



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 10.08.2023

Date of decision: 05.09.2023

+ **CM(M) 1051/2022**

OM PRAKASH JAISWAL & ORS. Petitioners
Through: Mr.Raghav Saluja, Ms.Tanisha
Verma, Advs.
versus

MANISH KUMAR & ORS. Respondents
Through: Mr.Suhail Sehgal, Mr.Prashant
Drolia, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. The present petition has been filed by the petitioners challenging the orders dated 30.05.2022 and 18.07.2022 (hereinafter referred to as the 'Impugned Orders') passed by the learned Motor Accidents Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 152/2020 titled ***Om Prakash & Ors. v. Manish Kumar & Ors.*** (hereinafter referred to as the 'Claim Petition'), deleting the respondent no.3 herein from the array of parties, and dismissing the application seeking review against the said order, respectively.

2. The above Claim Petition has been filed by the petitioners herein under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') stating that on 10.08.2019 at about 6:00 A.M., the deceased-Shri Amit Jaiswal was driving his motorcycle. When he reached at the M.B. Road,



near SDM Office, Saket, New Delhi, he met with an accident after being hit by a taxi bearing registration no. HR-69B-9372 (hereinafter referred to as the 'Offending Vehicle'). The Offending Vehicle was being driven by the respondent no.1 herein. The said taxi was owned by the respondent no.2 herein. The deceased, in spite of the medical attention and the treatment, died due to the injuries suffered in the said accident. The petitioners further claimed that the Offending Vehicle was not insured.

3. As far as the respondent no.3 is concerned, in the Claim Petition, it was stated as under:-

“(vii) That the offending vehicle was being driven by the respondent no.1 and owned by the respondent no.2. The respondent no. 3 hired the offending vehicle for the 'pick & drop' facility of its employees. As per law, it was the bounded duty of the respondent no.3 to check all the documents concerning the offending vehicle and its driver, therefore, as such all the respondents are liable to pay compensation to the petitioners jointly or severally.”

(Emphasis supplied)

4. The respondent no.3 herein filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908, seeking deletion of its name from the array of parties in the Claim Petition. It was contended by the respondent no.3 that the respondent no.3 had not hired the Offending Vehicle on the date of the accident and no employee or passenger associated with the respondent no.3 was in the vehicle on the date of the accident. It was further stated that the Offending Vehicle was not engaged in any manner with the respondent no.3 on the date of the accident and that the respondent



no.3 is not the concerned, responsible or liable party to pay any compensation to the petitioner on account of the accident in question; the same being the liability of the owner and the driver of the Offending Vehicle.

5. On the said application, the learned Tribunal vide the Impugned Order dated 30.05.2022, deleted the respondent no.3 from the array of parties, observing as under:-

“As per DAR vehicle not insured. Nothing has been brought whether the Genpact has any role in procuring the vehicle or if any passenger/ staff of the Genpact was sitting in the offending vehicle. This 152 Court unable to know from where the name of the Genpact has come in whole of the incident. DAR filed by the IO does not state anything in respect of the role of the Genpact. It appears that after coming to know that offending vehicle was un-insured, claimant had filed the petition u/s 166 & 140 of M.V. Act impleading the Genpact as it used to hire the taxi.

In view of the above, the application is allowed. The respondent no. 3/Genpact is deleted from array of parties from this petition.”

6. The petitioners herein filed an application seeking review of the above order, specifically bringing to the notice of the learned Tribunal that in the Detailed Accident Report (in short, ‘DAR’), the Investigating Officer had mentioned that the owner of the Offending Vehicle, in reply to the notice under Section 133 of the Act, had mentioned that as on the date of the accident, the said vehicle had been engaged with the respondent no.3. The Investigating Officer had also annexed the statement of Mr.Vinod, an employee of the respondent no.3, who had mentioned that the Offending Vehicle had been engaged with the respondent no.3



Company. The Investigating Officer had also annexed the log book entries of the relevant date, showing that the Offending Vehicle had picked/dropped the persons at the campus of the respondent no.3 company.

7. The above application of the petitioners seeking review of order dated 30.05.2022, was, however, dismissed by the learned Tribunal vide its Impugned Order dated 18.07.2022, *inter alia* observing as under:-

“It is a matter of fact that the offending vehicle was owned by the respondent no. 2. Though the owner had claimed that it had pressed the offending vehicle into the service of Genpact. However, merely pressing the service, the offending vehicle in any company, does not make the hirer coming within the definition of the owner.”

8. The petitioners have filed the present petition being aggrieved of the above Impugned Orders dated 30.05.2022 and 18.07.2022 passed by the learned Tribunal.

9. The learned counsel for the petitioners submits that there was ample evidence before the learned Tribunal to show that the respondent no.3 had hired the Offending Vehicle to pick and drop its employees. He submits that, therefore, the respondent no.3 was in actual possession and control of the vehicle when the accident had taken place. Placing reliance on the judgment of the Supreme Court in ***Purnya Kala Devi v. State of Assam and Another***, (2014) 14 SCC 142, he submits that as a person in actual possession and control of the vehicle, the respondent no.3 was jointly and



severally liable with the owner and driver of the Offending Vehicle to pay the compensation to the petitioners for the death of the deceased in the motor accident.

10. On the other hand, the learned counsel for the respondent no.3 submits that, without admitting the same, merely because the Offending Vehicle was being used to pick and drop the employees of the respondent no.3 company, the respondent no.3 company could not be said to be liable to pay the compensation to the petitioners for the death of the deceased due to a motor accident. He further submits that the liability can be fastened only on the owner of the Offending Vehicle, that is, in whose name the vehicle stands registered with the office of the registration authority. In support, he places reliance on the judgment of the Supreme Court in *Naveen Kumar v. Vijay Kumar and Another*, (2018) 3 SCC 1. He submits that in *Purnya Kala Devi* (supra), the Supreme Court was considering a case where the Offending Vehicle had been 'requisitioned' by the State Government under the provisions of the Assam Requisition and Control of Vehicles Act, 1968 (in short 'Requisition Act'). He submits that it was only in those peculiar facts of that case that the Supreme Court held that the State Government, being in possession of the vehicle, shall be liable to pay the compensation. He submits that mere hiring of a taxi cannot make the hirer liable to pay the compensation.

11. I have considered the submissions made by the learned counsels for the parties.



12. As is evident from the reading of the order dated 30.05.2022, the learned Tribunal had directed the deletion of the respondent no.3 premised on the fact that there is no mention of respondent no.3 in the DAR, nor was there anything brought on record to show the role of the respondent no.3 in procuring of the vehicle or if any passenger/staff of the respondent no.3 was sitting in the Offending Vehicle. This finding of the learned Tribunal, *prima facie*, is incorrect. DAR contained the statement of the owner of the Offending Vehicle, who had stated that the Offending Vehicle was being plied for the respondent no.3 on the date of the accident. His statement in vernacular language (Hindi) is reproduced herein under:-

Book No.	Volume No.	Case Diary No.

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INNER CASE DIARY

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CASE FIR NO. 329/19 DT. 11/06/2019 U/S 279/304A IPC P.S. SAKET

Statement of Mr. Vinod S/o Prem Raj R/o H. No. 55 Ward No. 04 Kharakhoda Gurgaon Haryana

STATEMENT U/S 161 CR.P.C.

बयान किया की मैं पता उपरोक्त पर रहता हूँ और Taxi No. HR 69B0372 नाम Whae को मालिक हूँ। उपरोक्त वाहन को दिनांक 09-10/08/2019 को Driver Manish Kumar S/o Vishwa Nath Singh R/o Ajoot, General Store Near Shiv Public School Sector-18 Gurgaon Haryana सेवा रहा था और मेरी उपरोक्त माफ़ी IEN Pvt Company Gurgaon में लगी हुई है। जो आपके द्वारा IEN Notice मुझे मिला जिसका मैंने भिखित जवाब आपको दे दिया है और मैंने उपरोक्त वाहन के सम्पत्ति में वैश्व किराए लेकिन मेरे Vehicle का Insurance नहीं है।

आप आपने मेरा बयान लिखा जो सुन लिया ठीक है।

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S.D. N. K. ADICHTA

ASI Ramesh Chand
No. 238/SD
PS Saket



13. The DAR also contained the statement of Shri Bhupender Kumar, who had stated that he was working as a Security Guard with the respondent no.3, and on the date of the accident, his duty was in the Offending Vehicle. He stated that when the accident took place, the Offending Vehicle was coming from Sangam Vihar to Gurgaon and he was also in the vehicle.

14. Clearly, therefore, the finding of the learned Tribunal that there was no mention of the respondent no.3 in the DAR or any of its employee travelling in the Offending Vehicle at the time of the accident was incorrect.

15. Even otherwise, Section 2(30) of the Act defines the term ‘owner’ as under:-

“2. Definitions

xxxxx

(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”

(Emphasis supplied)

16. ‘Owner’, therefore, includes a person who is in possession of the vehicle under an ‘agreement of lease’. In ***Uttar Pradesh State Road Transport Corporation v. Kulsum and Others***, (2011) 8 SCC 142, the Supreme Court, considering a case where under the terms and conditions of an Agreement, effective control and command of a bus had been handed over by the owner of the vehicle to the State Road Transport Corporation (in short, ‘SRTC’)



and where the driver of the bus, though employed by the owner of the bus, under the Agreement with the SRTC was supposed to drive the bus under the instructions of the conductor who was appointed by the SRTC and was also bound by the orders of the SRTC, held that in such circumstances, it can be safely inferred that effective control and command of the bus was that of the SRTC, and for all practical purposes, the SRTC had become the ‘owner’ of the vehicle for the period that the vehicle was under its control. I may quote the relevant observation of the Supreme Court, as under:-

“29. In the instant case, the driver was employed by Ajay Vishen, the owner of the bus but evidently through Clause 4.4 of the agreement, reproduced hereinabove, driver was supposed to drive the bus under the instructions of the conductor who was appointed by the Corporation. The said driver was also bound by all orders of the Corporation. Thus, it can safely be inferred that effective control and command of the bus was that of the appellant.

30. Thus, for all practical purposes, for the relevant period, the Corporation had become the owner of the vehicle for the specific period. If the Corporation had become the owner even for the specific period and the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred along with the insurance policy in existence to the Corporation and thus the Insurance Company would not be able to escape its liability to pay the amount of compensation.”

17. The above judgment was relied upon by the Supreme Court in ***U.P. SRTC v. National Insurance Co. Ltd.***, (2019) 20 SCC 800, observing as under:



“6. After hearing the learned counsel for the parties we find that the issue involved is no more res integra and it stands settled by the judgment of this Court in U.P. SRTC v. Kulsum (2011) 8 SCC 142. In the aforesaid case, almost on similar facts, this Court held as under:

“30. Thus, for all practical purposes, for the relevant period, the Corporation had become the owner of the vehicle for the specific period. If the Corporation had become the owner even for the specific period and the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred along with the insurance policy in existence to the Corporation and thus the Insurance Company would not be able to escape its liability to pay the amount of compensation.

31. The liability to pay compensation is based on a statutory provision. Compulsory insurance of the vehicle is meant for the benefit of the third parties. The liability of the owner to have compulsory insurance is only in regard to third party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses the vehicle independently, a separate insurance policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice.”

7. The principle laid down in the aforesaid judgment has been again reiterated in Karnataka SRTC v. New India Assurance Co. Ltd (2016) 2 SCC 382 wherein the legal position was summed up as under:

“35. In view of the aforesaid discussion, we hold that the registered owner, insurer as well as Ksrtc would be liable to make the payment of compensation jointly and severally to the claimants and Ksrtc in terms of the lease agreement entered into with the registered owner would be entitled

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to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer.”

8. In view of the aforesaid authoritative pronouncements, we hold that the registered owner, insurer (Respondent 1) as well as the Corporation (appellant) shall be jointly and severally liable to the claimants in respect of the compensation that has been awarded by MACT. However, insofar as the appellant is concerned, it would be entitled to recover the amount paid to the respondents from the owner in terms of the agreement which has been entered into between them.”

18. In **HDFC Bank Limited v. Reshma and Others**, (2015) 3 SCC 679, the Supreme Court analysing the definition of the term ‘owner’, as defined under Section 2(30) of the Act, held that the legislature has deliberately carved out the exceptions from the registered owner, thereby making a person in possession of the vehicle under the Agreements mentioned in the dictionary clause, that is hirer purchase, lease, hypothecation, to be the owners for the purposes of the Act.

19. In **Purnya Kala Devi** (Supra), the Supreme Court held that a person in control and possession of the vehicle would also be construed as the ‘owner’, and not just the registered owner alone.

20. Though it is correct that in **Naveen Kumar** (Supra), the Supreme Court observed that the above judgment in **Purnya Kala Devi** (Supra) was *inter alia* on a special fact of the vehicle being taken under the Requisition Act, and also held that the registered owner shall continue to remain liable to pay compensation to the victim of a motor accident, in my view, the said judgment cannot



be read to absolve the person from paying the compensation to the victim of a motor accident, in whose actual possession the vehicle is at the time of the accident. The liability would remain joint and several in such circumstances between the registered owner and the person in whose actual possession the vehicle is at the time of the accident.

21. Having held the above, in the facts of the present case, the respondent no.3 has been deleted from the array of parties on a preliminary stage of the proceedings under the Claim Petition. The parties are yet to lead their evidence in the Claim Petition. It is yet to be established as to how and in what capacity was the respondent no.3 using the Offending Vehicle for ferrying its employees, if at all; whether it was a simpliciter hire of a vehicle for a particular trip or was it under an Agreement of a hire of the vehicle on a long term basis. The above factual issues could only be determined on the parties leading their respective evidence. It was, therefore, too premature for the learned Tribunal to order for the deletion of the respondent no.3 at the preliminary stage of the proceedings itself.

22. It is settled law that a plea that a claim/suit does not disclose any cause of action against a party, must be judged on a demurer. Such a plea ought to be accepted only when the Court comes to a conclusion that even if the averments in the claim/plaint are proved, the claimants/plaintiffs would not be entitled to reliefs claimed. In the present case, the petitioners in their Claim Petition had stated that the respondent no.3 had hired the Offending



Vehicle for the pick-up and drop facility of its employees. It could not, therefore, be stated that the Claim Petition does not disclose a cause of action against the respondent no.3. In addition, there was some material to show that the Offending Vehicle was being used for the purposes of the respondent no.3 at the time of the accident and on a regular basis. The actual relationship between the owner of the Offending Vehicle and the respondent no. 3 should have been left to be determined by the learned Tribunal on scrutiny of the evidence led by the parties on this issue. The claim proceedings should not have been scuttled against the respondent no. 3 at this preliminary stage itself.

23. The learned Tribunal has, therefore, erred in directing the deletion of the respondent no.3 at the preliminary stage of the claim proceedings. Only after the parties had led their respective evidence and, in case the learned Tribunal had found that there was no evidence to suggest that the Offending Vehicle had been used by the respondent no.3 under an 'Agreement of Lease', that the claim against the respondent no.3 could have been rejected

24. It is also settled law that the Act is a social beneficial legislation and the Tribunal should not adopt a hyper-technical and trivial approach in case of compensation under the Act.

CONCLUSION

25. In view of the above, the Impugned Orders dated 30.05.2022 and 18.07.2022 passed by the learned Tribunal are set aside. The Claim Petition shall, therefore, proceed also against the respondent no.3.



26. The present petition is allowed in the above terms. There shall be no orders as to costs.

NAVIN CHAWLA, J

SEPTEMBER 05, 2023/rv/AS

