

(1986) 06 KL CK 0014
In the High Court Of Kerala
Case No : A.S. No. 247 of 1980

M.K. Kunjuraman and Others

APPELLANT

Vs

Mrs. Saramma and Others

RESPONDENT

Date of Decision : 06-06-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 31(1)

Citation : (1987) ACJ 1081 : (1990) 68 CompCas 259

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 Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Thomas, J.—A young man by name Vijayan was knocked down by a bus (KLE 578) during the morning hours of November 5, 1971. Within a few minutes, Vijayan succumbed to his injuries. The appellants, the parents and the grandmother of Vijayan instituted a suit for compensation against the respondents alleging that the accident was the consequence of the negligent driving of the bus by its driver, the tenth defendant.

2. One Shri P. M. Mathai was the registered owner of the bus at the time of the accident. His widow and children are defendants Nos. 1 to 9 against whom the appellants made the claim for compensation. The eleventh defendant is the person in whose favour the ownership of the bus is said to have been transferred as early as July 9, 1970.

3. 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 Nos. 1 to 9 that the ownership of the bus was transferred to the

eleventh defendant on July 9, 1970. Hence, a decree was passed against defendants Nos. 10 and 11 for a sum of Rs. 36,100 with interest at six per cent, per annum from the date of the suit.

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

5. The relevant contentions of defendants Nos. 1 to 9 on this score are that Shri P. M. Mathai was one of the partners of a firm by name, Mar Bas-cil Bus Service, with its abbreviation 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 the eleventh defendant on July 9, 1970, for which exhibit B-3 agreement was executed on July 21, 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 exhibit B-3. According to those defendants, the registration of the vehicle was not transferred in the name of the eleventh defendant since the liability to pay the vehicle tax for the bus remained unsettled.

6. 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 compensation to the appellants.

7. Admittedly, Shri Mathai was the registered owner of the vehicle at the time of the accident Exhibit B-3 shows that the said bus was sold to the eleventh defendant on July 9, 1970. Of course, learned counsel for the appellants has argued that exhibit B-3 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 afterthought 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 eleventh defendant as early as July 9, 1970, itself. This can be found in exhibit B-5 reply notice sent by an advocate on behalf of defendants Nos. 1 to 9. Taking the cue from exhibit B-5 reply notice, the appellants made defendant No. 11 a party to the suit and claimed relief against him also. The learned sub-judge has observed in paragraph 8 of his judgment that "the plaintiffs have no case that exhibit B-3 is a document cooked up for this suit". When the fourth defendant was examined as DW-1, the suggestion was put to him by counsel for the appellants, during his cross-examination, that exhibit B-3 was executed only for the purpose of escaping from the tax liability. Apart from the said suggestion put

to DW-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 learned counsel for the appellants to assail the genuineness of exhibit B-3.

8. The main contention of learned counsel for the appellants in this appeal is that even if the ownership of the vehicle was transferred as per exhibit B-3, 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, learned counsel has referred us to the decision in *Northern India General Insurance Co. Ltd. v. Kanwarjit Singh* [1973] ACJ 119. 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 damages 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.

9. Chapter III of the Motor Vehicles Act, 1939 (for short, "the Act"), deals with the registration of 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 has to issue a certificate of registration in form "G" as set forth in the First Schedule of the Act. This is provided for in 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 provision 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 ;...

(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".

10. 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 these penal consequences, the Act does not provide for any other consequence on account of the omission 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.

11. In *Muthuswami Gounder v. Thulasi Ammal* [1970] ACJ 18 : [1970] MLJ 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 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 some of the earlier decisions of the same High Court in *Smt. Padmadevi and Others Vs. Gurbakshsingh and Others*, and *Champalal Vs. Ramchander and Another*, The Division Bench consisting of their Lordships A. P. Sen and M. L. Jain JJ. in *Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others*, , had observed that (at page 128) :

"... the sale of a motor vehicle is not governed by Section 54 of the Transfer of Property Act but it being a movable 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".

12. Their Lordships quoted with approval the view held by the Delhi High Court in *Oriental Fire and General Insurance Co. Ltd. v. Smt. Vimal Rai* [1974] 44 Comp Cas 316, 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.

13. 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 the transferee despite the non-transfer of the registration. In such cases, the registered owner cannot be made liable.

14. 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 Nos. 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.

15. 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.