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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision:18.03.2019

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MACT APP. 917/2017 & CM No.37744/2017

URMILA

..... Petitioner

Through: Mr.Saurabh Upadhyay,
Mr.Vipul Sharma and
Ms.Hardika Kalia, Advocates.

versus

SUSHMA & ORS.

.....Respondents

Through: Mr.Anshuman Bal, Advocate for
R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

A.K.CHAWLA, J. (ORAL)

1. By the instant appeal, the appellant assails the finding of the Motor Accident Claims Tribunal-02 (North) in short 'the Tribunal' rendered in its judgment-award dated 23.08.2017, whereunder, the liability to pay compensation to the motor accident victim (s) *inter alia* has come to be fixed upon him, being the registered owner of the offending vehicle.

2. Concisely, the facts relevant to the appeal are that as on the date of occurrence of the incident of accident on 11.08.2006, when the accident occurred in which the motor cycle bearing registration no. DL 3S T 9655 in

short 'the offending vehicle', was involved and in respect whereof, the impugned award has come to be made by the Tribunal, the appellant was continuing to be the registered owner thereof, though, prior to the subject incident, he had sold the offending vehicle to the respondent No.5-Sh.Dipty Singh, who himself was driving it when the accident occurred. The Tribunal, placing reliance upon ***P.P.Mohammed vs. K.Rajappan and others*** 2003 ACJ 1595 followed by ***Pushpa alias Leela and others vs. Shakuntala and others*** (2011) 2 SCC 240, held that the appellant being the registered owner of the offending vehicle as on the date of the accident, she was liable to the third party on account of the use of such vehicle.

3. Taking note of the ratio of ***P.P.Mohammed and Pushpa's*** case (supra) as also the observations made by the Full Bench of this court in ***Anand Sarup Sharma vs. P.P.Khurana & others*** AIR 1989 Delhi 88 and a few single bench judgments of the Punjab and Haryana High Court, a learned single Judge of this court in MAC Appeal No.524/2008 ***Sidharth Khetrpal vs. Mohd.Hanif & Ors*** and other connected matters decided on 14.09.2017, has made categorical observations on the subject, as under:

"18. An accident claim case is maintained under the provisions of the Motor Vehicles Act, 1988 which is essentially the law of torts codified for such purposes, the prime regime being represented by the 12th Chapter. Section 168 of the Motor Vehicles Act, 1988 being germane to the issue raised in these appeals, may be quoted to the extent relevant here, as under:-

"168. Award of the Claims Tribunal.— (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an

inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be”.

19. *It is clear from the afore-quoted provision of Section 168 that the claims tribunal, after inquiry into the application for compensation, may grant the award specifying as to the person who is bear the responsibility to pay, such person inclusive of “the insurer or owner or driver of the vehicle involved in the accident or by all or any of them.” Noticeably, the law does not refer to the registered owner, but simply uses the expression “owner”.*

20. *The fact that the owner may be a person distinct from the registered owner cannot be denied. In the context of provision contained in Section 31 of the erstwhile Motor Vehicles Act, 1939, also governing the subject of “transfer of ownership”, which was a similarly worded clause as contained in Section 50 the Motor Vehicles Act, 1988, a Full Bench of this Court in Anand Sarup Sharma vs. P.P. Khurana & Ors., AIR 1989 Delhi 88, had observed as under:-*

“13. We have carefully examined the above provisions. In our considered opinion, these provisions do not have the effect of postponing the transfer of property from the seller to the buyer till the transferor and transferee make the requisite report and the vehicle is registered in the name of the transferee. Section 22 simply imposes a statutory obligation. It prohibits the driving of any vehicle by any person unless the vehicle is registered. Non-compliance of these provisions does not have the effect of postponing the transfer of property in the vehicle from buyer to seller. To take a contrary view would result in an absurd result. If a buyer after purchase does not use the vehicle he is the owner. But if after one year he uses it he ceases to be the owner. It is not and cannot be the law.

14. Opening words of section 31 “where the ownership of any motor vehicle registered under the Chapter is transferred” make clear that transfer of ownership has to precede the reports required to be made

under section 31. Section 31 does not prohibit the transfer of a motor vehicle till the reports are made. These provisions only cast an obligation on the transferor and the transferee to report to the registering authority concerned regarding the transfer of the vehicle after the transfer has already taken place. These provisions have nothing to do with the ownership of the vehicle as such. They merely provide for regulations of use of motor vehicles in public places. Their non-compliance attracts penalties.”
(emphasis supplied)

21. As observed earlier, the liability on account of damage or injury (including death) caused due to negligent driving of a motor vehicle is essentially a liability in tort. The person at the wheel of the motor vehicles is, generally speaking, the principal tort-feasor. The liability of the owner arises because he is the person who either employed or permitted the driver to be at the wheel of the vehicle at the relevant point of time, such liability being “vicarious”. In this context, further observations of Full Bench of this Court in Anand Sarup Sharma (supra) to the following effect are enlightening:-

“23. A decree or award, in our opinion, can never be made against a person who has sold the vehicle prior to the date of accident. A driver is always liable if the death or bodily injury is caused due to his rash and negligent driving. This is also the rule that an employer, though guilty of no fault of himself, is liable for damage done by a fault or negligence of his servant acting in the course of his employment on the principle that an owner is victoriously liable for the rash and negligent act of his servant. The buyer cannot by any stretch of arguments be termed as the servant of the seller. The seller, therefore, cannot be held liable for the tortious act of the purchaser or his servant, committed during the course of this (purchaser's) employment. The purchaser, in view of the provisions of section 94, no doubt, is barred by statute from using the vehicle without getting it insured. The consequence of non-compliance of the statutory obligation can lead to two consequences, namely, (i) criminal liability and (ii) tortious liability. However, the seller in no case would be liable either under tort or under the statute. This non-compliance

by the buyer would not make the seller liable for damages. The fact that he continues to be the registered owner would not make any difference so far as his liability to pay compensation under tort or statute is concerned.”

(emphasis supplied)

22. In *Godavari Finance Company vs. Degala Satyanarayanamma & Ors.*, (2008) 5 SCC 107, the question raised was as to whether the financier in whose name the vehicle stood registered, or the owner, were to be held liable to pay the compensation arising out of an accident. It is in that context that the Supreme Court observed thus:-

“12. Section 2 of the Act provides for interpretation of various terms enumerated therein. It starts with the phrase "Unless the context otherwise requires". The definition of "owner" is a comprehensive one. The interpretation clause itself states that the vehicle which is the subject matter of a hire-purchase agreement, the person in possession of vehicle under that agreement shall be the owner. Thus, the name of financier in the registration certificate would not be decisive for determination as to who was the owner of the vehicle. We are not unmindful of the fact that ordinarily the person in whose name the registration certificate stands should be presumed to be the owner but such a presumption can be drawn only in the absence of any other material brought on record or unless the context otherwise requires.”

x x x

15. An application for payment of compensation is filed before the Tribunal constituted under Section 165 of the Act for adjudicating upon the claim for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Use of the motor vehicle is a sine qua non for entertaining a claim for compensation. Ordinarily if driver of the vehicle would use the same, he remains in possession or control thereof. Owner of the vehicle, although may not have anything to do with the use of vehicle at the time of the accident, actually he may be held to be constructively liable as the employer

of the driver. What is, therefore, essential for passing an award is to find out the liabilities of the persons who are involved in the use of the vehicle or the persons who are vicariously liable. The insurance company becomes a necessary party to such claims as in the event the owner of the vehicle is found to be liable, it would have to reimburse the owner inasmuch as a vehicle is compulsorily insurable so far as a third party is concerned, as contemplated under Section 147 thereof. Therefore, there cannot be any doubt whatsoever that the possession or control of a vehicle plays a vital role."

(emphasis supplied)

23. It is noted that the decision in *Pushpa @ Leela & Ors. vs. Shakuntala & Ors.*, (2011) 2 SCC 240 (SC) is later in terms of time vis-à-vis the decision in *Godavari Finance Company vs. Degala Satyanarayanaamma & Ors.*, (2008) 5 SCC 107 and does not take note of the said previous ruling.

25. The registration of the vehicle in the name of an individual is of import. It generally proceeds on the presumption that the person in whose name the vehicle is registered is the person responsible for its use. This attracts to him the vicarious liability. But then, it being a rebuttable presumption, it cannot be a thumb rule that in all cases the registered owner must be held accountable. If the registered owner can show, by credible evidence, like in the present case, that he had no control over the vehicle or that the vehicle was with someone else, over whom, or use of the vehicle by whom, he had no control, he cannot be held accountable, the liability in such case shifting on to the person who had the control over the vehicle."

4. Similar view was taken by another learned single Judge of this court in MAC Appeal No.456 of 2007 **Anoop Kumar Kaila vs. Smt. Soma Devi & ors.** decided on 04.05.2010. This court does not see any reason to differ with the opinion expressed by the coordinate benches of this court. Suffice to say, the case in hand is akin to those cases and it is well proved on record that the appellant had transferred the offending vehicle to the respondent No.5 and as on the date of the occurrence of the incident, the respondent No.5 was the

actual owner thereof.

5. For the foregoing reasons, the appeal is allowed. Consequently, the impugned judgment-award dated 23.08.2017 passed by the MACT-02 (North) is modified to the effect that the appellant has no liability under it. Appeal stands disposed of accordingly. No order as to costs.

A.K.CHAWLA, J.

MARCH 18, 2019/dm

