

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 1598/2016(O&M)

Date of decision: 26.04.2023.

M/s Rhee Pharmaceuticals

.....Appellant

Vs.

Sukhdeep Kaur and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. DS Sukarchakia, Advocate for the appellant.

 Mr.Binderjit Singh, Advocate for respondents 1 to 4

 Mr. Achin Gupta, Advocate for respondent no.6

Nidhi Gupta, J.

Present appeal has been filed by the Registered Owner of Car bearing registration no.PB-04-L-2544 (hereinafter referred to as 'the offending vehicle') assailing the Award dated 4.12.2015 passed by Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.45,20,776/- has been granted to the claimants/respondents 1 to 4 herein, in a petition u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Ld. Tribunal on appraisal of facts, pleadings and evidence concluded that the deceased-Gurpreet Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 1.5.2012 due to rash and negligent driving of offending vehicle being driven by respondent no.5.

Appellant is registered owner of the offending vehicle, while respondent

no.6 is the alleged purchaser of the same. Ld. Tribunal held appellant along with respondent no.5 herein/ driver of the offending vehicle, liable to pay the compensation as above, along with interest @ 6% per annum from the date of filing of the claim petition till realization.

Ld. counsel for the appellant assails the Award on the ground that the Ld. Tribunal is in grave error in fastening joint and several liability on the appellant/ respondent no.2 in the claim petition, and respondent no.5/ respondent no.1 in claim petition-driver of the offending vehicle as, it had been established on record that the appellant had sold the offending vehicle to respondent no.6 herein. It is submitted that the appellant had led voluminous evidence before the Ld. Tribunal to prove that he had sold the offending vehicle to respondent no.6 however, the said evidence has not been properly appreciated by the Tribunal. Ld. counsel refers to the Lower Court Record, in particular to Ex. R1 which is ITR of the appellant for the assessment year 2011-12/Financial Year 2010-11; Ex. R2 account ledger of the appellant firm from 1.4.2010 to 31.3.2011; and Ex.R3 delivery receipt dated 12.10.2010, to submit that from the said documents it is borne out that the appellant had sold the offending vehicle to respondent no.6 (respondent no.3 in the claim petition) for a sale consideration of Rs.90,000/-. It is submitted that a perusal of Ex.R3 shows that said car/offending vehicle was even delivered to respondent no.6 on 12.10.2010 itself. It is submitted that accordingly, appellant had no concern with the offending vehicle after 12.10.2010 as they were neither owner, nor in possession, of the said car on the alleged date of accident i.e. on 1.5.2012.

It is submitted that the above said evidence of the appellant remained uncontroverted and un-rebutted yet Ld. Tribunal has fastened the

liability on the appellant merely on the ground that the appellant was registered owner of the offending vehicle.

It is further submitted that subsequent purchaser of the offending vehicle-respondent no.6 herein was duly impleaded as respondent no.3 by the Id. Tribunal vide order dated 13.9.2013. It is stated that despite service, respondent no.6 did not care to contest the petition and was accordingly, proceeded against ex-parte vide order dated 16.10.2013. It is submitted that therefore, the plea of the appellant that the ownership and possession of the offending vehicle had been delivered to respondent no.6 remained uncontroverted and without denial. It is submitted that therefore, adverse inference is to be drawn against respondent no.6/ subsequent purchaser with regard to the transfer of vehicle and he should have been held liable in respect of payment. In support, Id. counsel for the appellant relies upon judgment of this Court in **JS Choudhary, Proprietor of Ambala Finlease Crops v Ritu Devi, Vol. CLXII-(2011-12)397**, in particular on Paras 2, 3 and 4 thereof, which read as under:-

"2. The procedure set out under Section 50 of the Motor Vehicles Act for transfer of ownership is only evidence of ownership and not at all times conclusive. The transfer of title in a motor vehicle takes place by delivery and by passing of consideration for sale. The ownership in goods is transferred under Section 19 of the Sale of Goods Act and the distinction between the sale of goods and a transfer of ownership by registration under Section 50 was dealt with by the Hon'ble Supreme Court in **Vasantha Vishwanathan and others v. V.K. Elayalwara and others 2001(8) SCC 133**. The Supreme Court held the following:-

"Section 31 of the Motor Vehicles Act, 1939 lays down that where the ownership of any motor vehicle registered under the Motor Vehicles Act is transferred, the transferor and transferee both are required to report the fact of transfer to the registering authority so that particulars of transfer of ownership may be entered in the certificate. The transfer is not effected under Section 31 of the Motor Vehicles Act, 1939, but the same simply prescribes procedure for entering the factum of transfer in the registration certificate, which is an act posterior to the transfer. The transfer of vehicles in question would be governed by the provisions of Section 19 of the Sale of Goods Act according to which property in the vehicle would pass to Defendant I at such time as the parties to the contract intend it to be transferred. Thus the passing of property in the goods would be dependent upon the intention of the parties, as evidenced from the contract."

3. In a case where the subsequent purchaser is not made a party and the case is prosecuted against a registered owner only without any objection from the registered owner or without any steps being taken to implead the subsequent purchaser, a liability to be fastened on the registered owner could be perfectly understood. The learned counsel appearing for the claimant refers to a decision of this Court in **Rulda Singh and others v. Amarvir Kaur and others (2009-1)153 PLR 800** to the effect that the registered owner will still liable.

4. The learned judge was referring to the judgment of the Supreme Court in **T.V. Jose (Dr.) v.**

Chacko P.M. (2001) 8 SCC 748 to hold that the registered owner who was the transferor and whose name continued to be in the records with the transferring authority would continue to be liable. In my view, the judgment of the Supreme Court must be understood in the context when the subsequent purchaser is not made party. In that case, the registered owner sought impleadment of the transferee before the Supreme Court for the first time. The court rejected the attempt and held as follows:- "We agree with Mr. Iyer that the High Court was not right in holding that the appellant continued to be the owner as the name had not been changed in the records of RTO. There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the appellant still continued to remain liable to third parties as his name continued in the records of RTO as the owner. The appellant could not escape that liability by merely joining Mr. Roy Thomas in these appeals. Mr. Roy Thomas was not a party either before MACT or the High Court. In these appeals, we cannot and we will not go into the question of inter se liability between the appellant and Mr. Roy Thomas. It will be for the appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so.

I will read down the law laid down in *Rulda Singh's* case (*supra*) as valid in the situation where a subsequent purchaser is not even made a party. In this case, the subsequent purchaser is a party and the transfer of ownership to such a subsequent purchaser was also an admitted fact. The award could have been, therefore, sustained only against the subsequent purchaser. The liability cast on the transferor of the vehicle, who was not

the owner at the time when the accident had taken place cannot, therefore, be made answerable. It will only be appropriate that the decree is passed against the purchaser, for in the event of recovery, it will become possible for a claimant to even seize the vehicle and recover the amount, if the judgment debtor does not satisfy the award”.

Ld. counsel for the appellant also relies upon another judgment of this Court in **Ravi Kumar v Jitender Lathar, Vol. CLXXV-(2014-3) PLR 275**, wherein abovesaid view has been followed.

Ld. counsel for the appellant further submits that the ld. Tribunal also failed to appreciate that it is admitted case of the claimants, as pleaded in the claim petition itself that the accident in question was a result of head-on collision. It is submitted that accordingly, it was incumbent upon the ld. Tribunal to make an appropriate deduction by determining the extent of contributory negligence on the part of the deceased.

In response, it is submitted by the ld. counsel for respondent no.6, alleged subsequent purchaser of the offending vehicle, that Ex.R3 relied upon by the appellant is a delivery receipt/challan, and not a transfer. It is submitted that it is an admitted fact on record that the appellant was registered owner of the vehicle on the date of accident and therefore, he cannot escape his liability. In support of the above contention, learned counsel relies upon 3-Judge Bench judgment of the Hon’ble Supreme Court in **Naveen Kumar v Vijay Kumar and others, Law Finder Doc Id # 970642**, to submit that it has been held by the Hon’ble Supreme Court that for the purposes of Motor Vehicles Act, the person whose name is reflected in the record of the Registering Authority is the owner, and therefore, liability is of the registered owner of the offending vehicle.

Ld. counsel refers to judgment of the Hon'ble Supreme Court in **Parkash Chand Daga v Saveta Sharma and others, 2019(1) RCR (Civil) 372** to submit that so long name of the transferor continues in the RTO's record, he remains liable to third person in case of accident. Ld. counsel for the claimants/respondents 1 to 4 submits that as regards head on collision, the appellant had taken no such plea in the written statement filed by him before the ld. Tribunal, or even at the time of arguments.

No other argument has been raised on behalf of the parties.

Heard ld. counsel for the parties.

A few uncontroverted facts that emerge from the record are that though it is alleged by the appellant that they sold the offending vehicle to respondent no.6 (respondent no.3 before the ld. Tribunal), on 12.10.2010, yet as per undisputed evidence on record on the date of accident i.e. 1.5.2012, the appellant was still the registered owner of the offending vehicle. In this regard findings of the ld. Tribunal as contained in paras 29 and 30 of the impugned Award are relevant, and are reproduced below:-

“29. Learned counsel for respondent No.2 has vehemently contended that respondent No.2 is not liable to pay any compensation, as he was not the owner of the offending Car at the time of accident and rather Rajiv Ahuja son of Narinder Ahuja (respondent No.3) was the owner of the vehicle in question, as he sold the same to him on 12.10.2010 for a total sale consideration of Rs.90,000/- and also delivered the possession of the Car, in question, to him. In this regard, he has also referred to the statement made by Rishi Ahuja (RW-1), who testified through his affidavit, Ex.RW-1/A, that respondent No.2 had sold the Car in question, to Rajiv Ahuja son of Narinder Ahuja (respondent No.3) on 12.10.2010 for a

sale consideration of Rs.90,000/- and that possession of the Car along with its Registration Certificate as well as insurance certificate valid upto 22.11.2010 was also delivered to said Rajiv Ahuja on 12.10.2010. He further testified that a writing in this regard was also executed. He further testified that respondent No.2 had entered the said sale consideration in its account books and that the said amount has also been reflected in the balance sheet submitted by respondent No.2 to the Income Tax department along with income tax return for the year 2010-11.

30. However, this contention raised by learned counsel for respondent No.2 is not liable to be accepted. From the perusal of the file, it transpires that the offending vehicle still stands registered in the name of respondent No.2 in the Registration Certificate of the offending Car. Ashok Kumar, Clerk in the office of District Transport Officer, Faridkot while appearing as CW-5 has categorically stated that as per their record, Car bearing RC No.PB-041-2544 stands registered in the name of M/S Rhee Pharmaceuticals, Sikhwala Road, Kotkapura, District Faridkot (respondent No.2) and that no transfer entry regarding the sale of the Car in question, is incorporated in their record. He proved the RC of the Car, in question, showing respondent No.2 as its registered owner as Ex.PW-S/A. Moreover, no affidavit of Rajiv Ahuja, who allegedly purchased the Car, in question, from respondent No.2, has been placed and proved on the record. Merely from the entry incorporated in the accounts books being maintained by respondent No.2, it is not established that the Car, in question, was sold to Rajiv Ahuja prior to the accident because the registration number of the Car is not mentioned in the said entry. As such, from the perusal of the file it transpires that the offending vehicle still stands

registered in the name of respondent No.2. It is settled law that the registered owner and whose name does find mention in the form of certificate of registration is liable to pay the compensation in case any accident occurs. It was incumbent upon the vendor and vendee of any vehicle to get the vehicle transferred before the Transport authority. Moreover, to decide this point, this Tribunal relies upon an authority titled as Vipin Kumar Sharma Vs. Jagwant Kaur and others 2005(4) RCR (Civil) 40, wherein it has been categorically observed by the Hon'ble Punjab and Haryana High Court that liability of the registered owner continues till the registration continues in his name even if the vehicle stood sold/transferred. In view of the law laid down in the aforesaid authority, the contention raised by respondent No.2 that he is not liable to pay the compensation to the claimants due to the accident occurred on 1.5.2012, is devoid of any merit. Therefore, respondents No. 1 and 2, who are driver and registered owner of the offending vehicle, shall be jointly and severally liable to pay the amount of compensation to the claimants along with interest at the rate of 6% per annum from the date of filing the claim petition. Accordingly, this issue is decided in favour of the claimants and against the respondents No.1 and 2”.

(Emphasis supplied)

Counsel for the appellant is unable to deny or controvert in any manner whatsoever, the above said findings recorded by the Id. Tribunal.

Moreover, even as per judgments referred to by the Id. counsel for the respondents, the position in law is very much clear inasmuch as it has been held by 3-Judge Bench of the Hon'ble Supreme Court in

Naveen Kumar's case (supra) that where the registered owner purported to

transfer offending vehicle but continues to be reflected in the records of the Registering Authority as owner, he would not stand absolved of the liability. Relevant Headnote and Para 12 of the said judgment in **Naveen Kumar (supra)** is reproduced hereinbelow: -

“Motor Vehicles Act, 1988 Sections 2(30) and 50 Claim for compensation - Liability of Owner - Where registered owner purported to transfer vehicle but continues to be reflected in records of registering authority as owner, he would not stand absolved of liability - Principle underlying provisions is that victim of motor accident not to be left in state of uncertainty - Claimant for compensation ought not to be burdened with following trail of successive transfers, which are not registered with registering authority.

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 fulfillment 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”.

Hon’ble Supreme Court has reiterated this position vide subsequent judgment in the case of **Prakash Chand Daga’s** case (supra) wherein owner of the offending vehicle/appellant in the said case had sold the offending vehicle on 11.9.2009 and accident took place on 9.10.2009 and the offending vehicle had remained registered in the name of the appellant, Hon’ble Supreme Court had granted recovery rights to Insurance Company against the registered owner therein. Relevant paras 8 and 9 of the said judgment are extracted below:-

“8. In the decision in Naveen Kumar (supra) the legal position was adverted to and this Court observed as under:

"13. 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 1939 Act. 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 fulfillment 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* 2015(1) RCR (Civil) 1 : (2015)3 SCC 679 and *Purnya Kala Devi* 2014(2) RCR (Civil) 591 : (2014) 14 SCC 142.

14. The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In T.V. Jose, 2002(1) RCR (Civil) 120 : (2001)8 SCC 748, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the Registering Authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled."

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." P.P. Mohammed v. K. Rajappan and Ors. (2008) 17 SCC 624 para 4. The High Court was therefore absolutely right in allowing the appeal. The challenge raised by the appellant must fail".

In the present case the offending vehicle is alleged to have been sold on 12.10.2010 i.e. almost two years prior to the date of accident and yet the vehicle continued to be registered in the name of the appellant herein, thus casting a shadow of doubt. As regards the plea of contributory negligence by Id. counsel for the appellant, perusal of the LCR reveals that though said plea was taken by the appellant, however, in the reply filed by the appellant no such plea of contributory negligence was taken.

In view of the above undisputed factual and legal position,
finding no merit in this appeal the same is hereby, **dismissed**.

Application(s), if any, stand disposed of.

26/04/2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No