

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.883 of 2019

(From the judgment dated 21st February, 2018 passed by the learned 2nd M.A.C.T. (Southern Division), Berhampur, Ganjam in M.A.C. Case No.69/210 (284/2008-GDC))

***Manager, ICICI Bank Ltd.,
Dharmanagar, Berhampur, Dist.-
Ganjam***

....

Appellant

-versus-

G. Mangulu Patro and another

....

Respondents

Advocate(s) appeared in this case:-

For Appellant	:	Mr. N.K. Dash, Advocate
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For Respondents	:	Mr. P.K. Mishra, Advocate For Respondent No.1
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CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

1st August, 2022

B.P. Routray, J.

1. Present appeal by the insurer is directed against the judgment dated 21st February, 2018 passed by the learned 2nd M.A.C.T. (Southern Division), Berhampur, Ganjam in M.A.C. Case No.69/2010 (284/2008-GDC) wherein compensation to the tune of Rs.2,00,000/- has been granted along with simple interest @6% per annum from the date of filing of the claim application, i.e.24.10.2008 to the minor daughter of the claimant due to the motor vehicular accident dated 7.1.2008.

2. Since the vehicle was not insured, the learned Tribunal while directing for payment of compensation by present Appellant, i.e. Manager, ICICI Bank Ltd., Dharmanagar, Berhampur has granted liberty to the Bank to realize such amount from the Respondent No.2-owner of the offending motorcycle bearing Registration No.OR-07-N-1942, namely, Surendra Patro.

3. Admittedly the offending vehicle was hypothecated to the present Appellant at the time of purchase and continued to be so on the date of accident, as the financier.

4. Learned counsel for the Appellant submitted that in view of clear definition of 'owner' of the motor vehicle, the financier cannot be held liable for payment of compensation. But the learned Tribunal violating the law has directed the financier to pay the compensation with liberty to realize the same from the owner.

5. None appeared for Respondent No.2-owner despite a set of lawyers have entered appearance for him by filing power.

6. Learned counsel for Respondent No.1-claimant submitted that considering the poor status of the claimant, the direction of the learned Tribunal to the financier to pay the compensation and recover the same from the owner cannot be faulted with.

7. Before proceeding further, it is important to look into the provisions contained in Section 2(30) of the Motor Vehicles Act, 1988 that defines owner. It is reproduced herein below:

“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.”

8. As seen from the impugned award, learned Tribunal has observed under Issue Nos.(ii) & (iii) that the hypothecation of the offending motorcycle with Respondent No.2-Bank at the time of accident causing injury to G. Hari Priya Patro has not at all been disputed/denied in the pleadings of the Respondent No.2. Before this Court also, the claimant (present Respondent No.1) does not dispute such hypothecation of the offending motorcycle with the present Appellant-Bank as the financier. Therefore, as per the definition of owner contained in Section 2 (30) of the M.V. Act, 1988, Surendra Patro (present Respondent No.2) is the undisputed owner of the offending motorcycle being the person in possession of the offending motorcycle under the hypothecation agreement.

9. The Supreme Court in the case of **HDFC Bank Ltd. vs. Reshma and others**, (2015) 3 SCC 679, adverting to the principles laid down in various earlier decisions, 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.”

10. In the case at hand, admittedly, the offending motorcycle was not insured and also nothing is there on record to reveal that this fact was known to the present Appellant-financier or it was done in collusion with the financier. Therefore, the liability is fastened on the owner-Respondent No.2, namely, Surendra Patro to pay the compensation, and not on the financier.

11. Resultantly, the appeal is allowed and the direction of the learned Tribunal is modified to the effect that the compensation amount is payable by the owner-Respondent No.2.

12. The statutory deposit made by the Insurer-Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

(B.P. Routray)
Judge

B.K. Barik/Secretary