HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 445/2002

Bajaj Auto Finance Limited c/o P.L. Motors Limited, Bhagwati Bhawan, MI Road, Jaipur through its Branch Incharge Sh. G.G. Shete.

----Non-claimant-appellant

Versus

1. Raghunath son of Sh. Vijaylal Kumawat, resident of Dhani Rambagh, Village Neendarh, District Jaipur.

----claimant-respondent.

2. Kishangopal son of Sh. Tulsiram, resident of Village Meena Wala, Kanakpura, Jaipur.

----Non-claimant-respondent

For Appellant(s) : Ms. Suruchi Kasliwal
Mr. Pryansh Jain
Ms. Alisha Chopra and
Mr. Dharmendra Pratap Singh Rathore

For Respondent(s) : Mr. Satish Kumar Khandal
Mr. Prahlad Sharma
Mr. R.P. Sharma

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Judgment

12/10/2022

Reportable

Instant appeal has been filed by the non-claimant/appellant against the impugned judgment and award dated 10.08.2000 passed by the Motor Accident Claims Tribunal, Jaipur (for short, 'the Tribunal') cum Rajasthan State Co-operative Tribunal, Jaipur in MAC Case No. 99/94, by which the claim petition filed by the claimant respondents was allowed and a direction was issued by the Tribunal to the appellant and the respondent No. 2 to pay an amount of compensation to the tune of Rs. 38,000/-.

Brief facts of the case are that an accident occurred on 30.11.1993 in which Radheyshyam as well as injured-Raghunath sustained certain injuries. Radheyshyam expired due to the injuries sustained by him in the accident. The matter was reported to the police where the FIR No. 422/1993 was registered against driver and the owner of the offending vehicle. Thereafter, two different claim petitions were submitted before the Tribunal, one by the dependents of the deceased Radheshyam and other by the injured claimant-respondent Raghunath. The learned Tribunal, after consolidating both the claims, passed a common judgment dated 10.08.2000 by fastening liability of making a payment of compensation upon the appellant, who is a financier of the vehicle as well as upon the registered owner of the vehicle, i.e. respondent No. 2.

At the outset it has been brought into the notice of this Court that two different appeals arising out of the common judgment dated 10.08.2000 were submitted before this Court. The connected appeal bearing SBCMA No. 439/2002 was decided by the Co-ordinate Bench of this Court vide order dated 11.04.2012 whereby the appeal filed by the appellant was dismissed.

Counsel submits that in view of the provisions contained under Section 168 of the Motor Vehicles Act 1988 (for short, ' the Act of 1988'), the appellant cannot be held liable to make the payment of compensation to the claimants because no such directions can be issued against the financer of the vehicle. She further submits that as per Section 168 of the Act 1988, such direction can be issued only against the insurer/owner/driver of the vehicle. She submits that the appellant is a finance company and did not fall within the definition of 'owner' as defined in

Section 2, Sub-section 30 of the Act of 1988. Counsel submits that as per Section 146 of the Act of 1988, no person shall be allowed to use any motor vehicle in any public place unless and until the vehicle is insured. She further submits that this fact is not in dispute that the respondent No. 2 is the driver and owner of the vehicle and he used his vehicle in the public place without getting it insured as per the Section 146 of the Act of 1988. Counsel submits that after considering all these provisions, the Hon'ble Apex Court in the case of **Godavari Finance Company Vs. Degala Satyanarayanamma and Ors; reported in (2008) 5 SCC 107** held that the Finance Company is not liable to pay any compensation to the claimants. She submits that reiterating the above provisions and following the aforesaid judgment, subsequently, the Hon'ble Apex Court in the case of **HDFC Bank Limited Vs. Reshma and Ors.; reported in (2015) 3 SCC 679** has taken a similar view and has held that the finance company who financed the owner for the purchase of his vehicle and the owner had entered into a hypothecation agreement with the bank. The borrower had the initial obligation to insure the vehicle and if the vehicle is not insured, the Finance Company cannot be made liable to pay any amount of compensation to the claimants in the case if the vehicle meets with an accident. Counsel submits that though the submissions in this regard were made before the Co-ordinate Bench of this Court at the time of decision of SBCMA No. 439/2002, but these facts were not considered and the same were ignored by the Co-ordinate Bench of this Court. Counsel submits that the Hon'ble Apex Court in the case of **Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel,** reported in (1968) 1 SCR 455: has held that when it appears to a Single

Bench or a Division Bench that there are conflicting decisions of the Court on an issue, then the matter should be referred to the Division Bench or the Special or Full Bench of the Court instead of taking a contrary view. Counsel submits that under these circumstances, an appropriate order may be passed.

Per contra, learned counsel for the respondent has opposed the arguments raised by the counsel for the appellant and submits that once when the Co-ordinate Bench of this Court has already dismissed the similar connected appeal filed by the same Finance Company vide judgment dated 11.04.2012, there is no occasion available with this Court to take a different view as the judgment passed by the Co-ordinate Bench has not been challenged by the appellant before the Appellate Court and the same has attained finality. He further submits that the award passed by the Tribunal has been satisfied and the amount of compensation has already been paid to the claimant. He further submits that a very petty amount of Rs. 38,000/- is involved, so different view may not be taken in the instant case. Counsel submits that under these circumstances interference of this Court is not warranted. However, the counsel for the respondents are not in a position to controvert the settled position of law in the case of **Godavari Finance Company (Supra) and HDFC Bank Ltd. Vs. Reshma (Supra)**.

Heard and considered the rival submissions made at the Bar and perused the material available on record.

This fact is not in dispute that the accident occurred on 30.11.1993 due to the rash and negligent driving of the respondent No. 2 in which Raghunath and one Radhyeshyam sustained injuries and subsequently Radheyshyam died on account

of those injuries. This fact is also not in dispute that two different claim petitions were submitted before the Tribunal for getting compensation and both the petitions were decided by the common judgment dated 10.08.2000. This fact is also not in dispute that the appellant filed SBCMA No. 439/2002 before this Court against the same award which was dismissed on 11.04.2012 and this fact is also not in dispute that the aforesaid judgment has not been assailed by the appellant before the Appellate Forum and the same has attained finality. However, the question which still remains for consideration of this Court is that whether this Court should follow the same judgment dated 11.04.2012 in the instant case or whether this Court may take a different view against of the judgments passed by the Hon'ble Apex Court in the case of **Godavari Finance Company (Supra) and HDFC Bank Ltd. Vs. Reshma (Supra)** wherein the Hon'ble Apex Court has held that the financier/finance company cannot be held liable to make any payment of compensation to the claimants when the owner of the vehicle has not got the vehicle insured.

In the case of **Godavari Finance Company (Supra)** it has been held as under:-

> 13. In case of a motor vehicle which is subjected to a hire purchase agreement, the financer cannot ordinarily be treated to be the owner. The person who is in possession of the vehicle, and not the financer being the owner would be liable to pay damages for the motor accident.
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> 14. Motor Accident Claims Tribunals are constituted in terms of Section 165 of the Act occurring in Chapter XII thereof. Section 166 lays down the manner in which the application

for compensation should be filed and who can file the same. Section 168 deals with the award of the Claims Tribunal, sub-section (1) thereof reads as under :-

> "168. Award of the Claims Tribunal. (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:
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> Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement

shall be disposed of in accordance with the provisions of Chapter X."

In terms of the aforesaid provisions, the Tribunal is required to issue a notice to the insurer and after giving the parties, including the insurer, an opportunity of being heard, it must hold an inquiry into the claims and determine the person who would be liable therefore. It can make an award and while doing so it can specify the amount which could be paid by the insured or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

15. An application for payment of compensation is filed before the Tribunal constituted under Section 165 of the Act for adjudicating upon the claim for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Use of the motor vehicle is a sine qua non for entertaining a claim for compensation. Ordinarily if driver of the vehicle would use the same, he remains in possession or control thereof. Owner of the vehicle, although may not have anything to do with the use of vehicle at the time of the accident, actually he may be held to be constructively liable as the employer of the driver. What is, therefore, essential for passing an award is to find out the liabilities of the persons who are involved in the use of the vehicle or the persons who are vicariously liable. The insurance company becomes a necessary party to such claims as in the event the owner of the vehicle is found to be liable, it

would have to reimburse the owner inasmuch as a vehicle is compulsorably insurable so far as a third party is concerned, as contemplated under Section 147 thereof. Therefore, there cannot be any doubt whatsoever that the possession or control of a vehicle plays a vital role.

16. The question came up for consideration before this Court in Rajasthan State Road Transport Corporation vs. Kailash Nth Kothari and others : (1997) 7 SCC 481where the owner of a vehicle rented the bus to Rajasthan State Road Transport Corporation. It met with an accident. Despite the fact that the driver of the bus was an employee of the registered owner of the vehicle, it was held :-

> "17….Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of RSRTC for operation of the bus. So far as the passengers of the ill-fated bus are concerned, their privity of contract was only with the RSRTC to whom they had paid the fare for travelling in that bus and their safety therefore became the responsibility of the RSRTC while travelling in the bus. They had no privity of contract with Shri Sanjay Kumar, the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of the driver from the owner to RSRTC, the matter may have been somewhat different. But on

facts in this case and in view of Conditions 4 to 7 of the agreement (supra), the RSRTC must be held to be vicariously liable for the tort committed by the driver while plying the bus under contract of the RSRTC. The general proposition of 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 employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner. The proposition based on the general principle as noticed above is adequately rebutted in this case not only on the basis of the evidence led by the parties but also on the basis of Conditions 6 and 7 (supra), which go to show that the owner had not

merely transferred the services of the driver to the RSRTC but actual control and the driver was to act under the instructions, control and command of the conductor and other officers of the RSRTC."

17. The question again came up for consideration recently before this Court in National Insurance Co. Ltd. vs. Deepa Devi and others : 2007 (14) SCALE 168. This Court in that case was dealing with a matter where the vehicle in question was requisitioned by the State Government while holding that the owner of the vehicle would not be liable it was opined :-

"10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondent Nos. 3 and 4 Page 4561 continued to be the registered owner of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of its power conferred upon it under the Representation of People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control thereover. The driver may still be the employee of the owner of the

vehicle but he has to drive it as per the direction of the officer of the State, who is put in-charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/ or its officers, the owner is only entitled to payment of compensation therefore in terms of the Act but he cannot not exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that the Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view."

In so opining the Court followed Kailash Nath Kothari (supra).

18. The legal principles as noticed hereinbefore, clearly show that the appellant

was not liable to pay any compensation to the claimants.

19. For the aforementioned reasons, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. No costs.

Subsequently, the Hon'ble Apex Court in the case of **HDFC Bank Limited Vs. Reshma and Ors. (Supra)** has held with respect to the same issue in para Nos. 22 to 25 as under:-

22. 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 Kachraji Rayamalji (supra), 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 Kailash Nath Kothari (supra), 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 Deepa Devi (supra). 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 Degala Satyanarayanamma (supra), 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 Kulsum (supra), 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.

23. 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.

24. In Purnya Kala Devi (supra), 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. There is reference to Section 146 of the Act that no person shall use or cause or allow any other person to use a motor vehicle in a public place without insurance as that is the mandatory statutory requirement under the 1988 Act. In the instant case, the predecessor-in-interest of the appellant, Centurion Bank, was the registered owner along with respondent no.2. The respondent no. 2 was in control and possession of the vehicle. He had taken the vehicle from the dealer without paying the full premium to the insurance company and thereby getting the vehicle insured. The High Court has erroneously opined that the financier had the responsibility to get the vehicle insured, if the borrower failed to insure it. The said term in the hypothecation agreement does not convey that the appellant financier had become the owner and was in control and possession of the vehicle. It was the absolute fault of the respondent no.2 to take the vehicle from the dealer without full payment of the insurance. Nothing has been brought on record that this fact was known to the appellant financier or it was done in collusion with the financier. When the intention of the legislature is quite clear to the effect, a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there is evidence on record that the respondent no.2, without the insurance plied the vehicle in violation of the statutory provision contained in Section 146 of the 1988

Act, the High Court could not have mulcted the liability on the financier. The appreciation by the learned Single Judge in appeal, both in fact and law, is wholly unsustainable.

25. In view of the aforesaid premises, we allow the appeals and hold that the liability to satisfy the award is that of the owner, the respondent no. 2 herein and not that of the financier and accordingly that part of the direction in the award is set aside. However, as has been conceded to by the learned senior counsel for the appellant, no steps shall be taken for realisation of the amount. There shall be no order as to costs."

Perusal of the judgment passed by the Co-ordinate Bench of this Court in SBCMA No. 439/2002 titled as Bajaj Auto Finance Limited vs. Smt Prem and Ors., indicates that the provisions contained under Sections 146 and 168 of the Act of 1988 and the judgment of the Hon'ble Apex Court in the case of **Godavari Finance Company (Supra)** were not brought into the notice of the Court.

In view of the settled proposition of law, the learned Single Judge has decided the SBCMA No. 439/2002 in ignorance of the provisions contained under Sections 146 and 168 of the Act of 1988 and the judgment of the Hon'ble Apex Court in the case of **Godavari Finance Company (Supra).**

The Judicial decorum and legal propriety demand that where a Single Bench or Division bench does not agree with the decision of a Bench of Co-ordinate jurisdiction, the matter shall be referred to a larger Bench. This view has been taken by the Hon'ble Apex Court in the case of **Sundaradas Kanyalal Bhathija & Ors vs.**

The Collector, Thane, Maharashtra, reported in AIR 1990 SC 261.

In **Ayyaswami Gounder V. Munuswamy Gounder, reported in AIR 1984 SC 1789** the Hon'ble Apex Court has held that a Single Bench of a High Court not agreeing with earlier decision of Single Judge of the same High Court, should refer the matter to a larger Bench and propriety and decorum do not warrant his taking a contrary view.

The Full Bench of Madhya Pradesh High court in the case of **Rama Rao and Ors. Vs. Shantibai and Ors. reported in AIR 1977 MP 222** has held that an earlier decision of a Single Judge was given per incuriam, as it was contrary to the view taken by that Court earlier in several case, which were not noticed by the Single Bench.

Similary Andhra Pradesh High Court in the case of **Thuraka Onnuramma And Anr. vs. Tahsildar, Kadiri And Ors. reported in AIR 1980 AP 267** has held that the decision rendered overlooking a statutory provision shall be treated as per incuriam.

The Madras High court in the case of **Philip Jeyasingh Vs. The Joint Registrar reported in 1992 (2) MLJ 309** has held that:

> "It is now well settled that a decision rendered overlooking a statutory provision shall be treated as perincuriam and cannot be regarded a binding precedent. Salmond on Jurisprudence, Twelfth Edition, page 150, says, "A precedent is not binding if it was rendered in ignorance of a

statute or a rule having the force of a statute i.e., delegated legislation". Salmond cites in support of this proposition High authority of Lord Halsbury in the House of Lords in London Street Tramways v. London County Council, 1898 A.C. 375 and of Lord Greene M.R. in Court of Appeal in that well known case of Young v.Bristol Aeroplane Company Ltd (1944)1 K.B. 718. As examples of per incuriam judgments Salmond cites a case where the court knew the statute but did not refer to the precise terms of the statutes as well as to a case where the Court knew thestatute but failed to appreciate its relevance to the matter in hand. On the extensive scope of the doctrine of per incuriam Salmond says that, "Even a court can impugn a precedent on such grounds."

In the case of **S. Kasi Vs. State Through the Inspector of Police Samaynallur Police Station Madurai District,** in criminal appeal No. 452/2020 the Hon'ble Apex Court has held that:

> "It is well settled that a coordinate Bench cannot take a contrary view and in event there was any doubt, a coordinate Bench only can refer the matter for consideration by a Larger Bench. The judicial discipline ordains so. This Court in State of Punjab and another versus Devans Modern Breweries ltd. and another, (2004) 11 SCC 26, in paragraph 339 laid down following:-
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> > "339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by

another Bench, the matter may be referred only to a Larger Bench. (See Pradip Chandra Parija v. Pramod Chandra Patnaik, (2002) 1 SCC 1 followed in Union of India Vs. Hansoli Devi, (2002) 7 SCC 273. But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. Kalyani Stores (supra) and K.K. Narula (supra) both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority."

The Gauhati High Court in the case of **Shri Jagadish Deka Vs. The State of Assam** in W.A. No. 158/2009 has held that:

"Similarly in the case reported in State of Bihar vs Kalika Kuer, reported in 2003 (5) SCC 448, the Supreme Court examined the circumstances in which a decision can be rendered "per incuriam".

Quoting the passage from Halsbury's Laws of England, it was held in para 5 thus:

5. At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In Halsbury's Laws of England (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities (pp.297-98, para 578) we find it observed about per incuriam as follows:

"A decision is given per incuriam whenthe court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake."

Lord Godard, C.J. in Huddersfield Police Authorities case observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the

case or statute, it would be a decision rendered in per incuriam."

Like wise, the question arose before the Supreme Court in the case reported in Official Liquidator vs Dayanand [(2008) 10 SCC 1] as to what is the effect of the decision when it is rendered in ignorance of earlier decisions rendered by other co-ordinate bench.

It is apposite to quote the following observations of the Supreme Court:

> "78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v. Administrator General of W.B. this Court observed: (AIR p. 941, para 19)
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> "19. ... If one thing is more necessary in law than any other thing, it is thequality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division

Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."

Their Lordships then placed reliance on the earlier decision of the Supreme Court reported in Lala Shri Bhagwan vs Ram Chand (AIR 1965 SC 1767) in which Hon'ble Apex COurt ruled as under:

> "18. ... It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer

> the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

In the situation like the one where the provisions of Sections 148 and 168 of the Act of 1988 and the judgment of Hon'ble Apex Court in the case of **Godavari Finance Company (Supra)** was not brought into the notice of the Co-ordinate Bench of this Court while deciding SBCMA No. 439/2002 and looking to the subsequent view of the Hon'ble Apex Court in the case of **HDFC Bank Limited (Supra)** this Court has no option except to refer this matter to a Special/Larger Bench so that the controversy is put to rest in accordance with law

This Court, accordingly, refer this case to the Special/Larger Bench to answer the following questions:-

(i) Whether the order dated 11.04.2012 passed by the Co-ordinate Bench in S.B Civil Misc. Appeal No. 439/2002 has been passed in ignorance of the judgment of Hon'ble Apex Court in the case of **Godawari Finance Company (Supra)** and the provisions contained under Sections 146 and 168 of the Motor Vehicles Act, 1988 ?

(ii) Whether this appeal can be decided in the light of the judgment of Hon'ble Apex Court in the case of **HDFC Bank**

Limited Vs. Reshma (Supra) by taking a contrary view, to the view taken by the Co-ordinate Single Bench of this Court vide order dated 11.04.2012 while deciding SBCMA No. 439/2002 against the same impugned judgment and award dated 10.08.2000 which has attained the finality?

Let the matter be now placed before the Hon'ble Chief Justice on the administrative side for constitution of a Special/Full Bench to decide the aforesaid two questions referred by this Court to the Special/Full Bench for answer.

(ANOOP KUMAR DHAND),J

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