

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.557 of 2019

(From the judgment dated 26th June, 2019 passed by the learned 6th M.A.C.T., Khurda in M.A.C.T. Case No.96/2010)

***Manager Legal, ICICI Bank,
Bhubaneswar Branch,
Bhubaneswar***

....

Appellant

-versus-

***Smt. Geetarani Mahapatra and
another***

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. B.B. Mishra, Advocate

For Respondents : Dr. T.C. Mohanty, Senior Advocate
For Respondent No.1

CORAM: JUSTICE B.P. ROUTRAY

**JUDGMENT
25th November, 2022**

B.P. Routray, J.

1. Present appeal by the insurer is directed against judgment dated 26th June, 2019 passed by the learned 6th M.A.C.T., Khurda in M.A.C.T. Case No.96/2010, wherein compensation to the tune of Rs.1,25,000/- has been granted along with interest @6% per annum to the claimant from the date of filing of the claim application, i.e. 08.10.2010 on account of injury sustained by her in the motor vehicular accident dated 27.05.2007.

2. According to the claimant, namely, Geetarani Mahapatra, she along with her husband and grand-son were standing on the road side and the offending vehicle being driven in a rash and negligent manner dashed against them. In the accident, she and her husband were injured and their grand-son died.

3. The Appellant-ICICI Bank is the financier of the offending vehicle, i.e. Maruti Car bearing Registration No.OR-02-T-9747.

4. Mr. Mishra submits that the Appellant is not the registered owner of the offending vehicle and therefore, it cannot be fastened with the liability to pay the compensation. According to him, one Naresh Pattanaik was the owner of the offending vehicle on the date of accident and the claim application is not maintainable in his absence. He relies on the decisions of the Supreme Court in ***HDFC Bank Ltd. vs. Reshma and others, (2015) 3 SCC 679*** and ***Prakash Chand Daga vs. Saveta Sharma and others, AIR 2019 SC 66***, in support of his submission.

5. Dr. T.C. Mohanty, learned Senior Advocate submits for the claimant that the offending vehicle being under possession of the Appellant-ICICI Bank on the date of accident, the Bank is liable to pay the compensation amount.

6. Before delving in-to the rival contentions, as urged by the parties, the undisputed facts need to be mentioned here that, the accident took place on 27.5.2007. The offending vehicle was initially purchased by Raj Mohan Patra (present Respondent No.2) in the year

2004, with hypothecation agreement executed between him and the ICICI Bank on 1.8.2004 and financed by ICICI Bank. Due to non-payment of installments, ICICI Bank repossessed the offending vehicle on 18.6.2006 under Ext.5. Initially the name of Raj Mohan Patra was registered as the owner of the offending vehicle and the same was registered again in the name of Naresh Pattanaik with effect from 29.5.2007, vide Ext.6.

Admittedly, the offending vehicle did not have a valid insurance policy on the date of accident. It's involvement in the accident is not disputed. The vehicle was driven by Naresh Pattnaik at the time of accident.

7. It has been explained by the Appellant-Bank that, after taking repossession of the offending vehicle on 18.6.2006, it was sold through auction to one Choudhury Ashis Das on 2.1.2007 and thereafter Choudhury Ashis Das sold it to Naresh Pattanaik without knowledge of the Bank.

8. So the point for determination is regarding ownership of the offending vehicle on the date of accident. The question is that, who would be the owner of the offending vehicle on the date of accident, i.e. on 27.5.2007 ?

9. The definition of owner as prescribed under the M.V. Act is as follows:

“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.”

10. The Supreme Court in the case of *HDFC Bank Ltd.* (supra), have held as follows:

“On a careful analysis of the principles stated in the foregoing cases, it is found that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasise, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration.

In *Purnya Kala Devi* (supra), a three-Judge Bench has categorically held that the person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted to the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control. There is reference to Section 146 of the Act that no person shall use or cause or allow any other person to use a motor vehicle in a public place without insurance as that is the mandatory statutory requirement under the 1988 Act. In the instant case, the predecessor-in-interest of the appellant, Centurion Bank, was the registered owner among with respondent no.2. The respondent no.2 was in control and possession of the vehicle. He had taken the vehicle from the dealer without paying the full premium to the insurance company and thereby getting the vehicle insured. The High Court has erroneously opined that the financier had the responsibility to get the vehicle insured, if the borrower failed to insure it. The said term in the hypothecation agreement does not convey that the appellant financier had become the owner and was in

control and possession of the vehicle. It was the absolute fault of the respondent no.2 to take the vehicle from the dealer without full payment of the insurance. Nothing has been brought on record that this fact was known to the appellant financier or it was done in collusion with the financier. When the intention of the legislature is quite clear to the effect, a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there is evidence on record that the respondent no.2, without the insurance plied the vehicle in violation of the statutory provision contained in Section 146 of the 1988 Act, the High Court could not have mulcted the liability on the financier. The appreciation by the learned Single Judge in appeal, both in fact and law, is wholly unsustainable.

In view of the aforesaid premises, we allow the appeals and hold that the liability to satisfy the award is that of the owner, the respondent no.2 herein and not that of the financier and accordingly that part of the direction in the award is set aside. However, as has been conceded to by the learned senior counsel for the appellant, no steps shall be taken for realization of the amount. There shall be no order as to costs.”

11. Further in the case of *Prakash Chand Daga* (supra), the Supreme Court have held as follows:

“9. The law is thus well-settled and can be summarized:-

“Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person.”

In the aforesaid case the vehicle was transferred from the earlier owner to the subsequent owner on 11.9.2009 and the accident took place on 9.10.2009 and despite sell of the vehicle on 11.9.2009, no transfer of ownership was effected.

12. In the instant case, the Appellant did not purchase the vehicle on transfer. The status of the Appellant is that he is the financier Bank, who repossessed the vehicle on 18.6.2006. Therefore, the decision in *Prakash Chand Daga's* case (supra) is not applicable to the present facts.

13. Rule 61 of the Central Motor Vehicle Rules, 1989 postulates that:

“61. Termination of hire-purchase agreements, etc.—(1) An application for making an entry of termination of agreement of hire purchase, lease or hypothecation referred to in sub-section (3) of Section 51 shall be made in Form 36 duly signed by the registered owner of the vehicle and the financier, and shall be accompanied by the certificate of registration and the appropriate fee as specified in rule 81.

(2) The application for issue of a fresh certificate of registration under sub-section (5) of Section 51 shall be made in Form 36 and shall be accompanied by a fee as specified in rule 81.

(3) Where the registered owner has refused to deliver the certificate of registration to the financier or has absconded then the registering authority shall issue a notice to the registered owner of the vehicle in Form 37.”

14. The Appellant does produce the copy of the hire-purchase agreement to justify the contention that the ownerships of the vehicle

still continues with Raj Mohan Patra despite repossession of the same by the Bank upon default in payment of installments. Therefore the presumption is against the Bank that after repossession of the vehicle, the ownership transferred to it for all purposes.

15. Admittedly upon taking repossession of the offending vehicle by the Appellant-Bank, it did not apply to the concerned authority for entry of cancellation of the hire-purchase or hypothecation agreement and it also did not take any step in terms of Section 50 of the M.V. Act for transfer of the ownership of the offending vehicle in its favour. What is important to see is the credibility and correctness of the averment of the Appellant. The Appellant has examined one witness, viz. OPW-1, namely, Santosh Kumar Panda, an official of the Bank. Said OPW-1 in his evidence has said that after repossession of the vehicle on 18.6.2006, it was sold through auction on 2.1.2007 to Choudhury Ashis Das and said Choudhury Ashis Das again sold the offending vehicle to Naresh Pattanaik on 18.1.2007. But the document under Ext.6 speaks that Naresh Pattanaik became the registered owner of the offending vehicle w.e.f. 29.5.2007. So, prior to 29.5.2007, the registered owner of the vehicle was Rajmohan Patra. But the undisputed fact remains that the vehicle was in actual possession of the Appellant-ICICI Bank w.e.f. 18.6.2006 and no material has been produced on record to reveal anything that the vehicle was sold and its possession was handed over to Choudhury Ashis Das w.e.f. 2.1.2007. The Appellant-Bank did not produce any sale certificate or handing over possession memo in favour of Choudhury Ashis Das. This means that the contention of the Appellant regarding re-sale of the vehicle to

Choudhury Ashis Das is unsubstantiated. So, the inference is that, the Appellant-Bank was in possession of the offending vehicle from 18.6.2006 till 28.5.2007, which means the possession of the vehicle on the date of accident, i.e. on 27.5.2007 with Appellant-ICICI Bank is established.

16. In view of the definition enumerated in Section 2 (30) of the M.V. Act and the law propounded in the case of *HDFC Bank Ltd.* (supra), the person, who was in possession of the vehicle on the date of accident, where a hypothecation agreement exists, is treated as the owner of the vehicle and liable to pay the compensation. It is important to mention here that Rajmohan Patra is admittedly not in possession of the offending vehicle w.e.f. 18.6.2006 and the possession of the offending vehicle between 18.6.2006 to 28.5.2007 is not established in favour of any person other than the ICICI Bank. Therefore, at no circumstance, neither Rajmohan Patra nor Choudhury Ashis Das nor Naresh Pattanaik could be treated as owner of the vehicle in true sense.

17. There being no other dispute raised, either regarding negligence on the part of the driver or with regard to quantification of the compensation amount, no merit is seen in the appeal.

18. In the result, the appeal is dismissed and the Appellant is directed to deposit the entire compensation amount along with interest before learned Tribunal as per its direction within a period of three months from today; where-after the same shall be disbursed in favour of the claimant on same terms and proportion as contained in the impugned judgment.

19. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application.

(B.P. Routray)
Judge



B.K. Barik/Secretary