
(1986) 06 KL CK 0007
In the High Court Of Kerala
Case No : A.S. No. 247 of 1980

M K Kunjiraman and Others

APPELLANT

Vs

Mrs. Saramma and Others

RESPONDENT

Date of Decision : 06-06-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 31

Citation : (1986) 23 KLJ 575

Hon'ble Judges : K.T. Thomas, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : P. Ramanujam and C.M. Nirmala Devi, for the Appellant; V. Parameswara Menon and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Thomas, J.—A young man by name Vijayan, was knocked down by a bus [KXE-578 during the morning hours of 5-11-1971. Within a few minutes Vijayan succumbed to his injuries. Appellants, the parents and the grand-mother of Vijayan, instituted the suit for compensation against the respondents alleging that the accident was the consequence of the negligent driving of the bus by its driver the 10th defendant. One Shri P. M. Mathai was the registered owner of the bus at the time of the accident. His widow and children are defendants 1 to 9 against whom the appellants made the claim for compensation. The 11th defendant is the person in whose favour the ownership of the bus is said to have been transferred as early as 9-7-1970.

2. The trial court rejected the contention of the defendants that the accident was not the result of the negligence on the part of the bus driver. The learned Sub Judge found that the appellants are entitled to be compensated on account of the death of Vijayan. However, the learned Sub Judge-accepted the contention of defendants 1 to 9 that the ownership of the bus was transferred to the 11th defendant on 9-7-1970 Hence a decree was passed against defendants 10 and 11 for a sum of Rs. 36100/- with interest at 6 per cent per annum from the date

of the suit.

3. The appellants in this appeal challenge the finding of the court below that defendants 1 to 9 are not liable for the damages as the vehicle was transferred to the 11th defendant even prior to the date of accident, and as the driver of the bus was not then acting in the course or those persons' employment.

4. The relevant contentions of defendants 1 to 9, on this score, are that Shri P. M. Mathai was one of the partners of a firm by name M/s Mar Bascil Bus Service, with its abbreviations "MBBS", and the bus (KLE-578) belonged to the firm and Shri Mathai was its registered owner, and that the said bus was transferred by him in favour of 11th defendant on 9-7-1970 for which Ext B3 agreement was executed on 21-7-1970 incorporating the terms of the sale. It is further contended that the driver of the bus had left the services of the firm "MBBS", soon after the execution of Ext. B3. According to those defendants, the registration of the vehicle was not transferred in the name of the 11th defendant since the liability to pay the vehicle tax for this bus remained unsettled.

5. In this appeal we need not consider the questions as to whether Vijayan was knocked down by the bus as alleged and whether the incident was the consequence of the negligent driving of the bus by its driver or even as to the quantum of damages. Those questions were answered by the learned Sub Judge in favour of the appellants and they have not been challenged now. The only question which is urged in this appeal is whether the legal representatives of Shri Mathai (the registered owner) are liable to pay the compensation to the appellants.

6. Admittedly, Shri Mathai was the registered owner of the vehicle at the time of the accident. Ext. B3 shows that the said bus was sold to the 11th defendant on 9-7-70. Of course the learned counsel for the appellants has argued that Ext. B3 is a sham document and the transfer mentioned therein was not intended to come into effect. This contention raised during the appellate stage appears to us to be an after thought because the appellants never raised such a contention in the court below. The appellants were told by the contesting defendants even when they sent a reply to the suit notice that they stand mainly on the contention that the ownership of the vehicle was transferred to the 11th defendant as early as 9-7-1970 itself. This can be found in Ext. B5 reply notice sent by an advocate on behalf of defendants 1 to 9. Taking cue from Ext. B5 reply notice, the appellants made defendant No. 11 a party to the suit and claimed a relief against him also. The learned Sub Judge has observed in paragraph 8 of his judgment that "the plaintiffs have no case that Ext. B3 is a document cooked up for this suit". When the 4th defendant was examined as D.W.1, the suggestion put to him by the counsel for the appellants, during his cross examination was that Ext. B3 was executed only for the purpose of escaping from the tax liability. Apart from the said suggestion put to D.W.1, the appellants have not chosen to dispute or challenge the genuineness of the defendants' case regarding the transfer of the vehicle. Therefore we are not

impressed by the belated attempt made by A the learned counsel for the appellants to assail the genuineness of Ext. B3.

7. The main contention of the learned counsel for the appellants in this appeal is that even if the ownership of the vehicle was transferred as per Ext. B3 it will not absolve the registered owner of his liability. According to him the registered owner must be deemed to be the owner of the vehicle notwithstanding the transfer of ownership of the vehicle to some other person. In support of that contention the learned counsel has referred us to the decision reported in Northern India General Insurance Co. Ltd., Bombay Vs. Kanwarjit Singh Sobti and Others, . In that case a truck was] acquired by "A" in his name and subsequently he got a transfer entry made in the certificate of registration in the name of "B", who was a domestic servant of "A". In an action for compensation arising from an accident involving the said truck, the, insurer contended that since the ownership of the truck was transferred in the name of "B", without prior notice to the insurer, no liability can be fastened on the insurer. The Tribunal found on facts that "B" is a domestic servant of "A" and that "A" is the real owner whereas "B" is only a benamidar In the background of the aforesaid facts a learned single Judge of the Allahabad High Court held that both the real " owner and the ostensible owner are equally liable for the damage resulting from the accident in which the truck was involved. We do not think that the said decision can be treated as an authority for the proposition that the registered owner will continue to be liable even though the ownership of the vehicle has been transferred to somebody else prior to the date of the accident.

8. Chapter TII of the Motor Vehicles Act, 1939 (for short the Act") deals with the registration of the motor vehicles. Section 22 of the Act requires registration for a motor vehicle if that vehicle is to be driven in public places. Section 23 enjoins on the owner of a motor vehicle to cause the vehicle to be registered by a registering authority. An application has to be made in that behalf by the owner of the motor vehicle and the registering authority is to issue a certificate of registration in form G" as set forth in the First Schedule of the Act. This is provided in Section 24. The above three section 24. The above three sections indicate the need for the registration of a motor vehicle. Section 30 of the Act requires the owner to intimate the registering authority regarding his change of address for the purpose of making necessary entries in the certificate of registration. Section. 31 is the important provisions as it deals with the transfer of ownership. The material portions of Section 31 (1) read thus:

Transfer of ownership-

(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,-

(a) the transferor shall-

(i) within fourteen days of the transfer, report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected and

shall simultaneously send a copy of the said report to the transferee;

xxx xxx xxx

xxx xxx xxx

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

It is clear from the said section that a transfer of the ownership of a motor vehicle must precede the report to the registering authority about the transfer of the ownership. This report is intended to make the necessary entries in the certificate of registration. If it is not so reported within the time prescribed the persons concerned are liable to certain penal consequences. Except those penal consequences, the Act does not provide for any other consequence on account of the omissions to make the said report. Nowhere in the Act it is stated that non-reporting of the fact of transfer of ownership will render the transfer inoperative or ineffective.

9. In *Muthuswamy Gounder v. Thulasi Animal* (1970 M. L. J 263) Natesan, J. has observed that "the registration book is not a document of title but is evidence of title and its absence at the time of sale would put a purchaser on inquiry". According to His Lordship, the Act regulates and controls the running of vehicles in public places for the purpose of carrying passengers or goods; but it does not deal with the passing of property in and legal title to the property. A Division Bench of the Rajasthan High Court, in the decision reported in *Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others*, adopted the same view. In that decision the Bench dissented from the views expressed in *scrap* of the earlier decisions of the same High Court *Smt. Padmadevi and Others Vs. Gurbakshsingh and Others*, , and *Champalalv. Ramchandra*, A I R. 1976 Raj. 75). The Division Bench consisting of their Lordships A. P. Sen and M L. Jain, JJ. in *Dewala's* case has observed that

.....the sale of a motor vehicle is not governed by Sec. 54 of the Transfer of property Act but it being a moveable property was to be governed by the provisions of the Sale of Goods Act.....The provisions of the Act regarding registration and issue of permit have nothing to do with the ownership of the vehicle. They only provide for regulation of the use of the motor vehicles in public places and if the requirements of the Act were not". fulfilled, penalties were attracted.

Their Lordships quoted with the approval the view held by the Delhi High Court in *Vimal Rai and Others Vs. Gurcharan Singh and Others*, that "the endorsement of the transfer in the records of the Registering Authority is not a condition

precedent to the transfer nor does it deal with the legality or validity of the transfer which must be determined by other provisions of law". In a still later decision reported in P.K. Panda Vs. Smt. Premalata Choudhury and Others, the Orissa High Court has adopted the above reasoning. Thus the weight of authorities is in favour of the view adopted by us as detailed above.

10. We are therefore fortified in taking the view that the actual owner can be different from the registered owner, and if it is proved that the registered owner has transferred the ownership to a different person the tortious liability will have to be borne by transferee despite the non-transfer of the registration. In such cases the registered owner cannot be made liable. The learned counsel for the appellants lastly contended that the permit of the vehicle remained with Shri Mathai and on his death the permit was transferred to the name of the 4th defendant and as such the defendants 1 to 9 are liable for the damages. We may point out that the appellants have not made out a plea like that in the suit. We are not inclined to consider the above contention in the absence of a specific plea in that regard.

We do not find any reason to interfere with the decree passed by the court below and accordingly we dismiss this appeal, without any order as to costs.