
(2019) 09 DEL CK 0565

In the Delhi High Court

Case No : MAC.APP. No. 411, 713 Of 2018, Civil Miscellaneous Application No. 16739, 31164, 31166 Of 2018

Rajendra Singh

APPELLANT

Vs

Shabbo & Ors (Bajaj Allianz General Insurance Co Ltd)

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(30), 50(3)

Citation : (2019) 09 DEL CK 0565

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : T.K. Mukherjee, A.K. Soni, Pavan Kumar

Final Decision : Dismissed

Judgement

Najmi Waziri, J

1. These appeals impugn the order dated 03.02.2018 passed by the learned MACT in MACT No. 422/17, wherein the appellant Rajendra Singh has been held liable to pay compensation apropos the fatal accident caused by the offending vehicle registered in his name. The learned counsel for the appellant relies upon the reply of the alleged subsequent owner of the vehicle. The learned Trial Court has reasoned as under:

"21. In this case, respondent No. 2 in his WS stated that he has already sold out the said vehicle to one Chander Pratap Singh on 10.02.2016 vide an agreement dt. 10.02.2016. Respondent No. 2 examined himself as R2W1 by way of affidavit Ex. R2W1/1. Witness has relied upon the documents i.e. agreement dt. 10.02.2016 Ex. R2W1/B, delivery receipts Ex. R2W1/C, copy of insurance policy Ex. R2W1/D and form 29 and form 30 mark X. The witness during cross examination deposed that he is the registered owner of the offending vehicle till today; he has not intimated to the registering authority regarding sale of offending vehicle to respondent No. 4 and he has got the offending vehicle

released on superdari. Merely signing form No. 29 and 30 by respondent No. 2 is not sufficient to transfer the offending vehicle.

I have gone through the documents on record. Respondent No. 3 examined witness i.e. Sh. Sudeep Kumar, Sr. Executive Legal as R3W1 by way of affidavit Ex. R3W1/A. Witness has relied upon the documents i.e. office copy of insurance policy Ex. R3W1/1 and copy of DL of respondent No. 1 Ex. R3W1/2.

Respondent No. 3 further summoned and examined the witness i.e. Mr. Mohd. Ali Raza from office of transport Department, NEZ, Loni Road, Shahdara, Delhi as R3W2 deposed that he is a Record Keeper and he has knowledge about the issuance of licences qua different classes of vehicles. He has been summoned here to prove the particulars of the DL of Rajan Singh bearing no. DL-0520130228333 Ex. R3W2/1 Rajan Singh was authorized only to drive M.CYL., LMV-NT (Non Transport). Rajan Singh has no valid and effective DL to drive the offending vehicle no. DL-1L-M-8452 being transport commercial vehicle. The DL holders are specifically given the licence under LMV-T to drive commercial vehicle and the DL holders who drive commercial vehicle with endorsement LMV-NT are challaned and fined as per the law.

22. It is settled the vehicle has to be transferred in view of the Form No. 29 and 30 to be presented before the transport authority and needs to be transferred. The respondent No. 2 during his evidence as well did not produce or prove any documents regarding transfer of the vehicle and its registration in the name of Chander Pratap Singh before transport authority. The abovesaid document relied by respondent No. 2 by no stretch of imagination can be considered as an agreement to sell or possession letter. The word " Owner" has been defined in section 2 (30) of the MV Act 1988 as under:-

(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.

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In the facts of this case also evidence produced on record showed that the respondent No. 2 has not even intimated regarding the transfer of the vehicle to the transport authority and prior to the accident or till today in the records of the registering authority the name of the transferee was not yet entered. Para 10 of the said judgment for better appreciation is reproduced as under:-

"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 either before MACT or the High Court. In these appeals, we cannot and 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."

24. I have gone through the judgment of Hon'ble Supreme Court in 2018 SCC Online SC titled Naveen Kumar V/s Vijav Kumar Ors. and the ratio of the judgment is squarely applicable in the facts of the case. Thus, it is clear that the vehicle was registered in the name of the respondent No. 2 and that is all that the Court is concerned with to establish the liability. In the circumstances, the identity of the vehicle having been established. The liability of the respondent No. 2 has been accordingly fixed being owner.

The testimony of R3W1 and R3W2 remained un impeached and uncontroverted. In view of testimony of R3W1 and R3W2, it appears that respondent No. 1 and 2 have breached the terms and condition of insurance policy and also violated the provisions of M. V. Act. Moreover the insurance policy is in the name of respondent No. 4 and there is no privity of contract between the insurance company and respondent No. 2. In view of the evidence on behalf of insurance company, the insurance company is not liable to make any payment and is entitled to be exonerated from the liability. Hence, I am of the opinion that respondent No. 1 and 2 being driver and owner are jointly and severally liable to pay the compensation to the petitioners. Interim award if any paid to injured/petitioner be adjusted in the award amount.

25. Resultantly, the Claim petition stands allowed. Respondent No. 1 and 2 are hereby directed to pay the compensation of Rs. 9,25,712/- within one month to the Claimants. Claimants are also entitled to the interest @ 09 % p.a. on the total compensation amount from the date of filing of petition till realization. (The New India Assurance Co. Ltd. Vs Gopali & Ors., 2012 ACJ 2131 SC, Jiju Kuruvila & Ors. V.s. Kunjamma Mohan & Ors., 2013 ACJ 2141 SC, Puttamma Vs. K.L. Naraynan Reddy & Ors., 2014 ACJ 526 SC)."

2. The appellant is unable to show as to where he has alleged in his Written Statement that the vehicle had been transferred to respondent no. 4. All that has been produced is the insurance policy which was in the name of respondent no.4. There is no privity of contract between the insurer and insured respondent no. 2.

3. The document now sought to be relied upon by the appellant was executed indeed after the pronouncement of the impugned judgment.

The same cannot be taken into consideration. The Court would note that in Prakash Chand Daga vs. Saveta Sharma and Ors. (2019) 2 SCC 747, the Supreme Court has held as under:

"8.....

14. The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In T.V. Jose, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the Registering Authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled."

4. The law stands settled that under the Motor Vehicles Act, 1988, it is the registered owner of the vehicle who shall be considered responsible to compensate against 3rd party liability. In the present case, the alleged transfer was not affected before the Transport Authority in favour of the alleged transferee.

5. In the circumstances, there is no reason to modify the impugned order which has held the registered owner responsible to pay the compensation. It may well be open to the appellant to pursue his remedies against the alleged transferee as per law. In view of the above, the interim order of this Court dated 31.10.2018 is hereby vacated.

6. The appeals, alongwith pending applications, stand dismissed.