M/S. GODAVARI FINANCE CO. A

v.

DEGALA SATYANARAYANAMMA & ORS.

(Civil Appeal No. 2725 of 2008)

APRIL 10, 2008

B

[S.B. SINHA AND V.S. SIRPURAKAR, JJ.]

Motor Vehicles Act, 1988 – ss. 2 (30) and 168 – Motor accident – Compensation – Offending vehicle subject of Hire Purchase Agreement – Liability of the financer of the vehicle C *treating it as the owner – Courts below holding it liable – On appeal, held: The liability to pay compensation is not on the financer – In such matters ordinarily financer not to be treated as the owner – The person in possession of the vehicle would be the owner – Hence– It is essential to find out the liability of* D *the person who is involved in the use of the vehicles or the person who is vicariously liable.*

Words and Phrases – 'Owner' – Meaning of, in the context of Motor Vehicles Act, 1988.

The offending vehicle, involved in a motor accident, E **was subject of Hire Purchase Agreement with the appellant-Company. Therefore its name was mentioned in the Registration Book. The claimant-respondent Nos. 1 and 2 in their claim petition for compensation for** F **agreement, alongwith the driver, owner and insurer, also impleaded the appellant company. Appellant denied its liability to pay the compensation. Tribunal held it liable. High Court confirmed the order of the tribunal. Hence the present appeal.**

Allowing the appeal, the Court G

HELD: 1.1 Section 2 of Motor Vehicles Act, 1988 provides for interpretation of various terms enumerated therein. It starts with the phrase "Unless the context

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A otherwise requires". The definition of "owner" is a comprehensive one. The interpretation clause itself states that the vehicle which is the subject matter of a Hire Purchase Agreement, the person in possession of vehicle under that agreement shall be the owner. Thus, the name
B of financer in the Registration Certificate would not be decisive for determination as to who was the owner of the vehicle. Ordinarily the person in whose name the Registration Certificate stands should be presumed to be the owner but such a presumption can be drawn only in
C the absence of any other material brought on record or unless the context otherwise requires.[Para 12] [236-A, B, C, D]

1.2 In case of a motor vehicle which is subjected to a hire purchase agreement, the financer cannot ordinarily
D 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. [Para 13] [236-D, E]

1.3 Appellant was not liable to pay any compensation
E to the claimants. 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
F 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
G 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
H 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. [Paras 16 and 18] [237-E, F, G; 238-A, B; 240-E, F]

Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari and Ors. **1997 (7) SCC 481;** *National Insurance Co. Ltd. vs. Deepa Devi and Ors.* **2007 (14) SCALE 168 – relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2725 of 2008.

From the final Judgment and Order dated 8.8.2008 of the High Court of Judicature of Andhra Pradesh at Hyderabad in C.M.A. No. 844 of 1999.

Bina Madhavan, S. Udaya Kumar Sagar and Hemal K. Sheth (for M/s. Lawyer's Knit & Co.) for the Appellant.

M.K. Dua and Kishore Rawat for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Whether a financer would be an owner of a motor vehicle within the meaning of Section 2(30) of the Motor Vehicles Act, 1988 (for short the Act) is the core question involved herein.

3. Ch. Praveen Kumar, fourth respondent, was the owner of a vehicle being a mini truck of 'Mahendra Nissan' make purchased by him having been financed by the appellant for a sum of Rs.50,000/-. The said loan was discharged by him by the end of 1995.

4. Indisputably the said vehicle had all along been in possession and control of the fourth respondent herein. It met

A with an accident on 29th May, 1995. In the said accident one Degala Balakrishana died. Respondent Nos. 1 and 2 filed an application claiming compensation alleging rash and negligent driving on the part of the driver of the said vehicle.

5. On or about 18th June, 1998, the appellant herein was B impleaded in the proceeding on the premises that it was the financer of the said vehicle.

6. The name of the appellant as a financer indisputably was incorporated in the Registration Book of the vehicle. C However, the extract of Registration Book revealed that the vehicle was registered in the name of the 4th respondent only w.e.f. 3rd June, 1992. It further revealed that the said vehicle was held under a Hire Purchase Agreement with the appellant w.e.f. 6th February, 1995 which was cancelled on 10th November, D 1995.

7. Appellant herein filed a written statement stating that on the date of accident the ownership of the vehicle was solely with the 4th respondent and not with the appellant. The Motor Vehicle Accident Claims Tribunal by a judgment dated 28th E October, 1998 awarded a sum of Rs.2,08,000/- in favour of the respondent Nos. 1 and 2. The objection of the appellant that it was not liable to pay any amount of compensation together with the owner of the vehicle, driver and insurance company was rejected by the Tribunal stating:-

F "In the light of the decisions cited above, the legal position that emerges is that it is the person who is in actual possession and control of the vehicle, who can be brought under the definition of owner, under the Act in order to make him tortuously liable for the acts of the servant and G the burden lies upon the party, who asserts it and on their failure adverse inference can be drawn and the financier can also fastened with liability alongwith the registered owner. In our case, R-4 except taking a plea that the vehicle is under the control of the owner R-2, it failed to file H documents to show the nature of the transaction between

it and R-2 and who is in actual control of the vehicle. The mere fact that RW.1, widow of the deceased admitted in her evidence that the vehicle belong to R-2 and it is in his custody, in my view, it cannot absolve R-4 from the burden of establishing this fact in order of avoid the liability. P.W.1 a widow and a third party cannot be attributed with knowledge of control over the vehicle and the actual contract between the parties. Thus, it is quite evident that R-2 and R-4 did not place any material to show as to who is in actual control of the vehicle and what are the rights of R-4 over it." A B C

8. An appeal preferred thereagainst by the appellant herein, by reason of the impugned judgment, dated 8th August, 2006 has been dismissed.

9. Ms. Bina Madhavan, appearing on behalf of the appellant, would submit : D

(1) In terms of Section 168 of the Act a financer cannot be held liable to pay compensation as the definition of an "owner" as contained in Section 2(30) of the Act would mean only a "registered owner". E

(2) In view of the fact that it was not the case of the claimants that the appellant was in possession or control over the vehicle at the time of accident, the impugned judgment is wholly unsustainable. F

(3) The finding of the learned Tribunal as also the High Court that appellant as a registered owner was liable for payment of compensation is wholly unsustainable.

10. Indisputably, as on November 10, 1995 the Hire Purchase Agreement was cancelled and an information thereabout was sent to the Deputy Transport Commissioner, Kakinada. G

11. Appellant admittedly was the financer. As the vehicle H

A was the subject matter of Hire Purchase Agreement, the appellant's name was mentioned in the Registration Book.

12. Section 2 of the Act provides for interpretation of various terms enumerated therein.

B It starts with the phrase "Unless the context otherwise requires". The definition of "owner" is a comprehensive one. The interpretation clause itself states that the vehicle which is the subject matter of a Hire Purchase Agreement, the person in possession of vehicle under that agreement shall be the owner. C Thus, the name of financer in the Registration Certificate would not be decisive for determination as to who was the owner of the vehicle. We are not unmindful of the fact that ordinarily the person in whose name the Registration Certificate stands should be presumed to be the owner but such a presumption can be D drawn only in the absence of any other material brought on record or unless the context otherwise requires.

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, E and not the financer being the owner would be liable to pay damages for the motor accident.

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 F 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 G 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 H

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:

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."

15. 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 therefor. 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.

16. 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

A 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
B 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.

17. The question came up for consideration before this Court in *Rajasthan State Road Transport Corporation vs.*
C *Kailash Nath 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 :-

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"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
E 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
F 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
G 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
H 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."

18. 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

A 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, B 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 C 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 D 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."

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

The legal principles as noticed hereinbefore, clearly show that the appellant was not liable to pay any compensation to the F claimants.

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

G K.K.T. Appeal allowed.