

Pushpa @ Leela & Ors vs Shakuntala & Ors on 12 January, 2011

Equivalent citations: AIR 2011 SUPREME COURT 682, 2011 (2) SCC 240, 2011 AIR SCW 562, 2011 AAC 596 (SC), 2011 (3) AIR JHAR R 66, 2011 (1) AIR KANT HCR 815, AIR 2011 SC (CIVIL) 392, (2011) 2 MAD LW 592, (2011) 2 PUN LR 472, (2011) 98 ALLINDCAS 7 (SC), (2011) 1 ACJ 705, (2011) 112 CUT LT 330, (2011) 1 CLR 570 (SC), (2011) 1 CURCC 148, (2011) 2 RECCIVR 616, (2011) 1 WLC(SC)CVL 315, (2011) 3 CIVLJ 458, (2011) 1 KER LJ 488, (2011) 3 ANDHLD 112, (2011) 2 ALL WC 1094, (2011) 3 MAD LJ 219, (2011) 1 TAC 778, (2011) 85 ALL LR 206, (2011) 1 RAJ LW 401, (2011) 1 ACC 342, (2011) 1 SCALE 303, (2011) 2 JCR 163 (SC), (2011) 2 CPJ 9, 2011 (1) KLT SN 52 (SC)

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Bench: R.M. Lodha, Aftab Alam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6924 OF 2005

Pushpa @ Leela & Ors.

... Appellants

Versus

Shakuntala & Ors.

... Respondents

JUDGMENT

AFTAB ALAM, J.

1. Whether in the fact and circumstances of the case the liability to pay the compensation amount as determined by the Motor Accident Claims Tribunal was of the purchaser of the vehicle alone or whether the liability of the recorded owner of the vehicle was coextensive and from the recorded owner it would pass on to the insurer of the vehicle? This is the short question that arises for consideration in this appeal by special leave filed at the instance of the claimants.

2. The appellants, claimants before the Claims Tribunal are the heirs and legal representatives of one Prem Chand who died in a motor accident on May 7, 1994. Prem Chand had hired the truck bearing registration no.HPA- 1435 for carrying some materials and food articles for a wedding in the family. He got the materials to be transported loaded on the truck by a labourer, Nikku Ram whom he had engaged for that purpose and took him along with him on the truck for unloading the consignment at the destination. According to the claimants, the driver Roop Ram was driving the truck rashly and at a very high speed. As a result, the truck met with an accident and at about 6.30-7pm while running on Dhararu Dhar Road near Bangora, Tehsil Arki, District Solan, in the State of Himachal Pradesh, it went off the road and overturned leading to the death of all the three persons, including the driver.

3. The truck had a little history of its own that actually gives rise to the question set out at the beginning of the judgment. It earlier belonged to one Jitender Gupta who was its registered owner. Jitender Gupta sold the truck to Salig Ram on February 2, 1993 and gave its possession to the transferee. On the date of the sale, the truck was covered by an insurance policy taken out by Jitender Gupta from New India Assurance Company Ltd. The insurance policy was issued on February 25, 1992 and it was due to expire on February 24, 1993. Despite the sale of the vehicle by Jitender Gupta to Salig Ram, the change of ownership of the vehicle was not entered in its certificate of registration. After the earlier policy issued by New India Assurance Company Ltd. expired on February 24, 1993, there was a period when the truck was not covered by any insurance policy. Later on, however, Salig Ram took out an insurance policy for the truck from Oriental Insurance Company Ltd. bearing policy no.31/94/00628. The policy was taken in the name of Jitender Gupta, the earlier owner of the truck, and it was valid from December 8, 1993 to December 7, 1994. The accident in which Prem Chand and Nikku Ram lost their lives took place on May 7, 1994, i.e. during the period when the policy taken out from the Oriental Insurance Company Ltd. was subsisting and valid.

4. The heirs and legal representatives of both the deceased, Prem Chand and Nikku Ram filed separate claim applications before the Motor Accident Claims Tribunal, Solan, Himachal Pradesh. In both the claim applications Salig Ram, the transferee was impleaded as respondent no.1, Jitender Gupta, the original owner of the truck as respondent no.2 and Oriental Insurance Company Ltd. as respondent no.3. The two claim applications, MAC petition no.62-NS/2 of 1994 filed by the heirs and legal representatives of the deceased Prem Chand (appellants in this appeal) and MAC petition no.63-NS/2 of 1994 filed by the heirs and legal representatives of the deceased Nikku Ram (who pursued the matter only up to the High Court and who have not been able to come to this Court in appeal) were consolidated and heard together. All the three respondents appeared before the Tribunal and filed their separate replies resisting the claims of the two claimants. But none of the respondents led any evidences before the Claims Tribunal.

5. The Claims Tribunal, on the basis of the ex parte evidence adduced on behalf of the claimants, found and held that both Prem Chand and Nikku Ram died on May 7, 1994, in the accident caused by truck no.HPA-1435 which was being driven by its driver Roop Ram in a rash and negligent manner. It also found that Prem Chand and Nikku Ram were not travelling in the ill-fated truck as unauthorised or gratuitous passengers. The Claims Tribunal further held that the heirs and legal representatives of Prem Chand were entitled to a sum of Rs.5,04,000/- for the loss of dependency

and Rs.10,000/- for loss of consortium and Rs.2000/- as cremation charges. The heirs and legal representatives of Prem Chand were, thus, held entitled to a total compensation of Rs.5,16,000/-. In case of the heirs and legal representatives of the deceased Nikku Ram, the Claims Tribunal held that they were entitled to a total compensation of Rs.2,42,000/-.

6. Coming next to the question of liability of payment, the issue that is most crucial for the claimants from the practical point of view, the Claims Tribunal held that no liability for payment of compensation to the claimants would attach to Jitender Gupta since he had ceased to be the owner of the vehicle after its sale to Salig Ram on February 2, 1993. It further held that even though an insurance policy for the truck was taken out from Oriental Insurance Company Ltd., the policy was in the name of Jitender Gupta, who was no longer the owner of the truck on the date the policy was taken out and there was no privity of contract between Salig Ram, the owner of the truck and the insurance company. Hence, the insurance policy was of no use for indemnifying Salig Ram, the owner of the truck. In short, Salig Ram alone was liable for payment of the compensation amount to the two claimants. In this connection, the Claims Tribunal in paragraph 46 of its judgment held and observed as followed:

"Because the subsequent policy was taken by respondent no.2 effective from 08.12.1993 to 07.12.1994 when he was not owner having no right, title or interest to obtain the policy. The owner at that time was respondent no.1 who never entered into any privity of contract with respondent no.3 to cover third party risks qua the vehicle."

7. Against the judgment and award made by the Claims Tribunal the claimants filed appeals before the Himachal Pradesh High Court being FAO no.459 of 2000 (by the heirs and legal representatives of Prem Chand) and FAO no.77 of 1999 (by the heirs and legal representatives of Nikku Ram). Both the appeals were dismissed by the High Court by a common judgment and order dated July 15, 2004.

8. We have examined the judgments passed by the Claims Tribunal and the High Court and we find that both the Tribunal and the High Court addressed the question of the liability of the recorded owner of the vehicle on the basis of a provision that has no relevance to the issue. Both the Tribunal and the High Court discussed at length the provision of section 157 of the Motor Vehicles Act, 1988 ("the Act" for short) that deals with "Transfer of Certificate of Insurance". So far as that section is concerned the Tribunal and the High Court were right in holding that section 157 of the Act would apply only to the earlier policy (being that of New India Assurance Company Ltd.) taken out by Jitender Gupta during the validity period of which the truck was sold by him to Salig Ram and it can have no application to the second policy taken out from Oriental Insurance Company Ltd. in the name of Jitender Gupta after the sale of the truck. But as stated earlier, section 157 has no application in the facts of this case.

9. The question of the liability of the recorded owner of the vehicle has to be examined under different provisions of the Act. Section 2(30) of the Act defines "owner" in the following terms:

"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;"

(Emphasis added)

10. Then, section 50 of the Act lays down the procedure for transfer of ownership. It is a long section and insofar as relevant it is reproduced below:

"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) xxxxxxxx

(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) xxxxxxxx (3) xxxxxxxx (4) xxxxxxxx (5) xxxxxxxx (6) On receipt of a report under sub-section (1), or an application under subsection (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."

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 February 2, 1993.

12. The question of the liability of the recorded owner of a vehicle after its sale to another person was considered by this Court in *Dr. T.V. Jose vs. Chacko P.M.*, (2001) 8 SCC 748. In paragraphs 9 and 10 of the decision, the Court observed and held as follows:

"9. Mr. Iyer appearing for the Appellant submitted that the High Court was wrong in ignoring the oral evidence on record. He submitted that the oral evidence clearly showed that the Appellant was not the owner of the car on the date of the accident. Mr. Iyer submitted that merely because the name had not been changed in the records of R.T.O. did not mean that the ownership of the vehicle had not been transferred. Mr. Iyer submitted that the real owner of the car was Mr. Roy Thomas. Mr. Iyer submitted that Mr. Roy Thomas had been made party-Respondent No.9 to these Appeals. He pointed out that an Advocate had filed appearance on behalf of Mr. Roy Thomas but had then applied for and was permitted to withdraw the appearance. He pointed out that Mr. Roy Thomas had been duly served and a public notice had also been issued. He pointed out that Mr. Roy Thomas had chosen not to appear in these Appeals. He submitted that the liability, if any, was of Mr. Roy Thomas.

10. We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. 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 R.T.O. as the owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these Appeals. Mr. Roy Thomas was not a party either before MACT or the High Court. In these Appeals we cannot and will not go into the question of inter se liability between the Appellant and Mr. Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so."

(Emphasis added)

13. Again, in *P.P. Mohammed vs. K. Rajappan & Ors.*, (2008) 17 SCC 624, this Court examined the same issue under somewhat similar set of facts as in the present case. In paragraph 4 of the decision, this Court observed and held as follows:

"4. These appeals are filed by the appellants. The insurance company has chosen not to file any appeal. The question before this Court is whether by reason of the fact that the vehicle has been transferred to Respondent 4 and thereafter to Respondent 5, the appellant got absolved from liability to the third person who was injured. This question has been answered by this Court in *T.V. Jose (Dr.) v. Chacko P.M.* wherein it is held that even though in law there would be a transfer of ownership of the vehicle,

that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person. We are in agreement with the view expressed therein. Merely because the vehicle was transferred does not mean that the appellant stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

(Emphasis added)

14. The decision in Dr. T.V. Jose 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.

15. Learned counsel for the insurance company submitted that even though the registered owner of the vehicle was Jitender Gupta, after the sale of the truck he had no control over it and the possession and control of the truck were in the hands of the transferee, Salig Ram. No liability can, therefore, be fastened on Jitender Gupta, the transferor of the truck. In support of this submission he relied upon a decision of this Court in National Insurance Company Ltd. vs. Deepa Devi & Ors., (2008) 1 SCC

414. The facts of the case in Deepa Devi are entirely different. In that case the vehicle was requisitioned by the District Magistrate in exercise of the powers conferred upon him under the Representation of the People Act, 1951. In that circumstance, this Court observed that the owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remained under requisition, the owner did not exercise any control over it: the driver might still be the employee of the owner of the vehicle but he had to drive the vehicle according to the direction of the officer of the State, in whose charge the vehicle was given. Save and except the legal ownership, the registered owner of the vehicle had lost all control over the vehicle. The decision in Deepa Devi was rendered on the special facts of that case and it has no application to the facts of the case in hand.

16. In light of the discussion made above it is held that the compensation amount is equally realisable from respondent no.3, Oriental Insurance Company Ltd. and it is directed to make full payment of the compensation amount as determined by the Claims Tribunal to the appellants within two months from the date of this judgment.

17. Even though the claimants in the other case, the heirs and legal representatives of Nikku Ram, have not come to this Court, we consider it appropriate to give the same direction in respect of their case. There is absolutely no difference in the case of Nikku Ram and Prem Chand. Nikku Ram, being a daily wage earner was given a compensation of Rs.2,42,000/-. It is quite possible that his heirs

and legal representatives were unable to come to this Court simply for want of sufficient means. The insurance company must pay the compensation amount determined in case of Nikku Ram to his heirs and legal representatives in case the amount has so far not been realised from Salig Ram as directed by the Claims Tribunal.

18. The appeal is allowed but with no order as to costs.

.....J. (AFTAB ALAM)J. (R.M. LODHA) New Delhi January
12, 2011.