
(1997) 05 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 936 of 1985 in F.A.O. No. 628 of 1980

Smt. Tirpta Bakshi and Others

APPELLANT

Vs

Sukhwant Singh and Others

RESPONDENT

Date of Decision : 13-05-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 22, 31

Citation : (1999) ACJ 498 : (1998) 93 CompCas 381 : (1997) 117 PLR 406 :
(1997) 4 RCR(Civil) 569

Hon'ble Judges : P.K. Jain, J;M.S. Liberhan, J

Bench : Division Bench

Advocate : L.M. Suri and Deepak Suri, for the Appellant; Munishwar Puri, for the Respondent

Judgement

M.S. Liberhan, J.—This Letters Patent Appeal arises out of an award granting compensation of Rs. 80,000 to the claimants against the driver and transferee of the offending vehicle, i.e., truck No. PNP 6544.

2. The sole question raised in this appeal was with respect to the liability of the registered owner, namely, Hans Raj, and of the insurance company, i.e., whether the registered owner is liable to reimburse the claimants and resultantly the insurance company's liability to indemnify the insured, i.e., the registered owner.

3. The learned single judge came to the conclusion that the vehicle in question was sold by Hans Raj, the registered owner, to one Mool Chand. Hans Raj, the transferor, was the insurer of the vehicle. The transferor did not intimate the insurance company with respect to the sale of the vehicle. The insurance company did not transfer the policy to the transferee. Thus, in terms of the contract of indemnity, i.e., the insurance policy, the insurance company was absolved of its liability to pay compensation to the claimants.

4. Learned counsel for the appellants challenged the finding of the learned single judge on the facts. It was contended that in fact, Shri Hans Raj, insured, still had

a subsisting interest in the vehicle, i.e., on the date of accident. Mere transfer of possession of the vehicle by itself would not absolve the transferor of his liability as well as that of the insurance company. Even otherwise, it is proved on record that the alleged transfer was witnessed or proved in view of the affidavit showing the transfer. The affidavit had been tampered with, with respect to the date of sale in order to avoid one's liability especially when it is admitted in evidence that the sale was made by the owner of the truck to one of his drivers for a paltry sum of Rs. 2,000 and the truck is alleged to have been handed over to him just on receiving a payment of Rs. 2,000 as earnest money,

5. In view of the provisions of Section 31 read with Section 22 of the Motor Vehicles Act, 1939, it emerges that though the registration certificate of a motor vehicle may not be a document of title yet it prima facie establishes the real ownership of the vehicle. A presumption of ownership is that the person who is registered as owner in the registration certificate under the Motor Vehicles Act is the owner unless the same is rebutted by the owner, i.e., transferor or the transferee, by leading cogent evidence or can be shown by circumstantial evidence showing the ownership vesting in someone else than the registered owner mentioned in the certificate of registration. We find support in our observation from *Phul Bus Service Vs. Financial Commissioner, Taxation and Others*, .

6. We have heard learned counsel for the parties at length and also gone through the records. There is no gainsaying that men may lie but circumstances do not. Secondly, an admission made by a person against himself is the best evidence. The salient facts which emerge from a reading of the statement of Hiramoni (RW-6) who is the son of the transferor, Hans Raj, and appeared as his attorney, are that in the end of April, 1977, the truck was delivered to Shri Mool Chand by his father, Hans Raj, when a sum of Rs. 2,000 was given to him as earnest money. One Prem Chand stood as surety for payment of the remaining sale price. Though he stated that Mool Chand paid the remaining amount on May 6, 1977, yet it is an oral statement of Hans Raj in his own favour which has to be weighed and assessed by balancing the counter-statement made by Mool Chand, transferee of the vehicle, that he took the delivery of the truck after it had been registered in his name in January, 1978, which finds corroboration from the fact that an affidavit with respect to the title of the truck and having no objection to the transfer of the same being executed and sworn in terms of the requirement of the Motor Vehicles Act and the rules made thereunder was given by Hans Raj to Mool Chand in December, 1977. The affidavit is duly sworn by Hans Raj and identified by an advocate before the Oath Commissioner. Though the date of sale has been entered in ink appears to be later on as it does not bear the signatures either of the deponent or of the Oath Commissioner while the entire affidavit is typed one. Thus, it would be reasonable to infer that the vehicle was sold and transferred only in December while the accident took place in August. Possession of the truck is not material to determine the vicarious liability of the owner as the possessor would be presumed to be in possession on behalf of the legal owner,

who is none else but the registered owner till proved otherwise, May be that for the purpose of avoiding the payment of goods tax an affidavit was filed for obtaining a clearance certificate for payment of goods tax, wherein again Mool Chand had entered the date of purchase without any entry with respect to the date being not typed separately and having been signed by any one. The deponent was not identified by any person before the Oath Commissioner nor the Oath Commissioner attested that he knew the deponent personally. In these circumstances, it cannot be said whether the affidavit was sworn by the deponent before an Oath Commissioner, whether it is in fact sworn by him or not, apart from the fact that a bare looking at the affidavit and the signatures for the alleged receipt of truck by Mool Chand appear to be patently and visibly distinct. Thus, no reliance can be placed on the documents, exhibits RW-2/2, RW-2/3 and RW-6/5. Similarly, exhibit RW-6/3 cannot be relied upon almost for the *pari materia* reasons, i.e., date in the affidavit was filled in by pen in the blank space without being signed by any one, the deponent not being identified either by the Oath Commissioner, apart from the fact that it was only an intimation with respect to suspension of the route permit for January 1, 1977.

7. It may also be noticed that the signatures of Mool Chand are affixed on exhibit RW-5/2 at a place meant for the signatures of the Registration Authority. The only proper duly executed and undisputed document which has come on record is the affidavit sworn by Hans Raj on December 22, 1977, duly identified by an advocate wherein the date of sale as April 28, 1977, having been filled in pen, i.e., much after the date of accident, one can reasonably draw an inference with respect to the date of sale and liability of Hans Raj. There is no reliable evidence on record to show when the entire consideration was paid by transferee to the transferor. One cannot in the ordinary course of human conduct surrender his title to a truck for a paltry sum of Rs. 2,000 admittedly paid as earnest money unless the entire consideration is paid. This finds corroboration from the affidavit for no objection, sworn in December,

8. Learned counsel for the appellants vehemently argued that since the insurance policy undertook to indemnify the driver of the vehicle and the policy being a third party policy, consequently the insurance company is jointly and severally liable to pay compensation to the claimants. It is nobody's case that the driver of the vehicle was not under indemnity of the insurance company under the insurance policy. I may hasten to add that inferences ordinarily should be drawn in favour of the claimants who are a third party and were not privy to the contract of insurance. The statutory insurance is incumbent to protect his interest. The attempt should be to protect his interest rather than to defeat it, as otherwise the respondents would be able to render the provisions of law and its object illusory and reduce it to a pious wish of the Legislature to protect the third person. Learned counsel for the appellants, in support of their contention, relied upon *New India Assurance Co. Ltd. Vs. Moti Ram and Others* and *Jupiter General Insurance Co. Ltd. and Another Vs. Gurcharan Singh and Others*,

9. Nothing has been pointed out to take another view except the one taken by the Motor Accidents Claims Tribunal as well as the learned single judge that on the relevant date, i.e., August 28, 1977, the vehicle was being driven by Sukhwant Singh, respondent, and Hans Raj was the registered owner.

10. The driver, the owner of the vehicle and even the possessor of the vehicle nowhere denied that the respondent-driver was driving the truck not under their instructions. Rather it is nobody's case except the denial of the driver, that he was not driving the vehicle under the control and instructions of the insured, Hans Raj, may be the owner has not remained in actual possession for the purpose of plying the vehicle. Mere transfer of ownership would not really affect the matter when the contract of insurance policy covers the driver too. Moreover, as discussed earlier, Hans Raj, insured, was the owner of the truck having a subsisting interest in it and it is for the driver or the owner to show that the driver was driving it without the permission of the owner. We find support for our above observation from the law laid down in *New India Assurance Co. Ltd. Vs. Moti Ram and Others* by a Division Bench to which we have got nothing to add.

11. In view of the observations made above and on appreciation of evidence-documentary as well as oral--we are of the considered view that Hans Raj, the registered owner of the vehicle, had a subsisting interest in the vehicle till December, 1977, and the accident having taken place on August 28, 1977, consequently, Hans Raj is liable for the tortious act of his driver for rash and negligent driving of the offending truck even if its possession was handed over to Mool Chand in April, 1977. Without consideration, the transfer was an eyewash at the most. It is the owner as well as the ostensible owner who will be liable to pay the compensation, viz., Hans Raj, respondent No. 2.

12. In view of the observations made, above, the judgment of the learned single judge is set aside and the Letters Patent Appeal is accepted with no order as to costs. Hans Raj, owner, Mool Chand, transferee, the driver of the offending vehicle as well as the insurance company are held jointly and severally liable to reimburse the claimants.