

(1989) 03 AP CK 0014
In the Andhra Pradesh High Court
Case No : A.A.O. No. 481 of 1986

R. Venkatappa Naidu and Another	Vs	APPELLANT
Thammivevi Sugunamma and Others		RESPONDENT

Date of Decision : 15-03-1989

Acts Referred:

Evidence Act, 1872 — Section 18
Penal Code, 1860 (IPC) — Section 304A
Registration Act, 1908 — Section 17

Citation : (1990) ACJ 1080

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : S.V. Ramana Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

K. Ramaswamy, J.—On June 2, 1982 at about 8.00 a.m. on Srikalahasti-Naidupet Road near Poyakothu village, the deceased Thammineni Srinivasulu Naidu aged about 35 years who got into the tractor bearing No. AAC 358 died due to the rash and negligent driving of the driver, RW 2, when the deceased fell down under the wheels and was run over. The widow, the minor children and the mother, respondent Nos. 1 to 5 herein, laid the claim in a sum of Rs. 80,000/-. The Tribunal below found that the death was due to rash and negligent driving of the driver, but held that the deceased was not proved to be agriculturist cultivating Ac. 3-00 land on lease basis. However, it held that he must be an agricultural labourer and was contributing a sum of Rs. 200/- per month to his family, viz., his wife, three minor children and mother. As a result, the annual dependency was fixed at Rs. 2,400/-, applied multiplier of 14.18 since he was aged 35 years and awarded a sum of Rs. 34,032/-. It also awarded a sum of Rs. 1,000/-towards medical expenses and Rs. 5,000/-towards loss of consortium to the widow. It was found that the deceased also had contributed to the accident since he was standing on a rod when the vehicle was being driven by the second appellant. As a result half of the amount thereof, viz., Rs. 20,016/-was awarded.

As against the amount awarded the appeal has been filed by the owner and the driver, the first and second appellants respectively.

2. The contention of Mr. S.V. Ramana Reddy, learned counsel for the appellants, is that there is no evidence that the driver drove the vehicle rashly and negligently, as a result the liability cannot be fastened on the appellants. We have the direct evidence of PW 2 who has stated that the deceased got into the tractor driven by RW 2 and the accident took place due to negligent driving. In C.C. No. 95 of 1982 on the file of the Addl. Munsif Magistrate, Srikalahasti, the driver has confessed that he had driven the vehicle rashly and negligently and on that basis he was convicted for an offence u/s 304A of the Indian Penal Code and he was sentenced to pay fine. In view of the fact that the driver himself has confessed that he had driven the vehicle rashly and negligently, though the judgment in the criminal court is not binding on the civil court, but that admission is admissible u/s 18 of the Evidence Act. Therefore, it constitutes a substantive evidence in the proceedings u/s 110-A of the Motor Vehicles Act (Act 4 of 1939), for short "the Act". Accordingly, I hold that the accident had occurred due to rash and negligent driving of the driver.

3. It is next contended that the first appellant is the registered owner and the second appellant has purchased the vehicle from the 1st appellant and till the transfer is effected by the registering authority u/s 31 of the Act, the vendor continues to be the owner; the vendee second appellant is thereby not liable to pay compensation. In support thereof, he placed reliance on the Full Bench decision of this court in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, obligates the transferee to report to the registering authority concerned of the transfer of the vehicle along with the certificate of registration and get the registration transferred in his name. Therefore, when the transfer is effected, it is the duty of the transferee to apply to the registering authority u/s 31 and get the registration transferred. This is only a statutory obligation. The vehicle is a movable one and transfer is effected by delivery of possession of the vehicle by the vendor to the vendee along with "C certificate and if it is a stage carriage the route permit, etc., and the title gets transferred. If the value is more than Rs. 100/-and if it is duly got registered u/s 17 of the Registration Act, 1908, at the option of the parties, the right, title and interest in the property stood in the name of the vendor stands extinguished and the same stands transferred to the vendee from the date of registration of the conveyance deed. Therefore, the effect of registration u/s 31 is only a ministerial act of statutory obligation and the title does not cease to exist in the transferee till the mutation is effected in the registration certificate, unless there is a special contract to the contrary. In Panna Lal v. ChandMal 1980 ACJ 233 (SC), the facts are that along with the vehicle, AJM 455, the road permit and also the memo of sale as well as "C certificate were handed over to the plaintiff. u/s 31 of the Act, the transferee within thirty days of the transfer of ownership shall report the transfer to the registering authority with the prescribed fee and enter the transfer of ownership in the "C certificate, etc. Instead, he gave notice to the sellers, viz., original

owners. Since they did not take any action he laid the suit for refund of the purchase price. The suit was dismissed. On appeal it was confirmed. It was held that u/s 31 the transfer of ownership is permitted and it casts an obligation on the transferee to report to the registering authority concerned regarding the transfer of the vehicle along with a certificate of registration and then get the registration transferred in his name. It is the duty of the plaintiff to have applied for transfer to the registering authority u/s 31. If the plaintiff did not choose to move the registering authority, he cannot be heard to say that he is entitled to refund of the purchase money or damages. From this it is implicit that on delivery of possession of the vehicle together with the registration certificate and if it is a stage carriage or public carrier, the route permit, the title in the vehicle stands transferred to the transferee and the transfer becomes concluded. In J.C. Chennarayudu Vs. N. Lakshmmamma and Others, , Madhava Reddy, J. (as he then was) speaking for the Division Bench was to consider a case where both the transferor and the transferee had agreed that the transferor would continue to be the owner of the vehicle until it is duly registered u/s 31 and that the purchaser is legally entitled to ply the vehicle on the public roads in terms of the contract. The question therein was whether the transferee is liable to pay compensation for damage due to the accident occurred in the interregnum. In that context the Division Bench has held that a specific undertaking was also given by the transferee to the transferor that he would not transport prohibited goods or contraband in the vehicle. Such an undertaking would not have been given by the transferee to the transferor, if the entire right, title and interest in the vehicle stood transferred to the transferee. That stipulation was necessary only because the transferor retained interest in the vehicle that he was aware that any liability which can be fastened to the vehicle would be the liability of the transferor until there is a valid transfer of the "C certificate and the road permit. In those circumstances, it was held that in view of the terms of the agreement between the parties, the transferor continues to be the owner of the property until the transfer is effected in the "C certificate and the road permit. Thereby, the transferor is liable to pay damages for the accident occurred in the interregnum. Far from helping the appellants, the ratio therein supports the view I have taken that in a case where there is transfer without any pre-conditions, then the title to the vehicle stands transferred the moment it was registered and the vehicle was delivered to the transferee vendee. Therefore, from the date when it was transferred he continues to be the owner. In Kondaiah's case 1986 ACJ 1 (AP), relied on by the learned counsel for the appellants, the express covenants in Exh. B-1 are that the vehicle will remain registered in the name of the seller till the transfer of permit is effected by the Secretary, State Transport Authority, Hyderabad. Thereafter immediately the purchaser shall get the vehicle transferred to his name. Till such time the seller shall appear before the concerned authorities in the capacity of the owner, if need be. Thus the covenants in the contract under Exh. B-I clearly show that the vendor continues to be the owner of the property till it is duly transferred in the "C certificate by the Secretary, State Transport Authority. Thereby, the above ratio is also of little

assistance to the appellants. Accordingly, I have no hesitation to hold that, unless there is any contract to the contrary between the transferor and the transferee, the moment the possession of the vehicle together with "C" certificate and if it is a stage carriage or public carrier, route permit is delivered, the title in the vehicle stands transferred to the transferee-purchaser and from that date he is the legal owner. Merely because the "C" certificate has not been transferred in his name, he does not cease to be the owner of the property. What would be the consequence for non-transfer is altogether a different fact or for which we are not concerned in this case. The effect of a contract of insurance is not relevant in this case as the insurance company is absolved of its liability and there is no appeal against it. Accordingly, I hold that the second appellant transferee is the owner of the vehicle.

4. It is next contended that the second appellant is not liable for the tortious act committed by the driver. The driver had taken the deceased unauthorisedly in the vehicle. He was not instructed to take any passengers and the vehicle is only a tractor. He cannot take any passenger in the tractor as per law. Therefore, the owner is not liable for the unauthorised acts of the driver. Prima facie the contention appears to be plausible, but I find it very difficult to accept this argument. It is true that this court in *Machiraju Visalakshi v. Treasurer, Council of India, Mission of the Luthern Church in America, Machiraju Vishalakshi and Others Vs. The Treasurer, Council of India Mission of the Luthern Church in America Guntur and Others*, , held that the master ordered the driver to take the car for servicing to certain place permitting one police constable known to him to travel in car; the master further told the driver not to pick up any passenger en route but the driver picked up passengers on the way to make some gain for himself and committed an accident during the transit resulting in death of the passengers; the master could not be held liable for payment of compensation u/s 110-B. In that case there is an express instruction given by the master to the driver not to pick up any passenger en route but contrary to the direction the driver picked up the passengers, who sustained injuries or death due to the accident. Thereby the master would be absolved of the vicarious liability of the owner. That case is distinguishable for the reasons that there is express direction given by the master. In *Jiwan Dass Roshan Lal v. Karnail Singh* 1980 ACJ 445 (P&H), S.S. Sandhawalia, C.J. of the Punjab & Haryana High Court, also has taken the same view stated earlier. There is no dispute as regards the proposition of law as such. But the question in this case is whether the owner has given any specific direction to the driver and the driver has contravened the directions issued by the owner. After all, the passenger is not aware of the authority of the driver or the instructions given by the owner. If the driver has exceeded his authority and picked up the passengers, it is always open to the owner to proceed against the driver and recover the damages which were mulcted on the owner for the tortious acts committed by the driver. But that would be entirely a different fact. Where the third party was inducted to get into the vehicle on payment of fare and, on receipt of it, when he was permitted to

travel in the vehicle, then ostensibly the driver acted during the course of his employment, and the vicarious liability has to be fastened on the owner subject to the owner recovering the same from the driver according to law for his unauthorised acts. But the innocent passenger or his legal representatives cannot be denied of the legal right given under Sections 110-A and 110-B of the Act. In a recent judgment, I have considered the liability of the owner of the tractor with regard to the tortious act committed by the driver and also in another case as regards the liability of the owner for picking up passengers in a goods carriage by the driver contrary to the provisions of the Act. Therein it was held that if the driver contravenes any of the provisions of the Act, it is always open to the authorities to take appropriate action as per law but the liability to the third party cannot be denied on the ground that the driver has contravened the provisions of the Act. Accordingly, I hold that the ratio in those cases is of little assistance to the appellant. It is open to the second appellant to proceed against the driver to recover the damages suffered due to the acts unauthorisedly done by the driver. It is not a case of the first appellant that he instructed his driver not to pick up any passenger en route but contrary thereto the driver has committed the tortious act.

5. Considered from this perspective, I hold that the appellants are liable to pay damages to the legal representatives of the victim.

6. For the foregoing reasons, the appeal is dismissed, but in the circumstances of the case, there shall be no order as to costs.