Hdfc Bank Ltd vs Kumari Reshma And Ors on 1 December, 2014

Equivalent citations: 2014 AIR SCW 6673, 2015 (3) SCC 679, (2015) 1 CURCC 1, (2015) 3 MAD LW 15, (2015) 4 MPLJ 251, (2015) 2 PAT LJR 283, (2015) 2 ANDHLD 1, (2015) 1 RECCIVR 1, (2015) 2 JLJR 9, (2015) 2 JCR 34 (SC), (2015) 1 CAL LJ 1, (2015) 1 CIVILCOURTC 575, (2015) 6 MAH LJ 51, (2015) 1 PUN LR 366, (2015) 1 RAJ LW 125, (2014) 13 SCALE 418, (2015) 1 WLC(SC)CVL 239, (2015) 1 MPHT 193, (2015) 108 ALL LR 461, (2015) 1 CIVLJ 790, (2014) 4 CIVILCOURTC 424, (2014) 1 RENCR 531, (2014) 2 RENTLR 423, (2014) 4 RAJ LW 2967, (2014) 3 WLC (RAJ) 589, (2015) 2 CURCC 268, (2015) 60 OCR 289, (2014) 4 ACC 929, (2015) 1 TAC 1, (2015) 1 ACJ 1, (2015) 1 ALL WC 599, 2015 (2) SCC (CRI) 408, 2014 (140) AIC (SOC) 3 (RAJ), (2015) 1 BOM CR 1, AIR 2015 SUPREME COURT 290

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Bench: Uday Umesh Lalit, Rohinton Fali Nariman, Dipak Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.10608-10609 OF 2014
[Arising out of S.L.P. (Civil) Nos. 19079-19080 of 2014]

HDFC Bank Ltd. ... Appellant

Versus

Kumari Reshma and Ors. ... Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted in both the Special Leave Petitions.

In these appeals, by special leave, the assail is to the judgment and order dated 22.10.2013 passed by the learned Single Judge of the High Court of judicature of Madhya Pradesh Bench at Indore in Misc. Appeal No. 2261 of 2005 preferred by the Centurion Bank Limited, the predecessor-in-interest of the appellant herein, and Misc. Appeal No. 3243 of 2005 preferred by the claimants, the 1st respondent herein, whereby the High Court has dismissed the appeal preferred by the appellant

herein and allowed the appeal of the claimants by enhancing the awarded sum to Rs. 3 lacs opining that the said amount would be just and equitable compensation for the injuries sustained by her. The High Court also dismissed the review petition no. 619/2013 vide order dated 13.05.2014 preferred by the appellant herein. Be it stated, the Additional Member, Motor Accident Claims Tribunal, Indore had awarded Rs.1,75,000/- in Claim Case No.181/2003.

Filtering the unnecessary details, the facts which are requisite to be stated are that on 20.12.2002 about 12.30 p.m. the claimant was going on a scooter bearing registration No. MP09Q92 from Shastri Bridge to Yashwant Square and at that time the Motor Cycle belonging to 2nd respondent and driven by the respondent No.3 herein, in a rash and negligent manner dashed against the scooter as a consequence of which she sustained a fracture in the right hand superacondylar fracture and humerus bone fracture and certain other injuries. She availed treatment at various hospitals as she had to undergo an operation and thereafter advised to take physiotherapy regularly. Keeping in view, the injuries suffered and the amount she had spent in availing the treatment, she filed a claim petition putting forth the claim for Rs.4,50,000/-. The tribunal as stated earlier awarded a sum of Rs.1,75,000/- with 6% interest and opined that all the non-applicants to the claim petition were jointly and severally liable to pay the compensation amount. It is apt to state here the stand and stance put forth by the predecessor-in-interest the appellant bank that it had only advanced a loan and the hypothecation agreement was executed on 1.11.2002 by it. As per the terms of the agreement, the owner of the vehicle was responsible to insure the vehicle at his own costs. Reliance was placed on Clause 16 and 17 of the loan agreement which stipulated that the bank was required to get the vehicle insured if the borrower failed to or neglected to get the vehicle insured. The accident as stated earlier had taken place on 20.12.2002 and the vehicle was insured by the owner on 16.1.2003. It was further put forth by the bank that the owner deposited Rs.6,444/- with the dealer of the motor cycle i.e. Patwa Abhikaran Pvt. Ltd., whereas it was required to pay Rs.9,444/-. Despite the same, he obtained the possession of the vehicle on the same day itself which was not permissible.

It was urged before the tribunal the financer was not liable to pay the compensation and it was the exclusive liability of the borrower. The tribunal on scrutiny of the clauses opined that as the financer had a duty to see that borrower does not neglect to get the vehicle insured, it was also liable along with the owner and accordingly fastened the liability both jointly and severally.

In appeal, it was contended that the financer could not have been fastened with the liability to pay the compensation. The High Court referred to the definition clause in Section 2 (30) of the Motor Vehicles Act, 1988 (for brevity "the Act"), took note of the language employed in Clause 16 of the agreement that if the owner neglects to get the vehicle insured the bank was required to get it insured, and the fact that the financer and the borrower were the registered owners and, accordingly opined that the bank was liable to pay. Being of this view the learned Judge dismissed the appeal preferred by the bank and partly allowed the appeal preferred by the claimants. Be it stated, the application for review filed by the Bank did not meet with success.

We have heard Mr. Gopal Subramaniam, learned senior counsel for the appellant. None has appeared on behalf of respondent despite service of notice.

We are obliged to mention here that while issuing notice we had directed that the appellant-bank shall deposit the awarded sum before the tribunal which would be at liberty to disburse the same in favour of the claimant. Mr. Subramaniam submitted that the bank does not intend to recover anything from the claimant but the legal position should be made clear so that the bank, which is the financer, is not unnecessarily dragged into this kind of litigation.

Criticising the impugned award and the order passed in appeal, learned senior counsel has submitted that the definition of 'owner' under Section 2(30) of the Act would not cover a financer who has entered into a hypothecation agreement with the borrower who is in possession and control of the vehicle. Learned senior counsel would contend that Clauses 16 and 17 of the agreement have nothing to do with the financer's liability, for Section 146 of the Act requires the owner to insure the vehicle before it plies on the road and in the case at hand the borrower, who was in possession and control of the vehicle in question, in a clandestine manner without paying the insured amount and getting the vehicle insured had taken the vehicle the same day from the dealer and got it insured afterwards. It is urged by him that the role of the bank would come in when there is failure to insure the vehicle and, in any case, that will not fasten a statutory liability on the financer to pay the compensation to the third party, for the vehicle is not on the road by the financer or at is instance. Elaborating further, it is submitted by him that if the owner does not pay, the bank will pay the insurance company and recover it from the borrower and hence, it would be inapposite to interpret the contract in a different way to fasten the liability on the financer. It is canvassed by him that there is no stipulation in the agreement that the financer would indemnify the borrower against the third party in the event of an accident and in the absence of such a postulate the interpretation placed by the High Court is absolutely erroneous.

To appreciate the said submission, it is appropriate to refer to Section 2 (30) of the Act which reads as follows:-

> "(30). "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."

On a plain reading of the aforesaid definition, it is demonstrable that a person in whose name a motor vehicle stands registered is the owner of the vehicle and, where motor vehicle is the subject of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under that agreement is the owner. It also stipulates that in case of a minor, the guardian of such a minor shall be treated as the owner. Thus, the intention of the legislature in case of a minor is mandated to treat the guardian of such a minor as the 'owner'. This is the first exception to the definition of the term 'owner'. The second exception that has been carved out is that in relation to a motor vehicle, which is the subject of hire-purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of vehicle under that agreement is the owner. Be it noted, the legislature has deliberately carved out these exceptions from registered owners thereby making the guardian of a minor liable, and the person in possession of the vehicle under the

agreements mentioned in the dictionary clause to be the owners for the purposes of this Act.

As we find from the judgment of the High Court, it has placed reliance on Mohan Benefit Pvt. Ltd. V. Kachraji Rayamalji & Ors.[1]. In the said case, the 2nd respondent was the registered owner of the truck and the appellant was the "legal owner of the vehicle as per hire-purchase agreement". The claim petition stated that at the time of the accident, the 1st respondent was driving the truck owned by the 2nd respondent and the appellant and they had become liable, jointly and severally, to pay the damages claimed. The tribunal, on the basis of the evidence led before it came to the conclusion that hire-purchase agreement was not the only document executed between the appellant and the second respondent. It had awarded damages against the appellant and the second respondent. The award passed by the tribunal was affirmed by the High Court holding that real documents executed between the parties at the time of the alleged loan had been kept back from the Court with ulterior motives and in that situation, all possible adverse inference should be drawn against the appellant therein; and that the hire purchase agreement that was produced could not be made the basis for deciding the relationship between the parties nor could it be pressed into service for proving that the transaction was only of hypothecation in the garb of hire purchase agreement. Affirming the view expressed by the High Court, this Court held "Having heard the counsel and read the evidence adduced in the case, we have no doubt that the hire-purchase agreement produced by the appellant does not spell the true relationship between the appellant and the second respondent. The High Court, therefore, was right in coming to the conclusion that, had the documents which reflected the true relationship between them been produced, they would have "exploded" the case of the appellant. Consequently, the adverse inference drawn by the High Court was justified".

After so holding, the Court repelled the submission of the counsel for the appellant that there was no evidence to show the appellant had any right to control the driver of the truck. The Court opined that in the circumstances of the case, the logical inference must be that, had the documents that set out the true relationship between the appellant and the second respondent been produced, they would have shown that the appellant had a right to exercise control in the matter of the plying of the truck and the driver thereof.

In this context, we may refer to a two-Judge Bench decision in Rajasthan State Road Transport Corporation V. Kailash Nath Kothari & Others.[2] In the said case, plea was taken by the Rajasthan State Road Transport Corporation (RSRTC) before the High Court that as it was only a hirer and not the owner of the bus, it could not be fastened with any liability for payment of compensation but the said stand was not accepted. It was contended before this Court that the Corporation not being the owner of the bus was not liable to pay any compensation arising out of the accident because driver who was driving the bus at the relevant time, was not in the employment of the owner of the bus and not of the Corporation and hence, it could not be held vicariously liable for the rash and negligent act of the driver. The Court referred to the definition in Section 2(3), which defines "contract carriage", Section 2(19), which defines the "owner", Section 2(29), which defines "stage carriage" and Section 42 that dealt with "necessity of permits". Be it stated, these provisions reproduced by the Court pertained to Motor Vehicles Act, 1939 (for short, 'the 1939 Act'). The owner under the 1939 Act was defined as follows:

> "2. (19) 'owner' means, 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;"

The Court referred to the conditions 4 to 7 and 15 of the agreement and in that context held thus:

> "The admitted facts unmistakably show that the vehicle in question was in possession and under the actual control of RSRTC for the purpose of running on the specified route and was being used for carrying, on hire, passengers by the RSRTC. The driver was to carry out instructions, orders and directions of the conductor and other officers of the RSRTC for operation of the bus on the route specified by the RSRTC".

While dealing with the definition of the owner under the 1939 Act, the Court ruled that the definition of owner under Section 2(19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of "owner" to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer would not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for the tort committed by its employee during the course of his employment and it [pic]would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. After so stating, the Court proceeded to analyse the conditions of the agreement, especially conditions 6 and 7 which in that case showed that the owner had not merely transferred the services of the driver to the Corporation but actual control and the driver was to act under the instructions, control and command of the conductor and other officers of RSRTC. Being of this view, it affirmed the view expressed by the High Court and dismissed the appeal.

In this context, it is profitable to refer to a two-Judge Bench decision in National Insurance Co. Ltd. V. Deepa Devi & Ors.[3] In the said case the question arose whether in the event a car is requisitioned for the purpose of deploying the same in the election duty, who would be liable for payment of compensation to the victim of the accident in terms of the provisions of 1988 Act. The Court referred to the definition of 'owner' in the 1939 Act and the definition of 'owner' under Section 2(30) of the 1988 Act. In that context, the Court observed that the legislature either under the 1939 Act or under the 1988 Act had visualized a situation of this nature. The Court took note of the fact that the respondent no. 3 and 4 continued to be the registered owners of the vehicle despite the fact that the same was requisitioned by the District Collector in exercise of the power conferred upon him under the Representation of People Act, 1951 and the owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the District Collector. Proceeding further, the Court ruled thus:

> "..... 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 therefor in terms of the Act but he cannot not (sic) exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that 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.

Elaborating the concept, the Court referred to Mukesh K. Tripathi V. Senior Divisional Manager LIC[4], Ramesh Mehta V. Sanwal Chand Singhvi[5], State of Maharashtra V. Indian Medical Assn.[6], Pandey & Co. Builders (P) Ltd., V. State of Bihar[7] and placed reliance on Kailash Nath Kothari (supra), National Insurance Co. Ltd. V. Durdadahya Kumar Samal[8] and Chief Officer, Bhavnagar Municipality V. Bachubhai Arjanbhai[9] and eventually opined the State shall be liable to pay the amount of compensation to the claimant and not the registered owner of the vehicle and consequently the appellant therein, the insurance company.

In Godavari Finance Company V. Degala Satyanarayanamma and others[10], the core question that arose for consideration whether a financier would be an owner of the vehicle within the meaning of Section 2(30) of the 1988 Act. It was contended before this Court that in terms of Section 168 of the Act, a financier cannot be held liable to pay compensation as the definition of 'owner' as contained in Section 2(30) of the 1988 Act would mean only a 'registered owner'; that it was not the case of the claimants that the appellant therein was in possession or control over the vehicle at the time of accident and the findings recorded by the trial Court and the High Court that the appellant as a registered owner was liable for payment of compensation, was wholly unsustainable. The Court took note of the fact that the appellant was a financier; that the vehicle was the subject matter of hire-purchase agreement; and that the appellant's name was mentioned in the registered book. Dealing with the definition of 'owner', the Court opined that the definition of "owner" is a comprehensive one and the dictionary 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; and that the name of financer in the registration certificate would not be decisive for determination as to who was the owner of the vehicle. The Court further opined that 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 the absence of any other material brought on record or unless the context otherwise requires. The Court opined that 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. In that context the Court observed that ordinarily if the driver of the vehicle uses 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 compulsorily insurable so far as a third party is concerned, as contemplated under Section 147 thereof. Thereafter, the Court relied upon the decisions in Kailash Nath Kothari (supra) and Deepa Devi (supra) and came to hold that the appellant was not liable to pay any compensation to the claimants. In Pushpa alias Leela and others V. Shakuntala and others[11], the question arose whether in the obtaining factual matrix therein the liability to pay the compensation amount as determined by the tribunal was of the purchaser of the vehicle alone or whether the liability of the recorded owner of the vehicle was co-extensive and from the recorded owner it would pass on to the insurer of the vehicle. The registered owner of the vehicle was one Jitender Gupta who had sold the truck to one Salig Ram and handed over the possession to the transferee and on the date of the sale, the truck was covered by the insurance policy taken by Jitender Gupta. There was no dispute that the policy stood in the name of Jitender Gupta on the date of the accident who was no longer the owner of the truck as he had transferred the vehicle to Salig Ram. The Tribunal had come to hold that Salig Ram alone was liable for payment of compensation. On an appeal being preferred, the High Court dismissed the appeals of the claimants. This Court referred to the definition of the 'owner' under Section 2(30) of the 1988 Act that defines the owner and Section 50 of the 1988 Act that deals with transfer of ownership. That apart, the Court also took note of the fact that notwithstanding the sale of the vehicle, neither the transferor Jitender Gupta nor the transferee Salig Ram took steps to change the name of the owner in the certificate of registration of the vehicle. The Court treated Jitender Gupta to be deemed to continue as the owner of the vehicle for the purposes of the 1988 Act even though under the civil law he had ceased to be its owner after its sale. While dealing with the facet of liability, the Court referred to the authority in T.V. Jose (Dr.) V. Chacko P.M.[12] wherein it has been held thus:

"There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the appellant still continued to remain liable to third parties as his name continued in the records of RTO as the owner."

Thereafter, the Court held thus:

> "The decision in T.V. Jose (Dr.) was rendered under the Motor Vehicles Act, 1939. But having regard to the provisions of Section 2(30) and Section 50 of the Act, as noted above, the ratio of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount. Further, since an insurance policy in respect of the truck was taken out in his name he was indemnified and the claim will be shifted to the insurer, Oriental Insurance Company Ltd."

Be it noted, in the said case, the decision rendered in Deepa Devi (supra) on the ground that it was rendered on the special facts of that case and has no application to the facts of the case in hand. Being of this view, it fastened the liability on the insurer.

In this context, another decision is apposite to be taken note of. In Uttar Pradesh State Road Transport Coporation V. Kulsum and others[13], the question arose if an insured vehicle is plying under an agreement or contract with the Corporation, on the route as per permit granted in favour of the Corporation, in case of an accident, whether the Insurance Company would be liable to pay the compensation or would it be the responsibility of the Corporation or the owner. The Court referred to Section 103 of the 1988 Act (Uttar Pradesh Amendment Act of 1993) wherein the Corporation has been vested with the right to take vehicles on hire as per the contract and to ply the same on the roads as the permit granted to it. In the said case, according to the terms and conditions of the agreement, the mini-bus was to be plied by the Corporation on the routes as per the permit issued by the Regional Transport Officer in his favour. Except for the services of the driver which were to be provided by the owner, all other rights of the owner were to be exercised by the Corporation only. The conductor was to be an employee of the Corporation and he was authorised and entitled to collect the money after issuing tickets to the passengers and had the duty to perform all the incidental and connected activities as a conductor on behalf of the Corporation. When a claim was lodged before the Tribunal, it allowed the claim petition placing reliance on Kailash Nath Kothari's case. Being aggrieved, the Corporation preferred appeal and the owner of the bus also filed a cross-objection against the finding recorded by the tribunal holding therein that the insurance company was not liable to make the payment and had fastened the liability on the owner on account of alleged breach of insurance policy. The Court analysed the definition under Section 2(30) of the 1988 Act, Section 103(1-A) which has been inserted by the Uttar Pradesh Amendment Act 5 of 1993, Sections 146 and 149 of the 1988 Acts and thereafter referred to the authority in Kailash Nath Kothari (supra) and distinguished the same by holding thus:-

> "In our considered opinion, in the light of the drastic and distinct changes incorporated in the definition of "owner" in the old Act and the present Act, Kailash Nath case has no application to the facts of this case. We were unable to persuade ourselves with the specific question which arose in this and connected appeals as the question projected in these appeals was neither directly nor substantially in issue in Kailash Nath case. Thus, reference to the same may not be of much help to us. Admittedly, in the said case, this Court was dealing with regard to earlier definition of

> "owner" as found in Section 2(19) of the old Act.
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> xxx xxx xxx xxx A critical examination of both the definitions of the "owner" would show that it underwent a drastic change in the Act of 1988, already reproduced hereinabove. In our considered opinion, in the light of the distinct changes incorporated in the definition of "owner" in the old Act and the present Act, Kailash Nath Kothari case shall have no application to the facts of this case".

Thereafter, the Court referred to the relevant clauses in the agreement and opined that:

> "A critical examination thereof would show that the appellant and the owner had specifically agreed that the vehicle will be insured and a driver would be provided by owner of the vehicle but overall control, not only on the vehicle but also on the driver, would be that of the Corporation. Thus, the vehicle was given on hire by the owner of the vehicle together with its existing and running insurance policy. In view of the aforesaid terms and [pic]conditions, the Insurance Company cannot escape its liability to pay the amount of compensation.
>
> There is no denial of the fact by the Insurance Company that at the relevant point of time the vehicle in question was insured with it and the policy was very much in force and in existence. It is also not the case of the Insurance Company that the driver of the vehicle was not holding a valid driving licence to drive the vehicle. The Tribunal has also held that the driver had a valid driving licence at the time of the accident. It has also not been contended by it that there has been violation of the terms and conditions of the policy or that the driver was not entitled to drive the said vehicle".

After so stating, the Court took note of the fact that the insurance company had admittedly received the amount of the premium; that there was no difference in the tariff of premium in respect of the vehicles insured at the instance of the owner or for the vehicle which is being attached with the Corporation; that no statutory duty is cast on the owner under the Act or under any rules to seek permission from the insurer to get the vehicle attached with the Corporation. On the aforesaid reasoning, the Court held the insurer liable.

Recently in Purnya Kala Devi V. State of Assam & Anr.[14], a three-Judge Bench was dealing with the issue when an offending vehicle is that under the requisition of the State Government under the Assam Requisition and Control of Vehicles Act, 1968 ('Assam Act', for short) the registered owner would be liable or the State Government that has requisitioned the vehicle. The Court referred to the definition of the term 'owner' under the 1939 Act as well as the 1988 Act. As was necessary in the said case, the Court referred to the relevant provisions pertaining to release from the requisition under the Assam Act. After analyzing the provisions, the three- Judge Bench set aside the award passed by the High Court which had held that owner was liable solely on the basis of the definition of the word 'owner' contained in Section 2(30) of the 1988 Act. The dictum laid down in the said case is as follows:

> "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. "

(Emphasis supplied) 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.

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.

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.

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.

.....J. [DIPAK MISRA] .....J. [ROHINTON FALI NARIMAN] .....J. [UDAY UMESH LALIT] NEW DELHI DECEMBER 01, 2014.

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[1] (1997) 9 SCC 103

(1997) 7 SCC 481
[3] (2008) 1 SCC 414
[4] (2004) 8 SCC 387
[5] (2004) 5 SCC 409
[6] (2002) 1 SCC 589
[7] (2007) 1 SCC 467
[8] (1988) 2 TAC 25 (Ori)
[9] AIR 1996 Guj. 51
[10] (2008) 5 SCC 107
[11] (2011) 2 SCC 240
[12] (2001) 8 SCC 748

[13] (2011) 8 SCC 142
[14] 2014 (4) SCALE 586
