

(2000) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 364 of 2000 in C.W.P. No. 6313 of 1999

Amrit Granite Industries

APPELLANT

Vs

Arvind Sharma and Others

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 144, 2

Citation : (2001) 1 ACC 670 : (2002) ACJ 1556 : (2001) 1 WLC 49

Hon'ble Judges : G.L. Gupta, J;Arun Madan, J

Bench : Division Bench

Advocate : Akhil Simlot, for the Appellant;

Final Decision : Allowed

Judgement

G.L. Gupta, J.—This is an appeal u/s 18 of the Rajasthan High Court Ordinance against the order dated 9.12.99 of the learned single Judge, whereby he dismissed the writ petition of the appellant company.

2. The short facts are these: Amrit Granite Industries (appellant) owned a motor cycle bearing the registration No. RJ 10-M-1755. There was an accident with this motor cycle and one Arvind Sharma sustained injuries. He filed a claim petition before the Motor Accidents Claims Tribunal, Jaipur City, Jaipur, against Amrit Granite Industries (appellant) and Sarafat Ali. An application u/s 140 of the Motor Vehicles Act, 1988, was moved which was allowed by the Tribunal. It was directed that the amount shall be paid by Amrit Granite Industries as it was the registered owner of the vehicle at the time of the accident. This interim award was challenged by appellant by filing a writ petition which was dismissed by the learned single Judge as stated above.

3. Mr. Simlot, learned counsel for the appellant, contended that the award could not be passed against the appellant as it is only the registered owner of the vehicle, whereas Sarafat Ali is its ostensible owner. Relying on the two judgments of Kerala High Court, Swaminathan v. Jayalakshmi Amma 1988 ACJ 261 (Kerala)

and Said Mohammed Vs. Rema, Mr. Simlot contended that the interim award passed against the appellant is not sustainable in law.

4. We have gone through the material on record and have considered the provisions of the Motor Vehicles Act, 1988 (for short "the Act of 1988").

5. Section 2(30) of the Act of 1988, reads as follows:

(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.

6. A reading of the above definition makes it clear that under the scheme of the Act, the owner of a vehicle is a person in whose name a motor vehicle is registered in the Transport Department. Only in three situations the question of possession is relevant. These situations are: where the vehicle is, (a) subject to a hire-purchase agreement; (b) subject to an agreement of lease; or (c) subject to an agreement of hypothecation and the possession is under the agreement. In those cases, the person in the possession of a vehicle will be considered the owner thereof. In other cases, it is only the registered owner who shall be deemed to be the owner of the motor vehicle.

7. In the instant case, it is not in dispute that the motor cycle stood registered in the name of the appellant on the date of the accident. Therefore, it cannot be said that the learned Tribunal committed any error in law in directing the appellant to pay compensation under the principle of "no fault liability" to the claimant.

8. Coming to the cases relied upon by Mr. Simlot, it may be stated that the case of Swaminathan (*supra*), was decided on the basis of the provisions of the Motor Vehicles Act, 1939. Under the Motor Vehicles Act, 1939, owner was defined u/s 2(19) as follows:

(19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor and in relation to a motor vehicle which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement.

9. It is obvious that under the Act of 1939, the possession of a vehicle was relevant consideration and not its registration. Since the legislature has chosen to change the definition of owner it has to be held that the intention of the legislature is that only the registered owner should be treated as owner for the purpose of the Motor Vehicles Act, It may be that a motor vehicle can be transferred by delivery of possession only under the provisions of the Sale of Goods Act, but that would not change the definition of owner given in the Motor Vehicles Act of 1988.

10. The decision of Said Mohammed (supra), also arose when the Act of 1939 was in force as the accident had taken place on 13.11.1987. The Motor Vehicles Act, 1988, came into force w.e.f. 1.7.1989.

11. In any case, the reasoning which has been given in the judgment does not appeal to us. When the legislature has intentionally made significant departure from the old definition, the courts cannot be justified to interpret the provisions in a different manner. The learned Judges of the Kerala High Court had interpreted the provision on the basis of these words of Section 2 "unless the context is otherwise".

12. In our opinion, on the basis of the words "unless the context is otherwise", the definitions of the various words given u/s 2 itself cannot be read in different manner. The other provisions of the Act may be interpreted keeping in view the opening words, but certainly not the words appearing in Section 2 itself.

13. u/s 140(1) of the Motor Vehicles Act, the owner of the vehicle has been made liable to pay compensation under the provisions of "no fault liability". This compensation is awarded without holding any inquiry. The purpose of the provision is to give instant relief to the legal representatives of the deceased or the injured. u/s 144 of the Motor Vehicles Act, 1988, provisions of Chapter X of "no fault liability" shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force. Section 141(2) of the Act provides that a claim for compensation u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expeditious-ly as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 shall be disposed of in the first place.

14. The provisions make it clear that no inquiry is required to be held for awarding compensation u/s 140 of the Motor Vehicles Act. The Claims Tribunal while awarding compensation is only to see whether the respondents against whom the compensation is claimed is the owner or not as defined in Section 2(30) of the Motor Vehicles Act. Once it is found that the respondent is the registered owner, he cannot escape from the liability of paying the amount of compensation by pleading that he had already sold the vehicle to any person. When the claim is tried on the principle of fault, a plea as to the ownership may be raised which may be decided by the Tribunal after recording the evidence of the concerned parties. If such inquiry is permitted to be held for the purpose of awarding compensation under Chapter X then the very purpose of the provision will be defeated.

15. It is significant to point out that in the case of Said Mohammed (supra), the controversy was with regard to the liability to pay compensation on the principle of fault. It was not a case where the compensation was awarded under Chapter X of the Act.

16. Learned single Judge has not erred when he dismissed the petition. There being no substance in this petition, it is hereby, dismissed with costs of Rs. 1,000 which shall be deposited by the appellant with the Legal Aid Board, Jaipur.