

RAJASTHAN HIGH COURT

Dhulchand

Vs.

KantiLal

C.M.A. No. 30 of 1988

(PrakashTatia, J.)

24.02.2004

JUDGMENT

PrakashTatia, J.

1. Heard learned counsel for the petitioner.
2. This appeal is against the award dated 3rd Oct., 1987 by which the appellant, respondent No. 2 and respondent No. 3 were held liable to pay the compensation to the claimant No. 1 as awarded by the Tribunal.
3. This appeal is by the appellant Dhuli Chand, who was the non-petitioner No. 3 before the Tribunal. The other non-petitioner before the Tribunal was SampatLal, who also challenged the award by S.B.C. Misc. Appeal No. 213/1987, which was dismissed on 8th Sept., 1988. According to the learned counsel for the appellant, the vehicle in dispute was registered in the name of one ShriSampatLal, he sold this vehicle to Dhuli Chand and HiraLal on 10th Aug., 1980. Dhuli Chand and HiraLal sold the vehicle to one ShriAmbaLal and actual physical possession was handed over to AmbaLal and AmbaLal agreed to pay taxes in future and also agreed to undertake all the liability of the Insurance claimant, therefore, AmbaLal alone was liable to pay all the compensation, which was awarded by the Tribunal. Learned counsel for the appellant relied upon the agreement (Ex. A-1) which is executed between the AmbaLal as party No. 1 and Dhuli Chand and HiraLal as party No. 2.

4. Learned counsel for the appellant relied upon the single Bench's judgment of this Court delivered in the case of *MurariLal v. Gumati Devi*, reported¹ in 1 wherein this Court pointed out that the distinction between 'real owner' and 'registered owner' and held that the person, who is in possession/in charge of the vehicle and who is dealing with the vehicle for his benefit is the owner as defined under Section 21(9) of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act' of 1939). Learned counsel for the appellant also relied upon the Division Bench's judgment of this Court delivered in the case of *New India Assurance Co. Ltd. v. R.S.R.T.C.*, reported² in wherein the R.S.R.T.C. took a bus on contract from the registered owner of the bus and the bus met with an accident and question come for consideration, whether the R.S.R.T.C. is liable to pay the damages to the victims as bus was under the control of R.S.R.T.C. and was on road for the benefit R.S.R.T.C. and was in the hands of driver of the R.S.R.T.C, or registered owner is liable to pay the compensation. The plea of R.S.R.T.C. was that the liability is of the registered owner of the vehicle and of the Insurance Company with whom the vehicle was insured. The Division Bench of this Court considered the judgment of the Hon'ble Supreme Court delivered in the case of *Pannalal v. State of Bombay*, reported in³ and also judgment of this Court delivered in the case of *Rajasthan State Road Transport Corporation v. KailashNath Kothari*, reported in⁴ and held that the R.S R.T.C. is also liable to pay the compensation.

5. It is true that the single Bench of this Court in the case of *MurariLal* (supra) made clear the distinction between the 'real owner' and 'registered owner' and after considering the definition of the owner given in Section 2(19) of the Act of 1939 (old Act) held that the real owner is liable to pay the compensation to the victim. The Division Bench of this Court in the above referred case (*New India Assurance Company Ltd. v. R.S.R.T.C.*)⁵ also held that the R.S.R.T.C. who was not the registered owner or "true owner" is liable to pay the compensation after taking note of the general proposition - "the general proposition of the law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the concerned employee during the course of his employment and within the scope of his authority. "But after that the Division Bench also observed, which is as under:

"The question whether a condition in an agreement with the owner to be absolved itself from the liability arising out of the accident, is invalid as public policy, was not examined though the finding was recorded by the High Court that the condition 15 of the agreement in the aforesaid case, in the contract to the extent, it shifts the liability arising of the accident from the R.S.R.T.C. to the owner, may be against the public policy."

(Emphasis supplied)

6. The Division Bench in the above case further observed that the Corporation cannot be absolved from the liability arising out of the use of the vehicle in question at public place, driven under its control and instructions as the vehicle engaged by it for the purpose of plying it as part of its business of public passenger transport. Ultimately, the Division Bench after holding the R.S.R.T.C. liable also held that the insurers liability under the policy being not exceeded Rs. 15,000/- per passenger, it is not liable to any further sums, it will be relevant to mention here that the insurance Company insured the vehicle for the benefit of registered owner of the vehicle and there was no privity of the contract between the Insurance Company and the R.S.R.T.C., therefore, if the owner of the vehicle would have been absolved totally by the Division Bench of this Court in the above referred judgment, then there could not have been any liability of the Insurance Company. Therefore, it appears that the R.S.R.T.C. was found responsible for the compensation because the vehicle was under the full control of the R.S.R.T.C. and it was driven under the control and instructions of the R.S.R.T.C. or by the person engaged by the R.S.R.T.C. as accident was caused by the employee of the R.S.R.T.C. but at the same time registered owner was also held liable for the damages.

7. In view of the above decisions, learned counsel for the appellant submits that since, AmbaLal was person having control over the vehicle and the vehicle was driven under the control and instructions of AmbaLal and, therefore, AmbaLal was the person, liable to pay the compensation. I do not find any force in the submission of learned counsel for the appellant in view of this case; firstly because the entire case set up by the appellant appears to be factually not correct. The Registration Certificate of the vehicle for the period starting from 1st Jan., 1982 to 31st March, 1982 reveals that SampatLal and Dhuli Chand were shown as the registered owners of the vehicle whereas the agreement (Ex. A/1) produced by the appellant reveals that the vehicle was shown to be owned by Dhuli Chand and HiraLal as on 23rd Feb., 1981. They agreed to sell the vehicle to AmbaLal as per the agreement. The vehicle was already financed by one ShriRoshanLal and his amount was due. As per agreement (Ex. A/1), AmbaLal agreed to purchase the vehicle for consideration of Rs. 86,201/-. AmbaLal paid Rs. 30,254/- to the sellers Dhuli Chand and HiraLal and agreed to pay Rs. 43,200/- to financier RoshanLal in monthly instalment of Rs. 1,600/-. AmbaLal further agreed that he will pay Rs. 8,747/- to the person from whom some goods were purchased for the vehicle. If Dhuli Chand and HiraLal were the two co-owners of the vehicle and they agreed to sell the vehicle to AmbaLal, then how the vehicle as shown

to be registered in the name of SampatLal and Dhuli Chand as on 1st Jan., 1982 till 31st March, 1982, has not been made clear. This fact casts serious doubt about the agreement (Ex. A/1) itself, which is only piece of documentary evidence to show that AmbaLal was the person purchaser of the vehicle from 31st Feb. 1981 and was in actual possession of the vehicle on 2nd March, 1982, when the accident occurred. Since argument itself is doubtful and the appellant failed to prove the sale of the vehicle to AmbaLal rather his stand contradicted by the documentary evidence produced by the appellant himself, therefore, if the Tribunal held that the appellant being registered owner of the vehicle, is liable to pay the compensation, the Tribunal has not committed any illegality.

8. Apart from it, in view of the Division Bench judgment of this Court delivered in the *New India Assurance Co. Ltd. v. RSRTC* (supra) any condition absolving the registered owner from the liability appears to be against the public policy. The Division Bench of this Court after considering the said condition in the agreement upheld the award against the registered owner also and also held that the Insurance Company is liable to pay the compensation though the vehicle was under the control and was driven under the instructions of the beneficiary of the contract and not by the registered owner. Therefore, even if, the appellant would have proved handing over the actual possession of the vehicle to the subsequent purchaser, they cannot have avoided their liability. It is true that in view of the Division Bench decision of this Court in *New India Assurance Co. Ltd.* (supra) even if, the vehicle has not been registered in the name of the purchaser and the purchaser permits his employee to drive the vehicle and his driver causes the accident, then the said transferee is also liable vicariously, but along with the registered owner. Admittedly, in this case, there is no case of hire purchase agreement for which there is a specific provision of the Registration of the Vehicle provided under Section 31A of the Old Act of the Act of 1939 and as provided under Section 51 of the Act of 1988.

9. It will be worthwhile to mention here that in the Book, *Motor Vehicles Act, 1988* published by the Eastern Book Company, Lucknow 9th Edition in "sub- section (30) of the Section 2" in the heading of "owner" there appears to be typing mistake as there is "comma" printed after the words "hire-purchase" and before the word "agreement". This makes the definition more wider, then intended by the Legislature in the Old Act. The definition of "owner" is given in sub-section (19) of Section 2, there is no such "comma" between "hire purchaser" and "agreement". The said comma is not in the *Motor Vehicles Act* published in the *AIR Manual 5th Edition* also. The publisher should take care while publishing the Acts because a mere inclusion of one comma, the scope of the statutory provision may be changed. By insertion of "comma", all the

persons, who are having agreement irrespective of the terms and conditions of the agreement and but are in possession of the vehicle will become the owner of the vehicle for the purpose of the Motor Vehicles Act, 1988.

10. Since the appellant failed to prove that the vehicle was sold to AmbaLal or was handed over to AmbaLal to run it exclusively in his control and under his instructions, therefore, I do not find any force in this appeal.

11. Hence, the appeal of the appellant is dismissed.

Appeal dismissed.

Cases Referred.

1. 1968 ACJ 316
2. 2003 RAR 213
3. AIR 1963 SC 1516
4. 1997(2) Apex Court Journal 439 (S.C): 1997 ACJ 1148
5. (2003 RAR 213)