
(2003) 01 JH CK 0140
In the Jharkhand High Court
Case No : M.A. No. 74 of 2000

Imran Ansary

APPELLANT

Vs

Hajrat Ali Ansari and Another

RESPONDENT

Date of Decision : 21-01-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 177, 2(30), 50

Citation : (2003) 2 ACC 429 : 2004 ACJ 2 1056 : 2004 AIRJharHCR 0 15 : 2003 JCR 1 542 : 2003 JLJR 1 484 (2003) 2 ACC 429 : (2004) ACJ 1056 : AIR 2004 Jhar 18

Hon'ble Judges : Vinod Kumar Gupta, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : Jai Prakash, for the Appellant; Prabhir Chatterjee, for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

1. Respondent No. 2 despite service is absent. Accordingly, this appeal is being disposed of in his absence.
2. The only question involved in this appeal filed u/s 173 of the Motor Vehicles Act, 1988 (1988 Act for short) revolves around the issue of the ownership of the vehicle involved in the accident and hence the consequential question of the liability resting upon such owner to pay the compensation amount. This question has assumed significance because of the admitted factual circumstance that the vehicle involved in the accident was not insured.
3. The brief facts of the case are as under :
4. The deceased Zakir Hussain, son of the claimant respondent No. 1 was a student of class II when he was aged about 7 years. On 1.12.1989 while he was playing along with other boys in front of his door by the side of a road, truck bearing registration No. BHM 1314 came from the side of Morradighat and it ran over the deceased resulting in his death on the spot. It was alleged that this

truck was being driven rashly and negligently. In the claim petition filed by the respondent No. 1/claimant, the following eight issues were framed by the Tribunal for adjudication :

- "1. Is the suit maintainable in its present form?
2. Whether the driver of the Vehicle Truck No. BHM 1314 was driving the same rashly and negligently at the time of accident?
3. Whether the deceased died in the Motor Vehicle Accident?
4. Whether the Imran Ansari defendant No. 1 or Rajesh Kumar Sharma defendant No. 2 was the real owner of the aforesaid vehicle at the time of accident?
5. Whether the Truck Bearing Registration No. BHM 1314 was insured with any insurance company?
6. Whether the deceased died as a result of his own fault and any guilty of contributory negligence?
7. Whether the claimant is entitled for the compensation as sought for?
8. Is the claimant entitled for any other relief or reliefs?"

5. In this appeal, we are not concerned with the findings on other issues, except the finding with respect to issue No. 4. Issue No. 4 had arisen because of the fact that in the claim petition as originally filed, the appellant Imran Ansary was impleaded as the respondent owner of the vehicle in question, but in the written statement filed by him, he had pleaded that he was not the owner of the vehicle. His case was that the respondent No. 2 Rajesh Kumar Sharma was the owner of the vehicle because he was the registered owner of the vehicle. Because of this stand taken by the appellant Imran Ansary in his written statement, the claim petition came to be appropriately amended and Rajesh Kumar Sharma, (respondent No. 2 herein) was added as defendant No. 2 in the claim petition.

6. In the written statement filed by Rajesh Kumar Sharma, it was averred by him that he was in fact the owner of the vehicle till 26th August, 1989, but that on that day, he sold the vehicle to Imran Ansary. The appellant, according to Rajesh Kumar Sharma took the delivery of the vehicle on the same day and since then, he has been plying the vehicle as its owner. According to Rajesh Kumar Sharma. on The date of the accident i.e. 1.12.1989, the vehicle was accordingly owned by the appellant Imran Ansary and, therefore, Rajesh Kumar Sharma was not liable to pay any compensation. During the course of the trial in so far as Issue No. 4 is concerned, respondent Rajesh Kumar Sharma produced four witnesses, who all deposed to the effect that he had sold the vehicle on 26.8.1989 to the appellant Imran Ansary. In evidence, a document styled as "letter of delivery" was tendered by Rajesh Kumar Sharma by which it was sought to be proved that Imran Ansary had taken the delivery of the vehicle and that he had paid the consideration thereof. For ready reference we re-produce hereinbelow the

aforesaid document which was marked as Ext. B by the Tribunal and the signature of Imran Ansary on this document put on 26.8.1989 was marked as Ext. A. The document reads thus :--

"Letter of Delivery.--I, Imran Ansari s/o late Hikmat Ansari r/o village Pandra Bajra, P.S. Nirsa Distt. Dhanbad that I have taken delivery of truck bearing Registration No. BHM 1314, Engine No. 312-9157605771 Chasis No. 312-0567605705 from Shri Rajesh Kumar Sharma S/o Shri D.P, Sharma R/o Katras Road, Dhanbad well and good and running condition and I have paid the full and final consideration of money and taken delivery of the aforesaid vehicle today is date of 26th August, 1989 and from today If any litigation or cases i.e. taxes Transport cases accidents would arise in concerning the aforesaid vehicle then I shall be responsible of the aforesaid vehicle and from today I shall pay all types of taxes of the aforesaid vehicle.

Sd/- Imran Ansari 26.8.1989"

7. Imran Ansary appellant did not lead any evidence by way of rebuttal to the evidence of Rajesh Kumar Sharma. Apparently, relying upon Rajesh Kumar Sharma's evidence and in view of the fact that the appellant had not led any evidence in rebuttal on the question of the ownership, the Tribunal by deciding Issue No. 4 held that the appellant Imran Ansary was the real owner of the vehicle on the date of the accident and, therefore, being liable to pay the compensation amount, saddled the said liability upon him by passing an award of rupees fifty thousand and directing that the said amount be paid by the appellant Imran Ansary to the claimant respondent No. 1 Hazrat Ali Ansary within three weeks.

8. Mr. Jai Prakash, learned counsel for the appellant has raised the basic question about the ownership of the vehicle and according to him, the adjudication of this question does not depend at all on the evidence led by respondent Rajesh Kumar Sharma before the Tribunal. To appreciate the argument of Mr. Jai Prakash, we have to record that it was not the case of Rajesh Kumar Sharma before the Tribunal, nor was it the finding of the Tribunal that the ownership of the vehicle ever (till at least the date of the accident) was transferred in the name of the appellant. It is also to be observed for the sake of the record that undoubtedly, Rajesh Kumar Sharma was shown as the registered owner of the vehicle at least till the date of the accident, because it was he whose name appeared as the owner of the vehicle in the Registration Certificate, Section 2(30) of 1988 Act defines "owner" thus :--

"(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."

9. u/s 168 of the 1988 Act, it is stipulated that the Tribunal, in an application for

compensation filed u/s 166 of the Act after holding an inquiry into the claim etc. etc. may make an award determining the amount of compensation and specifying the person to whom such compensation shall be paid. It further stipulates that while making the award the Tribunal shall specify the amount which shall be paid by the insurer, the owner or the driver of the vehicle involved in the accident or by all or any of them as the case may be. Sub-section (1) of Section 168 (supra) which is relevant for our purposes may be quoted with advantage. It reads thus :

"168. Award of the Claims Tribunal.--(1) On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or as the case may be each of the claims and subject to the provision of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the awards the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be :

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claims and any other claims (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X."

10. Apparently, therefore, as the law presently stands (as also it stood on the date of the accident and at the time of passing of the award), if the vehicle is not insured, the owner of the vehicle has to be made liable to pay the awarded amount. The reference to the expression "owner" therefore as occurring in Section 168 (supra) is clearly relatable to and linked with Section 2(30) of 1988 Act and relying on the definition of the term "owner" as occurring in Section 2(30) of the Act, the Tribunal has to specify in the award that the owner may have to pay the amount of the award to the claimant. Section 2(30) of the Act clearly defines "owner" to mean such a person in whose name the vehicle stands registered. In this case, we are not concerned with the other parts of the definition, such as a vehicle being the subject matter of a hire purchase agreement, or an agreement of lease or hypothecation, since it is nobody's case that the vehicle involved in the accident was the subject matter of any of these three types of agreements. The "ownership" concept, therefore, simpliciter in the present case is based on the registration of the vehicle and as such only that person would be considered as the owner in whose name the vehicle stands registered. Undoubtedly, the vehicle stood registered at the relevant time in the name of Rajesh Kumar Sharma.

11. Section 50 of the Act deals with a situation, contingency or an event where the ownership of any motor vehicle is to be transferred. Various sub-sections and

clauses of Section 50 clearly stipulate various requirements of law to be observed and various obligations to be performed by the transferor and the transferee and it is only after these obligations are performed and requirements met, both by the transferor as well as the transferee, that the ownership of the vehicle would stand registered from transferor to transferee and registration certificate amended accordingly. Among other provisions, Sub-section (3) of Section 50 makes the transferor or a transferee, as the case may be, liable for punishment in terms of Section 177 of the Act which occurs in Chapter XIII of the Act relating to offences, penalties and procedure and lays down that whosoever contravenes any provision of this Act or any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence, be punishable for the first offence with fine which may extend to rupees one hundred and for any second or subsequent offence with fine which may extend to three hundred rupees.

12. A plain reading of Section 50 and Section 177 of the Act therefore clearly suggests that once a person intends transferring the ownership of a vehicle to someone else, he has to take recourse to the scheme of Section 50 and comply with all the requirements contained therein and if he does not do so, he may be liable to prosecution u/s 177 of the Act. What, therefore, clearly emerges is that the scheme of Section 50 read with Section 177 of the Act is clearly suggestive of a settled legal position that unless recourse is had to Section 50 and change in the ownership of the vehicle is brought about by appropriate change in the registration certificate, the ownership does not get changed merely because the owner has entered into some agreement with a third party for the sale of the vehicle to him. Law does not recognize any such agreement nor any such sale transaction as may be encompassing within itself the concept of change of ownership and therefore, notwithstanding the execution of any such agreement, unless the requirements contained in Section 50 of the Act have been complied with and the change in the registration certificate has taken place, the ownership of the vehicle remains with the registered owner of the vehicle. Sub-section (6) of Section 50 is a clear pointer to such a proposition of law. It reads thus :--

"50. Transfer of ownership.--(6) On receipt of a report under Sub-section (1) or an application under Sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration."

13. A bare reading of Section 50(6) clearly points out that unless the registering authority causes the transfer of ownership to be entered in the registration certificate, the person whose name appears in that certificate as such an owner would be deemed to be owner of the vehicle for all purposes.

14. Even though in the light of the aforesaid discussion, it may not be wholly relevant, but we may like to comment that a bare look at Exhibit B perhaps suggests that this document did not carry with it the authenticity or veracity reasonably sufficient enough to even lead one to believe that in fact the vehicle was sold by respondent No. 2 to the appellant. Going by the language of the document itself, the appellant appears to have stated that he paid the money,

but without specifying the amount. This perhaps leads one to suspect the veracity or the authenticity of this document. If someone was purchasing a vehicle, the price of vehicle had to be settled and the document evidencing sale should have in normal course spelt out the amount of sale transaction. Not only that, such types of transactions also invariably carry with them the execution of a money receipt and the amounts are normally paid by cheque. Not only that, the document only contained the signature of the appellant, whereas all such types of documents have to be bilateral in the sense that both the seller and the purchaser have to execute a bilateral agreement which normally should bear the signatures of the witnesses in addition to the signatures of both the executants. In Exhibit-B neither the seller has signed, nor the names of any witnesses appear in the document. The document therefore can not be said to be above suspicion.

15. We, therefore, have no hesitation in holding that the Tribunal committed a grave error by declaring the appellant as the owner of the vehicle. That part of the award therefore in so far as it relates to the Tribunal's finding on issue No. 4 is set aside and issue No. 4 is decided by us by holding and declaring that respondent No. 2 Rajesh Kumar Sharma was the owner of the vehicle as on the date of the accident and therefore in terms of Section 168 of the Act, it is he who is liable to pay the awarded amount. The appeal is accordingly allowed and the judgment of the Tribunal to the aforesaid extent is set aside/modified with all consequences. No order as to costs.

16. The amount of Rs. 25,000/- deposited by the appellant in this Court shall be returned to him. Based on this judgment respondent No. 1 shall be at liberty to execute the award against respondent No. 2.