

**FAO No.1109 of 2018 (O&M)
and other connected cases**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No.1109 of 2018 (O&M)
and other connected cases
Date of Order: 24 .02.2021**

**Additional Commissioner Technical-cum-Chief
Executive Officer, Municipal Corporation, Amritsar.**

..Appellant

Versus

Ram Chander and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gian Chand Garg, Advocate
for the appellant.

Mr. Vinod Gupta, Advocate,
for respondent no.2 (in FAO No.1109 and 1112 of 2018)
for respondent no.3 (in FAO No.1388 of 2018)

Mr. Manoj Pundir, Advocate,
for respondent no.3 (in FAO No.1109 and 1112 of 2018)
for respondent no.4 (in FAO No.1388 of 2018).

ANIL KSHETARPAL, J.

By this order, FAO No.1109, 1112 and 1388 of 2018, filed by the Additional Commissioner, Municipal Corporation, Amritsar, shall stand disposed of.

Some facts are required to be noticed.

In an accident which is alleged to have taken place on 28.10.2016, 3 precious lives were lost. Late Smt. Bhanwanti alongwith her two daughters met with an unfortunate end in a motor vehicle accident allegedly caused by a bus bearing registration plate No.PB-02-CC-6390.

Three claim petitions were filed, out of which two were filed by the father

of two deceased daughters respectively and one by the husband of late Smt. Bhanwanti alongwith another daughter. In the claim petition, three respondents-Additional Commissioner Technical-cum-Chief Executive Officer, Amritsar, Municipal Corporation, Amritsar, Kanwardeep Singh (spelled in the MACT award as Kawrandeep Singh), driver of the offending vehicle and the New India Assurance Company Limited, respectively, were impleaded as parties. The Municipal Corporation, Amritsar, filed its written statement by asserting that the claim petition is bad for non-joinder of necessary parties. Kanwardeep Singh, respondent no.2-driver of the offending vehicle was proceeded ex-parte. The Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as ' the Tribunal') framed issue no.3 with respect to non-joinder of the necessary parties. Mr. Kanwaljit Singh, Junior Engineer, an official of the Municipal Corporation, Amritsar, appeared in evidence and reiterated that the petition is bad for non-joinder of necessary parties. It was stated that the Municipal Corporation, Amritsar, had engaged M/s Sri Anantha Padmanabha Transit Private Ltd., to run the State Transport Service Pvt. Ltd. It was stated that the driver of the bus was also employed by the aforesaid contracting company and was under its control.

Unfortunately, the Tribunal after having framed a specific issue No.3, did not go deep into it and decided the claim petition by just observing that the registered owner of the offending vehicle is the Municipal Corporation, Amritsar and the vehicle is insured with the Insurance Company.

That is how these three appeals have been filed.

In the appeals, M/s Sri Anantha Padmanabha Transit Private

Ltd. was added as respondent no.3. The appellant also filed an application for permission to lead additional evidence so as to produce on record the written contract entered into between the Municipal Corporation, Amritsar and the transport operator.

It may be noted here that the learned counsel representing the appellant has made a statement on 17.12.2020 that he does not wish to press these appeals against Ram Chander-respondent no.1. Thus, the service of notice of the appeals to Ram Chander was dispensed with.

This Bench has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel representing the appellant while referring to Section 2(30) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the 1988 Act') submits that the word 'owner' includes the person, who has taken control of the vehicle on an agreement of lease. He, hence, contends that in view of the contract entered into between the Municipal Corporation, Amritsar and respondent no.3-M/s Sri Anantha Padmanabha Transit Private Ltd., the vehicle was on lease with respondent no.3 and therefore, the appellant, who is the registered owner, could not be fastened with the liability to pay to the Insurance Company. He, in support of his arguments, relies upon the judgments passed in **Purnya Kala Devi vs. State of assam and another, (2014) 14 SCC, 142** and **HDFC Bank Ltd. vs. Kumari Reshma and others, (2015) 3 SCC, 679.**

Per contra, learned counsels, appearing for respondent No.2-Insurance Company and respondent no.3-M/s Sri Anantha Padmanabha Transit Private Ltd., have submitted that the Municipal Corporation is the registered owner of the offending vehicle and therefore, the various awards

passed by the Tribunal should be sustained.

In the considered view of this court, an interesting question with regard to the interpretation of Section 2(30) defining the word “owner” arises for determination. Hence, it will be appropriate to carefully notice the language used by the Legislature. Section 2(30) is extracted as under:-

Section 2(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;

On a plain reading of the definition of 'owner' under Section 2 (30), it is apparent that the legislature has emphasized on a person in possession and control over the vehicle is also included in the definition of the owner. Now let's dissect the definition. The first part deals with a owner who is a minor. It is provided that in such a case, the guardian of such minor will be treated as the owner. Now, let's discuss the second part. In the second part, if the motor vehicle is the subject matter of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation, then the person in possession and control of the vehicle is treated as the owner for the purposes of the Act. Thus, on a plain reading of the definition, it can be discerned that the Act of 1988 not only recognizes a registered owner but also includes a guardian of a minor owner, a person who has either taken the vehicle on hire-purchase or lease or by hypothecation.

Still further, this aspect has already been examined by the Supreme Court in more than one judgments. In **National Insurance Company vs. Deepa Devi and others, (2008) 1 SCC, 414,** the motorcar along with its driver was requisitioned by the District Collector for election duty. It was held that in the given situation, if the statutory definition

contained in the 1988 Act, cannot be given effect to in its letter and spirit, then same should be understood from a logical point of view. The Court held that the Collector is liable, although, the registered owner was someone else. Even if the driver was employed by the registered owner, still the possession and the control of the vehicle was with the District Collector, when the accident took place, therefore, the registered owner cannot be held liable.

Similarly, in **Rajasthan State Road Transport Corporation, vs. Kailash Nath Kothari & Others, (1997) 7 SCC 481**, the Corporation took a plea that the vehicle has taken on hire by it and therefore, not liable to pay compensation. The Supreme Court rejected the aforesaid contention. There is another judgment in **Purnya Kala Devi's** case (supra). In this case, the State of Assam had requisitioned the vehicle. After discussing the definition of the term 'owner' under the Motor Vehicles Act, 1939, its subsequent amendment by the Assam Act and Section 2(30) of the 1988 Act, the Court held that the term owner includes not only the registered owner but also a person, who is in control and possession of the vehicle. Similarly, in **HDFC Bank's** case (supra), the 3 Judge Bench of the Supreme Court, after examining the entire case law, held that the person who has taken the vehicle on hire-purchase is held liable being its owner.

Again, the stress was on the fact that who is in control and possession of the vehicle in question.

Keeping in view the aforesaid facts, it is apparent that the Tribunal has miserably failed to examine and decide issue no.3 in the correct perspective. Hence, it is considered appropriate to remit the matter back to the Tribunal for re-decision. It may be noted here that the learned

counsel for respondent no.3-M/s Sri Anantha Padmanabha Transit Private Ltd.,, who has been subsequently added as a party in the appeal, has contended that respondent no.3 should be granted an opportunity to prove that the driver was in possession of a valid licence and the company had taken necessary precautions while engaging the driver and therefore, there was no violation of the terms of the insurance policy.

Since, this court is remitting the matter back to the Tribunal after impleading respondent no.3 as a party and the impugned awards were passed without hearing it, therefore, the company is required to be given an opportunity to prove its stand. The award with respect to the quantum of compensation which stands paid to the claimants shall be treated as final and the matter is being remitted only for a limited purpose of determining the question that who is the owner within the meaning of Section 2(30) of the 1988 Act and whether the amount of compensation paid by the Insurance Company is liable to be recovered from such owner on account of any violation of the terms of insurance policy or not?

With these observations, these three appeals are allowed. The parties through their counsels are directed to appear before the Tribunal, on 25.03.2021.

It has been noticed that the driver of the offending vehicle is not represented in the appeal, therefore, the Tribunal shall issue a notice to the driver of the offending vehicle.

24th February, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No