

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

106

FAO No.3042 of 2020

Reserved on : 14.12.2022

Date of Decision : 20.12.2022

Tagore Bal Niketan Senior Secondary School, Karnal

....Appellant

VERSUS

Gurnam Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.C. Gupta, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the registered owner of the vehicle Swaraj Mazda School Van bearing registration no.HR-05-8980 (hereinafter referred to as the 'offending vehicle') which was involved in a vehicular accident resulting in death of Hansa Singh (hereinafter referred to as the 'deceased').

The brief facts relevant to the present *lis* are that on 21.08.2013, at about 4.30 pm, the deceased was going from Bus Stand Kot Dharmu to Village Kot Dharmu on his motorcycle bearing registration no.PB-13W-6592. One Sukhdev Singh is stated to be the owner of the said motorcycle. Kulwant Singh (respondent no.7 herein), who was the driver of the offending vehicle, came from the opposite direction while driving rashly and negligently and at a high speed hit the motorcycle of the deceased. Due to the impact, the deceased fell on the road and suffered injuries. Respondent no.7, driver of the offending vehicle, fled from the spot. The said occurrence was witnessed by Gurpreet Kaur, wife of the deceased, and her brother, Jagga Singh. The deceased was shifted to Civil Hospital, Mansa where he

was declared dead. FIR No.64 dated 22.08.2013 under Sections 304-A, 279, 427 of the Indian Penal Code, 1860 was registered.

The present claim petition was filed by the claimants for grant of compensation. The driver of the offending vehicle (respondent no.7 herein) did not appear despite being served. The appellant herein filed a written statement taking an objection that the offending vehicle stood sold to Shri Guru Harkrishan Public School, Noulviwala, Tehsil Patran, District Mansa on 05.07.2005 and necessary documents were exchanged between the parties in this regard. It is further averred that the offending vehicle was in possession of Shri Guru Harkrishan Public School, Noulviwala w.e.f. 05.07.2005 and that a NOC had been issued by the Registering Authority, Patiala on 24.08.2005. It is further averred that the claim petition was bad for non-joinder and mis-joinder of necessary party as Shri Guru Harkrishan Public School, Noulviwala had not been impleaded as party. The offending vehicle was not insured. On the basis of the objection raised by the appellant herein, Shri Guru Harkrishan Public School, Noulviwala was impleaded as a party. Objections were taken by Shri Guru Harkrishan Public School, Noulviwala that they had no concern with the offending vehicle and that the offending vehicle never remained in ownership of the Shri Guru Harkrishan Public School, Noulviwala.

On the basis of pleadings of the parties, the following issues were framed :

1. Whether Hansa Singh died in a motor vehicular accident, which took place on 21.08.2013 in the area of Kot Dharmu due to rash and negligent driving of school Van bearing registration no.HR-05-8980 by respondent No.1 ? OPP

2. Whether the claimants are the legal heir of deceased Hansa Singh ?
3. Whether the claimants are entitled to compensation, if so, how much and from whom? OPA
4. Whether the claim petition is maintainable against the respondents ? OPA
5. Whether respondent no.1 was not holding valid and effective driving licence at the time of accident ? OPR-1
6. Whether respondent no.2 was not holding valid registration certificate, fitness certificate, permit, if so its effect ? OPR
7. Whether respondents no.1 and 2 have violated the terms and conditions of the policy ? OPR 1 and 2
8. Whether the claim petition is bad for non-joinder of necessary parties ? OPR
9. Relief.

The Tribunal, on the basis of pleadings of the parties and the evidence on record, held the factum of accident to have been proved and held the appellant, being a registered owner of the offending vehicle, jointly and severally liable along with respondent no.7 herein (driver of the offending vehicle). Aggrieved by the said order, the present appeal has been filed.

Learned counsel for the appellant would contend that all the documents stood executed *qua* the sale of the offending vehicle in favour of Shri Guru Harkrishan Public School, Noulviwala and that the appellant has erroneously been held responsible. It is further the contention that a total

Noulviwala inasmuch as they produced on record Ex.R2, a *superdari* order passed by the Magistrate on 05.09.2013, according to which the offending vehicle was taken on *superdari* by one Jagjit Singh, general power of attorney holder of Rajan Kumar Lamba, Principal of the appellant. Learned counsel for the appellant would further contend that fraud vitiates all proceedings and hence the present award passed by the Tribunal was not sustainable in law. It is further contended that claimants have, before the filing of the claim petition, very cleverly turned hostile in the criminal case resulting in acquittal of the driver.

Heard.

In the present case, admittedly, the appellant is a registered owner of the offending vehicle. Hon'ble Supreme Court in case of **Naveen Kumar vs. Vijay Kumar & Ors. [2018 (2) RCR (Civil) 74]** has held as under :

“12. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression ‘owner’ in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the ‘owner’. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the

records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi."

It is trite that the outcome of the criminal proceedings has no bearing on a case under the Motor Vehicle Act, 1988 and the same needs to be proven on the touchstone of probabilities. In view of the law laid down, the registered owner of the offending vehicle cannot be absolved of his responsibility. Further, the argument raised by learned counsel for the

appellant that fraud vitiates all the proceedings cannot be accepted in the present case inasmuch as there is no fraud alleged to have been played by the claimants herein. The fraud, if any, is alleged on the part of Shri Guru Harkrishan Public School, Noulviwala *qua* which the appellant is always at liberty to initiate proceedings in accordance with the law. In the present case the Court is only to see whether the factum of the accident is proved on the touchstone of probabilities. Gurpreet Kaur, widow of the deceased, had appeared as CW2 and tendered in evidence her affidavit as Ex.CW2/A. Despite lengthy cross-examination her testimony could not be shaken. She is stated to be one of the eye-witnesses of the incident. It is further to be noticed that the offending vehicle was recovered from the spot which further lends credence to the version of CW2, Gurpreet Kaur.

Hon'ble Supreme Court in case of **Anita Sharma & Ors. vs. The New India Assurance Co. Ltd. & Anr. [2021 (1) RCR (Civil) 200]** held as under :

“22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to

ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646, wherein this Court reiterated that:

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530: (2009) 5 SCC (Civ) 189: (2010) 1 SCC (Cri) 1101]).”

In view of the above, I do not find any merit in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

20.12.2022

jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO