

(2011) 01 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 4546 of 2010

J.S. Choudhary Proprietor of Ambala Finlease Crops	APPELLANT
Vs	
Ritu Devi and Others	RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Motor Vehicles Act, 1939 — Section 157(1), 31, 50
Sales of Goods Act, 1930 — Section 19

Citation : (2011) 162 PLR 397

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeal is filed by a registered owner of the vehicle, who during the trial contended that the vehicle had been transferred to the 6th Respondent. The 6th Respondent-Sumer Chand, who was the purchaser, was the 2nd Respondent before the Tribunal and he had been represented through counsel Sh. O.K. Thakur. The fact of transfer of the vehicle was sought to be established through evidence by the registered owner. The fact of transfer in favour of the 2nd Respondent was itself not denied by the purchaser. On the other hand, the statement of Sumer Chand before the Police in the FIR No. 161 dated 2.8.2008 was that he had purchased the vehicle and the accident had taken place when his driver was driving the vehicle.

2. The procedure set out u/s 50 of the Motor Vehicles Act for transfer of ownership is only an evidence of ownership and not at all times conclusive. The transfer of title in a motor vehicle takes place by delivery and by passing of consideration for sale. The ownership in goods is transferred u/s 19 of the Sale of Goods Act and the distinction between the sale of goods and a transfer of ownership by registration u/s 50 was dealt with by the Hon'ble Supreme Court in Vasantha Viswanthan and Others Vs. V.K. Elayalwar and Others, . The Supreme Court held the following:

Section 31 of the Motor Vehicles Act, 1939 lays down that where the ownership of any motor vehicle registered under the Motor Vehicles Act is transferred, the transferor and transferee both are required to report the fact of transfer to the registering authority so that particulars of transfer of ownership may be entered in the certificate. The transfer is not effected u/s 31 of the Motor Vehicles Act, 1939, but the same simply prescribes procedure for entering the factum of transfer in the registration certificate, which is an act posterior to the transfer. The transfer of vehicles in question would be governed by the provisions of Section 19 of the Sale of Goods Act according to which property in the vehicle would pass to Defendant 1 at such time as the parties to the contract intend it to be transferred. Thus the passing of property in the goods would be dependent upon the intention of the parties, as evidenced from the contract.

3. In a case where the subsequent purchaser is not made a party and the case is prosecuted against a registered owner only without any objection from the registered owner or without any steps being taken to implead the subsequent purchaser, a liability to be fastened on the registered owner could be perfectly understood. The learned Counsel appearing for the claimant refers to a decision of this Court in *Rulda Singh and Ors. v. Amarvir Kaur and Ors.* 2 (2009) 153 PLR 800 to the effect that the registered owner will still liable.

4. The learned judge was referring to the judgment of the Supreme Court in *T.V. Jose (Dr.) v. Chacko P.M.* 3 (2001) 8 SCC 748 to hold that the registered owner who was the transferor and whose name continued to be in the records with the transferring authority would continue to be liable. In my view, the judgment of the Supreme Court must be understood in the context when the subsequent purchaser is not made party. In that case, the registered owner sought impleadment of the, transferee before the Supreme Court for the first time. The court rejected the attempt and held as follows:

We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of RTO. There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the Appellant still continued to remain liable to third parties as his name continued in the records of RTO as the owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these appeals. Mr. Roy Thomas was not a party either before MACT or the High Court. In these appeals, we cannot and we will not go into the question of inter se liability between the Appellant and Mr. Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so. (underlining mine)

I will read down the law laid down in *Rulda Singh's* case (supra) as valid in the situation where a subsequent purchaser is not even made a party. In this case, the subsequent purchaser is a party and the transfer of ownership to such a subsequent purchaser was also an admitted fact. The award could have been,

therefore, sustained only against the subsequent purchaser. The liability cast on the transferor of the vehicle, who was not the owner at the time when the accident had taken place cannot, therefore, be made answerable. It will only be appropriate that the decree is passed against the purchaser, for in the event of recovery, it will become possible for a claimant to even seize the vehicle and recover the amount, if the judgment debtor does not satisfy the award.

5. In all cases, where the plea of ownership is in question, the first attempt must be to see who is the registered owner. If the registered owner denies ownership and pleads transfer to a 3rd party but the transferee is not made a party, the Tribunal may call upon any party to direct the impleadment and if the evidence shows admission of transfer by the transferee, the Tribunal will be justified in making the transferee alone as liable. If there is a policy of insurance, no matter the fact of transfer is not notified to the insurer but the insurer is a party in proceedings, the Tribunal will also be justified in making the insurer liable to answer the claim of a third party, by virtue of the provisions u/s 157 (1) of the Motor Vehicles Act, constituting the deeming provisions for transfer of policy of insurance. If the transferor is impleaded and he denies the transfer but the Tribunal finds prima facie evidence of transfer, such as proof of delivery, payment of consideration and the contract details, evidence of transfer through the fact of who applied for custody of the vehicle from Criminal Court, evidence of driver etc., the Tribunal will again be justified in making the award against the transferee. However, if the issue of transfer itself becomes contentious and the Tribunal is unable to gather materials regarding the transfer, it is better left alone for independent adjudication before appropriate forum. The Tribunal shall in such cases, pass the award against the registered owner, leaving it open to him to adopt recoveries before the appropriate forum, if in law, he is entitled to a course that the Supreme Court adopted in T.V. Jose's case (supra).

6. The award is modified and the claimant shall have a right of enforcement of claim only against the 6th Respondent who is a subsequent purchaser and the driver, who has been arrayed as 5th Respondent in the appeal.

7. The appeal is allowed to the above extent.