Managing Director, K.S.R.T.C vs New India Assurance Co.Ltd & Anr on 27 October, 2015

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Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5293 OF 2010

Managing Director, K.S.R.T.C. ... Appellant

Versus

New India Assurance Co.Ltd. & Anr. ... Respondents

With

Civil Appeal No.6641 of 2010

MD Karnataka Road Transport Corpn. & Anr. … Appellants

Versus

Thippamma & Ors. … Respondents

J U D G M E N T

ARUN MISHRA, J.

1. The questions involved in the appeals are whether in the wake of lease agreement entered into by registered owner with Karnataka State Road Transport Corporation (hereinafter referred to as the 'KSRTC'), the registered owner and insurer along with KSRTC can be fastened with the liability to make payment to the claimants and whether KSRTC can recover the amount from registered owner and its entitlement to seek indemnification from insurer?

2. The facts giving rise to Civil Appeal No.5293 of 2010 reflect that the accident in question was caused by the bus which was driven under the control of KSRTC. The bus was owned by respondent no.2, T.M. Ganeshan, insured by the New India Assurance Co. Ltd. Admittedly, an agreement dated 28.2.2002 was entered into between the KSRTC and owner respondent no.2. The MACT, Tumkur, Karnataka on 25.6.2007 allowed the claim petition preferred by the claimants and awarded a sum of Rs.4,09,000/- with interest @ 6% p.a.

3. In view of the agreement between KSRTC and the owner of the bus, the liability was fastened upon the owner and the insurer of the vehicle jointly and severally to make the payment of compensation, not on KSRTC. Aggrieved thereby, the insurer preferred an appeal before the High Court of Karnataka. The same has been allowed by the impugned judgment and order dated 20.2.2009. The High Court has allowed the appeal filed by the insurer and held that the liability to make the payment of compensation is that of KSRTC alone. Aggrieved thereby, the KSRTC has come up in the appeal before us.

4. In Civil Appeal No.6641 of 2010, the bus was plied similarly on hire agreement by the KSRTC. The Claims Tribunal has fastened the liability jointly and severally upon the KSRTC and upon Internal Security Fund, Bangalore. Aggrieved thereby, the appeal was preferred in the High Court and the same has been dismissed. Hence, Civil Appeal No.6641 of 2010 has been filed in this Court.

5. It was submitted by Shri S.N. Bhat, learned counsel for the appellant that the High Court has erred in fastening the liability upon the KSRTC. In view of the lease agreement for hire entered into between the KSRTC and the owner, the owner could not escape the liability to make the payment of compensation. As such, the insurer was liable to indemnify the owner and to make the payment of compensation. The liability could not have been fastened upon the KSRTC. Learned counsel has placed reliance on the decision of this Court in Uttar Pradesh State Road Transport Corporation v. Kulsum & Ors., (2011) 8 SCC 142.

6. Shri Vishnu Mehra, learned counsel appearing on behalf of New India Assurance Co. Ltd. contended that in view of the fact that the vehicle was plied under the complete control and supervision of KSRTC, it cannot escape from the liability to make the payment of compensation. He has relied upon the decision of this Court in Rajasthan State Road Transport Corporation v. Kailash Nath Kothari & Ors., (1997) 7 SCC 481 and the definition of the owner under Section 2(30) of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'). He has consequently submitted that owner and insurer have rightly been exonerated by the High Court.

7. It was submitted on behalf of the claimants that they can recover the compensation from the KSRTC, owner and insurer jointly and severally.

8. The owner has been defined under Section 2(30) of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988). The definition in the Act of 1988 is extracted hereunder :

> "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;"

9. The definition of owner under Section 2(19) of the Motor Vehicles Act, 1939 read as under:-

> "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."

10. Under the Act of 1988, the owner means a registered owner and where the agreement on hire-purchase or an agreement of hypothecation has been entered into or lease agreement, the person in possession of the vehicle is treated as an owner.

11. Section 146 of the Act of 1988 prescribe the necessity for insurance against third party risk. Motor vehicle cannot be used in a public place without policy of insurance complying with the requirement of Chapter X1. Exemption has been carved out to the vehicles owned by the Central or State Governments and used for government purposes. Under sub-Section (3) of Section 146, it is open to the appropriate Government to exempt the vehicle owned by the Central or State Governments if it is used for Government purposes or any local authority or any State transport undertaking.

12. Section 147 of the Act of 1988 deals with the requirements of policy and limits of liability. The statutory requirement under Section 147 is that policy of insurance must be a policy which is issued by authorised Insurer and insures the person or class of persons specified in the policy to the extent specified in sub-section (2)(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place; and (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

13. Certain exception have been carved out in the proviso to sub-section (1) of section 147. It is contained in proviso (ii) that the policy shall not be required to cover any contractual liability. Limits of the liability have been provided in Section 147(2). The liability under Section 147(2)(1)(b)

is the amount of liability incurred and with respect to any damage to any property of a third party, a limit of Rs.6,000/-. Section 147(5) provides that notwithstanding anything contained in any law for the time being in force, an insurer shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

14. Section 157 of the Act 1988 deals with the deemed transfer of certificate of insurance. Provisions of Section 157 are as under:

> "157. Transfer of certificate of insurance.— (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.
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> (2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance." It is apparent from Section 157(1) of the Act of 1988 that certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

Section 157(2) of the Act provides that the transferee to apply within 14 days from the date of transfer in the prescribed form to make necessary changes in the certificate of insurance.

15. Before dilating further, we deem it appropriate to advert to the certain clauses in the lease agreement on the basis of which vehicles are plied on hire by the KSRTC. The owner of the private bus has to provide new bus to KSRTC for the purpose of hire.

16. As per clause 6, the owner of the private bus to discharge statutory liability. Clauses 6(i) and (ii) of lease agreement are quoted below:

> "6(i) In case the owner of the private bus defaults in the discharge of any of his statutory liability, KSRTC reserves the right to deduct such amounts from the amount payable to the owner as it is sufficient to discharge the liability, and if the liability is more than the amounts payable by KSRTC to the owner, the owner alone shall be liable to discharge the liability and/or to make good the amount to KSRTC, if discharged by KSRTC.

> 6(ii) If because of any default by the bus owner or by his/her drivers/other employees, agent representative, any liability comes on KSRTC, the KSRTC has the right to recover the amount either from the bills payable or the security deposit and to take further steps to recover the balance from the private owner by any lawful means."

17. The Conductor was to be provided under clause 7(iv) by the KSRTC and was entitled to collect the fare and luggage charges etc. for and on behalf of KSTRC.

18. As per clause 8, Drivers were to be engaged and provided by the owner. Salary etc. was also to be paid by the owner and is subject to other conditions such as they should not have been dismissed from the services of the Central Government etc. and should possess requisite licence.

19. Clause 14 of lease agreement with respect to insurance coverage is also relevant which is extracted as under:

> "14. The owner of the private bus shall keep the hired bus duly insured under a Motor Vehicle comprehensive insurance police covering all risks and all such costs shall be born by the owner of the private bus. In case of failure to have a valid comprehensive insurance policy. The bus will not be used for KSRTC's operations and it will be deemed that the bus has not been made available to KSRTC for scheduled operations, with all consequent of effects. The insurance shall cover 61passengers."

20. Clause 16 relating to liability as to accidents is also important for the purpose of decision of the case. Clauses 16(a) (b) and (c) are extracted as under:-

> "(a) The owner of the bus alone shall be solely liable for any claim arising out of any accident, damages or loss or hurt caused during the operation of the bus. The KSRTC shall not be liable for any claims arising out of the use of the buses, including claims made in connection with the impurities or loss of life sustained by passengers, bus crew or any other road user or to any property/person. Besides, all tortuous liability if any, shall be borne by the owner or the insurer of the vehicle themselves. However the accidents should be reported to the KSRTC office/Depot.
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> (b) KSRTC may make payment of ex-gratia amount to the victims in event of accident of such private hired buses while on KSRTC operations as per the KSRTC's prevailing norms which shall be recovered from any amounts due to the owner of such private buses or from security Deposit etc. Further, the owner of such private bus should make prompt payment of 'no fault liability' or any other claim under the law for such accident victims. In case KSRTC is compelled to make such payment on behalf of the owner of private buses, it shall be recovered from any amount due to the owner by KSRTC or receivable to him from Insurance Company or other debtors etc. In case of non-payment to non-recovery of such amount by KSRTC within 15 days, interest at 15% per annum shall also be recoverable. For delays beyond 30 days KSRTC may

amount or adjustment thereof towards hire charges payable.

(c) It shall be the responsibility of the owner of the private bus to produce at his own cost, the driver/bus before the court of …….. and before the police authorities whenever required in case of accident or any other contingencies or on order or directions by the Judicial Or Executive authorities ……. charges shall be payable by KSRTC in such cases." It is apparent from clause 16(a) that in case of accident claim, the KSRTC shall not be liable for any claim arising out of use of buses including loss of life sustained by passengers or any other user or to any property/person. If KSRTC makes any ex gratia payment in the case of accident, the same shall be recovered from any amount due to the owner in case KSRTC is made liable to make payment of compensation on behalf of private buses it shall be recovered from any amount due to the owner by KSRTC or receivable to him from Insurance Company etc.

21. Clauses 17, 18, 19 and 20 are also relevant they are extracted below:

"17. The KSRTC shall not be liable for any loss caused to the buses hired, at any point of time including during the period of agitations, strikes, accidents, natural calamities etc.

18. The owner of the private bus shall be liable for shall alone discharge or meet all claims including fines and penalties arising out of violation of traffic Rules, and Regulations, Statutes, Acts, Rules and Regulations etc., in force for act of omissions or commissions committed either by his/her drivers or by any other person not authorised to drive. The owner of the private bus shall be liable and shall meet and discharge any claim for compensation or damages on account of tortuous liability.

19(a) The owner of the private bus shall provide and make available bus/buses as per the contract to KSRTC on all days or operation in time as per the schedule departing time and also as so as to cover the entire schedule Kms. Duty.

(b) The owner of the private bus shall not withdraw any bus from the operation except with advance notice before 24 hours and with prior written consent of the depot manager concerned of KSRTC to do so. In case any violation of this clause, the owner shall be liable for imposition of penalties by the KSRTC.

20(1)(a) The KSRTC on its part agrees to pay hire charges to the owner at the rates inculcation in the hiring rate charts at Annexure A1 and A2, subject to the rules, terms and conditions of the contract. The hiring rate applicable shall be based on the schedule Kms. of the route allotted to the hired bus, except as otherwise provided herein."

22. The main question for consideration is whether the registered owner and insurer can escape the liability in view of the provisions contained in the Act and in view of the aforesaid terms and conditions of the lease agreement. The question also arise whether claimants can also recover the

amount from KSRTC.

23. The High Court has held that actual control of the bus was with the KSRTC and the driver was driving the bus under its control. Relying upon the decisions in National Insurance Co. Ltd. V. Deepa Devi & Ors., (2008) 1 SCC 414 and Rajasthan State Road Transport Corporation v. Kailash Nath Kothari & Ors., (1997) 7 SCC 481, it was held that KSRTC to be the owner under Section 2(30) of the Act. There is no liability of the registered owner as such insurer cannot be saddled with liability to indemnify. Hence, the registered owner and the insurer have been exonerated. The KSRTC has been fastened with the liability.

In our opinion, decision of High Court is not sustainable. The provisions contained in the Act are clear. No vehicle can be driven without insurance as provided in Section 147 whereas clause 14 of lease agreement between KSRTC and the owner clearly stipulate that it shall be the liability of the owner to provide the comprehensive insurance covers for all kind of accidental risks to the passengers, other persons/property. The provisions of said clause of the agreement are not shown to be opposed to any provision in the Contract Act or any of the provisions contained under the Act of 1988. Hiring of public service vehicles is not prohibited under any of the provisions of the aforesaid laws. It could not be said to be inconsistent user by KSRTC. The agreement is not shown to be illegal in any manner whatsoever nor shown to be opposed to the public policy.

24. The policy of insurance is contractual obligation between the insured and the insurer. It has not been shown that while entering into the aforesaid agreement of lease for hiring the buses, any of the provisions contained in the insurance policy has been violated. It has not been shown that owner could not have given bus on hire as per any provision of policy. It was the liability of the registered owner to provide the bus regularly, to employ a driver, to make the payment of salary to the driver and the driver should be duly licenced and not disqualified as provided in the agreement though buses were to be plied on the routes as specified by the KSRTC and hiring charges were required to be paid to the registered owner. In the absence of any stipulation prohibiting such an arrangement in the insurance policy, we find that in view of agreement of lease the registered owner has owned the liability to pay. The insurer cannot also escape the liability.

25. Apart from that what is provided under Section 157 of the Act of 1988 is that the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. Even if there is a transfer of the vehicle by sale, the insurer cannot escape the liability as there is deemed transfer of the certificate of insurance. In the instant case it is not complete transfer of the vehicle it has been given on hire for which there is no prohibition and no condition/policy of insurance as shown to prohibit plying of vehicle on hire. The vehicle was not used for inconsistent purpose. Thus, in the absence of any legal prohibition and any violation of terms and conditions of the policy, more so, in view of the provisions of Section 157 of the Act of 1988, we are of considered opinion that the insurer cannot escape the liability.

26. Now, we come to the question of exclusion of contractual liability under second proviso to Section 147(1). When we read provisions of Section 147 with Section 157 together, it leaves no room

for any doubt that there is deemed transfer of policy in case of transfer of vehicle. Hence, liability of insurer continues notwithstanding the contract of transfer of vehicle, such contractual liability cannot be said to be excluded by virtue of second proviso to Section 147(1) of Act of 1988. Higher purchase agreement, an agreement for lease or an agreement for hypothecation are covered under Section 2(30) of the Act of 1988. A person in possession is considered to be an owner of the vehicle under such agreements. In case such contractual liability is excluded then anomalous results would occur and financer under higher purchase agreement would be held liable and so on. In our view, an agreement for lease on hire cannot be said to be contract envisaged for exclusion under contractual liability in second proviso to Section 147(1) of the Act of 1988. The High Court has erred in holding otherwise.

27. The KSRTC can also be treated as owner for the purposes of Section 2(30) of the Act of 1988 plying the buses under lease agreement. The insurance company admittedly has insured the vehicle and taken the requisite premium and it is not a case set up by the insurer that intimation was not given to the insurance company of the hiring arrangement . Even if the intimation had not been given, in our opinion, the insurer cannot escape the liability to indemnify as in the case of hiring of vehicle intimation is not required to be given. It is only in the case of complete transfer of the vehicle when change of registration particulars are required under Section 157 of the Act, an intimation has to be given by the transferee for effecting necessary changes in the policy. Even otherwise, that would be a ministerial act and the insurer cannot escape the liability for that reason. When the KSRTC has become the owner of the vehicle during the period it was on hire with it for the purpose of Section 2(30) of the Act by virtue of provisions contained in Section 157 of the Act, the insurance policy shall be deemed to be transferred. As such, insurer is liable to make indemnification and cannot escape the liability so incurred by the KSRTC.

28. In RSRTC v. Kailash Nath Kothari (supra), question of liability of insurance company did not come up for consideration. The vehicle was taken by RSRTC from its owner Sanjay Kumar and it was being plied on the route by RSRTC. The case arose out of accident date 17.7.1981 under the Act of 1939. The definition of second owner under section 2(19) of Act of 1939 came up for consideration before this Court, and conditions 4 to 7 and 15 of agreement between RSRTC and the owner, this Court held that vehicle in question was in possession and actual control of RSRTC as such it cannot escape from liability. Relevant portion of decision is extracted below:-

> "15. Conditions 4 to 7 and 15 of the agreement executed between the RSRTC and the owner read:
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> "4. The Corporation shall appoint the conductor for the operation of the bus given on contract by the second party and the conductor of the Corporation shall do the work of issuing tickets to the passengers, to receive the fare, to let all the passengers get in and get out of the bus, to help the passengers to load and unload their goods, to stop the bus at the stops fixed by the Corporation and to operate the bus according to time- table.

5. The tickets, waybills and other stationery shall be supplied by the Corporation to the said conductor of the Corporation.

6. The driver of the bus shall have to follow all such instructions of the conductor, which shall be necessary under the rules for the operation of the bus.

7. The driver of the bus shall comply with all the orders of the Corporation or of the officers appointed by the Corporation.

15. Upon the accident of the bus taking place the owner of the bus shall be liable for the loss, damages and for the liabilities relating to the safety of the passengers. The Corporation shall not be liable for any accident. If the Corporation is required to make any payment or incur any expenses through some court or under some mutual compromise, the Corporation shall be able to recover such amounts from the owner of the bus after deducting the same from the amounts payable to him."

16. 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.

17. 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 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 would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. In this case, Shri Sanjay Kumar, the owner of the bus could not ply the bus on the particular route for which he had no permit and he in fact was not plying the bus on that route. The services of the driver were transferred along with complete "control" to RSRTC, under whose directions, instructions and command the driver was to ply or not to ply the ill-fated bus on the fateful day. The passengers were being carried by RSRTC on receiving fare from them. Shri Sanjay Kumar was therefore not concerned with the passengers travelling in that bus on the particular route on payment of fare to RSRTC. 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.

18. Reliance placed by learned counsel for the appellant on Condition No. 15 of the agreement (supra) in our view is misconceived. Apart from the fact that this clause in the agreement between the owner and the RSRTC, to the extent it shifts the liability for the accident from the RSRTC to the owner, may be against the public policy as opined by the High Court, though we are not inclined to test the correctness of that proposition of law because on facts, we find that RSRTC cannot escape its liability to pay compensation. The second part of Condition No. 15 makes it abundantly clear that the RSRTC did not completely shift the liability to the owner of the bus because it provided for reimbursement to it in case it has to pay compensation arising out of an accident. The words “if the Corporation is required to make any payment or incur any expenses through some court or under some mutual compromise, the Corporation shall be able to recover such amounts from the owner of the bus after deducting the same from the amounts payable to him” in the later part of Condition No. 15 leave no ambiguity in that behalf and clearly go to show the intention of the parties. Thus, RSRTC cannot escape its liability under Condition No. 15 of the agreement either. Thus, both on facts and in law the liability to pay compensation for the accident must fall on the RSRTC.” It is apparent that question of the liability of the insurer did not come up for consideration and also the relevant statutory provisions relating thereto in aforesaid decision. This Court, considering clause 16 of

> the agreement entered into by RSRTC and owner, held that RSRTC did not completely shift the liability to the owner of the bus in case it has to pay compensation arising out of an accident. In the instant cases also there are certain clauses referred to above which indicate that if the KSRTC has to make the payment, it can recover the same from the owner out of the amount payable by it or from the amount payable by the insurer to the owner. On the strength of decision in RSRTC v. Kailash Nath Kothari (supra), the KSRTC being in actual control of the vehicle would also be liable to make the compensation, however, in our opinion it can recover the amount from the registered owner or insurer, as the case may be. In fact of the case, vis-à-vis, the claimants' liability would be joint and several upon the KSRTC, registered owner and the insurer.

29. In National Insurance Co. v. Deepa Devi (supra), vehicle was under

> requisition by the State Government and that possession on requisition was not covered by the definition of the owner under section 2(30) in the Act of 1988 or the Act of 1939. It was held by this Court as the Motor Vehicles Act did not envisage such a situation. Owner in such a case has to be understood from common sense point of view. Thus, the State was held liable to make the payment of compensation. The question was altogether different in the aforesaid case.

30. In Godavari Finance Company v. Degala Satyanarayanamma & Ors., (2008) 5 SCC 107, definition of owner came up for consideration. It was held that the name of the financer was incorporated in the registration book as owner. The respondent was held to be owner of the vehicle which was purchased by him on being financed by Godavari Finance Company. The financer could not be held liable to make the payment of compensation as definition of the owner in the Act of 1939 is a comprehensive one as vehicle which is the subject matter of hire purchase agreement, the person in possession of the vehicle under that agreement shall be the owner. Thus, the name of the financer in the certificate would not be decisive for determination as to who was the owner of the vehicle. In the case of hire purchase agreement, financer cannot ordinarily be treated to be the owner and the person in possession is liable to pay damages for the motor accident. This Court has held thus:

> "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 compulsorily 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." (emphasis supplied by us) This Court has observed in Godavari Finance Company (supra) that insurance company in such a case becomes a necessary party as it would have to reimburse the owner.

31. In Uttar Pradesh State Road Transport Corporation v. Kulsum & Ors., (2011) 8 SCC 142, this Court has considered the question of vehicle given on hire by owner of the vehicle to UPSRTC with its existing and running insurance policy. It was held that the UPSRTC have become the owner of the vehicle during the specified period and vehicle having been insured at the instance of the original owner, it would be deemed that vehicle was transferred alongwith insurance policy to UPSRTC. The insurer cannot escape the liability to pay the compensation. The appeal preferred by UPSRTC was allowed. The instant cases are more or less the same and the decision of this Court in UPSRTC v. Kulsum (supra) also buttress the submission raised by KSRTC. This Court has held as under:

"30. Thus, for all practical purposes, for the relevant period, the Corporation had become the owner of the vehicle for the specific period. If the Corporation had become the owner even for the specific period and the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred along with the insurance policy in existence to the Corporation and thus the Insurance Company would not be able to escape its liability to pay the amount of compensation.

31. The liability to pay compensation is based on a statutory provision.

Compulsory insurance of the vehicle is meant for the benefit of the third parties. The liability of the owner to have compulsory insurance is only in regard to third party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses the vehicle independently, a separate insurance policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice."

32. In HDFC Bank Limited v. Reshma & Ors., (2015) 3 SCC 679, definition of owner under the provisions of Section 2(30) of the Act of 1988 came up for consideration before a bench of 3 judges of this Court. This Court referred to the decisions of Godavari Finance Company (supra) and Pushpa alias Leela & Ors. v. Shakuntala & Ors., (2011) 2 SCC 240 etc. in which the question arose whether the liability to pay 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. This Court in HDFC Bank Limited v. Reshma & Ors.(supra) held thus:

> "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
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> 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 Mohan Benefit (P) Ltd. V. Kachraji Raymalji (1997) 9 SCC 103, in our considered opinion, was inappropriate because in the instant case all the documents were filed by the Bank. In the said case, the 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. In the decision in Rajasthan SRTC v.

Kailash Nath Kothari,(1997) 7 SCC 481 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 National Insurance Co. Ltd. V. Deepa Devi, (2008) 1 SCC 414. 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 Pushpa v. Shakuntala case, (2011) 2 SCC 240 the learned Judges distinguished the ratio in Deepa Devi on the ground that it hinged on its special facts and fastened the liability on the insurer. In UPSRTC v. Kulsum, (2011) 8 SCC 142, the principle stated in Kailash Nath Kothari 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 v. State of Assam, (2014) 14 SCC 142, 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 2. Respondent 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 Respondent 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 Respondent 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." This Court has held that even when there was an agreement of and vehicle has been insured and agreement holder is treated an owner, the insurer cannot escape the liability to make indemnification.

33. In view of the decision in HDFC Bank Limited v. Reshma & Ors.(supra), the insurer cannot escape the liability, when ownership changes due to the hypothecation agreement. In the case of hire also, it cannot escape the liability, even if the ownership changes. Even though, KSRTC is treated as owner under Section 2(30) of the Act of 1988, the registered owner continues to remain liable as per terms and conditions of lease agreement lawfully entered into with KSRTC.

34. In view of the aforesaid discussion, we hold that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and the KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer.

35. The appeals are, accordingly, allowed. Parties to bear their own costs.

.....CJI.

(H.L. Dattu)

New Delhi;
….....J.
October 27, 2015. (Arun Mishra)