveen Kumar S/o Sahab Singh was the owner and the said offending vehicle was transferred in the name of M/s Praveen Transport Company on 21.06.1999 vide Ex.R3-2/B.

Shri Gyan Chand RW3 in his examination-in-chief has specifically stated that the offending vehicle was transferred on 21.06.1999 from the previous registered owner M/s Nutech Security Printer to M/s Praveen Transport Company.

15. The document Ex.R3-2/B is form 23, certificate of registration, said document shows that offending vehicle in question was transferred in the name of M/s Praveen Transport Company on 21.06.1999. The Appellant M/s Nutech Security Printer's own witness in his examination-in-chief has stated that the offending vehicle in

question was owned by M/s Nutech Security Printer and the same was transferred to M/s Praveen Transport Co. on 21.06.1999. The said examination-in-chief is reproduced as under: -

“Geeta Devi Vs. Jai Singh
Suit No.575/01

RW-3, Shri Gyan Chand, Dealing Cleark, Motor
Licencing Officer, 5/9, Under Hill Road, Delhi.

On S.A.:-

*The vehicle bearing registration no. DL-1LB-0144
was transferred on 21.06.1999 from the previous
registered owner, M/s Nutech Security Printers to
M/s Praveen Transport Company”*

16. Appellant M/s Nutech Security Printer in its affidavit has admitted that vehicle in question was leased in favour of respondent No.6 through Sahab Singh vide lease agreement dated 10.08.1994 Ex.RW2/1 for period of 36 months. The said lease agreement thus ended on 10.08.1997.

17. The incident took place on 09.06.1999. Ex.RW-2/B and statement of RW3 makes it crystal clear that on date of incident Appellant M/s Nutech Security Printer was registered owner of the offending vehicle and transfer was made by Appellant on a subsequent date i.e. 21.06.1999.

Since, on the date of the incident the Appellant was the registered owner of the offending vehicle. Therefore, liability, if any, is of the registered owner. There is no insurance policy cover given to the offending vehicle by the registered owner in the present case. Since, Appellant is the registered owner of the offending vehicle no

further determination of subsequent owner is called for and reliance is placed on *Naveen Kumar V. Vijay Kumar & Others* 2018 3 SCC 1.

18. As far as contention of the Appellant, that, on the date of accident actual control and possession of the said offending vehicle was with the respondent No.6 is concerned, the law in this regard is well settled in *Naveen Kumar* (*supra*), the relevant extract of the judgment is reproduced as under :-

“13. ...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 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. 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 Dr 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.”

19. In the instant appeal, facts emerging on record is that on date of the incident i.e. 09.06.1999, Appellant company was the registered owner and failed to prove that offending vehicle bearing No. DL-1LB-0144 was under the cover of insurance policy. Consequentially, the Appellant cannot escape its liability arising out of the incident.

20. The claimant, Geeta Devi has examined herself as PW1 and relied upon her affidavit Ex.PW1/1. PW1 is the witness to the incident who specifically stated that on 09.06.1999 she along with her two sons Sushil and Vakil was going towards Majid Malka, while they were crossing the road at 9:30 A.M near Khanpur Market, offending vehicle driven by Jai Singh/Respondent No.3 in rash and negligent manner hit her minor son Sushil. Consequentially, he fell down on the road and sustained multiple injuries on his person and later succumbed to his

fatal injuries. She relied upon following documents i.e. copy of FIR Ex.PW1/A, copy of MLC Ex.PW1/J, copy of charge sheet Ex.PW1/A-1, copy of postmortem Ex.PW1/I, and copy of death report Ex.PW1/H.

21. The Appellant did not prefer to cross-examine the sole eye witness of the incident i.e. Geeta Devi and her statement remains unrebutted on the record. The statement of PW1 inspires confidence and there is no reason to disbelieve the version given by sole eye witness, mother of the deceased in absence of rebuttal evidence.

22. Reliance placed by the Appellant on *M/s. Godavari Finance Co.* (supra) is misplaced.

23. The claimants specifically proved the claim petition leaving no room to interfere into the impugned award dated 16.02.2013 passed by the Tribunal. Thus, the present appeal is accordingly dismissed and impugned award is upheld. Awarded compensation be paid to the claimant as indicated in the impugned award.

24. Let one copy of this judgment be sent to the concerned Court.

No order as to costs.

I.S.MEHTA
(JUDGE)

APRIL 23, 2019