

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1416 OF 2022

	M/s. Hindustan Petroleum Corporation Ltd. Refinery Division, Material Department, B. D. Patil Marg, Chember, Mumbai-400 074	)))...	Appellant
	versus		
1	Jagdish Kalathrakal Maroli Residing at : Rakhi – E – 501, Vasant Utssav, Thakur Village, Kandivli (E), Mumbai	)))	
2	Ameen Automobiles 301/309, Shop No.9, Dockyad Road, Mumbai – 400 010.	)))	
3	Ajaykumar Govind Raj Ameen Automobiles, Malad, Mumbai – 400 010.	)))	
4	The New India Assurance Co. Ltd. through the Manager, Divisional Office Link Colony Bldg., 3 rd Floor, Nr. Kapurbawdi Circle, Thane (W)	))))...	Respondents

Mr. Lancy D'Souza a/w. Ms. Deepika Agarwal i/b. Mr. V. M. Parkar,
Advocate for the Appellant.

Ms. Rina Kundu, Advocate for Respondent No.1.

Ms. Jyoti Bajpayee, Advocate for Respondent No.4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2024.

Oral Judgment :

1. The issue involved in this appeal is that offending vehicle was sold in public auction.

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2. It is contention of learned counsel for the appellant that the appellant had sold the offending vehicle in public auction to respondent Nos.2 and 3 as a scrap. After selling the said vehicle, the respondents used it and accident occurred. As per the provisions of Section 50(2) of the Motor Vehicles Act, 1988 (for short "the MV Act") it was the duty of the purchaser of the vehicle to get it transferred in RTO in his name but it was not done by respondent Nos.2 and 3 and the Tribunal has not considered these facts. Learned counsel further submitted that as per sub-section 6 of Section 50, if appellant had filed an application for transfer, it would not have been entertained as it has to be filed by the purchaser but these facts are not considered by the Tribunal and has fixed the liability of payment of compensation on appellant, which is erroneous. Hence, requested to allow the appeal.

3. Though respondent Nos.2 and 3 are served, none present for respondent Nos.2 and 3. Hence, I am deciding it ex-parte against them.

4. Learned counsel for respondent No.4 submitted that appropriate orders be passed.

5. Learned counsel for respondent No.1-claimant submitted that the Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it. Learned counsel further submitted that, at the time of the accident, the ownership of the offending vehicle was with appellant, hence, the appellant is liable to pay

compensation. She relied on the judgment of this Court in **State of Maharashtra through Deputy Director of Health service (Tr.) Naidu Hospital Compound versus Almonsia and ors. (2017) 6 Bom CR 62.**

6. I have heard all learned counsel, perused the judgment and order dated 5th January, 2019 passed by Motor Accident Claims Tribunal, Thane (for short “the Tribunal”) in M.A.C.P. No. 303 of 2006.

7. Admittedly, the offending vehicle was sold by the appellant in public auction to respondent Nos.2 and 3. In their defense, the appellant has examined their officer – Rakesh Ghochar. He has stated that after declaring the vehicle as scrap, it was sold to respondent Nos.2 and 3. In cross-examination, he has admitted that the accident took place on 29th December 2005, whereas the vehicle was transferred on 14th February 2005.

7.1. While dealing with the issue of awarding compensation, the Tribunal has observed that at the time of the accident, the offending vehicle was standing in the name of the appellant in RTO record, hence, it is the liability of appellant to pay the compensation. I do not find infirmity in it. As per the view of this Court in **Almonsia and ors.(supra)**, this Court has considered that if the vehicle is sold in public auction, the liability is on the owner to pay the compensation. In the present matter, the offending vehicle was sold as a scrap. In spite of selling it as scrap, the purchaser used it for plying on the road. The appellant should have

informed the RTO authority that the said vehicle cannot be plied on the road as it was sold as scrap but it was not informed. The provisions of transfer under Section 50(2) of M.V.Act would not be applicable in the present matter as the vehicle was sold as a scrap but as the purchaser used it, hence, the appellant shall pay the compensation as fixed by the Tribunal and recover it from the purchaser as per legal remedy.

8. In view of above, I pass the following order:

O R D E R

1. The appeal is partly allowed.
 2. The appellant shall deposit the compensation amount as fixed by the Tribunal along with accrued interest thereon within six weeks after receipt of the order if not deposited.
 3. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 4. The appellant is at liberty to recover the compensation amount along with accrued interest thereon from respondent Nos.2 and 3- purchasers of the offending vehicle.
 5. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
9. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)