

# **SUPREME COURT OF INDIA**

Central Bank of India

Vs.

Jagbir Singh

C.A.No.3645 of 2015

(Dipak Misra and Prafulla C.Pant JJ.)

16.04.2015

## **JUDGMENT**

### **PRAFULLA C. PANT, J.**

1. This appeal is directed against order dated 19.11.2013, passed by National Consumer Disputes Redressal Commission (for short "NCDRC"), New Delhi, in Revision Petition No. 3648 of 2013 whereby the revision filed by the present appellant is dismissed.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Brief facts of the case, giving rise to this appeal, are that respondent Jagbir Singh purchased a tractor bearing registration No. HR-14B-3913, after getting loan sanctioned from the appellant-Bank. In terms of conditions of loan the respondent was making deposits of the loan instalments of loan to the Bank. The vehicle was initially insured as required under Motor Vehicles Act, 1988, but no premium of insurance was paid by the respondent for the period after 25.5.2005. On 24.9.2007 at about 11.50 a.m., an accident occurred between the above vehicle and motorcycle bearing registration No. DL-3S-AY-0421, in which Pankaj son of Babu Ram Garg, died due to rash and negligent driving on the part of Diwan Singh, driver of the tractor owned by respondent Jagbir Singh. The parents of the deceased filed claim petition No. 208/11/2007 before Motor Accident Claims Tribunal-II, Dwarka Courts, New Delhi, which was allowed by said Tribunal, vide its order dated 17.11.2012 awarding compensation to the tune of Rs.4,01,460/- with 7.5% interest per annum, against driver and owner of the vehicle. It has not been disputed between the parties that on the date of accident the vehicle No. HR-

14B-3913 was not insured with any of the insurance companies, as required under Section 146 of the Motor Vehicles Act, 1988.

4. The respondent filed complaint (No. 157 of 208) before District Consumer Disputes Redressal Forum, Jhajjar, praying that the Central Bank of India (appellant), i.e., the creditor bank should be made liable to pay the compensation, awarded against him by the Tribunal. The District Consumer Disputes Redressal Forum, vide its order dated 11.11.2009, held that the Bank (present appellant) is liable for the legal consequences for not getting the insurance renewed. The State Consumer Disputes Redressal Commission, Haryana, Panchkula, before whom the Central Bank of India (creditor bank) filed First Appeal No. 40 of 2010, vide its order dated 18.10.2012, dismissing the appeal on the ground that in terms of loan agreement the Bank has a right to recover insurance premium, held that the Bank cannot escape its liability. It appears that the Bank finally approached NCDRC by filing Revision Petition No. 3648 of 2013, but same was filed with delay of 230 days, and NCDRC in its wisdom did not find the explanation advanced for condonation of delay as sufficient, as such, the revision petition was dismissed as barred by limitation. Hence, this appeal through special leave.

5. Learned counsel for the appellant pointed out before us that the order of the State Consumer Disputes Redressal Commission was received by the appellant only on 26.11.2012, after the same was dispatched by the Commission on 19.11.2012. It is further submitted that the branch of the appellant bank is situated in a remote village and due to shortage of staff the matter could be taken up by the Regional Office only in December, 2012. It is contended that since it took time in obtaining the necessary permission for filing the revision, as such, the delay of 230 days, occurred in filing the revision petition, should have been condoned by the NCDRC. Admittedly, the revision petition was filed on 11.10.2013.

6. Having heard learned counsel for the parties and after going through the papers on record, we find that NCDRC has not considered properly the well explained delay in filing the revision petition before it. In our opinion, the time taken by the appellant bank in seeking permission to file the revision petition, as the matter had to be processed at various levels, cannot be said to have been not sufficiently explained for the purpose of condonation of delay. Therefore, the impugned order dismissing the revision petition, in the present case, cannot be sustained.

7. On the merits of the case, we find that none of the authorities under the Consumer Protection Act, 1986, in the case at hand has taken note of the law laid down by this Court on the issue of liability of the financier, in the cases of accident

occurred, after the vehicle is purchased with loan sanctioned to the owner of the vehicle. In *Pradeep Kumar Jain v. Citi Bank and another*[1], discussing Section 146 of Motor Vehicles Act, 1988, this Court has held as under: -

"5. Under Section 146 of the Act there is an obligation on the owner of a vehicle to take out an insurance policy as provided under Chapter XI of the Act. If any vehicle is driven without obtaining such an insurance policy it is punishable under Section 196 of the Act. The policy may be comprehensive or only covering third parties or liability may be limited. Thus when the obligation was upon the appellant to obtain such a policy, merely by passing of a cheque to be sent to the insurance company would not obviate his liability to obtain such policy. It is not clear on the record as to the nature of the policy that had been obtained by the appellant earlier when he purchased the vehicle and which was to be renewed from time to time. It is also not clear whether even in the case of renewal, a fresh application has to be made by the appellant or on the old policy itself an endorsement would have been made. In the absence of such material on record, and the nature of the insurance policy or any anxiety shown by the appellant in obtaining the policy as he could not ply such vehicle without such an insurance policy being obtained, he cannot claim that merely because he had passed on the cheques, the entire liability to pay all damages arising would be upon the first respondent."

8. A Three-Judge Bench of this Court, in *HDFC Bank Ltd. v. Kumari Reshma and others*[2], has further explained the law relating to liability of the creditor bank, and it has been held that the liability of such bank to get the vehicle insured is only till the vehicle comes out on the road. In other words, the creditor bank is not liable to get renewed the insurance policy on behalf of the owner of the vehicle from time to time. Paragraphs 23, 24 and relevant part of paragraph 25 of that judgment are reproduced as under: -

"23. In the present case, as the facts have been unfurled, the appellant bank had financed the owner for purchase of the vehicle and the owner had entered into a hypothecation agreement with the bank. The borrower had the initial obligation to insure the vehicle, but without insurance he plied the vehicle on the road and the accident took place. Had the vehicle been insured, the insurance company would have been liable and not the owner. There is no cavil over the fact that the vehicle was subject of an agreement of hypothecation and was in possession and control under the respondent no.2. The High Court has proceeded both in the main judgment as well as in

the review that the financier steps into the shoes of the owner. Reliance placed on Mohan Benefit Pvt. Ltd. v. Kachraji Rayamalji & ors. [(1997) 9 SCC 103], in our considered opinion, was inappropriate because in the instant case all the documents were filed by the bank. In the said case, two-Judge Bench of this Court had doubted the relationship between the appellant and the respondent therein from the hire-purchase agreement. Be that as it may, the said case rested on its own facts. The decision in Rajasthan State Road Transport Corporation v. Kailash Nath Kothari & others [(1997) 7 SCC 481], the Court fastened the liability on the Corporation regard being had to the definition of the 'owner' who was in control and possession of the vehicle. Similar to the effect is the judgment in National Insurance Co. Ltd. v. Deepa Devi & ors. [(2008) 1 SCC 414]. Be it stated, in the said case the Court ruled that the State shall be liable to pay the amount of compensation to the claimant and not the registered owner of the vehicle and the insurance company. In the case of Godavari Finance Company v. Degala Satyanarayanamma and others [(2008) 5 SCC 107], the learned Judges distinguished the ratio in Deepa Devi (supra) on the ground that it hinged on its special facts and fastened the liability on the insurer. In Uttar Pradesh State Road Transport Corporation v. Kulsum and others [(2011) 8 SCC 142], the principle stated in Kailash Nath Kothari (supra) was distinguished and taking note of the fact that at the relevant time, the vehicle in question was insured with it and the policy was very much in force and hence, the insurer was liable to indemnify the owner.

24. On a careful analysis of the principles stated in the foregoing cases, it is found that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasise, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration.

25. In Purnya Kala Devi v. State of Assam & Anr. [2014 (4) SCALE 586], a three-Judge Bench has categorically held that the person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted to the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control....."

9. In view of the above discussion and the principle of law laid down by this Court, the impugned order passed by the NCDRC and the orders passed by the State

Consumer Disputes Redressal Commission, Haryana and the District Consumer Disputes Redressal Forum, Jhajjar, are liable to be set aside.

10. Accordingly the appeal is allowed and the impugned order and the order passed by the authorities under Consumer Protection Act, 1986, in the present case, are set aside. No order as to costs.

[1] (1999) 6 SCC 361

[2] AIR 2015 SC 290