IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12037 of 2017

Reliance General Insurance Co. Ltd.	....	**Petitioner**

-versus-

Nalini Dalei & Anr.	....	**Opposite Parties**

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
22.11.2022

Order No

14. **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. The present writ Petition has been filed by the Petitioner-Company challenging the award passed by the learned Permanent Lok Adalat for Public Utility Services, Ganjam at Berhampur in PLA Case No. 380 of 2015 under Annexure-1.

3. Learned Permanent Lok Adalat vide the said award directed the Petitioner-Company to pay a sum of Rs.1,11,350/- (Rs. One lakh eleven thousand three hundred fifty) with interest @ 8% per annum payable from the date of loss/damage i.e.06.11.2014 till the date of actual payment.

4. The Petitioner has challenged the order impugned on various grounds, more particularly taking a cue from the decision of the Hon'ble Apex Court reported in ***AIR (1997) SC 3444***. In the said reported decision Hon'ble Apex Court in Para 17 has held as follows:-

*"**17.** The definition of owner under Section 2(19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of "owner" to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. In this case, Shri Sanjay Kumar, the owner of the bus could not ply the bus on the particular route for which he had no permit and he in fact was not plying the bus on that route. The services of the driver were transferred along with complete "control" to RSRTC, under whose directions, instructions and command the driver was to ply or not to ply the ill-fated bus on the fateful day. The passengers were being carried by RSRTC on receiving fare from them. Shri Sanjay Kumar was therefore not concerned with the passengers travelling in that bus on the particular route on payment of fare to RSRTC. Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of RSRTC for operation of the bus. So far as the passengers of the ill-fated bus are concerned, their privity of contract was only with the RSRTC to whom they had paid the fare for travelling in that bus and their safety therefore became the responsibility of the RSRTC while travelling in the bus. They had no privity of contract with Shri Sanjay Kumar, the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of*

the driver from the owner to RSRTC, the matter may have been somewhat different. But on facts in this case and in view of Conditions 4 to 7 of the agreement (supra), the RSRTC must be held to be vicariously liable for the tort committed by the driver while plying the bus under contract of the RSRTC. The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner. The proposition based on the general principle as noticed above is adequately rebutted in this case not only on the basis of the evidence led by the parties but also on the basis of Conditions 6 and 7 (supra), which go to show that the owner had not merely transferred the services of the driver to the RSRTC but actual control and the driver was to act under the instructions, control and command of the conductor and other officers of the RSRTC."

5. Learned counsel for the Petitioner contended that since the O.P. No. 1, who is the registered owner of the vehicle in question, had transferred the vehicle in favour of one Simanchal Prusty by way of an agreement dt.11.08.2012, the Petitioner-Company is not liable to pay the compensation as directed by the learned Lok Adalat.

6. Mr. Panda, learned counsel for the Opp. Parties on the other hand brought to the notice of this Court the subsequent decision passed by the Hon'ble Apex Court reported in the case of ***Surendra Kumar Bhilawe v. New India Assurance Co. Ltd. (AIRONLINE 2020 SC 596)***. Mr. Panda submitted that in view of the later decision in the case of ***Surendra Kumar Bhilawe***, the decision in ***AIR 1997 SC 3444 (Rajasthan State Road Transport Corporation Vs. Kailashnath Kothari & Ors.),*** no more governs the field. Hon'ble Apex Court in Para 3, 9, 20, 28, 53 and 54 of the decision in ***Surendra Kumar Bhilawe*** has held as follows:-

> ***"3.*** *The appellant was the owner of Ashok Leyland 2214 Truck bearing Registration Number CG 04 JA 3835, which was covered by a policy of insurance issued by the insurer policy number being 45030031110100001693, effective for the period from 2-6-2011 to 1-6-2012.*
>
> ***9.*** *However, instead of reimbursing the loss, the insurer issued a show-cause letter dated 22-3-2012 to the appellant requiring the appellant to show cause why the claim of the appellant should not be repudiated, on the allegation that, he had already sold the said truck to the said Mohammad Iliyas Ansari on 11-4-2008. It is, however, not in dispute that the appellant continued to be the registered owner of the said truck, on the date of the accident.*
>
> ***20.*** *The District Forum accepted the contention of the appellant that the ownership of the said truck did not stand transferred to Mohammad Iliyas Ansari, and allowed the complaint, by its order dated 9-1-2014, for the reasons summarised briefly hereinbelow:*
>
> ***1.*** *Even though the sale agreement with Mohammad Iliyas Ansari was dated 11-4-2008, the appellant continued to pay instalments towards repayment of the loan obtained from ICICI Bank, for purchase of the said truck, long thereafter.*
>
> ***2.*** *The appellant had produced documents to show that he had paid the premium for the insurance policy after 11-4-2008, and even as late as on 31-5-2011.*

__3.__ The insurer had not produced any materials to show said that the insurance premium had not been paid by the appellant, but had been paid by Mohammad Iliyas Ansari.

__4.__ The said truck was registered in the name of the appellant and the permit for operating the said truck for carriage of goods also stood in his name.

__5.__ Mohammad Iliyas Ansari had not objected to release of compensation to the appellant for damage caused to the vehicle, by reason of the accident.

__6.__ The insurer had not established that driver Rajendra Singh was an employee of Mohammad Iliyas Ansari.

__28.__ The National Commission completely ignored the following concurrent factual findings of the District Forum and State Commission:

__(i)__ Even after the date of the purported sale agreement, that is, 11-4-2008, the appellant continued to pay instalments to ICICI Bank towards repayment of the loan for purchase of the said truck.

__(ii)__ ICICI Bank had neither released the said truck from hypothecation nor given "No-Objection" for the sale of the said truck.

__(iii)__ The appellant paid the premium and took out the policy of insurance on or about 31-5-2011 covering the period from 2-6-2011 to 1-6-2012 in his own name. This was over three years after the date of the purported sale agreement.

__(iv)__ No steps were taken by the appellant or by Mohammad Iliyas Ansari to have the registration of the said truck transferred in the name of Mohammad Iliyas Ansari.

__(v)__ The permit for operating the said truck was still in the name of the appellant over three years after the purported sale agreement.

__53.__ In our considered opinion, the National Commission erred in law in reversing the concurrent factual findings of the District Forum and the National Commission ignoring vital admitted facts as stated above, including registration of the said truck being in the name of the Appellant, even as on the date of the accident, over three years after the alleged transfer, payment by the Appellant of the premium for the Insurance Policy, issuance of Insurance Policy in the name of the Appellant, permit in the name of the Appellant even after three years and seven months, absence of "No Objection' from the financier bank etc, and also overlooking the definition of owner in Section 2(30) of the Motor Vehicles Act, as also other relevant provisions of the

> *Motor Vehicles Act and the Rules framed thereunder, including in particular the transferability of a policy of insurance under Section 157.*
>
> ***54.*** *In view of the definition of 'owner' in Section 2(30) of the Motor Vehicles Act, the Appellant remained the owner of the said truck on the date of the accident and the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammad Iliyas Ansari."*

7. Accordingly, Mr. Panda submitted that in view of the subsequent decision rendered in the case of ***Surendra Kumar Bhilawe (supra),*** no illegality has been committed by the learned Permanent Lok Adalat in passing the order under Annexure-1 in favour of the O.P. No. 1, who is admittedly owner of the vehicle in question.

8. Mr. Dutt, learned counsel for the Petitioner though did not dispute the subsequent decision governing the field but submitted that learned Permanent Lok Adalat while directing for payment of the compensation has directed the payment of interest @ 8% per annum from the date of loss till its actual payment, which is on the higher side, Mr. Dutt submitted that here is no provision in Legal Services Authorities Act, 1987 for grant of interest because of such delayed payment.

9. Heard Mr. G.P. Dutt, learned counsel appearing for the Petitioner and Mr. P.C. Panda, learned counsel appearing for the Opp. Parties. On the consent of the learned counsels appearing for the Petitioner, this matter was taken up for disposal at the stage of admission. Taking into account the fact that the award was passed on 02.02.2017 and the Opp. Party has not got the benefit of the same, this Court while confirming the award made towards compensation, disposed of the matter with a direction on the Petitioner to pay the compensation amount of Rs.1,11,350/- (Rs. One lakh eleven thousand three hundred fifty) along with interest @ 6% per annum payable from the date of the award i.e.02.02.2017 till its actual payment. This Court directs the Petitioner-Company to pay the compensation amount along with the interest so directed by this Court within a period of eight (8) weeks from the date of receipt of this order.

9. The writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha