

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1198 of 2015**

- Jagdish Ram Shukla S/o Shri Hiramani Shukla, aged about 75 years R/o Village Beloudi, Pargana Vijaygarh, Tahsil Robertganj, District Sonbhadra, Uttarpradesh

---- Appellant**Versus m**

1. Smt. Minu Devi Wd/o Late Bhola, aged about 30 years, By Caste Khaiwar.
2. Ku. Durgawati, D/o Late Bhola, aged about 12 years
3. Ku. Basanti, D/o Late Bhola, aged about 10 years.
4. Ku. Shanti D/o Late Bhola, aged about 8 years.
5. Sarawan Kumar, S/o Late Bhola, aged about 6 years.
6. Ku. Manti D/o Late Bhola, aged about 4 years
Respondents No.2 to 6 are minor through their natural guardian mother Smt. Minu, Wd/o Late Bhola, Caste - Khairwar,
All are residence of Village Vishalpur, P.S. Ramchandrapur, Tahsil Pal, District Surguja and present District Balrampur-Ramanujganj (CG)
7. Mini Khairwar, S/o Dhanukdhari Singh Khairwar, aged about 25 years, R/o Village Lodha, P.S. Ramchandrapur, Tahsil Pal, District Surguja & present district Balrampur-Ramanujganj (CG)
8. Girdhari, S/o Rajju Singh, R/o Village Lodha, P.S. Ramchandrapur, Tahsil Pal, District Surguja and Present District Balrampur Ramanujganj (CG)

---- Respondents

For Appellant	:	Mr. Vivek Tripathi, Advocate
For Respondents	:	None.

Single Bench: Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****05/11/2020**

1. Appellant-non-applicant No.4 has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 11.8.2015 passed by the learned Additional Motor Accident Claims Tribunal, Camp Court

at Ramanujganj, District Balrampur Ramanujganj (for short 'the Claims Tribunal') in Claim Case No.65/12 whereby the Claims Tribunal allowed claim application in part, awarded Rs.6,57,000/- as compensation in a death case and fastened liability to make payment of entire amount of compensation upon non-applicant No.4-appellant being registered owner of offending vehicle.

2. Facts relevant for disposal of this appeal are that 7.5.2009 at about 11.00 a.m. non-applicant No.1 was driving tractor bearing registration number UP64-B-3639 in a rash & negligent manner, due to such driving, the offending vehicle overturned as a result Bhola Khairwar, one of the passengers of offending vehicle, suffered grievous injuries on his body and died on spot. Accident was reported in the concerned police station based on which crime was registered against non-applicant No.1 and on completion of investigation, charge sheet against him was filed in the Court of jurisdictional Magistrate.
3. Claimants/respondents No.1 to 6, who are widow & children of deceased, have filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.17,40,000/- on the grounds mentioned therein.
4. Non-applicant No.1 & 2 did not appear before the Claims Tribunal, therefore, they were proceeded ex-parte.
5. Non-applicant No.3 submitted his reply to claim application pleading therein that he has purchased the offending vehicle

from non-applicant No.4 on 13.5.2009, amount of compensation claimed in application is highly exaggerated. Pleading with regard to engagement/occupation and income of deceased has also been denied.

6. Non-applicant No.4 also submitted his reply and denied the pleadings made in claim application. It was pleaded that non-applicant No.4 has sold the offending vehicle to non-applicant No.3 on 5.4.2009, delivered possession and also signed the form required to be submitted for transfer of ownership of offending vehicle. Documents prepared by the police are also in the name of non-applicant No.3. Hence, it is non-applicant No.3 who is liable to pay amount of compensation.
7. The Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties, has held that deceased died on account of motor accidental injuries suffered by him in an accident which took place due to rash and negligent driving of offending vehicle by non-applicant No.1; non-applicant No.3 is not liable to make payment of compensation as the offending vehicle was purchased by him on 13.5.2009; awarded Rs.6,57,000/- as compensation and fastened liability upon non-applicant No.4 being registered owner of offending vehicle on the date of accident, to satisfy the impugned award.
8. Mr. Vivek Tripathi, learned counsel for appellant submits that initially offending vehicle is owned by appellant herein but on

5.4.2009 he had sold it to non-applicant No.3 and handed over possession to him. On the same day, the appellant had also signed relevant document required for transfer of ownership of offending vehicle in the name of subsequent purchaser. Accident took place on 7.4.2009 when the offending vehicle was in possession of non-applicant No.3 as owner. He further contended that non-applicant No.3 in his reply to claim application has admitted that he has purchased the offending vehicle but the Claims Tribunal has not framed Issue No.2 correctly and held non-applicant No.4/appellant herein liable to satisfy the impugned award. Finding recorded by the Claims Tribunal is erroneous. When once non-applicant No.3 has admitted purchase of offending vehicle from appellant then liability to make payment of entire amount of compensation would be upon non-applicant No.3 only. He further submits that appellant filed an application under Order 41 Rule 27 of CPC annexing copy of suprudnama and deposition sheet of non-applicant No.3 recorded by concerned Magistrate in criminal case arising out of same accident in which he has admitted that on the date of accident, the offending vehicle was owned by him. The application filed under Order 41 Rule 27 of CPC be allowed and impugned award so far as it relates to fastening of liability upon appellant be set aside.

9. None appeared on behalf of respondents, even in the second call.

10. I have heard learned counsel for the appellant and perused the

record of claim case.

11. To appreciate the submission made by learned counsel for appellant, I have perused the records of claim case, but could not lay my hands on any document showing sale of offending vehicle to non-applicant No.3 on 4.5.2009. On a specific query put by the Court in this regard, learned counsel for appellant admits that no document of sale has been executed at the time of sale of offending vehicle. He further submits that there is no requirement to execute any document in respect of sale of movable property. Other evidence available on record is reply submitted by non-applicant No.3 wherein he has admitted that he has purchased the offending vehicle on 13.5.2009 i.e. after the date of accident. Non-applicant No.3 was examined before the Claims Tribunal and he has made same statement in his evidence. In cross-examination, he has very categorically stated that he has purchased the offending vehicle after seven days of the accident. This evidence of non-applicant No.3 remained unshaken.
12. Appellant/non-applicant No.4 was examined as NAW-4 and he has deposed about the sale of vehicle on 5.4.2009, receipt of consideration and signing of document required for transfer of ownership of vehicle.
13. Perusal of the pleadings and evidence available on record shows that the appellant has not been able to bring on record any admissible piece of evidence to hold that the offending

vehicle was sold on 5.4.2009 and possession was handed over to non-applicant No.3 on the said date. On the contrary, non-applicant No.3 in his evidence has very specifically pleaded that he had purchased the offending vehicle on 13.5.2009 and in cross-examination, he made it very specific that he had purchased the offending vehicle after seven days of accident.

14. In view of above facts and evidence available on record, the finding recorded by the Claims Tribunal that non-applicant No.3 had purchased the offending vehicle after the accident cannot be said to be erroneous, rather it is based on evidence available on record. Hence, I affirm the said finding recorded by the Claims Tribunal.

15. The law with regard to liability of payment of amount of compensation under the Act of 1988 where vehicle stands transferred by registered owner to some other person by way of sale letter but ownership could not be transferred in the official record has been considered by Hon'ble Supreme Court in the matter of **Naveen Kumar vs. Vijay Kumar** reported in **(2018) 3 SCC 1** and considering the definition of 'owner' given in Section 2 (30) of the Act of 1988, has held thus:-

“13. 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 (3), 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 mis-construction of the judgments of this Court in Reshma and Purnya Kala Devi."

16. Thus, even if sale of offending vehicle prior to date of accident if proved by appellant, then also as per definition of 'owner' given under Section 2 (30) of the Act of 1988 coupled with above ruling of the Hon'ble Supreme Court, the primary liability to satisfy the impugned award would be of appellant being continued as registered owner of offending vehicle in the records of registering authority on the date of accident. However, the registered owner can recover the amount so deposited by him against the award passed by the Claims Tribunal from the subsequent purchaser in accordance with law.

17. By filing application under Order 41 Rule 27 of CPC, the appellant has sought to bring on record documents relating to criminal case arising out of accident in question. It is settled law that evidence recorded in criminal case cannot be read as evidence in proceeding of a civil case. Hence, the application filed by appellant cannot be allowed and it is hereby rejected.
18. In view of above, I do not find any tenable ground in this appeal calling interference with the impugned award. The appeal being sans merit is liable to be dismissed and is hereby dismissed. However, the appellant will be at liberty to take recourse under the law available to him, if any, for recovery of amount of compensation so deposited by him from respondent No.8 in accordance with law.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-