
(1996) 11 BOM CK 0020
In the Bombay High Court
Case No : First Appeal No. 862 of 1985

Jaysinghrao Dadu Patil and another	APPELLANT
Vs	
Kutubuddin Ismail Soudagar and others	RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 31
Sales of Goods Act, 1930 — Section 19, 20, 21, 22, 23

Citation : (1998) 1 ACC 210 : (1997) ACJ 1374 : (1998) 4 BomCR 446 : (1997) 1 MhLj 737

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : K.V.S. Murthy and C.H. Bokesch, for the Appellant;

Judgement

R.M. Lodha, J.—The appellants in this first appeal seek to impugn the award dated 20-8-1995 passed by Motor Accident Claims Tribunal, Kolhapur. The claimants Kutubuddin Ismail Soudagar and Jahirabi who are respondent Nos. 1 and 2 herein filed a claim petition before the Motor Accident Claims Tribunal, Kolhapur on 10-6-1981. Initially, in the claim petition Jaysinghrao Dadu Patil who is appellant No. 1 and Vasant Sattyappa Kambale who is respondent No. 3 herein were impleaded as opponents. Later on by way of an amendment Mr. M. J. Pawar who is respondent No. 4 herein was impended as opponent No. 3 and the United India Assurance Co. Ltd. and the New India Assurance Co. Ltd., were impleaded as opponents Nos. 4 and 5 and appellant No. 2 herein Hindurao Dadu Patil was impleaded as opponent No. 6. The claim was made by the claimants who are father and mother of deceased Latif Kutubuddin Soudagar who died in motor accident which took place on 4-2-1981 in the city of Kolhapur. According to the averments made in the claim petition, the deceased Latif Kutubuddin Soudagar was going on bicycle on 4-2-1981 at Udyamnagar at about 9-15 p.m. The tractor bearing No. M.E.L. 8104 together with trolley No. MXL. 3379 which was attached to the said tractor driven by respondent No. 2 herein dashed against the cycle. The said tractor was being driven rashly and negligently and as a result of the

dash the son of the appellant died on the spot. The deceased was educated upto S.S.C. and he was working in automobile workshop to gain experience and was getting pay of Rs. 250/- per month. At the time of accident, the age of the deceased was 20 years. The claimants claimed compensation amounting to Rs. 50,000/-. The respondent No. 4 M J. Pawar was registered owner of the vehicle in question and the United India Insurance Co. Ltd. was the insurer of the tractor. The New India Assurance Co. Ltd. was impleaded allegedly as insurer of trolly bearing registration No. MXL. 3379. The present appellants were impleaded as purchasers of the said vehicle.

2. The separate written statements were filed by all opponents except the driver. The present appellants allegedly purchasers of the vehicle set up the plea that they were not owner of the offending vehicle on the date of the accident and, therefore, no liability could be fastened on them. According to the present appellants. Mr. M.J. Pawar respondent No. 3 herein was the registered owner of the offending vehicle. The registered owner on the other hand set up the plea that the offending vehicle tractor No. MEL. 8104 was sold by him to the present appellants by way of an agreement dated 17-4-1980 and possession was handed over to them and the title of the said tractor was transferred to them. According to him, he had no concern whatsoever with the ownership and possession of the offending vehicle and all the liabilities including payment of loan and in respect of accident damages etc. were to be borne by the purchasers from the date of agreement dated 17-4-1980. Respondent No. 3 herein though admitted that the vehicle stood in his name in the document of registration of vehicle in question but it stood transferred to the present appellants. In the alternative, the registered owner prayed that if at all he is held responsible for the payment of compensation, since the vehicle was registered with the United India Insurance Co. Ltd. the said insurance company should be held responsible for payment of compensation.

3. The Motor Accident Claims Tribunal after recording evidence held that the claimants were able to prove that the driver of the tractor drove the vehicle rashly and negligently and dashed against the cycle of deceased Latif Kutubuddin Soudagar resulting in his death. The Tribunal also held that claimants were entitled to compensation of Rs. 40,000/-. The Tribunal however held that no liability could be fastened on the registered owner, respondent No, 3 herein and his insurer. The Tribunal accordingly passed the award against the present appellants amounting to Rs. 40,000/-towards damages to claimants together with costs and interest at the rate of 10% per annum from the date of accident. The Tribunal further directed that in case the aforesaid amount was not deposited within two months the rate of interest would run at the rate of 18% from the date of default.

4. The only question involved in the present First Appeal is whether the Tribunal was justified in not holding the registered owner and insurer of the offending vehicle liable?

5. Mr. Murthy the learned Counsel for the appellants strenuously contends that by the agreement dated 17-4-1980, there was no unconditional sale of offending vehicle namely, Tractor bearing registration MEL. 8104. According to him, since the sale of the said tractor was conditional and the conditions were not fulfilled, the title of the tractor never passed on to the present appellants and, therefore, the registered owner and the insurer only could be made liable and no liability could be fastened on the present appellants. Mr. Murthy relied on the agreement dated 1-4-1980, provisions of the Sale of Goods Act and the Division Bench judgment of this Court in United India Insurance Co. Ltd. Vs. Mathurabai and Others, .

6. On the other hand, Mr. Kudroli, the learned Counsel for respondent No. 4 and Mr. Kulkarni, the learned Counsel for respondent NO. 3 supported the award passed by the Tribunal and urged that in view of the Division Bench judgment of this Court in Mohamed Abdul Waheed Mohomed Nakim Khan Vs. Shyam Behari Rameshwar Kalvar and others, it cannot be said that the Tribunal committed any error in exonerating the registered owner and the insurer from any liability.

7. I have considered the contentions advanced by the learned Counsel for the parties.

8. There is no dispute that the respondent No. 3 herein Mr. M.J. Pawar is the registered owner of the offending tractor bearing registration No. MEL. 8104. On 17-4-1980 the registered owner entered into an agreement with the present appellants for sale of the said vehicle. From the said written agreement it is apparent that the present appellants were required to pay by draft or by cheque the installments of Rs. 2,000/- per month during 10th to 15th of each month to the State Bank of India (Division Belgaum) towards the loan taken by the owner against the said tractor. It was made clear in the agreement that the present appellants shall not commit any default with regard to the payment of installments to the Bank and in the event of default, the registered owner shall be entitled to the possession of the tractor again. In paragraph 7 of the agreement it is stipulated that the present appellants shall not evade the installment of Rs. 2,000/- per month and the transaction has been entered into on this condition only and there shall be no breach of this condition. Clause 6 of the agreement stipulates that from the date of the execution of the agreement when possession of tractor has been given to the present appellants, all kinds of responsibilities including accident damages, etc., shall lie on the present appellants. On 17-4-1980 admittedly the aforesaid vehicle was handed over to the present appellants. It would not be out of place to mention here that though the agreement of sale of vehicle was entered into on 17-4-1980 and possession was also given to the present appellants, the vehicle in question was got insured with respondent No. 4 herein in the name of the registered owner on 31-5-1980. The accident occurred on 4-2-1981 when the vehicle was being driven by the driver employed by the present appellants who drove the tractor rashly and negligently and dashed that vehicle against the cycle of the deceased. On these

facts, the question whether the liability of registered owner and the insurer could have been excluded is required to be answered.

9. Section 4 of the Sale of Goods Act, 1930 deals with sale and agreement to sale. Section 4 reads thus :

"(4) Sale and agreement to sell.---(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

10. Sections 19 and 20 of the said Act read thus :

"19. Property passes when intended to pass.---(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer as such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

20. Specific goods in a deliverable state.---Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed."

11. The agreement entered into between the present appellants and respondent No. 3 on 17-4-1980 leaves no manner of doubt that the sale of the tractor in question was conditional on payment of installments of Rs. 2,000/- per month by the present appellants to the State Bank of India. There is no dispute that said payment of Rs. 2,000/- per month till discharge of entire loan together with interest was not made by the present appellants. When the sale of the tractor in question was conditional sale depending upon due discharge of obligation under the terms of the agreement, the property in the said tractor cannot be said to have passed on to the present appellants at the time when the agreement was

made on 17-4-1980. Section 20 of the Sale of Goods Act provides that where there is unconditional contract for the sale of specific goods, the property in the goods passes to the buyer when the contract is made and it is immaterial whether at that time payment of the price or delivery of goods, or both is postponed. However, section 20 of the Sale of Goods Act cannot be invoked nor can it be attracted when the agreement for sale is conditional. In other words section 20 has application only where the contract for the sale of goods is unconditional.

12. In *Mohd. Abdul Waheed Mohd Nakim Khan v. Shyam Behari Rameshwar Kalvar and others*, (supra), the Division Bench of this Court held thus:

"4. Mohammad Abdul Waheed Khan is also examined as a witness. According to this witness he purchased the lorry on 1st of August, 1976. The sale price was agreed to be 30,500/- and he has paid part of the amount viz. Rs. 10,000/- to opposite party No. 2 about 5/6 months prior to the date of the accident. He also stated that the delivery of the lorry was not given to him on that day. According to this witness on the date of the accident, opposite party No. 2 was the owner. In the cross-examination certain inconsistencies and contradictions from his written statement were brought on record and it appears from it that this was not his case either in the written statement or at an earlier stage. An admission in a letter written by him was also brought to his notice. From his evidence it appears that it was his case that after payment of the installment of Rs. 10,000/-, it was agreed between the parties that the profits which he would be making by plying the lorry would be adjusted towards the balance of the sale price. This was not his case in the written statement. Certain documents which bear his signatures were also brought to his notice and he admitted signatures, though he stated that he made these signatures on blank papers. It appears from the evidence of Gunaji Sawant, Sub Inspector of Police that Mohammad Abdul Waheed Khan had admitted before him, when his statement was recorded on 13th February 1975, that he had purchased the motor lorry before one month from Chaitram Gupta. He also stated before the police that the lorry was in his possession at the time when his statement was recorded. He also stated that the driver was employed by him. The learned Member of the Tribunal after appreciating all the evidence on record rightly came to the conclusion that the evidence of opposite party No. 2A is unsatisfactory, as he chose to accept the evidence of opposite party No. 2 which got substantial corroboration from the contemporaneous record as well as the statement made before the police immediately after the accident. We generally agree with the application of the evidence as well as the findings recorded by the learned Member of the Tribunal in that behalf. Even if the evidence of Mohammed Abdul Waheed Khan, opposite party No. 2-A is accepted at its face values, it is quite clear to us that he had purchased the lorry from opposite party No. 2 for the sale price of Rs. 30,500/-. On his own admission he had paid a part of the amount viz., Rs. 10,000/-, to opposite party No. 2 about five or six months prior to the date of the accident. This position is admitted by the witness himself. He has raised a dispute about

the delivery of the lorry and has contended that the possession was not delivered to him. On the contrary it was agreed that the lorry should be plied by him and the money earned would be adjusted towards the balance of the price. It is not possible for us to accept this evidence of Mohammed Abdul Waheed Khan for more than one reason. Apart from the delivery form produced by opposite party No. 2, it appears that the driver who was driving vehicle at the relevant time was engaged by party No. 2-A. In the letter marked as Exhibit G addressed to the Advocate of the insurance company, he has admitted that the possession of the lorry was delivered to him and party No. 2 was not the owner of the vehicle on the date of the accident. This was his case even before the police when his statement was recorded on 13th February, 1975, i.e. immediately after the accident. In view of these admissions which get substantial corroboration in the documentary evidence on record, viz. Exhibits C, D, E and F, we are satisfied that the sale transaction took place between opposite party No. 2 and opposite party No. 2-A on 14th of December, 1974 and in pursuance of this transaction, the possession of the vehicle was handed to Mohammad Abdul Waheed Khan on 14-12-1974 itself. It is also clear from the evidence that the driver who drove the vehicle on the date of the incident i.e. 13th February, 1975 was employed by Mohammad Abdul Waheed Khan. Whether the whole amount of Rs. 30,500/- was paid on that day or an installment of Rs. 10,000/- was only paid will not make any difference, so far as the transfer of the vehicle is concerned in view of the provisions of section 20 of the Sale of Goods Act, 1930. So far as this Court is concerned it is by now well settled that the sale or transfer of the motor vehicle is governed by the Sale of Goods Act, 1930 and section 31 of the Motor Vehicles Act comes into operation after such a transfer of the vehicle. This is what the Division Bench of the Court in *Kisan v. Baldevsing* and another has held. The Division Bench observed

"There is no provision in the Motor Vehicles Act which deals with transfer or ownership of the motor vehicle which like any moveable property is governed by the Sale of Goods Act. The provision in section 31 of Motor Vehicles Act is only to the effect that after change of ownership corresponding change in registration certificate should be recorded that is, in place of previous owner, name of new owner should be substituted. Section 31 comes into operation after change of ownership. Transfer of registration follows transfer of ownership and not vice versa. Transfer of ownership does not flow from and does not depend on transfer of Registration. The transfer of ownership takes place from date of sale and not from date on which name of transferee is recorded."

A similar view is taken by another Division Bench of this Court in *Gulab Bai Damodar v. Peter K. Sunder*. In that case the Division Bench has further held that the insurance policy will lapse upon the transfer of the motor vehicle unless the insurance company agrees to accept the transferee as the insured person in relation to the vehicle. Such a view is also taken by the Karnataka High Court in *United India Fire and General Insurance Co. Ltd. v. Chennamma*, where the view taken by this Court in *Gulab Bai's* case was followed. Once it is held that the

transfer of the motor vehicle is governed by the provisions of the Sale of Goods Act, 1930, that obviously section 20 of the said Act will apply to such a transaction. It lays down that where there is an unconditional contract for the sale of specific goods in deliverable state, the property in the goods passes to the buyer, when an offer is made and it is immaterial whether at the time of the payment of the price or at the time of delivery of goods or both is postponed. To say the least, no general rule can be laid down as to when transfer of property takes place. Obviously it must depend upon the facts and circumstances of each case. After all ownership depends upon the bundle of facts. As to who was the owner of the vehicle on the date of the accident must obviously depend on the facts and circumstances of each case. In the case in hand on the basis of the evidence on record, a finding can safely be recorded that the transfer of vehicle took place on 14-12-1974 when the possession of the vehicle was given to opposite party No. 2-A who employed his own driver to run the vehicle and also used it for his own benefit. It is the case of opposite party No. 2 viz., Chaitram Gupta, that he was paid the whole amount on that day whereas according to party No. 2-A Mohammad Abdul Waheed Khan only the first installment of Rs. 10,000/- was paid. Even if it is assumed that only a part payment was made, still the vehicle stood transferred in favour of Mohammed Abdul Waheed Khan on 14-12-1974 itself for all practical purposes. The possession of the vehicle was delivered to him on that day. A delivery memo was executed by him in that behalf. He was running the vehicle for his own benefit by employing his own driver. It appears from the record that opposite party No. 2, Gupta executed all the relevant documents by signing necessary forms and therefore he ceased to be its owner on that day itself. Therefore, taking any view of the matter, it will have to be held that from 14th December, 1974 opposite party No. 2-A became owner of the vehicle. In this view of the matter, in our view, the trial Court was perfectly justified in coming to the conclusion that the sale of the vehicle took place on 14-12-1974 and from that date the opposite party No. 2 Chaitram Gupta ceased to be the owner of the vehicle. Once this finding is recorded, then obviously the insurance company could not be held liable for the payment of compensation. As held by this Court in Gulab Bai's case as soon as a vehicle is transferred the insurance policy in relation to the vehicle lapses, unless the insurance company agrees to accept the transferee as the insured person in relation to the vehicle. In the present case there is no evidence to show that on the sale of the vehicle, the insurance company ever agreed to accept the opposite party No. 2-A Mohammad Abdul Waheed Khan as the insured person in relation to the vehicle. There was no renewal of contract of indemnity in favour of opposite party No. 2-A Mohammad Abdul Waheed Khan. Therefore, in our opinion the learned Member of the Tribunal was wholly justified in holding that neither opposite party No. 2 Chaitram Gupta nor the insurance company were liable to pay any compensation to the legal representative of the deceased."

13. In the case before the Division Bench in Mohd. Abdul Waheed Mohd. Nakim Khan's case, the lorry was agreed to be sold for a sum of Rs. 35,500/- and part

of the consideration amounting to Rs. 10,000/- was paid. The possession of the lorry was transferred to the purchaser and there was unconditional contract for sale of the lorry. In this background of facts, the Division Bench relied on section 20 of the Sale of Goods Act and reached the conclusion that the sale of lorry took place on the date of contract i.e. 14-12-1974 and the title in the lorry passed on to the purchaser on that date and the registered owner ceased to be the owner of the vehicle. Present is the case where the agreement for sale of tractor in question was not unconditional and, therefore, the property in the tractor did not and cannot be said to have passed to the present appellants on 17-4-80. This conclusion is further fortified from the fact that even after the agreement dated 17-4-80 entered into between the present appellants and the respondent No. 3 herein the tractor in question was insured in the name of the registered owner i.e. respondent No. 3 herein on 31-5-1980. The parties, therefore, can be said to have intended that the sale of the tractor in question would be effected and title in the tractor in question would be transferred to the present appellants on fulfilment of the conditions mentioned in the agreement i.e. upon repayment of the entire loan together with interest by the present appellants. In the present case therefore, the section 19 of the Sale of Goods Act would be attracted and not section 20.

14. In *United India Insurance Co. Ltd. Vs. Mathurabai and Others*, , the Division Bench of this Court was dealing with quite similar question and it was held by the Division Bench that where the owner of the vehicle entered into an agreement for sale but the transfer was to be effective on payment of full price and during that time the owner allowed the transferee to ply the vehicle and the part of the sale price remained payable on the date of the accident, the property cannot be said to have passed to the transferee on the date of the accident. The Division Bench held thus:

"4. The only point urged on behalf of the appellant is that Prithipalsingh had sold the truck long before the date of the incident to the opponent No. 2 sometime in October 1980 and as such the insurance policy taken out by Prithipalsingh in respect of the truck in question had lapsed and, therefore the insurance company could not be held liable to pay the amount under the said policy. The learned Counsel for the appellant pointed out that the agreement to sell the truck between Prithipalsingh and opponent No. 2 Radhakisan Radharam Sindhi took place sometime in October 1980 and in pursuance of that agreement Prithipalsingh had parted with the truck and delivered it to Radhakisan and on the date of the incident Radhakisan was plying the truck. According to him, only a portion of the price of the truck remained to be paid, and that price was paid on 20th May, 1981 when truck was transferred in the office of the R.T.O. in favour of Radhakisan, He submits that the property in the truck has passed on to Radhakisan in October 1980 and only the formal act of change of registration remained, and that was done in May 1981 and after the registration in favour of Radhakisan the policy was also transferred in his name. Thus, according to him, on the date of the incident Prithipalsingh, who had taken out the policy, was no

longer the owner of the vehicle, and as such the insurance company could not be held liable for payment of the compensation under the policy taken out by Prithipalsingh."

15. The ratio of the Division Bench in United India Insurance Co. Ltd., (supra) is squarely applicable to the facts and circumstances of the present case and it can safely be held that the title in the property in the said tractor did not pass to the present appellants on the date of the accident since the sale of the tractor was conditional and upon payment of installments of Rs. 2,000/- each to the Bank till discharge of the loan and indisputably the present appellants had not paid installments as agreed. The Division Bench judgment of this Court in Mohd. Abdul Waheed Mohd. Nakim Khan's case, (supra) is based on entirely different facts where contract of sale of lorry was unconditional and section 20 of the Sale of Goods Act was applicable whereas in the present case the contract for the sale of the tractor was conditional and section 19 of the Sale of Goods Act is applicable and, therefore, the judgment of the Division Bench of this Court in Mohd. Abdul Waheed Mohd. Nakim Khan's case has no application. The present case is however covered by the (Division Bench of this Court in United India Insurance Co. Ltd.v. Mathurabai and others, 1986 A.C.J. 1052

16. The entire discussion made by the Tribunal absolving the liability of the registered owner and the insurer of the tractor in question is based on the erroneous approach and therefore cannot be sustained- The title of the tractor having not been passed to the present appellants, the registered owner could not be absolved. Since the registered owner is liable, the respondent No. 5 The United Insurance Company also is liable and cannot be absolved from the liability. The insurance of the vehicle in question was made on 31-5-80 after the agreement dated 17-4-80 and it is not the case of the insurer that the policy was obtained by fraud or misrepresentation or misstatement of facts.

17. The liability of the registered owner and the insurer of the contractor in question shall have to be joint and several with the present appellants though the property in tractor in question has not been passed to the present appellants. They cannot be absolved from the liability for the reasons. firstly, the appellants in the agreement dated 17/4/80 had undertaken that from the date i.e. 17-4-80 the tractor has been given in possession and that all kind of responsibilities such as R.T.O. accident damages. etc., shall lie on them. Secondly, the vehicle in question at the relevant time was being driven by the driver employed by them. u/s 110 of the Motor Vehicles Act, 1939 the Motor Accident Claims Tribunal has jurisdiction to adjudicate the claim for compensation in respect of accidents involving the death of or bodily injuries to the persons out of use of motor vehicle. The accident occurred involving the death of Latif out of the use of tractor in question which was in juridical possession of the appellants and driver who was their employee respondent No. 3 herein at the time of accident.

18. The appeal is accordingly partly allowed. The award passed by the Motor Accident Claims Tribunal on 30/8/1985 is modified by making the registered

owner M.J. Pawar respondent No. 41 and the United India Insurance Co. Ltd., Belgaum respondent No. 5 jointly and severally liable to pay the sum of the award as directed by Motor Accident Claims Tribunal 51. Kolhapur on 20/8/1985 alongwith the present appellants original opponents Nos. 1 and 6 and respondent No. 3 herein (original opponents No. 2).

19. No costs.

20. Certified copy expedited.

21. Appeal partly allowed.