
(2007) 01 GAU CK 0040
In the Gauhati High Court

Purnya Kala Devi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 147, 165, 168, 2

Citation : (2008) ACJ 1565 : (2007) 3 GLR 932

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—This is an appeal against the award, dated 11.7.2002, passed, in MAC Case No. 34/1993, by the Motor Accident Claims Tribunal, Darrang, determining a sum of Rs. 1,41,400, as compensation, payable to the claimant-appellant by respondent No. 3 herein, namely, Abdul Salam, who is the registered owner of the offending vehicle, with interest at the rate of 9% per annum from the date of making of the claim application.

2. The case of the claimant-appellant may, in brief, be described, thus:

The claimant's husband, Dhanbahadur Chhetry, used to receive, as a Chowkidar of Udalguri Girls' High School, Rs. 1,000 per month as his salary. On 16.2.1993, at about 10.15 a.m., when the claimant's husband was proceeding on the road, he was run over by a bus, bearing registration No. AMZ-6858, and died, the accident having taken place due to rash and negligent driving of the offending vehicle by its driver. The claimant, therefore, sought for compensation of a sum of Rs. 2,00,000 only. Though this claim for compensation was made not only against Abdul Salam, who was registered owner of the said vehicle, but also against one Jalil Haque, who is said to have purchased the said bus, the fact remains that Md. Abdul Salam remained as the registered owner of the bus till the date of making of the claim application.

3. Having been served with notice, Md. Abdul Salam aforementioned, appeared in the claim proceeding and filed his written statement, wherein he submitted,

inter alia, that at the time of the accident, the vehicle was under requisition by the State government, the order of requisition having been made by the SDO (Civil), Udalguri, and, hence, it is the State Government, who ought to have been fastened with the liability and made to pay the compensation, if any, to the claimant. Though the State of Assam was also impleaded as a party to the claim proceeding, it did not file any written statement. However, the SDO (Civil), who, too, stood impleaded as a party, submitted his written statement, his case being that the vehicle stood released on the day of the accident at about 10-30 a.m. and that the accident had taken place around the same time.

4. Having considered the evidence adduced by the claimant and the materials on record, the learned Tribunal awarded a sum of Rs. 1,41,400 as compensation, to the claimant and directed, as already indicated hereinabove, Md. Abdul Salam aforementioned, to pay the compensation to the claimant. Aggrieved by the quantum of compensation so awarded and also contending that since the vehicle, at the relevant point of time, stood requisitioned by the State government, it is the State government, who ought to have been made liable to pay compensation to the claimant, the claimant has preferred the present appeal.

5. I have heard Mr. D. Mazumdar, learned Counsel for the claimant-appellant, and Mr. P.S. Deka, learned State Government counsel, appearing on behalf of respondent Nos. 1 and 2. I have also heard Mr. K. N. Choudhury, learned Advocate General, Assam, and Mr. B. C. Das, learned senior counsel, as amicus curiae.

6. At the time of hearing of the present appeal, Mr. D. Mazumdar, learned Counsel appearing on behalf of the claimant-appellant, has submitted that while the claimant has no grievance as regards the sum of Rs. 1,34,400, which has been determined by the learned Tribunal, as compensation for loss of dependency of the claimant-appellant, the claimant-appellant is aggrieved by the amount of funeral expenses and loss of consortium, which have been awarded as Rs. 2,000 and Rs. 5,000 respectively.

7. While considering the above submissions made on behalf of the claimant-appellant, what may be noted is that there is no cogent evidence on record as regards the amount of funeral expenses incurred by the claimant-appellant. In such circumstances, the funeral expenses of Rs. 2,000 granted by the learned Tribunal cannot be said to be wholly unreasonable. Turning to the loss of consortium, it; may be noted that in *Lata Wadhwa and Others Vs. State of Bihar and Others*, the Supreme Court has held that in an appropriate case, the loss of consortium can be as high as Rs. 50,000. In view of the fact that the claimant has been made to suffer loss of company at the prime of her age, I am of the view that in these circumstances, the loss of consortium ought to have been assessed at a sum of Rs. 50,000. If so assessed, the total compensation payable to the claimant-appellant rises to the tune of Rs. 1,91,400 (Rs. 1,41,400. + 50,000).

8. I, now, turn to the most crucial aspect of the appeal, namely, as to whether the State government can be fastened with the liability of making payment of the compensation, which has been determined, in the present case, as payable to the claimant-appellant.

9. While considering the above aspect of the case, what may be noted is that though a claims tribunal is constituted u/s 165 of the Motor Vehicles Act, 1988 ("the M.V. Act, 1988"), the award assessing compensation is rendered by a claims tribunal u/s 168 of the M.V. Act. Sub-section (1) of Section 168 of the M.V. Act, 1988, makes it clear that the compensation shall be payable by the insurer or owner or driver of the vehicle involved in the accident or by any of them, as the case may be. In the face of the provisions of Sub-section (1) of Section 168 of the M.V. Act, 1988, none other than the insurer, owner or driver of a vehicle can be fastened with the liability to pay compensation under the provisions of the M.V. Act, 1988. In the present case, the offending vehicle was, admittedly, without insurance at the time, when it was being plied and met with the accident. In such a situation, in the light of the provisions of Sub-section (1) of Section 168, it is the owner or driver of the vehicle or both of them, who could have been made liable to pay compensation to the claimant-appellant.

10. The question, now, is this could the State government have been regarded as owner of the vehicle, even if it is assumed, for a moment, that the vehicle was under requisition, at the time, when the said accident had taken place ? My quest for an answer to this question brings me to Section 2(19) of the Motor Vehicles Act, 1939 ("the M.V. Act, 1939"), which defined "owner". The relevant provisions of Section 2 are reproduced below:

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context, -

XXX XXX XXX

XXX XXX XXX

(19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle, which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement;

11. From a careful reading of the definition of owner, as the same appeared in Section 2(19) of the M.V. Act, 1939, it is clear that a person, who was major and in possession of a motor vehicle, could have been regarded as owner thereof under the M.V. Act, 1939. Thus, in terms of the definition of the word "owner", as given in Section 2(19) of the M.V. Act, 1939, whoever had the control and possession of a vehicle could have been regarded as owner of the vehicle. This definition and concept of owner under the M.V. Act, 1939, stands materially changed in the M.V. Act, 1988, for Section 2(30) of the M.V. Act, 1988, which defines owner, now, reads as under:

2. Definitions. - In this Act., unless the context otherwise requires,

XXX XXX XXX

XXX XXX XXX

XXX XXX XXX

(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 ;

12. From a cautious and microscopic reading of the definition of "owner", as the same occurs in Section 2(30) of the M.V. Act, 1988, it becomes clear that a person, in order to be regarded as an owner, must have the vehicle registered in his name and where such a person is a minor, then, his guardian would be regarded as the owner. Section 2(30) of the M.V. Act, 1988, also indicates that in relation to a motor vehicle, a person may be regarded as owner, though he may not be the registered owner of the vehicle, provided that he is in the possession of the vehicle either on the strength of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation. In other words, apart from a person, in whose name a vehicle stands registered, even the person, who is in possession of a vehicle pursuant to a hire-purchase agreement, an agreement of lease or an agreement of hypothecation, would be regarded as owner.

13. What logically follows from the above is that if a person is not a registered owner of a vehicle or his possession of the vehicle is not pursuant to the three specified forms of agreement, namely, hire-purchase agreement, agreement of lease or agreement of hypothecation, such a person would not be regarded as owner of the vehicle.

14. What further follows from the above discussion is that in the M.V. Act, 1939, emphasis for being regarded as "owner" of a vehicle was on the control and possession of the vehicle; whereas in the M.V. Act, 1988, emphasis has shifted from "possession" to "registration", accordingly, unless a vehicle is registered in the name of a person, he cannot be regarded as owner of the vehicle. This general principle is, however, subject to three specified exceptions, namely, that a person in possession of a vehicle may also be regarded as owner thereof provided that he comes into possession of the vehicle in any of the said three specified modes of agreement, namely, (i) hire-purchase agreement, (ii) agreement of lease, or (iii) agreement of hypothecation. Thus, while under the M.V. Act, 1939, even a person, who might have had stolen a vehicle and committed an accident, could have, perhaps, been regarded as the owner of the vehicle, for, he had the control and possession of the vehicle, the definition of owner, now, given under M.V. Act, 1988, makes it clear that the possession of a

vehicle has to be acquired through the three specified modes, as given u/s 2(30), in order to treat a person as owner of a vehicle on the basis of his possession alone. This change, in the mode of definition of "owner", appears to have been made by the Legislature in order to help the victims of road traffic accidents. A vehicle, in order to be used in a public place, needs to have compulsory insurance, in terms of Section 147 of the M.V. Act, 1988, so as to safe guard the interest of a third party. Whoever may come to possess the vehicle, the registered owner of the vehicle would be regarded as the owner of the vehicle and the insurer would remain liable to pay compensation to a third party even if the vehicle meets with an accident, when the registered owner of the vehicle did not have the control and possession over the vehicle.

15. One may also, perhaps, point out that the M.V. Act, 1988, aims at giving relief to a victim of road traffic accident in two specified circumstances, namely, when death of, or injury to, a person is caused by negligence or default. The injury or death, therefore, caused by a wrongful act of driving of a vehicle would not be amenable to the jurisdiction of a claims tribunal constituted under section, 165 of the M.V. Act, 1988. For instance, when a person is killed not by negligence or default, but intentionally and the death becomes homicidal, a claims tribunal, constituted under the M.V. Act, 1988, cannot grant compensation to the legal representatives of the deceased merely on the ground that the deceased was killed by use of a motor vehicle in a public place. The compensation, if any, can, then, be claimed only in a civil court of competent jurisdiction. Similarly, when a vehicle, under requisition, injures a person or kills a person by negligence or default, the State Government may be liable to pay compensation in a suit for damages or, in an appropriate case, in an application made under article 226 of the Constitution of India. In the case at hand, when the claimant has chosen to seek compensation from the claims tribunal, the compensation can be directed to be paid only by the owner of the vehicle, in question, as defined in Section 2(30). So construed, it becomes transparent that Abdul Salam, being the registered owner of the vehicle, in question, was rightly held liable to pay compensation to the claimant-appellant. If an insured vehicle is requisitioned by State Government and on being used in a public place, it causes injury or death of a person by negligence or default of the driver, the victim can either make claim for compensation against the owner of a vehicle in a claims tribunal, constituted under the M.V. Act, 1988, or he may institute a civil suit seeking damages against the State Government and, in an appropriate case, he may even make an application under article 226.

16. Having regard to the definition of owner, as occurs in Section 2(30) of the M.V. Act, 1988, which is distinguishable from the definition of owner, contained in Section 2(19) of the M.V. Act, 1939, one cannot help, but hold that unless the State Government is found to be registered owner of a vehicle or a State Government's possession of a vehicle is pursuant to a hire-purchase agreement or an agreement of lease or an agreement of hypothecation, the State Government cannot be regarded as owner of the vehicle u/s 2(30) of the M.V.

Act, 1988, and no claim for compensation can be lodged with a claims tribunal, constituted u/s 165, against the State Government in such a case and no award can be passed against the State government u/s 168.

17. Under the M.V. Act, 1939, registration of vehicle was not the principal consideration for treating a person as owner of the vehicle and, hence, in accordance with the principles embodied in sale of goods, ownership of the vehicle could have changed from one hand to another with the purchase of the vehicle and, if a person, on having purchased a vehicle, had acquired possession and control thereof, he or she could have been regarded as the owner of the vehicle. Under the definition of owner, as given in Section 2(30) of the M.V. Act, 1988, if a registered owner parts with the possession of the vehicle in favour of the person, who has purchased the vehicle, the registered owner still remains the owner of the vehicle even if he ceases to have control and possession of the vehicle. As a corollary thereto, the person, who may have purchased the vehicle, but has not got his name registered as owner of the vehicle, shall not be regarded, for the purpose of Section 168, as the owner of the vehicle, though such a person may have the control and possession of the vehicle. In such a case, if the vehicle stood insured, the insurer would be liable to pay compensation to the claimant, notwithstanding the fact that the registered owner has sold the vehicle and the same has not been registered in the name of the purchaser.

18. In the case at hand, even if the vehicle, in question, was under requisition by the State Government in terms of the provisions of the Assam Requisition and Control of Vehicles Act, 1968 ("the Assam Act, 1968"), the fact remains that requisition of a vehicle gives to the person or authority, who has requisitioned the vehicle, the control and possession of the vehicle and it does not vest in the person or authority, which requisitioned the vehicle, title or ownership of the vehicle. There is, thus, a clear and definite distinction between requisition and acquisition. While acquisition passes title from the person, who may be the owner of the property, to the person, who acquires the property, requisition does not disturb the title of the property requisitioned, but only transfers the control and possession of the property to the person, who has requisitioned the property. Viewed, thus, it is clear that when a State Government requisitions a vehicle, it only takes over the possession and control of the vehicle and does not become the owner of the vehicle, for, its possession and control is not in terms of the three modes of possession, which have been specified in Section 2(30) of the M.V. Act, 1988. In other words, unless the State Government is the registered owner of a vehicle or it comes to the possession of a vehicle by virtue of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation, it cannot be regarded as the owner of the vehicle.

19. What emerges from the above discussion is that an award u/s 168 can be passed against the owner, insurer or driver of the offending vehicle or all or any of them. In the case at hand, the State Government was not the owner or the

insurer or driver of the vehicle at the relevant point of time and, hence, the State Government could not have been, and has rightly not been, fastened with the liability to pay compensation to the claimant. The remedy, if any, for tortious liability of the State Government, in a case of present nature, where the vehicle is not insured, lies, if I may reiterate, either in the civil court or, in an appropriate case, by way of an application under article 226 of the Constitution of India.

20. What crystallizes from the above discussion is that the claimant-appellant is entitled to receive a sum of Rs. 1,94,400 as compensation and the same is payable not by the State Government, but by Abdul Salam, who was the registered owner of the vehicle at the relevant point of time.

21. In the result and for the reasons discussed above, this appeal partly succeeds. While the liability to pay compensation to the claimant-appellant shall remain with Md. Abdul Salam aforementioned, as the registered owner of the said vehicle, the amount of compensation is enhanced to a sum of Rs. 1,94,400.

22. With the above modification in the amount of compensation awarded to the claimant-appellant, this appeal shall stand disposed of. No order as to cost.

23. Send back the LCR.