

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 682 of 2014

- Gopichand Jaiswal, S/o Padum Jaiswal, Aged About 50 Years, Occupation-Vehicle Owner/Service, R/o Aamapali, Post- Chaple, P.S. And Tah. Kharsia, Distt. Raigarh, Chhattisgarh

---- Appellant/NA2

Versus

1. Nindra Bai, W/o Late Jeevan Lal Chauhan, Aged About 32 Years Occupation- Housewife
2. Brijkumar S/o Late Jeevan Lal Chauhan Aged About 19 Years
3. Sukanti Bai D/o Late Jeevan Lal Chauhan Aged About 17 Years Minor
4. Krishna Kumar S/o Late Jeevan Lal Chauhan Aged About 13 Years Minor (Claimants)

Appellants-3 and 4 are minors through legal guardian mother Smt Nindra Bai, wife of late Jeevan Lal Chauhan

All are r/o village- Pamgarh, Post- Pamgarh, P.S. And P.S. Kharsia, Distt. Raigarh, Chhattisgarh

5. Murli Maitri S/o Late Chinilal Maitri Aged About 19 Years Occupation-Service, R/o Village-Saradih, P.S. Dabhra, Distt. Janjgir-Champa, Now R/o Shobha Rice Mill, Kharsia, Distt. Raigarh, Chhattisgarh (NA)
6. Medini Prasad Jaiswal S/o Gaya Prasad Jaiswal R/o Village And Post-Sarwani, District : Raigarh, Chhattisgarh
7. Ravishankar Patel S/o Puniram Patel R/o village-Bhelwadih, Post-Madanpur, Tah. Kharsia, District : Raigarh, Chhattisgarh

-----Respondents

For Appellant	: Shri Manoj Jaiswal, Advocate
For Respondents-1-4/Claimants	: Shri Vineet Kumar Pandey, Advocate
For Respondent- 5 to 7	: None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
07.08.2020

1. Challenge in this appeal is to the award dated 09.05.2014 passed in Claim Case- 1 of 2011 by the First Additional Motor Accident Claims Tribunal, Raigarh (for short, 'Claims Tribunal'), whereby learned Claims

Tribunal allowed claim application in part and awarded Rs.3,82,000/- in a death case and fastened liability upon driver and owner of offending vehicle to satisfy the amount of compensation.

2. Facts relevant for disposal of this appeal are that Jeevanlal (since deceased) on 26.03.2005 at about 6 pm while going to Crusher Plant from his house on Rajmarg Road, at that relevant time, NA1, rider of Motorcycle bearing No.CG 13-ZH-7573 (hereafter, referred to as 'offending vehicle'), owned by NA2, dashed the vehicle of Jeevanlal. In the said accident, Jeevanlal suffered grievous injuries on his person and succumbed to those injuries.

3. Respondents-1 to 4/Claimants have filed an application seeking compensation of Rs.9,25,000/- on account of untimely motor accidental death of late Jeevanlal pleading therein that on the date of accident, deceased was working at Rajesh Stone Crusher Plant and earning Rs.4,500/- per month, upon which the claimants, who are widow and children are dependant.

4. NA2/Owner of offending vehicle filed reply to claim application denying the pleadings of the claim application and further pleaded that no vehicle with such number (CG 13-ZH-7573) is registered in his name. One vehicle bearing No.MP 26 KB 1693 was recorded in his name, which he sold to Medini Prasad/NA3 on 19.11.1999 and handed over possession of the vehicle to him. Since the date of sale, it is Medini Prasad, who is using the vehicle. NA2 has also pleaded that Medini Prasad sold the vehicle in question to one Ravishankar Patel, resident of Bhelvadih,

Tahsil-Kharsiya, District Rajnandgaon, respondent-7 herein and it is he, who is using the offending vehicle at the time of accident. Documents were also executed to get the name of purchaser/transfer in the records of Transport Office.

5. NA1, rider of offending vehicle was proceeded *ex-parte*.
6. The purchaser of offending vehicle from NA3 Medini Prasad has been impleaded as NA4, Ravishankar Patel in the Claim Case.
7. Upon appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that death of Jeevanlal was on account of rash and negligent driving of offending vehicle by NA1/driver and in the said accident, Jeevanlal died; after calculating amount of compensation, liability to satisfy the amount of compensation of Rs.3,82,000/- is fastened upon NA1 and 2 jointly and severally.
8. Shri Manoj Jaiswal, learned counsel for the appellant- Gopichand Jaiswal, NA4, submits that the appellant has very specifically pleaded that prior to the date of accident, offending vehicle was sold to NA3-Medini Prasad on 19.11.1999 and 'Bikrinama' was filed as Ex.D9. Medini Prasad/NA3 sold the same vehicle to NA4, Gopichand Jaiswal. He further submits that the deed was witnessed by Jagmohan, Kotwar of village and one Narendra Kumar Dansena. Referring to Ex.D9, it is submitted that there was a condition that NA2 was given all rights for getting the offending vehicle transferred in his name and further mentioned that possession was also handed over to him. He further pointed out that

thereafter, the said Medini Prasad sold the vehicle MP 26 KB 1693 to one Ravi Shankar Patel. This fact was admitted by Ravi Shankar Patel in front of Sarpanch of village Panchayat Kharpli and the deed was executed in the style of 'Kabuliyat Nama'. Learned Claims Tribunal has not taken into consideration both these documents and arrived at a wrong finding. It is further argued that after seizure of offending vehicle by the Police, it is the purchaser of it, who had taken the custody of the vehicle from the Police, which clearly shows that the appellant was not the owner of the offending vehicle on the date of accident. He points out that the appellant in support of his pleading, examined himself as NAW-1 and proved the fact of execution of sale deed vide Ex.D9 (Bikri Patr) dated 19.11.1999 and Kabuliyat Nama dated 20.02.2006 and also examined NAW2/Jagmohan and NAW3/Narendra in support of his pleading. From the above evidence brought on record by the appellant, the appellant has proved his case but learned Claims Tribunal has erroneously fastened liability upon the appellant herein to satisfy the amount of compensation, which is *per se* illegal and is liable to be set aside.

9. Learned counsel for the appellant places reliance in case of **Purnya Kala Devi Vs State of Assam and another** reported in (2014) 14 SCC 142 and in the case of **Smt Kapsi Yadav Vs Pradeep @ Bablu** reported in (2008) 1 MPHT 461.

10. Per contra, Shri Vineet Pandey, learned counsel for the claimants supported the award adding that the name of appellant was not substituted by the name of subsequent purchaser if the vehicle was sold.

On the date of accident, appellant was the registered owner and hence the liability was rightly fastened upon him.

11. We have heard learned counsel for the respective parties and also perused the record of claim case as well as the appeal.

12. The sole question which was raised by learned counsel for the appellant for consideration of this Court is, whether only registered owner is liable to satisfy the amount of compensation or the purchaser/owner of the offending vehicle, who was in possession of vehicle on the date of accident as purchaser. To appreciate the contention of learned counsel for the appellant, we have perused the definition of 'Owner' as envisaged under Section 2(30) of Motor Vehicles Act, 1988, which reads as under:

“Owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

13. Upon going through the pleadings/reply submitted by the appellant before the learned Claims Tribunal, it is admitted that in the name of appellant vehicle bearing No.MP 26 KB 1693 was registered and he sold that vehicle to one Medini Prasad, who in turn sold the same vehicle to Ravi Shankar Patel. In the claim application, the number of vehicle has been shown as CG 13 ZH 7573. Ex.P4 Seizure memo shows offending vehicle bearing No.CG 13 ZH 7573, Engine No.9711M953958 and Chasis No.9111F907558. Document issued by registering authority is filed as

Ex.P5. On perusal, Motorcycle with same Engine number and Chasis number has been registered as CG 13 ZH 7573 in the name of Gopichand Jaiswal, s/o Padum Jaiswal, ie the appellant herein. The number of Motorcycle which is shown was purchased during the time of undivided State of MP and hence, the number of that Motorcycle may be registered as stated by the appellant in his reply but after formation of new State, new number was allotted.

14. Upon considering the evidence of appellant, in which it is stated that in support of sale of Motorcycle, he placed on record the sale deed dated 19.11.1999 and 'Kabuliyat Nama' dated 20th February, 2006. It is also admitted in paragraph-11 of the impugned award that offending vehicle is registered in his name; the earlier number of offending vehicle (CG13 ZH 7573) was MP 26 KB 1693, and he is not aware about the registration of new number as he has not made any application. Appellant also examined NAW2/Jagmohan in support of his pleading who supported the statement and pleading of the appellant with regard to the sale of Motorcycle by the appellant to NA3/Medini Prasad and further which was sold to NA4/Ravi Shankar Patel.

15. Learned Claims Tribunal has taken into consideration evidence and documents placed on record by the appellant, particularly, admission of the appellant that the offending vehicle was recorded in his name on the date of accident, .

16. Now, in the aforementioned facts and circumstances of the case, and in view of definition under Section 2(30) of the Act of 1988, where the

owner has been shown to be a person in whose name Motorcycle stands registered, on the date of accident, appellant/NA2 is registered owner of the offending vehicle.

17. In the matter of **Smt Kapsi Yadav** (supra) for consideration before the Court was with respect to the quantum awarded by learned Claims Tribunal and further whether the Financer of the offending vehicle can be termed as Owner as defined under Section 2(30) of the Motor Vehicles Act, 1988. In that case, the offending vehicle was under agreement of Hypothecation and the person purchased the vehicle under agreement of Hypothecation was in the possession of vehicle under the agreement was Santosh Kumar Tiwari, and in view of aforementioned fact, the High Court held that the Financier Company could not be said to be liable to make payment of compensation and it is the person, who is in possession of offending vehicle.

18. So far as the judgement relied upon by learned counsel for the appellant in the case of **Kala Devi** (supra), the vehicle was under requisition of the State Government under the provision of Assam Act and it was in those circumstances, it was held that the person in possession to be owner of the vehicle.

19. Case law relied upon by the learned counsel for the appellant is on different facts and not applicable to the facts of the case.

20. Hon'ble Supreme Court has considered the similar issue with regard to sale of Motor vehicle by registered owner to some other person, but the name could not be corrected in the records of registering authority, in case

of **Naveen Kumar Vs Vijay Kumar and others** reported in (2018) 3 SCC 1 and 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(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 *HDFC Bank Ltd Vs Reshma* (2015) 3 SCC 679 and *Purnya Kala Devi Vs State of Assam*, (2014) 14 SCC 142.”

21. Hon'ble Supreme Court in the aforementioned judgment, in clear terms clarified that in view of specific definition of 'Owner' as envisaged under Section 2(30) of the Motor Vehicles Act, 1988 and the principle

underlying it that the deceased/victim should not be left in a state of uncertainty for the purpose of claiming compensation following a trial of successful transfers.

22. In the case at hand also registered owner of offending vehicle transferred the vehicle to NA3/Medini Prasad, who thereafter transferred the said vehicle to NA4/Ravishankar Patel, but even after, sale, his name, remain recorded in the records of the Registering authority.

23. In view of the aforementioned facts and circumstances of the case, and the law laid down by Hon'ble Supreme Court, the liability to satisfy the amount of compensation would be upon the registered owner and not the person, who was in possession of the vehicle vide any sale letter. We do not find any infirmity in the order passed by learned Claims Tribunal fastening liability upon the appellant/registered owner of the offending vehicle on the date of accident.

24. The appeal stands dismissed. However, the appellant will be at liberty to avail the remedy available to him under law for redressal of his grievance, if any.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge