

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 5259 of 2015 (O&M)
Date of Decision: March 02, 2020

Raghbir Singh Appellants(s)

Versus

Parminder Kaur and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vipin Mahajan, Advocate for the appellant.

Mr. G.P.S. Tung, Advocate for respondents no.1 to 5.

Respondent no.6 ex parte.

Mr. Inderjit Sharma, Advocate for respondent no.7.

LISA GILL, J.

Appellant is the registered owner of the offending vehicle (not insured) and is aggrieved of award dated 05.03.2015, passed by learned Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal'), holding the appellant liable to pay the compensation, jointly and severally along with respondent no.6 and absolving respondent no.7 of all liability.

Brief facts necessary for adjudication of the case are that a petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the respondent-claimants, seeking compensation on account of death of Malkiat Singh, on account of injuries sustained by him in the motor vehicle accident,

which took place on 10.11.2010, due to the rash and negligent driving of the offending tractor bearing registration No. PB-18-B-4305. The claimants are the widow, minor children and parents of the deceased. The tractor in question was not insured. The appellant is reflected as the registered owner of the said vehicle.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent act of the driver of the tractor bearing registration no. PB-18-B-4305 and Malkiat Singh died due to the injuries sustained by him in this accident. Malkiat Singh, aged 30 years, was proved to be serving the Punjab Police. His income was assessed as Rs.19,775/- per month, on the basis of the salary certificate Ex.P-1. Learned Tribunal awarded a sum of Rs.26,77,500/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	19,775/- per month
2.	Income after deducting 1/4 th as personal living expenses of the deceased	14,875/- per month
3.	Dependency after applying multiplier of 15	14,875 x 12 x 15 = 26,77,500/-
4.	Loss of consortium	1,00,000/-
5.	Loss of expectation of life	1,00,000/-
6.	Litigation and funeral expenses	50,000
	Total	Rs.29,27,500/-

Learned Tribunal held the present appellant alongwith respondent no.6 to be jointly and severally liable to pay the compensation. The appellant is the registered owner. Respondent Harpinder Singh was the

driver of the offending vehicle. Respondent no.7 Sarup Singh son of Ajit Singh is the person to whom the vehicle in question is claimed to have been sold by the present appellant, before the occurrence of the accident. Sarup Singh has been absolved of any liability. Aggrieved from liability being imposed upon the appellant, this appeal has been filed.

Learned counsel for the appellant argues that in the present case, the vehicle in question had been sold to respondent no.7 much prior to the accident in question, which took place on 10.11.2010. Respondent no.7 had taken possession of this vehicle on 10.05.2010 itself though the appellant continued to be reflected as the registered owner. He seeks to distinguish the judgment of the Hon'ble Supreme Court in ***Naveen Kumar Vs. Vijay Kumar and others 2018(2) RCR (Civil) 74*** by arguing that it is only where the subsequent purchaser is not in picture or he cannot be traced that liability is required to be imposed upon the registered owner. Once it has come on record that possession of the vehicle was handed over prior to the accident in question and the vehicle was taken on Superdari by respondent no.7, the appellant should be completely absolved of all liability. It is thus, prayed that the present appeal should be allowed and award dated 05.03.2015, passed by the learned Tribunal be set aside.

Learned counsel for respondent no.7 controverts the said averments and submits that in the written statement filed on behalf of respondent no.7, there is a denial of respondent no.7 being the owner of the offending vehicle. The affidavit Ex.R2 of respondent no.7 sought to be relied upon by the appellant is of no avail to him for the simple reason that

it is inadmissible in evidence. The affidavit could not have been relied upon, five years after the alleged sale. Dismissal of this appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The factum of the appellant being the registered owner of the vehicle is concerned, is not in doubt and is in fact admitted. The case set up by the appellant is that he transferred the offending vehicle in favour of the respondent-Sarup Singh on 10.05.2010 prior to the occurrence of the accident on 10.11.2010. It is pointed out that respondent no.7 has admitted that he purchased the offending tractor trolley. The said vehicle was further taken on Superdari after the accident by the respondent-Sarup Singh. It is, thus, submitted that the present appellant had nothing to do with the offending vehicle on the date of the accident i.e. 10.11.2010. The offending vehicle was effectively in possession and control of the respondent-Sarup Singh. It is further contended that initially the claimants had impleaded only the respondent-Sarup Singh and driver Harpinder Singh as parties to the claim petition. In the written statement filed by respondent-Sarup Singh, he took a plea that he was not the owner of the tractor on the date of the occurrence, therefore, the present appellant was impleaded. It is vehemently argued that sufficient evidence has been led in the shape of affidavits of the respondent-Sarup Singh as well as the evidence of RW-1 Surinder Singh, Transport Clerk and the Superdari bond Ex.R-3 to show that Sarup Singh is the subsequent purchaser and he was in possession and control of the

offending vehicle on 10.11.2010. It is in these circumstances that the appellant seeks complete exoneration from any liability whatsoever.

The Hon'ble Supreme Court in *Naveen Kumar's* case (supra) has categorically held that the owner of the vehicle within the meaning of Section 2(30) of the Motor Vehicles Act, 1988, means the registered owner. In *Naveen Kumar's* case (supra), the succession of transfers in respect to the offending vehicle was put forth as a defence to the claim. The registered owner as well as the subsequent purchasers were all parties to the litigation. The Hon'ble Supreme Court, after considering the entire facts and circumstances and considering the various earlier judgments of Hon'ble Supreme Court including that of *HDFC Bank Limited V. Reshma*, 2015(1) RCR (Civil) 1, on which strenuous reliance was placed by learned counsel for the appellant, concluded that the registered owner cannot escape the liability to compensate the claimants.

In this view of the matter, the appellant cannot be exonerated of the liability to compensate the appellants. He has been held jointly and severally liable along with respondent no.6 (driver) to pay the compensation to the claimants. At the same time, it is to be noted that the appellant has led sufficient evidence on record, which shows that the vehicle in question was indeed sold to the respondent Sarup Singh. Learned counsel for respondent no.7 on a pointed query, had candidly stated that the contents of the affidavit Ex.R-2 are not denied and neither is it denied that the offending vehicle was taken on Superdari by respondent no.7 after the accident in question, though

it is sought to be urged that an affidavit cannot be lead as evidence to prove facts.

Keeping in view the facts and circumstances as above, the appellant has been rightly held liable to pay the compensation. However, it is held that the appellant shall be entitled to recover the amount of compensation from the respondent-Sarup Singh after satisfying the claim. No serious argument has been raised regarding the quantum of compensation. Therefore, with the liberty as above to the appellant, this appeal is dismissed with no order as to costs.

March 02, 2020

Sunil

(LISA GILL)
JUDGE

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