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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 6th November, 2024+ CM(M) 84/2024, CM APPL. 2550/2024 (stay)

M/S. SHIV PROBUILD PVT. LTD.Petitioner

Through: Mr. Anubhav Singh, Mr. Sunil, Mr.
Aman Singh and Ms. Maria Mary,
Advocates.

versus

M/S. KUNDU NIRMANRespondent

Through: Mr. Sunil Kumar Agarwal, Ms.
Neelam Agarwal, Mr. Raghav Kapoor
and Mr. R.K. Verma, Advocates.**CORAM:**
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**JUDGMENT** (oral)**CM(M) 84/2024**

1. The Petition under *Article 227 of the Constitution of India, 1950* has been filed on behalf of the Petitioner, to challenge the Order dated 06.12.2023 of the learned Tribunal, dismissing the Application under Order 1 Rule 10 of the *Code of Civil Procedure, 1908* ('CPC' hereinafter), of the *M/s Shiv Probuild Pvt. Ltd./Registered Owner* of the offending vehicle, to implead M/S. Kundu Nirman as a party.
2. The offending vehicle i.e. APOLLO make HIDROSTATIC PAVER FINISHER MODE of which the petitioner is the registered owner bearing No. 6H 3301/1200001, was handed over to the Respondent, *M/s Kundu Nirman*, pursuant to a Work Order dated 01.06.2022, on the specified terms and conditions. The Respondent being the contractor of Pubic Works



Department ('PWD' *hereinafter*), was carrying out the assigned work of strengthening and construction of the road, when the accident occurred involving this vehicle on 25.06.2022 at about 12:30 a.m., resulting in death of Mr. Rajesh. FIR No. 172/2022 under Section 279/304A of the *Indian Penal Code, 1860* ('IPC' *hereinafter*) read with Sections 3/181, 146/196, 39/192, 134/187, 66/192 of the *Motor Vehicle Act, 1988* ('M.V. Act' *hereinafter*) was registered at Police Station, Roop Nagar, Delhi.

3. The Claimants, the legal heirs of the deceased, Mr. Rajesh, filed MACT Case No. 807/2022 tilted Babita & Ors. vs. Ajesh & Ors., for claiming compensation against the Petitioner herein, who is the Respondent No. 1 and other Respondents.

4. During the pendency of the trial, the Respondent No. 1/Petitioner *herein* filed an Application under Order 1 Rule 10 CPC, for impleadment of the Respondent M/S. Kundu Nirman as well as the PWD and Delhi Police, as a necessary party on the ground that the vehicle had been handed over to the Respondents, pursuant to the Work Contract dated 01.06.2022. Even though the driver along with the vehicle had been provided by the petitioner, i.e. the registered owner but it was under the power, possession and control of the Respondent and the driver was also acting in accordance with the directions issued by the Respondent. Therefore, in terms of the definition of 'owner' under Section 2(30) of MV Act, the Respondent is the owner and was liable to be impleaded in the Claim Petition. However, the Application for impleadment, has been dismissed *vide* impugned Order dated 06.12.2023.

5. The ***Order has been challenged*** on the ground that the Work Order/Contract/Agreement dated 01.06.2022, has not been appreciated in the



right perspective. The Respondent is a deemed owner and should have been impleaded as a necessary party. Reliance has been placed on Rajasthan State Road Transport Corporation (RSRTC) vs. Kailash Nath Kothari & Ors., 1997 ACJ 1148, decided by the Apex Court on 03.09.1997.

6. ***Learned counsel on behalf of the Respondent***, has vehemently opposed the Appeal and has asserted that the learned Tribunal has rightly observed that the control of the vehicle was with the Registered Owner which is evident from the fact that the driver had been supplied by the Petitioner. Moreover, the terms of Work Order/Agreement make it evident that the entire control was that of the Registered Owner. There is no infirmity in the Impugned Order and the Petition is liable to be dismissed.

7. **Submissions heard.**

8. Essentially, the facts are not in dispute that though the Petitioner is the Registered Owner of the offending vehicle, it was in power and possession of the Respondent, pursuant to the Work Order dated 01.06.2022 and was being operated on his instructions for construction of the road.

9. Section 2(30) of the *Motor Vehicle Act, 1988* reads as under:-

“(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;”

10. It is evident from the definition itself that the person in possession of a vehicle under a hire-purchase agreement is also covered within the definition of the owner.



11. The Apex court in Prakash Chand Daga v. Saveta Sharma, (2019) 2 SCC 747, relying upon T.V. Jose vs. Chacko P.M., (2001) 8 SCC 748 and reiterated by the Hon'ble Madhya Pradesh High Court, in Ashok Kumar Mishra vs. Durgavati and Ors., MANU/MP/0161/2007, held that, even if a vehicle has been sold and its possession is transferred with proof (like sale documents), the registered owner continues to be liable to third parties as long as their name remains in the RTO records. Therefore, vis-à-vis to third party liability is characterized as “*joint and several*” between the Registered Owner and the new owner.

12. As held in P.P. Mohammed v. K. Rajappan, (2008) 17 SCC 624, 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. Thus, while transfer of ownership is permitted, the law places a specific obligation on the transferee (buyer) to report the transfer to the registering authority, submit the Certificate of Registration, and get the vehicle registered in their name. The failure of the *new owner* to update the registration doesn't invalidate the sale itself, but it also doesn't eliminate the registered owner's liability.

13. Similar facts came as the present case, came up for consideration in the case of Kailash Nath Kothari (supra), wherein the registered Owner handed over his bus to RSRTC for plying on the routes specified by RSRTC which was authorised to collect the fare through the conductor from the passengers who travelled in the bus. It was observed that the definition of ‘owner’ under Section 2(9) of the *M.V. Act*, is not exhaustive. It has to be construed in a wider sense in the facts and circumstances of the given case.



14. *The expression 'owner' must include a person, who has actual possession and control of the vehicle and under whose directions and command, the driver is obliged to operate the bus. To confine the meaning of owner to the Registered Owner only would, in a case where the vehicle is in the possession and control of the hirer, not be proper for the purpose of fastening liability in case of an accident. In the said case, while the registered owner had appointed the driver for the bus who was his employee, but RSRTC was held to be responsible being an actual possession of the vehicle.*

15. *In the present case, the Claim Petition is still pending trial. The Respondent, who was in actual possession of the vehicle, is a necessary and a proper party. He is directed to be impleaded as the Respondent with liberty to take defences as available, by filing a Written Statement.*

16. Amended memo of parties be filed before the learned Tribunal within 15 days and the Written Statement be filed on behalf of the Respondent, in accordance with law.

17. The learned MACT shall proceed for the adjudication of the Claim Petition.

18. Petition is allowed and disposed of accordingly. The pending Application(s) also stands disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 6, 2024/RS