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(2014) 01 AP CK 0146

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 186 of 2005 and X.OBJ (SR) No. 10938 of 2005

Sri Phanidra Finance Corporation — APPELLANT

Vs

Gali Brahmanandham and Others — RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 158, 166, 2(30), 50

Citation : (2014) 01 AP CK 0146

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : T.V.S. Prabhakara Rao, Advocates for the Appellant; K.V.L. Jayasimha, Advocates for the Respondent

Judgement

B. Chandra Kumar, J.—Whether the registered owner of a vehicle is liable to pay compensation or a transferee from the registered owner, which is not recorded with the registration authorities is liable to pay compensation is the short question that falls consideration in this appeal.

2. The brief facts of the case are as follows:

"On 04.04.1999 in a road accident, the deceased Gali Ganiraju died. The third respondent herein, who purchased the vehicle from the appellant herein, was driving the vehicle at the time of accident. He also sustained injuries in the accident. The vehicle involved is a scooter. It is not in dispute that the appellant is the registered owner of the vehicle. But the case of the appellant is that he sold away the same in the year 1997 to the third respondent herein. The parents of the deceased claimed compensation. It appears that father of the deceased-1st claimant died during the pendency of the proceedings and therefore the second claimant, mother of the deceased, is the only claimant and she alone was awarded compensation of Rs. 1,20,000/-. The Tribunal by its award dated 20.10.2004 in O.P. No. 169 of 2000 observed that the appellant herein and the third respondent, i.e. the financer and purchaser both are jointly

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and severally liable to pay the compensation awarded. The appellant financer aggrieved by the same, filed this appeal."

3. The main contention of Sri T.V.S. Prabhakara Rao, learned counsel for the appellant is that there is sufficient evidence to show that the vehicle has been transferred in the name of third respondent and it is held that when the vehicle was transferred in the name of third respondent, the Tribunal was not justified in fixing the liability on the appellant and third respondent jointly. In support of his contention, he has relied on judgments in The New India Assurance Co. Ltd. Vs. Smt. Sheela Rani and Others, , Uppala Muralidhar Rao Vs. K. Balakrishna Reddy and Others, , Godavari Finance Co. Vs. Degala Satyanarayanamma and Others, , and Pushpa @ Leela and Others Vs. Shakuntala and Others, .

4. Learned counsel for the claimants Sri K.V.N. Jayasimha submits that unless the vehicle is transferred in the name of the purchaser, the registered owner would be continued to be liable. He has relied on judgment of the Apex Court in Pushpa alias Leela(supra) and on the judgment of the Delhi High Court in India Lease Development Ltd. Vs. Savita and Others, . The facts are not in dispute. In that case, the insurance company with which the vehicle was insured had taken a stand that transfer of the car by the transferor to transferee has not informed to it about the transfer as required under Section 103(A) of the Motor Vehicles Act, 1939 and the accident having been taken place subsequent to the transfer, the insurance company is not liable. The Apex Court held that on the transfer of the vehicle intimation was given, but though not in the prescribed form. In the present case, the vehicle was not insured. Therefore, the said decision is not applicable to the facts of the present case on hand. Reliance is placed on the judgment of the Apex Court in Godavari Finance Company. In that case one Ch. Praveen Kumar, 4th respondent was the owner of the vehicle. He purchased the vehicle having been financed by the appellant and subsequently he discharged the loan in the year 1995. The vehicle was in possession and control of Ch. Praveen Kumar - the fourth respondent. It met with an accident on 29.05.1995. The appellant was the financer. Its name as a financer was incorporated in the registration book of the vehicle. However, the extract of the registration book reveals that the vehicle was insured and registered in the name of Ch. Praveen Kumar, only with effect from the vehicle was held under a hire purchase agreement dated 06.02.1995 and it was cancelled on 10.11.1995. Accident occurred on 29.05.1995. In that case, the name of the fourth respondent Ch. Praveen Kumar was registered in the registration book. Here in this case, the name of the purchaser is not registered in the registration book. Hence, the said decision is not applicable to the facts of the present case on hand. The factum of hire purchase agreement was also entered in the registration book. Therefore, the facts of that case are entirely different and not applied to the present case. Reliance is placed on decision of the single judge of this Court in Uppala Muralidhar Rao (supra). In the said decision it was held that ownership of the vehicle passes from the transferor to the transferee by executing available document and when the accident occurred after transfer of the vehicle, the

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transferor is not liable. Reliance is also placed on judgment of the Pushpa Alias Leela (supra). In that case, policy was issued on 25.02.1992, but it was expired on 24.03.1993. Policy was taken by one Jitender Gupta. Subsequently he sold the vehicle to Salig Ram. But despite the sale of the vehicle, the change of the ownership of the vehicle was not entered in the certificate of registration. The Apex Court referring the definition of owner, observed at Para 11 as follows:

"11. It is undeniable that notwithstanding the sale of the vehicle neither the transferor Jitender Gupta nor the transferee Salig Ram took any step for the change of the name of the owner in the certificate of registration of the vehicle. In view of this omission Jitender Gupta must be deemed to continue as the owner of the vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale on 02.02.1993."

5. Therefore, as far as the liability of the insurance company is concerned, it was held that the insurance company is liable to pay compensation. Section 2(30) of the Act defines "owner" in the following terms:

"2.(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."

6. Section 50 of the Act reads as follows:

"50. Transfer of ownership--(1) Where the ownership of any motor vehicle registered under this Chapter is transferred--

(a) the transferor shall--

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) *******

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) - (5) * * * * *

(6) On receipt of a report under sub-section (1), or an application under sub-

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section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority."

In case between India Lease Development Ltd. (supra) Delhi High Court observed as follows:

"Following judgment of the apex Court in Pushpa @ Leela and Others Vs. Shakuntala and Others, , wherein it was held that in the absence of taking any steps by the registered owner for transfer of the vehicle, the registered owner would continue to be liable. Since the respondent No. 7 has not come forward to deny the execution of the sale letter and Forms 29 and 30 for transfer of the vehicle, he is proved to be the rightful owner of the vehicle. He too cannot escape the liability and would be liable to pay the compensation to the claimants along with the registered owner."

7. Hence, it is clear that in the absence of taking any steps by the registered owner for transfer of the vehicle, the registered owner would continue to be liable.

8. Moreover, the Tribunal has held that both the appellant and third respondent are jointly and severally liable to pay compensation.

9. In the above circumstances, it appears that there are no merits in the appeal and accordingly it is liable to be dismissed and the same is dismissed.

10. The settled legal position is that the cross objections are maintainable. In view of the decision of the Supreme Court in Rajesh and Others Vs. Rajbir Singh and Others, , the Apex Court held that it is the duty of the Tribunal to award just and reasonable compensation. The settled legal position is that the Claims Tribunal shall treat any report of accidents forwarded to it under sub-Section (6) of Section 158 as an application for compensation under sub-Section (4) of Section 166 of the Act. It is also settled law that irrespective of the total amount claimed by the claimants, the Tribunal can award the amount of compensation which appears to it just and reasonable. In fact, the appeal is nothing but continuation of original proceedings. In the light of above discussion, I hold that cross objections are maintainable.

11. Even in the absence of cross objections, the appellate Court has ample powers to pass appropriate orders under Order XLI Rule 33 CPC:

"Order XLI Rule 33 CPC: Power of Court of Appeal: The appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of

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all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

12. The above rule brings out the scope of the authority of the appellate Court irrespective of the fact as to who has approached the Court. There is no bar on the appellate Court to give a finding in favour of the respondents even though they have not approached the Court with a prayer for the same. The provisions of the Motor Vehicles Act, 1988 being beneficial provisions, it appears that Order XLI Rule 33 CPC come to the rescue of the claimant in this appeal. The above provision makes it clear that the appellate Court has sufficient powers to do substantial justice between the parties irrespective of the fact as to which party has approached the appellate Court. Of course, such power has to be rarely exercised, but where the facts of the case demands it is the duty of the Court to exercise such powers for doing ultimate justice. The similar view was taken by the High Court of Punjab and Haryana at Chandigarh in case between Oriental Insurance Company Ltd. Vs. Gurdev Singh and others, .

13. Coming to the facts of the present case, admittedly, the deceased was aged about 25 years. P.W. 1 is no other than the mother of the deceased. The deceased was a sportsman and Ex. A6 is sports certificate of the deceased issued by the concerned authorities. The deceased has completed B.Com Degree. It is the case of the claimant that the deceased was assisting his father in running hotel under the name and style of Sri Dhana Lakshmi Coffee Hotel, Nidadavole. The Tribunal has taken the income of the deceased at Rs. 1,500/- per month. It has to be seen that a daily labourer earns about Rs. 100/- to Rs. 150/- per day. Having regard to the age of the deceased, his educational qualifications, sports certificates and the business done by him, I consider just and reasonable to take his income at Rs. 5,000/- per month, even if 50% of the same is deducted towards his personal expenses, the loss of earnings would be Rs. 2,500/-. Since there are no other legal heirs, except the mother, the age of the mother should be taken as criteria for determining the multiplier. Since, the age of the mother was shown as 50, the appropriate multiplier is ''11''. The loss of dependency would come to Rs. 2,500/- x 12 x 11 = Rs. 3,30,000/-. It is also settled law that mother needs the support of her son during her old age. In view of the decision reported in Vimal Kanwar and Others Vs. Kishore Dan and Others, , wherein the Apex Court observed that the mother of the deceased is entitled to an amount of Rs. 1,00,000/- for the loss of love and affection. In the circumstances, I consider just and reasonable to award Rs. 50,000/- towards loss of love and affection and support during old age. The claimant is also entitled to Rs. 25,000/- towards

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funeral expenses. Thus, the total compensation comes to Rs. 4,05,000/-.

14. It is settled law that irrespective of the claim made by the claimants, the Courts have to award just and reasonable compensation. However, the claimants have to pay deficit Court fees.

15. In view of the above discussions, the MACMA is dismissed and the cross objections are allowed granting compensation of Rs. 4,05,000/- to the claimant. The rate of interest shall be at 7.5% per annum from the date of petition till realization. However, the claimant shall pay deficit Court fees before drafting the decree. No costs.

16. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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