

(2006) 07 P&H CK 0232

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Hukam Singh

APPELLANT

Vs

Janak Steel Tubes Ltd.

RESPONDENT

Date of Decision: July 5, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Citation: (2008) ACJ 644 : (2006) 4 RCR(Civil) 327

Hon'ble Judges: R.S. Madan, J

Bench: Single Bench

Judgement

R.S. Madan, J.

This appeal is directed against the order dated 14.6.91 passed by Motor Accidents Claims Tribunal, Hisar (for short to be referred to as "M.A.C.T., Hisar") vide which the claim of the present appellant with respect to the damage caused to the tractor bearing No. HYL 2275, was dismissed.

2. In brief the facts of the case are that on 26.11.1990, Krishan Kumar had come to Hisar along with Suresh Kumar to sell his cotton and after selling the same they were returning in tractor No. HYL 2275 being driven by Krishan Kumar, deceased, whereas Suresh Kumar was sitting on the mudguard of the tractor. At about 10 p.m. when they reached near Satrod Khurd near bridge of canal, Krishan Kumar stopped the tractor-trolley on the extreme left side of the road to urinate. After urination Krishan Kumar was checking the articles lying in the trolley. In the meanwhile truck No. HYT 1211 which was being driven by Karam Vir, respondent No. 2, came from opposite direction in a rash and negligent manner and hit the right side of the tractor as a result of which Suresh Kumar fell down from the tractor. The tractor was broken into pieces. Krishan Kumar received injuries on the head and died on the spot. Hukam Singh, the claimant, who was the owner of the tractor-trolley filed the claim petition for the grant of compensation to the tune of Rs. 50,000 on account of damage caused to the tractor-trolley. It was also pleaded that the claimant suffered

loss of Rs. 10,000 by not plying the tractor for 2 months because it remained idle during this period.

3. The claim petitions were contested by the respondents by filing separate written statements.

4. From the pleadings of the parties, the following issues were framed by learned M.A.C.T., Hisar:

(1) Whether the accident took place due to the rash and negligent driving of the truck No. HYT 1211 by Karam Vir, driver? OPP

(2) If issue No. 1 is proved, to what amount of compensation are the claimants entitled to and from which of the respondents? OPP

(3) Whether the petition is not maintainable in view of the preliminary objections raised by the respondent? OPR

(4) Relief.

5. Issue No. 1 was decided in favour of the claimants. While disposing of issue No. 2, the claim petition filed by Hukam Singh was dismissed on the ground that Hukam Singh, claimant, has failed to prove that he was the owner of the tractor in question on 26.11.1990, the date on which the alleged accident had taken place. The registration of the vehicle was transferred to his name only after the accident. Since, the vehicle was not transferred in the name of Hukam Singh, claimant, on the date of accident, his claim in respect of damage caused to the tractor was rejected.

6. Challenge here in this appeal is to the order of the Tribunal vide which the claim of the appellant was dismissed.

7. I have heard the learned Counsel for the parties and have perused the record carefully.

8. It is pertinent to mention here that at the time of filing of the appeal, an application under Order 41, Rule 27 of the Code of Civil Procedure, was also moved for permission to place on the record the copy of the registration certificate of the tractor in question. At the time of admission of the appeal, it was ordered that the application shall also be heard and disposed of at the time of final hearing of the appeal.

9. On behalf of the appellant, it is contended that in order to prove the damage caused to the truck, the claimant-appellant has examined Satbir Singh, tractor mechanic, PW 5, who has categorically stated that he had surveyed the tractor bearing No. HYL 2275 at the asking of Hukam Singh to assess the damage caused to the tractor and he prepared the estimate of damage, fully detailed in Exh. P10 and Exh. P12 for a sum of Rs. 33,321.50 and labour charges for Rs. 2,710 and issued the estimate, Exh. P10 to Exh. P12. He stated that the estimates were assessed correctly

as the vehicle was completely damaged. In the cross-examination, the testimony of this witness could not be shattered.

10. The testimony of PW 6, Inder Parkash, is the partner of Hindustan Workshop at Hansi, inspected the trolley of tractor No. HYL 2275 on 18.12.1990 and had issued the estimate cost of repair of the trolley. Besides this, there is the statement of the claimant Hukam Singh as PW 4 who has given a detailed version of the damage caused to the tractor. He admitted that due to the paucity of funds he was unable to carry out the repairs of his tractor. Besides this the claimant has also placed on the record the photographs, Exhs. P4 to P7, regarding damage caused due to accident and also showing the scene of accident. No evidence with respect to the damage caused to the tractor has been led by the respondent insurance company.

11. It has been contended by Mr. H.S. Gill, Senior Advocate, on behalf of the appellant, that sale of vehicle is governed by the provisions of Sale of Goods Act and stated that transfer of the vehicle is complete upon payment of consideration and the delivery of the vehicle, irrespective of the fact whether it has been registered or not. Reference was made to Balwant Singh Vs. Jhannubai and Others, , wherein the High Court of Madhya Pradesh at Indore has dealt with this question in paras 9, 10, 11 and 12 of the judgment. In para 11 of the judgment, it has been observed as under:

(11) ...It has further been held by this decision that registration certificate is a very important piece of evidence to show that ownership of the vehicle for certain purposes. However, failure to do so, cannot be deemed to militate against the validity and legality of the passing of the title in the vehicle so transferred or to expose the innocent seller who may have done his all to complete the transfer to legal liabilities for acts and omissions in respect of the vehicle subsequent to the transfer. Moreover, the certificate of registration is not a document of title, it is issued to the owner of the vehicle, that is, the person by whom the vehicle is kept and used and although provision made for changes of ownership to be recorded in the book the name appearing in it may not be that of the legal owner of the vehicle, the registration book is evidence of title and its absence at the time of sale should put a purchaser on enquiry.

12. Reference was also made to the Full Bench judgment of Andhra Pradesh High Court reported as Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, where in para 35, it was observed as under:

(35) On the first question we refer sections 22 and 31 of the Motor Vehicles Act, 4 of 1939 (hereinafter called "the Act"). No doubt, those provisions enjoin both on the transferor and transferee to report the factum of transfer of the vehicle to the registering authority and the owner is required to register the vehicle. We are not persuaded to hold on a careful reading of the said provision that the transfer is incomplete till the registration is effected in favour of the purchaser. The transfer of

vehicle is governed by the provisions of Sale of Goods Act. In the absence of any agreement to the contrary payment of price, and deliver of vehicle make the sale complete and the title passes to the purchaser. The obligation to register the vehicle is for the purposes of controlling and regulating the movement of vehicles by the authorities under the Act and they do not stand in the way of passing title to the purchaser. This is the view taken by the Supreme Court in Panna Lal v. Chand Mal 1980 ACJ 233 (SC) and hence it is unnecessary to go into further debate on this question and accordingly we reject this contention.

13. In view of the observation made by the Full Bench of Andhra Pradesh High Court as well as by the Hon'ble Supreme Court in Panna Lal's case 1980 ACJ 233 (SC), I am of the view that the registration of the vehicle in the name of Hukam Singh for claiming the compensation with respect to the damage caused to the vehicle is not a prerequisite condition precedent.

14. Learned Counsel for the insurance company could not produce any contra authorities to the observations made by the Supreme Court in Panna Lal's case 1980 ACJ 233 (SC), as well as the Full Bench decision of Andhra Pradesh High Court.

15. In the light of the above discussion, the order of the M.A.C.T., Hisar is set aside and the claimant-appellant is held to be owner of the damaged vehicle. Since the tractor in question has not been got repaired and only an estimate was got prepared from not an authorised dealer but from a mechanic, is not sufficient to prove the actual damage caused to the tractor in question. However, taking into account the photographs placed on the records as Exh. P4 to Exh. P7 pertaining to the place of accident in which the damage is shown to have been caused to the tractor, this Court can assess the extent of damage only from the oral evidence. The tractor in question was of 1984 model and accident had taken place on 26.11.1990 and it was secondhand tractor purchased by Hukam Singh, claimant. Therefore, he used the same for 7 years. The value of the vehicle during the period of 7 years might have depreciated. A sum of Rs. 25,000 appears to be just and fair to meet the ends of justice, if the same are awarded to the claimant-appellant in this case along with interest at the rate of 6 per cent per annum from the date of filing of the claim petition and till the date of decision by the Tribunal, i.e., 14.6.1991.

16. Accordingly, the civil misc. application and the appeal is accepted with costs of the appeal. Counsel's fee is assessed at Rs. 11,000.