

# SUPREME COURT OF INDIA

Purnya Kala Devi

Vs.

State of Assam

C.A.No.1672 of 2010

(P.Sathasivam CJI., Ranjan Gogoi and N.V.Ramana JJ.)

07.04.2014

## JUDGMENT

### **P. SATHASIVAM, CJI.**

1. This appeal is directed against the impugned final judgment and order dated 04.01.2007 passed by the Gauhati High Court in MAC Appeal No. 30 of 2003 whereby the High Court held that the claimant/appellant herein is entitled to a sum of Rs. 1,94,400/- as compensation for the death of her husband in the motor vehicle accident and the same is payable by Abdul Salam-who was the registered owner of the vehicle at the relevant point of time and not by the State Government.

### 2. Brief Facts:

a) The appellant/claimant is a widow and mother of four children. On 16.02.1993, at about 10:15 a.m., the claimant's husband died in a road accident by a speeding bus belonging to Md. Abdul Salam which was not insured and was under requisition of the State Government at the relevant time.

b) The appellant filed MAC Case No. 34 of 1993 before the Motor Accident Claims Tribunal (in short 'the Tribunal'), Darrang, Mangaldai for compensation of Rs. 2,00,000/- against the registered owner-Md. Abdul Salam. Sub Divisional Officer (Civil), Udalguri and the State of Assam were also impleaded

as parties in the said case.

c) The registered owner of the vehicle filed his reply contending that at the relevant time the vehicle was under requisition of the State Government and, hence, the liability to pay compensation is that of the State Government. The SDO, Udalguri, Respondent No. 2 herein, on his behalf and on behalf of the State Government, filed a written statement denying any of its liability and averred that “the vehicle was released on the same date at 10.30”. The SDO further averred that “as per the police report, in the absence of driver, the Handiman of the mini bus drove the bus without any permission from the police and occurred the accident”.

d) By judgment dated 11.07.2002, the Tribunal directed the registered owner to pay a sum of Rs. 1,41,400/- with interest at the rate of 9% per annum to the appellant/claimant and absolved Respondent Nos. 1 and 2 herein from any liability.

e) Being aggrieved by the said order, the appellant filed MAC Appeal No. 30 of 2003 in the Gauhati High Court not only for higher compensation but also for absolving Respondent Nos. 1 and 2 herein from any liability.

f) By impugned order dated 04.01.2007, though the High Court enhanced the compensation by Rs. 50,000/-, it was held that the State Government cannot be held liable for paying compensation to the appellant under the Motor Vehicles Act, 1988 (for short “the 1988 Act”) because the liability to pay compensation under the said Act is upon the registered owner, insurer or driver of the vehicle or all or any of them.

g) Aggrieved by such direction, the appellant has filed this appeal by way of special leave.

3. Heard Mr. Jatin Zaveri, learned counsel for the appellant and Mr. Navnit Kumar, learned counsel for the respondents.

Contentions:

4. The appellant has filed the above appeal contending that at the relevant time, the offending vehicle was under requisition of the State Government and hence, under the provisions of the Assam Requisition and Control of Vehicles Act, 1968 (for short “the Assam Act”), Respondent No. 1 is liable to pay compensation.

5. On the other hand, it is the stand of Respondent No. 1 that unlike the Motor Vehicles Act, 1939 (for short ‘the 1939 Act’), unless a vehicle is registered in the name of a person, he cannot be regarded as the owner of the vehicle under the 1988 Act. Under Section 2(30) of the 1988 Act, a person, in order to be regarded as an owner, must have the vehicle registered in his name and where such a person is a minor, his guardian would be regarded as the owner. The said provision also indicates that in relation to a motor vehicle, a person may be regarded as owner though he may not be the registered owner of the vehicle provided he is in possession of the vehicle on the basis of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation. As such, Respondent No. 1, neither being a registered owner of the vehicle nor being in possession of the vehicle pursuant to a hire-purchase agreement or an agreement of lease or an agreement of hypothecation, is not liable to pay any compensation to the appellant/claimant. On facts, it is stated that the then SDO(C), Udalguri requisitioned the vehicle (Bus) bearing Registration No. AMZ 6858 on 14.02.1993 which was placed on Government Duty. On 16.02.1993, at 10.30 a.m., when the said vehicle was taken out of the Police Station Campus and the driver took a turn towards Udalguri Tiniali, a cyclist named Dhan Bahadur Chetri (since deceased), a chowkidar at Udalguri Girls H.S. School, who was coming towards Udalguri town from his school, was knocked down by the said vehicle leading to his death. The accident took place after the release of the said vehicle, i.e., on 16.02.1993 and the offending vehicle was without insurance at the time when it was being plied and met with the accident. Under Section 168(1) of the 1988 Act, it is the insurer or owner or driver of the vehicle or any of them who could have been liable to pay compensation. As such, the State Government is not liable to pay compensation to the appellant as it had only requisitioned the vehicle and was neither the owner nor the driver of the offending vehicle in view of the provision as envisaged in Section 2(30) of the 1988 Act. The offending vehicle had already been released by the State Government before the accident and the same was evident from the records. The appellant had already been awarded compensation by the Tribunal which was further enhanced by the High Court and any dispute regarding the liability of paying compensation by the State Government lies with the owner of the vehicle and the

appellant has no legal right to agitate her case in the present facts and circumstances and remedy sought for by the appellant was already allowed by the Tribunal and the High Court. Furthermore, the vehicle in question in the instant case was driven by the owner of the vehicle without any valid insurance policy at the time of the accident. The High Court has given the correct interpretation of the relevant provisions of law. The impugned judgment and order dated 04.01.2007 passed by the High Court is justified on all accounts.

Discussion:

6. Section 2(19) of the 1939 Act defined the expression “owner” to mean where the person in possession of a motor vehicle is a minor, the guardian of such minor and in relation to a motor vehicle, which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement.

7. On 26.04.1969, the Assam Act came into force. Section 2(b) of the Assam Act defines the expression “owner” almost identically as defined under Section 2(19) of the 1939 Act which is as under:-

“2(b) “owner” includes where the person in possession of the vehicle is minor, the guardian of such a minor, and in relation to a vehicle which is the subject of a hire-purchase agreement the person in possession of the vehicle under that agreement;”

8. The 1939 Act was consolidated and amended by the 1988 Act. Section 2(30) of the 1988 Act defines “owner” to mean as under:-

“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.”

9. It is not in dispute that on 14.02.1993, the SDO, Udalguri requisitioned a Bus belonging to Md. Abdul Salam under the Assam Act. While under requisition, on 16.02.1993, the Bus involved in an accident and killed the husband of the appellant at

10.15 a.m. At that time, the vehicle was not insured.

10. The appellant/claimant claimed compensation of Rs. 2,00,000/- against the owner of the vehicle, i.e., Md. Abdul Salam as well as the State of Assam-Respondent No. 1 herein. The registered owner filed the reply contending that Respondent No. 1 was liable to pay compensation. The SDO, Udalguri, Respondent No. 2 herein, filed written statement before the Tribunal alleging that the vehicle was released on the date of accident at 10.30 a.m. In this regard, it is useful to refer the stand taken by the Sub-Divisional Officer (SDO)(C), Udalguri on behalf of the State of Assam in the following terms:

“The fact of the case is that the vehicle was requisitioned by the Sub- Divisional Officer (Civil) Udalguri on public demand. The vehicle was handed to O/C of Police Udalguri for their duties.

As per police report in the absence of driver the Handiman of the Mini Bus drove the bus without any permission from the police and occurred the accident.

The vehicle was released on same date at 10.30 and the accident occurred at 10.30.”

11. Though it was stated that the vehicle was released on the same date at 10.30 a.m., the State or its officers failed to place and substantiate the same by placing any material. It is relevant to refer Section 5(1) of the Assam Act, which reads as under:

“5. Release from requisition. (1) The officer or authority requisitioning a vehicle may, at any time, release the vehicle from requisition and when it is decided so to do, a notice in writing shall be served on the owner to take delivery of the vehicle on or with such date and from such place and such person as may be specified therein.”

12. It is clear that Section 5(1) of the Assam Act provides that a vehicle may be released from requisition after service of notice in writing on the owner to take delivery of the vehicle on or with such date and from such place or from such person as may be specified therein and with effect from such date no liability for compensation shall lie with the officer or authority. In spite of our repeated questions,

learned counsel for the State of Assam has brought to our notice only the above-quoted plea taken by the SDO (C) and has not placed any material, such as notice in writing served on the owner, to prove that the delivery of vehicle was effected on such date and time in terms of Section 5(1) of the Assam Act.

13. Though the above point was pressed into service, the High Court, without adverting to Section 5 of the Assam Act, merely on the basis of the definition of “owner” as contained in Section 2(30) of the 1988 Act, mulcted the award payable by the owner of the vehicle. The High Court failed to appreciate that at the relevant time the offending vehicle was under the requisition of Respondent No. 1 – State of Assam under the provisions of the Assam Act. Therefore, Respondent No. 1 was squarely covered under the definition of “owner” as contained in Section 2(30) of the 1988 Act. The High Court failed to appreciate the underlying legislative intention in including in the definition of “owner” a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the “owner” and not alone the registered owner. The High Court further failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control. The High Court also failed to appreciate that Section 146 of the 1988 Act requires that no person shall use or cause or allow any other person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the State Government has violated the statutory provisions of the 1988 Act. The Tribunal also erred in accepting the allegation of Respondent No. 2 that the vehicle was released on the date of the accident at 10.30 a.m. and the accident occurred at 10.30 a.m. without any evidence even though in the claim petition, it was stated that the accident had occurred at 10.15 a.m.

14. In the light of what is stated above, we accept the stand taken by the appellant and hold that the appellant/claimant is entitled to receive a sum of Rs. 1,94,400/- as fixed by the High Court with interest at the rate of 9% per annum from the date of claim petition till the date of deposit and the same is payable by the State of Assam. The amount shall be deposited before the Tribunal within a period of eight weeks from the date of receipt of copy of this order and on such deposit being made, the appellant – Purnya Kala Devi is permitted to withdraw the same. The appeal is allowed on the above terms.

