

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 8699 OF 2024
IN
FIRST APPEAL NO. 743 OF 2024

Kaluram B. Gore (deceased) Thr. Lrs. ... Applicants
Manisha Kaluram Gore and Ors.

versus

Sanjay Baban Misal Respondents

.....

Mr. Sumant Deshpande, Advocate for the Applicant / Appellant.
Mr. Yogesh Pande a/w. Mr. Himandhu Jha, Advocates for the Respondents.

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CORAM : R. M. JOSHI, J.

DATE : 3rd DECEMBER, 2025.

P.C. :

1. This application is filed by the original opponent No.1 in M.A.C.P. No. 567 of 2016 seeking unconditional stay to the Judgment and Award dated 21.01.2020 passed therein.

2. Learned counsel for the applicant / original opponent No.1 submits that admittedly opponent No.1 is not registered owner of the vehicle involved in the accident and the said vehicle has been registered in the name of opponent No.2. It is his submission by relying upon the judgment of the Hon'ble Supreme Court in the case of *Navin Kumar Vs. Vijay kumar and Ors.*¹, in view of the definition of the owner under Section 2(30) of

1 (2018) 3 scc 1

the Motor Vehicles Act, the registered owner would be liable for payment of compensation and only in the cases of an agreement of hire-purchase, lease or hypothecation the person in possession of the vehicle under that agreement is treated as the owner. He further submitted that there is absolutely no evidence on record to hold that the opponent No.2 is covered by any of these three categories. He therefore is seeking unconditional stay to the Judgment and Award passed by the Tribunal.

3. Learned counsel for the original claimants opposed the application firstly by contending that the appellant / original opponent No.1 has not appeared before the Tribunal and as such he cannot be now permitted to challenge the Judgment and Award impugned. It is submitted that there is evidence to indicate that actual possession of the vehicle was with opponent No.1 and that the driver of the vehicle was under his control and command. It is submitted that therefore this is not a case of unconditional stay of the impugned Award. To support his submission, he placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *U.P. State Road Transport Corporation Vs. Rajenderi Devi and Ors.*² and *Vaibhav Jain Vs. Hindustan Motors Pvt. Ltd.*³.

4. Though it is a matter of fact that the appellant / original Opponent No.1 has not contested the claim before the Tribunal, however that does not preclude him to challenge the Award by raising point of law. Prima

² 2020 ACJ 1899

³ 2024 INSC 652

facie perusal of the claim petition filed before the Tribunal indicates that the claimant themselves admit about the vehicle being registered in the name of opponent No.2. There is no pleading with regard to there being any hire-purchase, lease or hypothecation agreement between opponent No.1 and opponent No.2.

5. The Hon'ble Supreme Court in the case of *Navin Kumar(supra)* has held that the parliament has consciously introduced the definition of expression "owner" in Section 2(30) of the Act making a departure from the provisions of Section 2(19) of earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or in case of a death, legal heirs of deceased victim should not be left in a state of uncertainty. The claimant for compensation ought not to be burdened with following trend of successive transfers which are not registered with registering Authority. It is further held that to hold otherwise would be to deficit the salutary object and purpose of the Act. Thus only in case of an agreement of hire-purchase, lease or hypothecation the person in possession of the vehicle under that agreement is treated as owner. Here in this case, no such case is sought to be made out by the claimant.

6. In so far as judgment relied upon by the learned counsel for the original claimant in the case of *U.P. State Road Transport Corporation*

(*supra*), deals with the liability of the owner is vicarious for the tort committed by its employee during the course of his employment. In case of ***Vaibhav Jain Vs. Hindustan Motors Pvt. Ltd.***⁴ there was no registered owner of the vehicle as the accident occurred before the registration of the vehicle or its transfer. Also, in paragraph -16 of the same case, Hon'ble Supreme Court has held that the meaning of owner would not be confined to the registered owner, only where the vehicle is in the actual possession and control of the person hiring at the time of the accident. In view of this Judgment, therefore it would not apply to the present case.

7. Since it was the case of the claimants themselves that the opponent No.2 is the registered owner of the vehicle and since no case is made out of the lease hire purchase or hypothecation agreement, prima facie appellant has made out a case for unconditional stay of the Judgment and Award hence impugned Judgment and Award dated 21.01.2020 passed in M.A.C.P. No. 567 of 2016 stands stayed till the decision of the appeal.

8. Interim application is allowed and disposed of.

(R. M. JOSHI, J.)

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