

## Naveen Kumar vs Vijay Kumar And Ors on 6 February, 2018

**Equivalent citations:** AIR 2018 SUPREME COURT 983, 2018 AAC 703 (SC), AIR 2018 SC (CIVIL) 1459, (2018) 2 PAT LJR 94, (2018) 1 ACC 549, (2018) 1 WLC(SC)CVL 461, (2018) 2 PUN LR 208, (2018) 2 RECCIVR 74, (2018) 3 RAJ LW 2034, (2018) 4 MPLJ 241, (2018) 5 MAH LJ 556, (2018) 70 OCR 6, 2018 (1) SCC (CRI) 661, (2018) 1 UC 648, (2018) 1 KER LJ 827, (2019) 1 CIVLJ 336, (2018) 1 ACJ 677, (2018) 4 ANDHLD 51, (2018) 2 BOM CR 647, (2018) 127 ALL LR 251, (2018) 2 ALL WC 1607, (2018) 183 ALLINDCAS 27 (SC), (2018) 1 GUJ LH 465, (2018) 2 JCR 140 (SC), (2018) 2 JLJR 42

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**Bench:** D Y Chandrachud, A M Khanwilkar, Dipak Misra

1

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 1427 OF 2018  
(Arising out of SLP (C) No.18943 of 2016)

NAVEEN KUMAR

..Appell

VERSUS

VIJAY KUMAR AND ORS

..Respondent

JUDGMENT

Dr D Y CHANDRACHUD, J.

1 An accident took place at about 7:30 pm on 27 May 2009 when Smt. Jai Devi and her nephew Nitin were walking down a street in their village. A motor vehicle driven by Rakesh in the reverse gear hit them. Nitin was run over by the rear wheel of the car and died on the spot. Smt. Jai Devi received multiple injuries. Two claim petitions were filed before the Motor Accident Claims Tribunal ('the Tribunal'). One of them was by Smt. Jai Devi. The second was by Somvir and Smt. Saroj, the

parents of Nitin. The vehicle involved in the accident (a Maruti-800 bearing Registration DL-3CC-3684) was Date: 2018.02.06 14:45:23 TLT Reason:

registered in the name of Vijay Kumar, the First respondent.

According to the First respondent, he had sold the vehicle to the Second respondent on 12 July 2007 prior to the accident and had handed over possession of the vehicle together with relevant documents including the registration certificate, and forms 29 and 30 for transfer of the vehicle. The Second respondent stated before the Tribunal that he sold the vehicle to the Third respondent on 18 September 2008. The Third respondent in turn claimed before the Tribunal to have sold the vehicle to the petitioner. The petitioner, in the course of his written statement claimed that he had sold the vehicle to Meer Singh. The succession of transfers was put forth as a defence to the claim.

2 By its award dated 6 October 2012, the Tribunal granted compensation in the amount of Rs 10,000/- to Smt. Jai Devi and of Rs.3,75,000/- on account of the death of Nitin, to his parents. The Tribunal noted that the registration certificate of the offending vehicle continued to be in the name of the First respondent. The Tribunal held the First respondent jointly and severally liable together with the driver of the vehicle. The vehicle was uninsured on the date of the accident.

3 The award of the Tribunal was challenged by the First respondent in appeal before the High Court of Punjab and Haryana. A learned Single Judge of the High Court allowed the appeal on 25 January 2016 on the ground that there was no justification for the Tribunal to pass an award against the registered owner when there was evidence that he had transferred the vehicle and the last admitted owner was the appellant herein. In the view of the High Court, the Tribunal ought to have passed an award only against the appellant as the owner. In coming to this conclusion the High Court relied upon two decisions of this Court : *HDFC Bank Limited v Reshma*<sup>1</sup> and *Purnya Kala Devi v State of Assam*<sup>2</sup>.

4 On behalf of the appellant, it has been submitted that the High Court has proceeded on a manifestly erroneous construction of the legal position. It has been urged that Section 2(30) of the Motor Vehicles Act, 1988 indicates that the person in whose name a motor vehicle is registered is the owner and the only two exceptions to that principle are where such a person is a minor or where the subject vehicle is under a hire purchase agreement. The decision of this Court in *Purnya Kala Devi* (supra), it has been submitted, related to a situation where the offending vehicle had been requisitioned by a state government. Similarly, the decision in *Reshma* (supra) dealt with a situation where the vehicle had been financed against a hypothecation agreement. It was in this background that this Court held that the person in possession of the vehicle under a hypothecation agreement was to be treated as the owner. Having 1 (2015) 3 SCC 679 2 (2014) 14 SCC 142 regard to the definition contained in Section 2(30), it was urged that the High Court was in error in foisting the liability on the appellant who is not the registered owner of the vehicle. Learned counsel appearing on behalf of the appellant submitted that in *Pushpa alias Leela v Shakuntala*<sup>3</sup>, the position has been clarified by holding that where notwithstanding the sale of a vehicle, neither the transferor nor the

transferee have taken any step for change in the name of owner in the certificate of registration, the person in whose name the registration stands must be deemed to continue as the owner of the vehicle for the purposes of the Act.

5 On the other hand, learned counsel appearing on behalf of the First respondent supported the judgment of the Tribunal by submitting that the appellant as the person in physical possession and control of the vehicle was liable. Learned counsel appearing on behalf of the First respondent also relied on the decisions of this Court in Purnya Kala Devi and Reshma. Learned counsel submits:

(i) “The sale of a vehicle also results in a presumable change of physical possession and control of the vehicle from the vendor to the vehicle. The registered owner at the best can be regarded as an ostensible owner of the vehicle but not the real owner after the sale of the vehicle, even if his name is there on the Registration Certificate of the vehicle;

(ii) The definition of owner in the Section 2(30) of the Act, is not a complete code and the exceptions contained therein are not exhaustive;

(iii) The Court/Tribunal should apply the test whether the registered owner has, through legitimate means, fully relinquished his possession and control over the vehicle or not. If the answer is in the 3 (2011) 2 SCC 240 affirmative, he cannot be made liable and the person who is in physical possession and control of the vehicle should be made liable;

and

(iv) Section 50 casts the onus of changing the name in the registration certificate, on both the transferor as well as the transferee, and hence the transferor (the registered owner) cannot be made liable, and the transferee who has control over the use of vehicle should be made liable.” 6 The expression ‘owner’ is defined in Section 2(30) of the Act, 1988, thus:

“2(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.” The person in whose name a motor vehicle stands registered is the owner of the vehicle for the purposes of the Act. The use of the expression ‘means’ is a clear indication of the position that it is the registered owner who Parliament has regarded as the owner of the vehicle. In the earlier Act of 1939, the expression ‘owner’ was defined in Section 2(19) as follows:

“11...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.” Evidently, Parliament while enacting the Motor Vehicles Act, 1988 made a specific change by recasting the earlier definition. Section 2(19) of the earlier Act stipulated that where a person in possession of a motor vehicle is a minor the guardian of the minor would be the owner and where the motor vehicle was subject to a hire purchase agreement, the person in possession of the vehicle under the agreement would be the owner. The Act of 1988 has provided in the first part of Section 2(30) that the owner would be the person in whose name the motor vehicle stands registered. Where such a person is a minor the guardian of the minor would be the owner. In relation to a motor vehicle which is the subject of an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement would be the owner. The latter part of the definition is in the nature of an exception which applies where the motor vehicle is the subject of a hire purchase agreement or of an agreement of lease or hypothecation. Otherwise the definition stipulates that for the purposes of the Act, the person in whose name the motor vehicle stands registered is treated as the owner.

7 Section 50 deals with the procedure for transfer of ownership, and provides as follows:

“50. Transfer of ownership.—(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,— (a) the transferor shall,—

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)— (A) the no objection certificate obtained under section 48; or (B) in a case where no such certificate has been obtained,— (I) the receipt obtained under sub-section (2) of section 48; or (II) the postal acknowledgement received by the transferred if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in section 48, together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) Where—

(a) the person in whose name a motor vehicle stands registered dies, or

(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government, the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5):

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him under section 177.

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2). 32 (6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority.”

8 The decision of the Bench of two judges of this Court in Pushpa alias Leela (supra) was in a case where the offending vehicle was registered in the name of J who had sold it to S on 2 February 1993

and had given possession to the transferee. On the date of the transfer the truck was covered by a valid policy of insurance. Despite the sale of the vehicle the change of ownership was not reflected in the certificate of registration. The policy of insurance expired on 24 February 1993. Subsequently S took out an insurance policy in the name of the registered owner and it was valid and subsisting when the accident took place on 7 May 1994. The Tribunal held that no liability to pay compensation attached to J since he had ceased to be the owner of the vehicle after its sale on 2 February 1993. S alone was held to be liable for the payment of compensation to the claimants. On these facts the Bench of two judges of this Court held as follows:

“11. It is undeniable that notwithstanding the sale of the vehicle neither the transferor Jitender Gupta nor the transferee Salig Ram took any step for the change of the name of the owner in the certificate of registration of the vehicle. In view of this omission Jitender Gupta must be deemed to continue as the owner of the vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale on 2-2-1993.” (Id at page 244) In the course of its decision, the two judge Bench referred to the earlier decision in *Dr T V Jose v Chacko P M4*, which had arisen under the Motor Vehicles Act 1939. In that context, this Court had held thus:

“12...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. The appellant could not escape that liability by merely joining Mr Roy Thomas in these appeals.” (Id at page 244) The decision in *Dr T V Jose* was followed in *P P Mohammed v K Rajappan*<sup>5</sup>. Noticing that the decision in *Dr T V Jose* was rendered under the Motor Vehicles Act, 1939, the Court in *Pushpa* held that the ratio of the decision “shall apply with equal force to the facts of the cases arising under the 1988 Act” in view of the provisions of Section 2(30) and Section 50. Consequently, the view of this Court was that the person whose name continues in the record of the registering authority as the owner of the vehicle is equally liable together with the insurer.

9 The decision of a three judge Bench of this court in *Purnya Kala Devi* (supra) involved a situation where the registered owner of a vehicle involved in an accident denied his liability to compensate the legal heirs of the deceased victim on the ground that the state government had requisitioned the vehicle. On the date of the accident, the vehicle stood requisitioned under the Assam Requisition and Control of Vehicles Act, 1968. The state failed to establish that the vehicle was released from requisition after service of a 4 (2001) 8 SCC 748 5 (2008) 17 SCC 624 notice in writing to the owner, to take delivery, as required by Section 5(1) of the state Act. Under the Assam Act, it was only upon the service of a notice to that effect that no liability for compensation would lie with the requisitioning authority. The High Court absolved the state government on the basis of the definition of the expression ‘owner’ in Section 2(30) of the Motor Vehicles Act, 1988. Reversing the judgment, this Court held thus :

“16..the High Court, without adverting to Section 5 of the Assam Act, merely on the basis of the definition of “owner” as contained in Section 2(30) of the 1988 Act, mulcted the award payable by the owner of the vehicle. The High Court failed to appreciate that at the relevant time the offending vehicle was under the requisition of Respondent 1 State of Assam under the provisions of the Assam Act. Therefore, Respondent 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. The Tribunal also erred in accepting the allegation of Respondent 2 that the vehicle was released on the date of the accident at 10.30 a.m. and the accident occurred at 10.30 a.m. without any evidence even though in the claim petition, it was stated that the accident had occurred at 10.15 a.m.” (Id at page 147) 10 The above observations would indicate that a combination of circumstances cumulatively weighed with this Court. Significantly, for the purposes of the present discussion, what emerges from the above judgment is the circumstance that the motor vehicle was on the date of the accident requisitioned by the state government. Requisitioning by its very nature is involuntary insofar as the person whose property is requisitioned is concerned. This Court observed that it is the person in control and possession of a vehicle which is under an agreement of lease, hypothecation or hire purchase who is construed as the owner and not the registered owner. The same analogy was drawn to hold that where the vehicle had been requisitioned, it was the state and not the registered owner who had possession and control and would hence be held liable to compensate.

Purnya Kala Devi does not hold that a person who transfers the vehicle to another but continues to be the registered owner under Section 2(30) in the records of the registering authority is absolved of liability. The situation which arose before the court in that case must be borne in mind because it was in the context of a compulsory act of requisitioning by the state that this Court held, by analogy of reasoning, that the registered owner was not liable. 11 The subsequent decision of a Bench of three judges of this Court in *HDFC Bank Limited v Reshma* (supra) involved an agreement of hypothecation. The Tribunal held the financier of the vehicle to jointly and severally liable together with the owner on the ground that it was under an obligation to ensure that the borrower had not neglected to get the vehicle insured. The High Court had dismissed the appeal filed by the Bank against the order of the Tribunal holding it liable together with the owner. In the appeal before this Court, Justice Dipak Misra (as the learned Chief Justice then was) adverted during the course of the

judgment to the principles laid down by this Court in several earlier decisions, including of this Court<sup>6</sup>. Noticing that the case before the court involved a hypothecation agreement, this Court held:

“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 the subject of an agreement of hypothecation and was in possession and control of Respondent 2.”(id at page 693) Since the Second respondent was in control and possession of the vehicle this Court held that the High Court was in error in fastening the liability on the financier. The failure of the Second respondent to effect full payment for obtaining an insurance cover was neither known to the financier nor was there any collusion on its part. Consequently, the High Court was held to be in error in fastening liability on the financier.

12 The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression ‘owner’ in Section 2(30), it is the person in whose name the motor vehicle stands registered who, 6 Mohan Benefit (P) Ltd. v. Kachraji Raymalji, (1997) 9 SCC 103 : 1997 SCC (Cri) 610; Rajasthan SRTC v. Kailash Nath Kothari, (1997) 7 SCC 481 ; National Insurance Co. Ltd. v. Deepa Devi, (2008) 1 SCC 414 : (2008) 1 SCC (Civ) 270 : (2008) 1 SCC (Cri) 209; Mukesh K. Tripathi v. LIC : (2004) 8 SCC 387 : 2004 SCC (L&S) 1128, Ramesh Mehta v. Sanwal Chand Singhvi (2004) 5 SCC 409, State of Maharashtra v. Indian Medical Assn. (2002) 1 SCC 589 : 5 SCEC 217, Pandey & Co. Builders (P) Ltd. v. State of Bihar (2007) 1 SCC 467 and placed reliance on Kailash Nath Kothari [Rajasthan SRTC v. Kailash Nath Kothari, (1997) 7 SCC 481, National Insurance Co. Ltd. v. Durdadahya Kumar Samal : (1988) 1 ACC 204 : (1988) 2 TAC 25 (Ori) and Bhavnagar Municipality v. Bachubhai Arjanbhai : 1995 SCC OnLine Guj 167 : AIR 1996 Guj 51; Godavari Finance Co. v. Degala Satyanarayanamma, (2008) 5 SCC 107 : (2008) 2 SCC (Cri) 531; Pushpa v. Shakuntala, (2011) 2 SCC 240 : (2011) 1 SCC (Civ) 399 : (2011) 1 SCC (Cri) 682; T.V. Jose [(2001) 8 SCC 748 : 2002 SCC (Cri) 94] , SCC p. 51, para 10; U.P. SRTC v. Kulsum, (2011) 8 SCC 142 : (2011) 4 SCC (Civ) 66 : (2011) 3 SCC (Cri) 376; Purnya Kala Devi v. State of Assam, (2014) 14 SCC 142 : (2015) 1 SCC (Cri) 304 : (2015) 1 SCC (Civ) 251.” for the purposes of the Act, would be treated as the ‘owner’. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression ‘owner’ in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise



would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi. 13 The submission of the Petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In Dr T V Jose, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled. 14 For the above reasons we allow the appeal and direct that the liability to compensate the claimants in terms of the judgment of the Tribunal will stand fastened upon the First respondent. The judgment of the High Court is set aside. In the circumstances of the case, there shall be no order as to costs.

.....CJI [DIPAK MISRA] .....J [A M  
KHANWILKAR] .....J [Dr D Y CHANDRACHUD] New Delhi;

February 06, 2018