

(2010) 02 P&H CK 0002
In the Punjab And Haryana At Chandigarh

Sham Sunder

APPELLANT

Vs

National Insurance Company Limited

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Citation : (2011) ACJ 1544 : (2010) 159 PLR 222 : (2010) 2 RCR(Civil) 926

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Judgement

Rajesh Bindal, J.—This order will dispose of a set of 8 appeals filed by the appellant, who has been held liable to pay compensation on account of a motor vehicular accident.

2. Briefly, the facts of the case are as under:

On 5.3.1985, an accident took place near Shiv Mandir turning at Uchana Kalan. According to the averments in the claim petitions, certain election was being held at village Uchana Kalan on that day. Ram Bhagat took the truck to the school where polling booth had been set up to enable his mother to cast her vote. He was under the influence of liquor at that time and he asked the children to board the truck. Several children boarded the truck which was being driven back by him rashly and negligently. He turned the truck at a high speed, as a result of which the truck turned turtle and fell on one side, on account of which seven children died and Om Parkash received multiple injuries. The claim petitions were filed. The Motor Accidents Claims Tribunal, Jind (for short, "the Tribunal") awarded compensation to the claimants.

3. On the pleadings of the parties, various issues were framed by the Tribunal. The issue, which is relevant for consideration by this Court in the present set of appeals is issue No .2, which is extracted as under:

2. Whether Pawan Kumar/Sham Sunder/Bhup Singh was owner of the truck HRJ-9165 on 5.3.1985, if so, its effect on the liability of the said respondent as also on the liability of the Insurance Company?

4. The dispute is as to who is liable to bear the burden of compensation, namely, as to whether Pawan Kumar, who is the registered owner or the appellant, to whom the vehicle was allegedly transferred by way of execution of a document, though not registered with the Registering Authority or Bhup Singh, to whom Sham Sunder allegedly transferred the vehicle after purchasing the same from Pawan Kumar.

5. Learned Counsel for the appellant submitted that initially when the petitions were filed by the claimants for grant of compensation on account of the accident, Pawan Kumar was shown to be the owner of the vehicle. It is on the application filed by Pawan Kumar subsequently that the present appellant as well as Bhup Singh were impleaded as parties in the claim petitions. The findings recorded by the Tribunal to the effect that the appellant being the owner of the vehicle would be liable to bear the burden of compensation are totally perverse, if the evidence produced on record by the parties is considered. He referred to insurance policy (Ex.R1), driving licence of Ram Bhagat (Ex.R2); registration certificate of the truck (Ex.R3); application dated 8.3.1985 (Ex.R3) filed by Pawan Kumar for release of the vehicle on superdari; sapurdginama (Ex.R5) furnished by Pawan Kumar. Application dated 8.3.1985 and the sapurdginama clearly show that Pawan Kumar had claimed himself to be the owner of the vehicle. The submission is that in the light of the aforesaid clinching evidence, reliance of the Tribunal on document (Ex.R6) dated 31.1.1984, vide which the vehicle in question was allegedly transferred by Pawan Kumar in favour of the appellant and the possession delivered, could not possibly be relied upon for the reason that the original thereof was not produced and it was merely a photo copy. Even that was exhibited by Pawan Kumar without confronting the same to the appellant in his evidence. In view of the aforesaid facts and relying upon the judgments of this Court in Vipin Kumar Sharma Vs. Jagwant Kaur and Others, and Rajasthan High Court in Champalal v. Ramchander and Anr. AIR 1976 Raj 75, it was submitted that the award of the Tribunal holding the appellant to be liable to bear the burden of compensation, deserves to be set aside and Pawan Kumar, who was the registered owner of the vehicle at the time of accident should be burdened with the liability.

6. On the other hand, learned Counsel for respondent-Pawan Kumar submitted that in fact the truck in question, which was involved in the accident, was sold by Pawan Kumar to the appellant for a total sum of Rs. 2,00,000/- by way of a document executed on 3.1.1984. As the truck had been financed by Haryana Financial Corporation, a sum of Rs. 57,000/- was received in cash by Pawan Kumar, whereas the appellant was to repay the loan to the extent of Rs. 1,43,000/- along with interest to Haryana Financial Corporation. The appellant was entitled to get the registration transferred in his name after clearance of the loan. Certain other terms were also mentioned in the document executed, which may not be relevant for the purpose of decision of the present appeals, however, the important condition was that possession of the truck was handed over by Pawan Kumar to the appellant. Once the transfer of ownership as well as

possession of the vehicle is proved on record on the basis of evidence led, Pawan Kumar could not possibly be held liable to bear the burden of compensation as for all intents and purposes, the appellant, who was in custody and control of the truck at the time of accident, has rightly been held liable to satisfy the award of the Tribunal. Reliance was placed upon *Panna Lal Vs. Shri Chand Mal and Others*, .

7. Learned Counsel for the Insurance Company submitted that in the present set of appeals, the only dispute is between the appellant as well as Pawan Kumar as to who is liable to bear the burden of compensation, as there was admittedly violation of the terms of the policy on account of the fact that passengers were being carried in goods vehicle. The Insurance Company, in any case, was not liable.

8. Heard learned Counsel for the parties and perused the relevant referred record.

9. The issue as to who is liable to bear the burden of compensation where it is claimed that the vehicle in question had been transferred to some one else but such a transfer has not been given effect to in the record with the Registering Authority has been considered by Hon"ble the Supreme Court and various High Courts.

In *Champalal's case (supra)*, Rajasthan High Court held as under:

Then Section 31 provides for a transfer of ownership of any such vehicle. It follows from the provisions referred to above that the registration certificate is an essential requirement before any such motor vehicle can be made use of and that any person in whose favour this certificate of registration is issued would obviously be the owner thereof. In case of any transfer of ownership in respect of that motor vehicle, the procedure contemplated u/s 31 has to be followed and till any such transfer is entered in the certificate of registration, it has to be presumed that the person in whose favour such certificate of registration stands, is the owner.

In *Dr. T. V. Jose v. Chacko P.M. and Ors.* 2001 A.C.J. 2059,

Hon"ble the Supreme Court dealing with a similar proposition opined as under:

10. 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 R.T.O. 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 R.T.O. As owner. The appellant could not escape that liability by merely joining Roy Thomas in these appeals. Roy Thomas was not a party either before the 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 Roy Thomas. It will be for the appellant to adopt appropriate proceedings against Roy Thomas if in law, he is entitled to do so.

10. A Division Bench of this Court in Vipin Kumar Sharma's case (supra), referred to the judgment of Hon'ble the Supreme Court in Dr. T.V. Jose's case (supra) opined that a registered owner of the vehicle was liable to satisfy the award of the Tribunal. However, it was left open to the appellant therein to take recourse to appropriate proceedings in accordance with law against the vendee, as claimed in that case.

11. As far as the material on record is concerned, after filing of the claim petitions, respondent No. 2-Pawan Kumar filed application for impleading the appellant and Bhup Singh as respondents therein on the plea that the vehicle in question had been sold by him to Sham Sunder on 31.1.1984 who, in turn, had further sold the same to Bhup Singh. No objection having been raised by the claimants or the other respondents, the aforesaid two persons were impleaded as respondents in the claim petitions. In reply to the claim petitions filed by Sham Sunder, the factum of his being the buyer of the truck from Pawan Kumar was denied and it was stated that in fact, Pawan Kumar is the owner of the vehicle, who got it released on superdari after the accident. It is Pawan Kumar only who was paying the loan instalments to Haryana Financial Corporation and even the route permit and insurance policy were also in his name. Another plea sought to be raised is that the truck in question, which was taken by the appellant vide document executed between the parties on 31.1.1984 was returned back to Pawan Kumar on 6.2.1985, though the document was not exhibited as such on the file. In the reply filed by Pawan Kumar, the fact that he was the registered owner of the vehicle in question at the time of accident, was admitted. It is also a fact on record that the truck in question was taken on superdari (Ex.R3) from the police custody after the accident by Pawan Kumar claiming himself to be the owner of the vehicle and further furnishing superdaganama (Ex.R5).

12. From the evidence on record, it cannot be opined that the sale of vehicle in question, as claimed by Pawan Kumar, was complete in all respects and what remained was only the transfer of ownership in record with the Registering Authority. Rather, from the documents placed on record, written statement and application for superdari filed by Pawan Kumar established that in fact he himself claimed to be the owner of the vehicle. Once that is so, the findings recorded by the learned Tribunal regarding the appellant being the owner of the vehicle is certainly perverse and is liable to be set aside. Accordingly, it is held that the appellant shall not be liable to bear the compensation payable on account of the accident in question and the findings to that effect are set aside. It is further held that Pawan Kumar in fact would be liable to bear the compensation, who was the registered owner of the vehicle on the date of accident and he would be liable to satisfy the award of the Tribunal. However, it is left open for Pawan Kumar to take recourse to appropriate proceedings against the appellant or any other person to whom he claimed to have sold the vehicle, in accordance with law.

The appeals are disposed of in the manner indicated above.