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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 182 of 2015

- M/s Shriram Transport Finance Company Limited, Head Office Second Floor, Cristal Tower Apartment, Minkoha Petrol Pump Raipur, Police Station Civil Lines, Tahsil & District Raipur (CG)

---- Appellant

Versus

1. Samaru Ram Pudo, S/o Samunsai Pudo, aged about 50 years
2. Smt. Ason Bai, W/o Samaru Rama Pudo, aged about 45 years,

   Both are R/o Village Tarhul Sahilapara, Bhanupratappur, Police Station & Tahsil Bhanupratappur, District Uttar-Bastar Kanker (CG) Civil & Revenue District Uttar-Bastar Kanker (CG)

3. Omprakash Gaverna, S/o Sher Singh Geverna, aged about 31 years, R/o Village Tarhul Sahilapara, Bhanupratappur, Police Station & Tahsil Bhanupratappur, District Uttar-Bastar Kanker (CG) Civil & Revenue Distt. Uttar-Bastar Kanker (CG)
4. Hori Lal Sahu, S/o Tiju Ram, aged about 40 years, R/o Urla Bendri Police Station Urla, Tahsil & District Raipur (CG) Civil & Revenue District Raipur (CG)

---- Respondents

MAC No. 185 of 2015

- M/s Shriram Transport Finance Company Limited, Head Office Second Floor, Cristal Tower Apartment, Minkoha Petrol Pump Raipur, Police Station Civil Lines, Tahsil & District Raipur (CG)

---- Appellants

Versus

1. Agnuram Khadahe, S/o Nandlal, aged about 50 years
2. Smt. Gayatri Bai, W/o Agnuram Khadahe, aged about 42 years
   Both R/o Village Tarhul Sahilapara, Bhanupratappur, Police Station & Tahsil Bhanupratappur, District Uttar-Bastar Kanker (CG) Civil & Revenue District Uttar-Bastar Kanker (CG)
3. Omprakash Gaverna, S/o Sher Singh Geverna, aged about 31 years, R/o Village Tarhul Sahilapara, Bhanupratappur, Police Station & Tahsil Bhanupratappur, District Uttar-Bastar Kanker (CG) Civil & Revenue Distt. Uttar-Bastar Kanker (CG)
4. Hori Lal Sahu, S/o Tiju Ram, aged about 40 years, R/o Urla Bendri Police Station Urla, Tahsil & District Raipur (CG) Civil & Revenue District Raipur (CG)

---- Respondents

For Appellant	:	Mr. Ratnesh K Agrawal, Advocate
For Respondent No.1 to 3	:	None.
For Respondent No.4	:	Mr. Praveen K Tulsiyan, Advocate.

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

19.1.2021

1. As the above appeals arise out of the same accident and involve similar grounds of challenge, they are being heard together and disposed of by this common order.

2. Appellant- finance company of Tata Sumo bearing registration number CG04-ZB-5001 (henceforth 'the offending vehicle'), has preferred these appeals (MAC Nos.182/2015 & 185/15) challenging the common award dated 26.11.2014 passed by the learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker in Claim Case Nos.90/2012 & 88/2012, allowing claim applications in part,

awarding Rs.3,44,000/- & Rs.3,44,000/- as compensation resepctively and fastened liability upon appellant herein to satisfy the impugned award.

3. Facts relevant for disposal of these appeals are that on 2.4.2011 Santosh Pudo along with his friend Kamlesh Khadhe had gone to Bhanupratappur on motorcycle bearing registration number CG07-LM-8689 for purchasing some household goods, while returning from there at about 19.30 hrs when they reached near Village Karmoti, the offending vehicle, driven by non-applicant No.1 rashly and negligently, dashed their motorcycle. In the said accident, both the riders of motorcycle suffered grievous injuries and died.

4. Claimants, parents of deceased Santosh Pudo, filed claim application seeking an amount of Rs.9,30,000/- as compensation mentioning therien that on the date of accident, their deceased son was aged about 22 years, he was working as Labourer and earning Rs.5,000/- per month.

5. Claimants-parents of deceased Kamlesh also filed claim case seeking an amount of Rs.9,30,000/- as compensation mentioning that on the date of accident, their deceased son was aged about 22 years, he was working as Labourer and earning Rs.5,000/- per month.

6. Non-applicant No.1 did not appear before the Claims Tribunal, therefore, he was proceeded ex-parte.

7. Non-applicant No.2 filed reply to claim applications pleading therein that offending vehicle was purchased by him on 31.3.2009 availing finance facility from non-applicant No.3. As per hire-purchase agreement, non-applicant No.2 was required to repay Rs.79,300/- in equal monthly instalments, but he failed to pay instalments in time, therefore, non-applicant No.3 seized the offending vehicle on 26.1.2010 and kept it in ts possession. On 1.12.2010 a notice was sent by

non-applicant No.3 calling upon non-applicant No.2 to deposit Rs.28,120/-. On receipt of said notice, non-applicant No.2 had deposited Rs.10,000/- on 14.03.2011 and on 18.4.2011 the loan account has been settled as full and final. Since 26.1.2010 the offending vehicle was in possession and control of non-applicant No.3, whereas accident occurred on 2.4.2011, therefore, liability to satisfy the compensation, if any, would be upon non-applicant No.1 & 3.

8. Non-applicant No.3 Finance Company did not file reply to claim application before the Claims Tribunal.

9. The Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties, allowed both the claim applications in part, awarded a sum of Rs.3,44,000/- as compensation in each claim case and fastened liability upon non-applicant No.1-driver & non-applicant No.3-finance company to satisfy the amount of compensation.

10. Mr. Ratnesh Kumar Agrawal, learned counsel representing appellant submits that offending vehicle was purchased by non-applicant No.2 availing loan facility from non-applicant No.3/ appellant. Referring to Section 2 (30) of the Act of 1988, learned counsel submits that under the Act of 1988 the liability to satisfy the amount of compensation is upon the 'registered owner' and in case where the vehicle is under finance or hypothecation, then liability to satisfy the amount of compensation will be upon the person who is in possession of vehicle. After seizing the offending vehicle from the possession of non-applicant No.2, appellant had sold it in an auction to one Mukesh Shrivastava. Claimants have not arrayed said Mukesh Shrivastava, who had purchased the offending vehicle and in possession of the same, as non-applicant to claim application. He further contended that the appellant finance company cannot be held liable for any reason. The vehicle stood recorded in the name of non-

applicant No.2, therefore, it is non-applicant No.2 who will be liable for payment of amount of compensation. It is further contended that it is duty of the purchaser to get his name recorded/substituted in the records of the Transport Department to be the owner of the offending vehicle and to get appropriate insurance policy, but that has not been done by non-applicant No.2 for which appellant cannot be held liable. In support of this submission, learned counsel has placed his reliance on the decision rendered in **Pushpa @ Leela & others Vs. Shakuntala and Ors** reported in **2011 (2) MPHT 1 (SC)** and **Godavari Finance Company vs. Degala Satyanarayananamma & ors** reported in **(2008) 5 SCC 107**.

11. Mr. P.K. Tulsiyaan, learned counsel for non-applicant No.2/ respondent No.4, who had purchased the offending vehicle availing finance from the appellant, submits that there is no dispute with regard to purchase of offending vehicle under finance of appellant company, but he submits that due to non-payment of instalments in time, the appellant had seized offending vehicle from possession of non-applicant No.2 on 26.1.2010 and since then it was in possession of the appellant and not with non-applicant No.2. He further contended that loan amount has been paid by non-applicant No.2 on 14.3.2011 and on 18.4.2011, no dues certificate was issued by the appellant, whereas accident took place only on 2.4.2011. He contended that the appellant has not filed any reply to claim application saying that offending vehicle has been sold by it to one Mr. Mukesh Shrivastava in auction on 16.2.2010. He also referred to the provisions of Section 2 (30) of the Act of 1988 to buttress his submission that in case the vehicle has been purchased under the hypothecation agreement, then the person who is in possession of the vehicle will be treated as owner of said vehicle. In the case at hand, there is no dispute that prior to the date of accident, the appellant has seized the offending vehicle from possession of non-applicant No.2. Referring to the affidavit statement made

by the witness of appellant finance company under Order 18 Rule 4 of CPC, he submits that there is admission on the part of appellant that prior to the date of accident the offending vehicle was taken into possession by appellant, but they have further pleaded that the said vehicle had been sold in auction on 16.2.2010 to one Mukesh Shrivastava. He submits that no admissible piece of evidence has been brought on record by appellant to prove the said contention. Hence, the Claims Tribunal is justified in fastening liability upon appellant finance company. Learned counsel for respondent No.4 places his reliance on the decision rendered in the matter of **Naveen Kumar vs. Vijay Kumar** reported in **(2018) 3 SCC 1**.

12. We have heard learned counsel for the parties and perused the record.

13. So far as the fact that though vehicle was purchased under hypothecation agreement by non-applicant No.2/respondent No.4 from the appellant, but as per admission of witness of appellant, the offending vehicle was taken into possession (seized) by appellant due to non-payment of instalments. From the aforementioned fact, which is infact admitted by appellant, it is clear that prior to the date of accident, offending vehicle was taken into possession by appellant finance company, as such, the offending vehicle was in possession of the appellant and not of non-applicant No.2.

14. Appellant has not filed any reply to claim application specifying the facts which they have stated in their evidence that after seizure of vehicle from possession of non-applicant No.2, it has been sold in auction to one Mukesh Shrivastava, so that claimants could have taken appropriate steps with regard to impleadment of subsequent purchaser based on details and address to be supplied by appellant. In absence of any specification and details, it cannot be said that claimants were at fault in any manner.

15. To appreciate the submission of learned counsel for appellant, we find it appropriate to extract definition of 'owner' as provided in Section 2 (30) of the Act of 1988, as below:-

> "(30) "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;

16. A bare reading of the above definition makes it clear that in the definition of 'owner' of motor vehicle exception is carved out by the law-makers when the vehicle is under hire-purchase agreement. When a motor vehicle is subject to hire-purchase agreement, the owner will be the person who is in possession of vehicle. There is specific averment in the evidence by appellant itself that prior to the date of accident, the offending vehicle was seized from possession of non-applicant No.2, who entered into hire-purchase agreement with appellant for purchase of offending vehicle. Thus, from 26.1.2010 the possession of offending vehicle was with appellant and not with non-applicant No.2.

17. So far as contention of learned counsel for appellant that as the offending vehicle has been sold in auction to one Mukesh Shrivastava, the appellant cannot be held liable as appellant was not in possession of the offending vehicle on the date of accident is concerned, we find it difficult to accept said submission of appellant for more than one reasons. Firstly, looking to the object of the Act of 1988, which is beneficial piece of legislation, and the fact that claimants have lost their relative, they should not be made to suffer on account of mistake or error of any other person or institution who is party

to claim application. Secondly, the appellant has been arrayed as a party to claim application, time was given to them to file reply but they have not submitted their reply, therefore, their right to file reply has been closed and they have been proceeded ex-parte. Subsequently, appellant moved an application under Order 9 Rule 17 of CPC for setting aside ex-parte proceeding. The Claims Tribunal allowed the said application with a condition that the order proceeding ex-parte be set aside from the date of the order and the appellant has been permitted to participate in the further proceedings only. This order was not put to challenge by the appellant. Appellant has placed on record certain documents along with an application under Order 7 Rule 14 CPC dated 10.2.2014 just before submission of affidavit under Order 18 Rule 4 of CPC dated 22.3.2014. In the said affidavit they have stated with regard to seizure of offending vehicle / taking into possession of offending vehicle from non-applicant No.2 on account of non-payment of instalments and selling the same in auction to one Mukesh Shrivastava on 16.2.2010. Perusal of the documents filed along with application filed under Order 41 Rule 27 of CPC would only show that document Ex.D-1 is quotation for the purchase of repossessed vehicle. There is no sign and seal of any of the officers of appellant. They have filed Sale Data Sheet showing date of sale, name & address of buyer of offending vehicle where only name of 'Mukesh Shrivastava' is mentioned. Appellant has not made any attempt to call Mukesh Shrivastava as a witness by filing application in this regard. A photocopy under the heading 'Screen Report- History of Paid Fees' showing it to be obtained from the RTO, Raipur but any employee from the said RTO has not been examined as witness to prove the said document. It is settled that a party asserting some facts is required to prove the same by producing cogent and reliable piece of evidence in support thereof. In case at hand, the appellant failed to prove said fact, but what is proved is repossession of the offending vehicle being seized from non-applicant No.2 by appellant, which is admitted by them in their evidence.

18. In Godavari Finance Company's case (supra) there was no dispute in respect of legal preposition settled by Hon'ble Supreme Court that the owner of vehicle means registered owner of vehicle as defined under Section 2 (30) of the Act of 1988. In case at hand, on account of non-payment of instalments the appellant had taken possession of offending vehicle from non-applicant No.2 and as such, non-applicant No.2 was not having control on it. Hence, the decision rendered in Godavari Finance Company's case (supra) is of no help to the appellant. Similarly, the case of Pushpa@ Leela (supra) is also on different facts, therefore, it is also of no help to the appellant.

19. Section 50 of the Act of 1988 talks about the transfer of ownership. Sub-section (1) (a) of Section 50 casts a duty upon the 'transferor' to report the transfer to the Registering Authority along with documents in the prescribed form and manner. Section 50 (1) of the Act of 1988 is reproduced below;-

> "(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,—
> (a) the transferor shall,—
> (i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and
> (ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)—
> (A) the no objection certificate obtained under section 48; or

(B) in a case where no such certificate has been obtained,—

(I) the receipt obtained under sub-section (2) of section 48; or

(II) the postal acknowledgement received by the transferee if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in section 48, together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration."

20. Section 51 of the Act of 1988 deals with the special provisions regarding motor vehicle subject to hire-purchase agreement, etc. and it casts a duty upon the person with whom registered owner had entered into agreement, to specify the registering authority of taking into possession the vehicle from the registered owner. Sub-section (3) & (5) of Section 51 is reproduced below;-

"(3) Any entry made under sub-section (1) or sub-section (2), may be cancelled by the 1[last registering authority] on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe 2[and an intimation in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority.

(5)Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle 3[from the registered owner] owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgement due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement.

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force.”

21. There is specific provision under Section 51 (5) with regard to the situation where the registered owner commits default of paying regular instalments to the financier and the vehicle has been taken into possession by the financier, then he is having obligation to specify the registering authority that he has obtained possession of vehicle after giving opportunity to the registered owner, so as to get duplicate registration certificate, if the registration certificate is not handed over by the registered owner. In case at hand also, appellant, who is

financier of offending vehicle, had seized the offending vehicle from the possession of registered owner i.e. non-applicant No.2, in default of regular payment of instalments of loan by registered owner but the appellant failed to comply with the provisions contained under Section 51 (5) of the Act of 1988. Looking to the provisions, as contained under Section 51 of the Act of 1988, particularly sub-sections (2), (3) & (5), the appellant has not taken any initiative of getting the vehicle registered in the name of subsequent purchaser of offending vehicle in auction sale conducted by appellant. Appellant violated the provisions of the Act of 1988 in not informing the Registering Authority under Section 51. The case will fall under the exception of Section 2 (30) of the Act of 1988. In the aforementioned circumstance, we are of the view that the Claims Tribunal was justified in not holding non-applicant No.2/respondent No.4 to be liable for satisfying the amount of compensation, more so when there is evidence of appellant itself that after seizing offending vehicle from possession of non-applicant No.2, appellant finance company had sold offending vehicle in auction to one Mukesh Shrivastava.

22. For the foregoing reasons, we do not find any substance in both the appeals, the same are liable to be dismissed and are hereby dismissed.

Sd/-	Sd/-
(P.R Ramchandra Menon)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-