

(2012) 07 KAR CK 0058

In the Karnataka High Court

Case No : M.F.A. No. 3202 of 2009 (MV) A/W M.F.A. Crob. No. 168 of 2009

H.D. Chandrappa

APPELLANT

Vs

Smt. Hanumakka
 Smt. Hanumakka and D.R.
Nagendrappa Vs D.C. Mohan Kumar

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 31, 50

Citation : (2013) 2 ACC 415 : (2012) 6 KarLJ 657

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : V. Mahesha, for Sri A. Hanumathappa, in M.F.A. No. 3202/2009 and Sri Mahesh R. Uppin, in M.F.A. Crob No. 168/2009, for the Appellant; Mahesh R. Uppin, for R1 and R2 R3 Service Held Sufficient in M.F.A. No. 3202/2009 and Sri V. Mahesha, for Sri A. Hanumathappa, for R3 in M.F.A. Crob No. 168/2009, for the Respondent

Judgement

K.N. Keshavanarayana

1. This appeal is filed questioning the legality and correctness of the judgment and award dated 26.12.2008 passed by the Addl. M.A.C.T. and Presiding Officer, FTC-1, Davangere, in M.V.C. No. 674/2005. The appellant was arrayed as respondent No. 3 before the trial court. Respondent Nos. 1 and 2 herein were the claimants while respondent Nos. 3 and 4 herein had been arrayed as respondent Nos. 1 and 2 before the tribunal.

2. For the sake of convenience, the parties herein would be referred during the course of this judgment according to their ranking before the tribunal.

3. The claimants-petitioners filed the claim petition u/s 166 of the M.V. Act seeking compensation of Rs. 10 lakhs for the death of their son Shivarudrappa in the motor vehicle accident that occurred at about 9 p.m., on 13.07.2003. The case of the claimants was that the deceased Shivarudrappa was employed in the wine shop run by respondent No. 3 and on the fateful day, he was proceeding in

the lorry bearing registration No. KA-17/5992 which was driven by respondent No. 1 and on account of rash and negligent driving of the lorry by respondent No. 1, the vehicle met with an accident, as a result, the said Shivarudrappa sustained grievous injuries to which, he succumbed. Initially, the claim petition was filed against respondent Nos. 1 and 2 on the ground that they are the driver and owner respectively of the offending lorry. Subsequently, respondent No. 3 was impleaded. Respondent No. 3 is none other than the father of respondent No. 1.

4. The 2nd respondent filed statement of objections contending interalia that she was the earlier registered owner of the vehicle in question and about 7 years prior to the date of accident, she sold the vehicle to Chandrappa-respondent No. 3, father of the 1st respondent and since 7 years, the vehicle has been in possession and control of respondent Nos. 1 and 2, as such, she was not the owner of the offending vehicle as on the date of the accident and therefore, she is not liable to answer the claim of the claimants. She denied other averments made in the petition. Respondent No. 1 in his statement of objections merely denied the petition averments. After respondent No. 3 came to be impleaded, he filed a memo adopting the statement of objections filed by respondent No. 1. On the basis of the pleadings of the parties, the tribunal framed the following issues:-

(i) Whether the petitioners prove that D.R. Nagendrappa the son of petitioner No. 1 and petitioner No. 2 met with road traffic accident on 13.07.2003 at about 9 p.m., on Ayanoor Hanagere Katte public road near Sirigere village while travelling in Trax No. KA-17-5992 due to the rash and negligent driving of the same by its driver and he succumbed to the injuries suffered?

(ii) Whether the petitioners prove that they are the only legal heirs of deceased Shivarudrappa?

(iii) Whether the respondent No. 2 proves that she was not the owner of the said Trax bearing registration No. KA17/5992 as on the date of the accident?

(iv) Whether the petition is bad for non-joinder of necessary party?

(v) Whether the petitioners are entitled for compensation? If so, what is the quantum and from whom?

(vi) What order or award?

5. During the enquiry, the 2nd claimant-father of the deceased was examined as PW-1 and the claimants examined one more witness as PW-2. The claimants placed reliance on the documentary evidence marked as Exs. P1 to P9. Respondent No. 1 examined himself as RW-1 and respondent No. 2 examined herself as RW-2. She relied on the documentary evidence marked as Ex. R1. The tribunal on assessment of oral and documentary evidence, by the judgment under appeal, answered issued No. 1 in the "affirmative" in favour of the claimants holding that the claimants have proved the accident alleged involving the lorry in question and that the said accident occurred on account of the negligence of the respondent No. 1 as the driver of the vehicle. The tribunal also

held that the deceased Shivarudrappa died on account of the injuries suffered by him in the said accident. On issue No. 3, the tribunal held that respondent No. 2 has proved by acceptable evidence that she has sold the vehicle in question to respondent No. 3 about 7 years prior to the date of the accident, therefore, as on the date of the accident, she was not the owner of the vehicle, whereas on the date of the accident, respondent No. 3 was the owner of the vehicle, as such, respondent No. 1 as driver and respondent No. 3 as owner of the vehicle are liable to pay compensation to the claimants. The tribunal by determining the monthly income of the deceased at Rs. 2,500/-, by deducting 1/3rd of the monthly income towards the personal and living expenses of the deceased and by adopting multiplier of 12 in relation to the age of the mother of the deceased, quantified the loss of dependency at Rs. 2,40,000/- and to this, the tribunal added Rs. 10,000/- towards loss of expectancy of life and Rs. 5,000/- towards funeral expenses. Thus, the tribunal awarded total compensation of Rs. 2,55,000/- and directed respondents 1 and 3 to jointly and severally pay the said compensation amount with interest at 6% p.a. from the date of petition till the date of payment.

6. Being aggrieved by the said judgment, respondent No. 3 has presented this appeal inter alia on the ground that the tribunal has committed serious error in holding him liable to pay compensation though respondent No. 2 was admittedly the registered owner of the vehicle as on the date of the accident.

7. On receipt of the notice of hearing of the appeal, the claimants have filed cross objections inter alia contending that the compensation awarded by the tribunal is on the lower side and deserves to be enhanced.

8. Respondent No. 2 before the tribunal arrayed as respondent No. 4 in the appeal has remained absent in spite of service of notice.

9. I have heard Sri. Mahesh, learned Counsel appearing for respondent No. 3 (the appellant) and Sri. Mahesh R. Uppin, learned Counsel appearing for claimants and perused the records secured from the tribunal.

10. Sri. Mahesh, learned Counsel appearing for the appellant contended that the tribunal has committed error in holding that the appellant was the owner of the offending vehicle as on the date of the accident though the registration certificate in respect of the said vehicle did not stand in his name, on the other hand, it stood in the name of the 2nd respondent. Therefore, he contended that having regard to the admitted fact that the registration certificate of the vehicle stood in the name of respondent No. 2 on the date of the accident, tribunal ought to have held that 2nd respondent the owner of the vehicle, alone is liable to compensate the claim. It is his further submission that as long as the registration certificate of the vehicle has not been changed in accordance with the Act and Rules, the 2nd respondent who continues to be the owner is answerable to the claim arising out of the user of the motor vehicle, therefore, the judgment of the tribunal fastening liability on respondent No. 3 is perverse and illegal. He further

contended that respondent No. 2 who is the registered owner of the offending vehicle has not complied with the mandatory requirement of Section 50 of the Motor Vehicles Act, therefore, it is not open to her to contend that she is not the owner of the vehicle. In support of his contention, learned Counsel sought to place reliance on the decision of this Court in the case of Mahabala Vs. Satyanarayana and Others, and also the judgment of the Apex Court in the case of G. Govindan Vs. New India Assurance Co. Ltd. and Others, Alternatively, he also contended that the compensation determined by the tribunal is excessive and liable to be reduced.

11. On the other hand, Sri. Mahesh R. Uppin, learned Counsel for claimants, contended that though the 2nd respondent is the registered owner of the vehicle, the evidence on record clearly established that she had sold the said vehicle to respondent No. 3, about 7 years prior to the date of the accident, as such, the tribunal is justified in holding that as on the date of the accident, respondent No. 3 was the owner of the vehicle, therefore, the tribunal has not committed any error in holding respondents 1 and 3 liable to pay the compensation to the claimants. He contended that in both the decisions relied upon by the learned Counsel for the appellant-respondent No. 3, the questions considered were only with regard to the liability of the insurer to satisfy the claim of the third parties despite the transfer of the vehicle by insured to another person, whereas in the case on hand, since the vehicle was not covered by any policy of insurance, the question of liability was only between the registered owner and the purchaser of the vehicle, therefore, the tribunal has rightly held that since the vehicle is a movable article, the title in the property passed on to the purchaser moment the possession was handed over in terms of the provisions of the Sale of Goods Act, therefore, for all practical purposes, respondent No. 3 became the owner of the vehicle from the date of delivery of possession and from that date, respondent No. 2 ceased to be the owner.

12. He further contended that since respondent No. 1 who is none other than the son of respondent No. 3 in his evidence has categorically admitted the purchase of the vehicle about 7 years prior to the date of the accident from respondent No. 2, respondent No. 2 the registered owner has rebutted the presumption arising out of the registration certificate in respect of the vehicle standing in his name and has satisfactorily established that respondent No. 3 is the owner of the vehicle, therefore, respondent No. 3 is liable to satisfy the claimants. In this behalf, learned Counsel sought to place reliance on the decision of this Court in the case of Nemanna Yellappa vs. Syndicate Bank reported in 1979(1) K.L.J. 333 and the full bench decision of this Court in the case of Paragounda Vs. Bhimappa and others, With regard to the quantum of compensation, he contended that the tribunal has committed error in determining the monthly income of the deceased at Rs. 2,500/- though there were sufficient evidences to indicate that the deceased was earning more than Rs. 5,000/- per month and that in view of the recent judgment of the Supreme Court in Santhosh Devi vs. National Insurance Co., Ltd., and another in Civil Appeal No. 3723/12, even in respect of the daily

wage earners, additional weightage is required to be given towards future prospects. Therefore, he contended that the monthly income of the deceased could be safely taken at Rs. 5,000/- and on that basis, loss of dependency be quantified.

13. In the light of the facts and circumstances of the case and also the submissions made on both sides, the points that arise for consideration are;

(i) Whether the tribunal is not justified in holding that the appellant-respondent No. 3 was the owner of the offending vehicle, as such, he is liable to satisfy the award?

(ii) Whether the claimants are entitled for enhancement of compensation, if so, to what extent?

14. There is no dispute as to the occurrence of the accident involving lorry bearing registration No. KA-17 5992 and the death of Shivarudrappa as a result of the said accident. In the claim petition, a specific averments had been made that the accident was due to the negligence of respondent No. 1 as the driver of the offending vehicle. Respondent No. 1 in his statement of objections merely denied those allegations. However, in his examination-in-chief filed by way of affidavit, respondent No. 1 examined as RW-1 came out with a different story as to the occurrence of the accident. According to his examination-in-chief, his father has been running liquor business in Davangere and the deceased Shivarudrappa had been employed in the said business, but subsequently, the said Shivarudrappa misappropriated funds, therefore, he was removed from the service. He has further stated therein that during the night of 13.07.2003, the vehicle which had been parked in front of the shop was stolen by some one and later he came to know that the deceased had taken away the vehicle and met with an accident. Thus, according to RW-1, the accident was due to the negligence of the deceased himself. According to him, he was not the driver of the vehicle at that time. However, the police documents established that in respect of this accident, police filed charge sheet against respondent No. 1. The tribunal on assessment of the evidence has recorded a finding that respondent No. 1 was the driver of the vehicle at the time of the accident and the accident occurred as a result of his negligence. The said finding has not been challenged before this Court by respondent No. 1. No serious grounds are urged in that regard before this Court by respondent no. 3 also. Therefore, it is clear that the accident was due to the negligence of respondent No. 1.

15. There is no dispute that the registration certificate in respect of the offending vehicle stood in the name of respondent No. 2 even as on the date of the accident. Admittedly, as on the date of the accident, the vehicle was not covered with any policy of insurance. Respondent No. 2 in her statement of objections has specifically contended that she sold away the vehicle in question to respondent No. 3 about 7 years prior to the date of the accident, as such, she ceased to be the owner of the vehicle and on the other hand, respondent No. 3

was the owner of the said vehicle on the date of the accident. Respondent no. 1 who is none other than the son of respondent No. 3 in his statement of objections did not dispute the said fact. He did not state anything with regard to the ownership of the vehicle. Respondent No. 3 upon his impleadment, did not file independent statement of objections, on the other hand, by filing a memo, he adopted the statement of objections filed by his son respondent No. 1. It is pertinent to note that respondent No. 3 came to be impleaded as a party to the claim petition only in the light of the statement of objections filed by respondent No. 2. Thus, respondent No. 3 after his impleadment did not dispute the averments made by respondent No. 2 with regard to the sale of the vehicle about 7 years prior to the accident. Respondent No. 3 during the enquiry did not enter the witness box. Respondent No. 2 examined as RW-2 in her evidence asserted the sale of the vehicle to respondent No. 3 about 7 years prior to the date of the accident. During her evidence, she produced an agreement said to have been executed in favour of respondent No. 3 and got it marked as Ex. R1. The entire cross-examination of RW-2 by the learned Counsel appearing for respondent No. 3 was only with regard to Ex. R1 and even there was no suggestion put to her that the vehicle had not been sold to respondent No. 3. Respondent No. 1 who is the son of respondent No. 3 in his examination-in-chief itself has admitted that his father for the purpose of his business had purchased the vehicle in question from respondent No. 2 about 7 years prior to the date of the accident. The relevant statement in the examination-in-chief is as under:-

In the cross-examination, on behalf of respondent No. 2, RW-1 has stated thus:-

16. Thus from the evidence of RW-1, it is clear that the vehicle in question had been sold to respondent No. 3 about 6-7 years prior to the date of the accident. Even before this Court, respondent No. 3-appellant has not disputed the fact of he having purchased the vehicle from the 2nd respondent several years prior to the date of the accident and the vehicle having remained in his possession and control. However, contention raised on his behalf before this Court is that the registered owner has not complied with the mandatory requirement of Section 50 of the Act by intimating the registering authority about the transfer, therefore, the registered owner continues to be responsible to answer the claim of the third parties arising out of the use of the motor vehicle.

17. In Nemanna Yellappa's case referred to supra, this Court had an occasion to consider the sale of the motor vehicle. In that case, the motor vehicle owned by certain persons came to be attached in execution of a money decree obtained by Syndicate Bank. The person who claimed to have purchased the vehicle much prior to the date of the attachment, filed an application seeking raising of the attachment on the ground that on the date of attachment, he was the owner of the property and therefore, the vehicle was not liable for attachment. However, the said application came to be rejected by the Executing court. The said order was assailed before this Court and this Court formulated the following point for consideration;

(i) Whether the learned Civil Judge is justified in holding that the only evidence of transfer of ownership of motor vehicle is change of name in the R.C.?

18. Considering the said question, this Court has observed thus:-

9. It may at once be observed that the sale of motor vehicles is not under the Motor Vehicles Act, but, it is under the Sale of Goods Act. the fact of non-registration of the vehicle in the name of the purchaser does not vitiate the sale. In the case of *Muthuswami Goundar v. Thulasi Amma*; (1970 ACJ 18 (Mad)), the High Court of Madras has held that S. 31 of the Motor Vehicles Act no doubt states that contractual transfer of ownership of a vehicle has to precede the application for transfer of ownership. But, as between the transferor and transferee the sale gets completed before the transfer of the registration certificate. The failure to report the transfer may involve some penalties under the law. But, that certainly does not interdict the passing of property in the vehicle to the transferee. All that is required under the Act is that the transfer has to be notified; otherwise, certain penal consequences follow, but that does not make the transfer invalid. The moment the sale of the vehicle is effected intending to pass the property therein forthwith vis-a-vis the vehicle, the registered owner ceases to have any proprietary interest. It may be that till there is an endorsement on the registration certificate, ostensibly the transferor is the owner. But the beneficial interest, including the right to possession, vests in the transferee. The Registration book of a vehicle is not a document of title but is evidence of title and its absence at the time of sale, should put a purchaser on inquiry. Similar are the observations made in the case of *The Oriental Fire & General Insurance Co. Ltd. v. Smt. Vimal Rai* (AIR 1973 Del. 115). That being so, the learned Civil Judge is entirely in error in thinking that the only way to transfer the ownership of a motor vehicle is by getting the name of the purchaser registered in the R.C. and in the books of the R.T.O. The learned Civil Judge appears to have been obsessed with this idea because he has repeated that observation several times in the course of his judgment and that notion wrongly laboured by him has vitiated his reasoning.

19. However, a Division Bench of this Court in the case of *Ramaiah Setty Vs. Meena*, while dealing with an appeal passed by M.A.C.T. in relation to a vehicle not covered by a policy of insurance, considered the question as to whether the registered owner is liable to answer the claim of the third parties in spite of the sale of the vehicle, held that as long as the mandatory provisions of Section 31 of the M.V. Act, 1939 have not been complied with, and the R.C. is not changed into the name of the transferee, the transferor continues to be liable to answer the claim of the third parties arising out of the use of the motor vehicle. The Division Bench held that registered owner is the only owner who is responsible. The correctness of this decision in *Ramaiah Shetty's* case came up for consideration before the Full Bench of this Court in *Paragounda Vs. Bhimappa and others*, The Full Bench in *Paragounda's* case has also considered the correctness of the view expressed by another Full Bench in *National Insurance*

Co., Ltd., vs. Mallikarjun & others (1990(3) Kar. L.J.(supp.) 154).

20. The point referred to for the opinion of the Full bench in Mallikarjuna's case was "when a registered owner of motor vehicle covered by an insurance policy transfers the vehicle to another, but does not secure certificate of transfer of the insurance policy covering the vehicle to the transferee of the vehicle, whether the insurance company is liable to answer the liability arising out of an accident met with by the vehicle after transfer of ownership of the vehicle but during the period for which the insurance policy had been issued?".

Relevant facts of that case were, one Pyarejan was the registered owner of the offending vehicle. The vehicle was validly insured with and a policy of insurance had been issued by National Insurance Co., Ltd. During the currency of the policy, the insured Pyarejan sold the vehicle to one Mohammed Ruknoddin, but did not intimate the insurer about the sale nor transfer of policy in favour of transferee as provided by Law was sought. However, the name of transferee was entered in the Registration Certificate concerning to the vehicle in place of the name of transferor. Thereafter, the vehicle met with an accident which led to filing of a claim petition seeking compensation against the owner and insurer of the vehicle. The insurer contested the claim contending that, moment the insured under the policy transferred the insured vehicle, the policy lapsed, and since, the policy was not transferred in the name of transferee of the vehicle as on the date of accident, it is not liable to answer the claim arising out of the user of the vehicle.

The Pull bench after referring to the relevant provisions of the M.V. Act, 1939, answered the point referred as under;

That the insurance company is not liable to answer the liability arising out of an accident met with by the vehicle after the transfer of ownership but during the period for which the insured policy is issued. The insurer is entitled to avoid the liability against the third party risks on the plea that the insured had sold the vehicle covered by insurance policy before the date of accident without intimation by the owner.

21. In Paragounda's case, following two questions had been referred for the opinion of the Full Bench;

(1) Whether the Full bench decision of this Court reported in National Insurance Co. Ltd. Vs. Mallikarjun and others, applies to a case only where the transfer of ownership of a vehicle is entered in the Certificate of Registration as required u/s 31 of the Motor Vehicles Act, 1939 and has no application where it is not so entered.

(2) If the answer to the above question is in the negative, whether the decision in Ramaiah Setty Vs. Meena, is good law?

22. The Full Bench in Paragounda's case on point No. 1, after referring to the opinion in Mallikarjuna's case concurred with the said view and answered point

No. 1 in the negative. On point No. 2, the Full bench referring to the object and purpose of Section 31 of M.V. Act 1939 has held thus in para-12:-

12. Section 31 of the Act provides the procedure as to how the transfer of ownership of a motor vehicle is to be reported by the transferor and the transferee. The obligation is to cast both upon the transferor and the transferee to report the transfer to the registering authority. It is incumbent upon the transferor to report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected, within fourteen days of the transfer, and he shall simultaneously send a copy of the said report to the transferee. The transferee has also similar obligation and to forward the certificate of registration to that registering authority together with the prescribed fee and copy of the report received by him from the transferor in order that the particulars of transfer of ownership may be entered in the certificate of registration. These provisions have nothing to do with the ownership of the vehicle as it is well-settled that the transfer of ownership of a vehicle, being a movable property, is governed by the Sale of Goods Act. The said provision only provide for the regulation of the use of motor vehicles in public places and to impose penalty if the requirements of the Act are not fulfilled. Failure to notify the transfer visits the transferor or/and the transferee with certain penal consequences; that does not, however, make the transfer invalid. The endorsement of transfer in the record of registering authority is also not a condition precedent to the transfer to take effect, nor does it deal with the legality or otherwise of the transfer to take effect, nor does it deal with the legality or otherwise of the transfer which must be determined under the general law and also the Sale of Goods Act. The requirement u/s 31 of the Act is that the change of ownership should be recorded also in the certificate of registration requiring the name of the transferee to be substituted. In the certificate of registration, in the place of the registered owner. The object of Section 31 appears to be that the registering authority must have the name of the proper person who is liable to pay taxes and perhaps, in the case of an accident, to trace the proper person upon whom liability can be fixed for damages or compensation resulting from the accident. In that view of the matter, it seems to us that the meaning given to the expression "owner" in the context of his liability to third parties in the event of the involvement of the vehicle in an accident giving rise to a claim for compensation or damages is too broadly stated by the Division Bench in Ramaiah Shetty v. Meena & another, 1990(2) Kar. L.J. 228. The proper view appears to be that unless it is proved that the "registered owner" has ceased to be the owner of the vehicle, he continues to be liable in the event of an accident for the claims of the third parties. In other words, the onus to establish cessation of his title in the vehicle by virtue of a bonafide transfer thereof lies upon the registered owner and unless and until that burden is discharged, he would continue to be liable to meet the liability arising out of an accident involving the vehicle. In that view of the matter, the view taken by the Division Bench in the case of Ramaiah Setty Vs. Meena, to the extent indicated above is not correct and it is over-ruled. Consequently, the

answer to the second question is in the negative.

23. Thus from the opinion of the Full bench, it is clear that the registered owner has to prove that he ceased to be the owner of the vehicle and thereby has to rebut the presumption as to the ownership arising out of his name being found in the R.C.

24. In *G. Govindan vs. New India Assurance Co. Ltd., & others* referred to supra, the Apex Court was considering the question, "whether the insurance policy lapses and consequently, the liability of the insurer ceases when the insured vehicle was transferred and no application/intimation as prescribed u/s 103-A of the Act was made/given." Thus, from the very question that arose for consideration in Govindan's case, it is clear that the Apex Court was considering the liability of the insurer in respect of a vehicle which the insured appears to have transferred and no such intimation had been given to the insurer. Before the Apex Court in Govindan's case, the decision of the Pull bench of the Andhra Pradesh High Court in *Madineni Kondaiah and Others Vs. Yaseen Fatima and Others*, the Full Bench decision of the Delhi High Court in *Anand Sarup Sharma vs. P.P. Khurana* (1989 ACJ 577 (Del)) and the decision of the Full bench of this Court in *Mallikarjuna's* case referred to supra came up for consideration. As noticed supra in *Mallikarjuna's* case, the full bench of this Court had held that moment the vehicle is transferred, the insured cease to have insurable interest and therefore, the insurer is not liable. The full bench in *Mallikarjuna's* case had not accepted the contrary view expressed by the full bench of the Andhra Pradesh High Court. However, the Apex Court in Govindan's case preferred to accept the view expressed in the full bench decision of the Andhra Pradesh High Court and disagreed with the view expressed in the full bench decision of the Delhi High Court as well as the full bench decision of this Court in *Mallikarjuna's* case.

25. The Full bench of the Andhra Pradesh High Court had held that though the transferee who is a third party to the contract cannot secure any personal benefit of the policy unless there is a novation of contract between the transferee and insurer, as such, under a composite policy, covering the risk of property, person, third party risks, the transferee cannot enforce the policy without the assignment in his favour, so far the policy covers the risk of the person and property. It is further held in the said decision that the third party risk is concerned, so long the obligation of the statute are not fulfilled as contemplated u/s 31 r/w Section 94, he continues to have the insurable interest till such obligations are fulfilled.

26. In *Mahabala's* case referred to supra, also a single bench of this Court while considering liability of the insurer to indemnify the insured in respect of a third party claim arising out of the vehicle transferred to another person, has followed the decision of the Apex Court in Govindan's case referred to supra.

27. Thus, from the above, it is clear that in the decisions relied upon by the learned Counsel for appellant, while considering the question as to, whether the

insurer is liable to answer the claim of the third parties in spite of the sale of the vehicle, the Apex Court has held that the insurer cannot escape from the liability for the reason that the very object of the compulsory insurance in relation to third parties is to protect the interest of the unfortunate victims of the accident by user of the motor vehicle and such claims should not be defeated on the ground that the insurer has not been informed nor on the ground that the mandatory requirement regarding the transfer of the registration certificate not been complied with.

28. Thus, in all these cases, only the liability of the insurer was under consideration and it is under such context, the Courts have held that the registered owner continues to be the owner of the vehicle and he does not lose insurable interest. Therefore, the fact that the decision in Mallikarjuna's case has been over-ruled by the Apex Court in Govindan's case, has not in any way affected the decision of the full bench of this Court in Paragounda's case on point No. 2 referred to therein, since point No. 2 considered in Paragounda's case was only in relation to a vehicle not covered by a policy of insurance and the liability of the insurer was not in question. In Paragounda's case, the full bench has clarified the view expressed by Division Bench in Ramaiah Sherry's case. The full bench has held that it is the obligation on the part of the registered owner to establish that he ceased to be the owner on account of sale transaction and unless he establishes the same, he continues to be the owner and is answerable for the claims of the third parties arising out of the use of the motor vehicle.

29. It is also necessary to note that all these decisions have been considered in the light of the provisions of the M.V. Act, 1939. In M.V. Act, 1988, a clear provision has been made with regard to the liability of the insurer in case of the sale of the vehicle. Section 157 deals with the transfer of certificate of insurance. According to this Section, there is a deemed transfer of the policy of insurance in favour of the person to whom motor vehicle is transferred with effect from the date of its transfer. Therefore, under the New Act, a vehicle covered by a policy of insurance, though is transferred, with regard to claim of the third parties arising out of the use of such motor vehicle, it will not be open to the insurer to contend that it is not liable to answer such claim on the ground that the vehicle has been transferred.

30. Therefore, the emerging legal position would be in a case where the vehicle is not covered by a policy of insurance and in a claim petition arising out of an accident involving such vehicle, if the person named as registered owner of the vehicle in the concerned register of the Registering Authority contends that he ceased to be the owner of the vehicle on account of its sale, it is for him to show and establish that he ceased to be the owner, notwithstanding the fact that the registration certificate is not changed into the name of the transferee, and if he succeeds in doing so, then he will not be liable to answer the claim. If he fails to do so, he would be liable to answer the claim of the third parties.

31. In the case on hand, there is no dispute with regard to the sale of the vehicle

by respondent No. 2 in favour of respondent No. 3. No doubt, the registration certificate has not been changed and it continued to be in the name of the respondent No. 2 even as on the date of the accident. Respondent No. 1 examined as RW-1 in his evidence has categorically admitted that his father purchased the vehicle in question 4-5 years prior to the date of the accident from respondent No. 2 and that respondent No. 2 has handed over all the documents pertaining to the vehicle along with the necessary forms for change of registration and also handed over the possession of the vehicle. He has admitted that right from the date of the sale of the vehicle, the vehicle has been in their possession and control. Thus, from the above, it is clear that respondent No. 3 as transferee of the vehicle was in possession and control of the same as on the date of the accident. Respondent No. 3 did not dispute the said fact. Therefore, it would not lie in the mouth of the respondent No. 3 to contend that he is not liable to answer the claim of the third parties arising out of the use of the motor vehicle nor it lies in his mouth to contend that since 2nd respondent continues to be the registered owner, she should be made liable to answer the claim of the claimants in this case.

32. No doubt, the mandatory requirement of Section 50 of M.V. Act has not been complied with. Section 50 imposes duty both on transferor and transferee of the motor vehicles to inform the registering authority about the transfer and seek change of the registration. Non-compliance of those requirements entails them with penal action. But non-compliance of mandate of Section 50, does not invalidates the sale of the vehicle. In the case on hand, respondent No. 3-appellant himself was guilty of not complying with the duty cast upon him u/s 50 of the Act. He had the benefit and use of the vehicle for over 7 years prior to the accident. He kept quiet without getting his name entered in the registration certificate concerning the vehicle in question though the transferor had handed over all necessary documents and forms duly signed. He had utilised the vehicle for over 7 years. On the top of it, he had allowed the vehicle to run on the public road without taking a policy of insurance and thereby he has committed violation of the provisions of Section 146 of the Act. Therefore, respondent No. 3-appellant who is guilty of all these acts cannot be allowed to contend that he is not liable to answer the claim of the claimants.

33. Having regard to the facts and circumstances of the case, the observations made by the full bench in Paragounda's case on point No. 2 referred to therein, would apply in all force. Respondent No. 2 has established satisfactorily that she ceased to be the owner of the vehicle on the date of the accident and therefore, she is not liable to answer the claim of the claimants. Therefore, the tribunal is justified in holding that respondent No. 3-appellant as owner and respondent No. 1 as driver are jointly and severally liable to compensate the claimants. The said finding recorded by the tribunal is sound and reasonable and is in accordance with the well-settled principles of law. Therefore, it does not suffer from perversity or illegality.

34. Therefore, I find no substance in the contentions urged by learned Counsel for the appellant.

Re: quantum of compensation;

35. As noticed supra, the tribunal has determined the monthly income of the deceased at Rs. 2,500/-. RW-1 in his oral evidence has admitted the employment of the deceased in the wine shop run by his father. Of course, he has come out with a theory that since the deceased had misappropriated the funds, he was removed from the service. However, such a stand had not been taken in the statement of objections. The accident occurred in the year 2003. Regard being had to the cost of living and also the wages paid to unskilled labours during that period, it is reasonable to assume that the deceased would have earned at least Rs. 100/-per day or Rs. 3,000/- per month. The Apex Court in Santosh Devi's case referred to supra, has held that even in case of persons self employed or daily wage earners, additional weightage is required to be given. Applying the said principle, having regard to the age of the deceased, 50% of the monthly income should be added as additional weightage. On that basis, the monthly income of the deceased works out to Rs. 4,500/-. The tribunal is not justified in deducting 1/3rd of the monthly income of the deceased as the deceased was a bachelor and he has left behind only his parents as dependents. In the light of the settled principle of law, in a case of this nature, 50% of the monthly earning should be deducted towards personal and living expenses of the deceased. In the light of this, the monthly loss of dependency works out to Rs. 2,250/-. The multiplier of 12 adopted by the tribunal having regard to the age of the mother of the deceased is not proper. The appropriate multiplier is 13 as held in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Thus, total loss of dependency works out to Rs. 3,51,000/- (Rs. 2,250 x 12 x 13) as against Rs. 2,40,000/- awarded by the tribunal. The compensation of Rs. 15,000/- awarded under conventional heads are just and reasonable and does not warrant enhancement. In addition, the claimants are also entitled for a sum of Rs. 10,000/- towards loss of filial love and affection. Thus, the claimants are entitled for total compensation of Rs. 3,76,000/-. To this extent, cross objections filed by the claimants deserves to be allowed. Accordingly, M.F.A. No. 3202/2009 is dismissed. Cross objection is allowed. The compensation awarded by the tribunal at Rs. 2,55,000/-is enhanced to Rs. 3,76,000/-. The enhanced compensation of Rs. 1,21,000/- shall carry interest at 6% p.a. from the date of the petition till the date of payment. The appellant-respondent No. 3 is directed to pay the entire compensation with interest within 8 weeks from today. Amount in deposit is ordered to be transferred to the tribunal concerned.