Ramesh Chander Vs Ganesh Bahadur Kami and Others

Court: Delhi High Court

Date of Decision: Oct. 12, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 10, 114, 151
Motor Vehicles Act, 1988 â€" Section 140, 166, 2, 2(30)

Citation: (2012) ACJ 2579 : (2012) 1 ILR Delhi 259

Hon'ble Judges: Reva Khetrapal, J

Bench: Single Bench

Advocate: Harvinder Singh and Ms. Vidhi Gupta, for the Appellant; Ramesh Kumar, Advocate for the Insurance Company, for the Respondent

Judgement

Reva Khetrapal, J.
This appeal is directed against the judgment and award of the Motor Accidents Claims Tribunal, Delhi dated

15.11.2007 as modifed by order dated 18.01.2008 passed in Suit No. 267/2007 titled as ""Ganesh Bahadur Kami and Anr. v. Raj Pal and Ors."".

2. Concisely, the facts are that on 27.09.2004, the Respondents No. 1 and 2 filed a Claim Petition u/s 166 read with Section 140 of the Motor

Vehicles Act, 1988, claiming compensation for the untimely demise of one Shri Nar Bahadur Kami, on 20.10.1996, in a road accident allegedly

caused on account of the rash and negligent driving of a TSR bearing No. DL-1R 5965 driven by the Respondent No. 3 wherein the Appellant

was impleaded as owner of the vehicle, and it was asserted that at the time of the accident the TSR was being driven by the Respondent No. 3-

driver under the instructions, supervision and employment of the Appellant.

3. In response to the notice of the institution of the petition, the Appellant filed his written statement, denying any liability to pay the claimed amount

to the Respondents No. 1 and 2, and submitting therein that he was not the registered owner of the aforesaid TSR on the date of the accident, nor

he was in control of the vehicle, nor was the driver of the TSR under his employment or control. Soon thereafter, an application was filed by the

Respondents No. 1 and 2/claimants under Order I Rule 10 read with Section 151 Code of Civil Procedure, for impleading one Ramhit, son of

Sukhari Ram as the owner of the vehicle on the ground that this fact was not known to them earlier. The said application was allowed by the

Claims Tribunal and the owner Ramhit was impleaded as the party-Respondent in the Claim Petition. On 09.05.2006, however, he [(Ramhit)

(who is the Respondent No. 4 herein] was proceeded ex parte and issues were framed. Significantly, no issue was framed by the learned Tribunal

on the question as to whether the Appellant on the date of the accident was in possession and control of the vehicle in order to be treated as an

owner thereof.

4. The learned Tribunal thereafter proceeded to conduct an enquiry and after recording its findings on the basis of evidence adduced, passed its

award on 15.11.2007, granting a sum of Rs. 3,54,000/- as compensation to the Respondents No. 1 and 2 (claimants), which was subsequently

modified to Rs. 2,45,000/- by the learned Tribunal by its order dated 18.01.2008, on a review application filed by the Appellant u/s 114 read with

Section 151 of the CPC for reduction of the awarded amount by deducting an appropriate sum towards the personal expenses of the deceased.

As regards the liability to pay compensation, the learned Tribunal held that the Appellant to be jointly and severally liable to pay compensation to

the claimants along with the Respondents No. 3 and 4 on the basis of its finding that even though the vehicle was formally transferred in the name

of the Appellant on a subsequent date, the Appellant was in actual physical control of the vehicle on the date of the accident.

5. Aggrieved from the aforesaid finding of the Tribunal, the present appeal has been preferred by the Appellant to contend that at the time of the

accident, the Appellant was not in possession and control of the TSR, nor the driver of the TSR was employed by the Appellant, and, therefore,

the learned Tribunal has wrongly held the Appellant to be jointly and severally liable along with the owner and the driver of the TSR to pay

compensation along with interest thereon to the Respondents No. 1 and 2.

6. The sole issue which arises for consideration in this appeal, as contended by Mr. Harvinder Singh, the Learned Counsel for the Appellant, is

whether the Appellant as the financier of the vehicle of which the Respondent No. 4 was the registered owner at the time of the accident could be

held liable to pay compensation to the Respondents No. 1 and 2, merely on account of the fact that he had taken the offending vehicle/TSR on

superdari on 21.10.1996 from Police Station Pahar Ganj.

7. Mr. Harvinder Singh, the Learned Counsel for the Appellant, contended that on the date of the accident, the Appellant was the financier of the

vehicle and the Respondent No. 4 Ramhit was the registered owner, and that the Respondent No. 4 remained the registered owner till the vehicle

was transferred in the name of the Appellant in the record of the Transport Authority on 30.12.1996 on the basis of a sale letter given by the

Respondent No. 4 dated 16.11.1996. He further contended that the transfer fee for the aforesaid transfer of the vehicle was deposited on

20.12.1996 vide receipt No. 850982 (Ex.R2W2/B). Prior to the transfer of this vehicle, he stated, the Appellant"s name was endorsed as

financier by the concerned Transport Authority on 14.02.1994 vide receipt of the Transport Authority Ex.R2W2/D, and the said hire-purchase

endorsement remained in favour of the Appellant upto 20.12.1996, i.e., the date on which the vehicle was transferred to the Appellant on the basis

of the sale letter given by the Respondent No. 4. With regard to the superdginama, the Learned Counsel for the Appellant, contended that the

Appellant had got released the offending vehicle on superdari on 21.10.1996 only for the reason that the Respondent No. 4 was a habitual

defaulter who did not pay the instalments regularly and in time and was always in arrears. Thus, there was no other option available with the

Appellant as the financier of the vehicle, but to take the vehicle on superdari from the concerned Police Station.

8. In order to buttress his aforesaid contentions, the Learned Counsel for the Appellant has taken me through the evidence adduced before the

learned Claims Tribunal to contend that there is not an iota of evidence suggestive of the fact that the Appellant was the owner of the offending

vehicle, or was in possession or control thereof on the date of the accident, or the employer of the driver who had caused the accident. He pointed

out that only three witnesses had been examined by the claimants, namely, PW1 Shri Ganesh Bahadur Kami, PW2 Shri Prem Bahadur and PW3

Shri Dhan Bahadur. All the said witnesses had identified the dead body of the deceased and the claimants had thereafter closed their evidence. The

Appellant had examined himself as R2W1 by tendering in evidence his examination-in-chief by way of affidavit (Ex.R2W1/A), wherein he had

stated on oath that on the date of the accident, i.e., on 20.10.1996, the Respondent No. 4, namely, Ramhit was the registered owner of the TSR in

question and was in possession of the said vehicle for all purposes. It was further stated therein that he had purchased the said TSR from the

Respondent No. 4 on 16.11.1996, i.e. after the date of the alleged accident, and that the TSR had been transferred in his name on 30th

December, 1996 on the basis of the sale letter and other documents. The Respondent No. 4, namely, Ramhit, the registered owner had not paid

the instalments regularly and in time and was in arrears, therefore, under such circumstances there was no option with him (RW-1) but to take the

vehicle on superdari on 21.10.1996 from the police of Police Station Pahar Ganj, New Delhi.

9. The Learned Counsel for the Appellant next drew my attention to the testimony of R2W2, Shri Dinesh Verma, an official from the Transport

Department, who was summoned by the Appellant with the record pertaining to the ownership of Vehicle No. DL-1R 5965 (TSR). He deposed

that as per the record of the Transport Department, the said vehicle was transferred in the name of the Appellant on 20th December, 1996 and

now stood registered in the name of the Appellant. He further stated that in October, 1996, this vehicle was registered in the name of Sh. Ramhit

(Respondent No. 4) and proved on record the computerized copy of the relevant record of the Transport Department as Exhibit R2W2/A, and

the relevant pages including the sale letter of the vehicle dated 16.11.1996 as Exhibit R2W2/B.

10. Mr. Harvinder Singh, the Learned Counsel for the Appellant contended that in view of the fact that the testimonies of the Appellant (R2W1)

and the official witness from the Transport Department (R2W2) were unchallenged and unassailed on record, the Appellant was not liable to pay

any compensation to the Respondents No. 1 and 2. The registered owner of the vehicle, at the time of the accident, who was the Respondent No.

4 alone was liable to pay the same. The Appellant undisputedly was not the registered owner on the date of the accident nor the offending vehicle

was in his possession on the date of the accident. Moreover, at the time of the accident, the Appellant was the financier, which fact stands proved

from the testimony of R2W2, who proved on record the Registration Certificate of the vehicle dated 14.03.1991 [Exhibit R2W2/C (three sheets)]

issued in the name of the Respondent No. 4, the original receipt of hire-purchase dated 14.02.1994 (R2W2/D), the endorsement entry made in

favour of the Appellant on the third page of the Registration Certificate (Exhibit R2W2/C) on 14.02.1994 and the removal of the said Registration

Certificate endorsement in favour of the Appellant on 20th December, 1996 (Exhibit R2W2/B). It also stands established on record that after

removal of the hypothecation entry, a fresh Registration Certificate as also a fresh permit was issued in the name of the Appellant, both of which

were proved in evidence as Exhibit PW1/9.

11. To counter the aforesaid contentions of the Learned Counsel for the Appellant, Mr. Ramesh Kumar, on behalf of the Respondents No. 1 and

2, raised a two-fold contention. First, the non-production of the hire-purchase agreement gives rise to an adverse inference against the Appellant.

Second, the mere fact that the Appellant got the vehicle released on superdari on the very next day after the accident, that is, on 21st October,

1996 leads to the legal presumption that the vehicle belonged to him. The said legal presumption, he contended, is further strengthened by the fact

that the Appellant became the registered owner subsequently, in December, 1996.

12. It was also contended by the Learned Counsel for the Respondents No. 1 and 2 that the Appellant having filed a review petition for the

reduction of the quantum of compensation, and the learned Tribunal having reduced the award amount to Rs. 2,45,000/- alongwith interest at the

rate of 7.5 per cent per annum by its order dated 18.01.2008, is now estopped from challenging the judgment and award of the learned Tribunal

once again by filing an appeal before this Court. He urged that if the Appellant had any grievance against the award, he, having filed an application

before the learned Tribunal for reduction of the award amount, could have additionally challenged his liability to pay the award amount. This not

having been done by him, it is not open to him to now challenge the findings of the learned Tribunal by filing an appeal.

13. Before dealing with the respective contentions of the parties, it is deemed expedient even at the risk of repetition to highlight a few necessary

facts. On the date of the accident, that is, on 20th October, 1996, admittedly the registered owner was the Respondent No. 4, Ramhit, but there

existed an agreement between the Respondent No. 4, Ramhit and the Appellant whereby and whereunder the Appellant was financing the

purchase of the TSR by the Respondent No. 4. The Respondent No. 4 has not contested the case either before the learned Tribunal or before this

Court. There is, thus, on record the unrebutted testimony of the Appellant, who appeared in the witness box as R2W1 to depose that he was

neither the registered owner nor in possession or control of the TSR in question. There is also on record the unrebutted testimony of R2W2, the

witness from the Transport Department, who has placed on record the computerized copy of the record of the Transport Department, which

shows that on the date of the accident, the vehicle in question was registered in the name of the Respondent No. 4 and was transferred in the name

of the Appellant on 20th December, 1996. It has also been established that there exists in the records of the concerned Transport Authority the

Registration Certificate in favour of the Respondent No. 4, which carries an endorsement to the effect that on the date of the accident the vehicle in

question was hypothecated in favour of the Appellant. There also exists on record the fact that with effect from 20.12.1996, the vehicle was

registered in the name of the Appellant. There is also on record the superdarinama dated 21.10.1996 to show that the vehicle was got released by

the Appellant on superdari immediately after the accident.

14. Adverting now to the question as to whether the Appellant on the basis of the aforesaid documents can be held liable to pay compensation to

the Respondents No. 1 and 2, the answer to the same, in my opinion, must be held to be in the negative. I say so for the reason that there is

unrebutted and unrefuted evidence on record to show that on the date of the accident the Appellant was not the registered owner of the vehicle in

question nor he was in possession and control thereof. There is also nothing on record to suggest that the vehicle was plying under his instructions

or that the driver was his employee, who was working under his supervision and control. The superdarinama alone, in my opinion, is of no avail to

the Respondents No. 1 and 2, more so as the registered owner of the vehicle on the date of the accident, namely, the Respondent No. 4 has

neither contested the claim petition nor the present appeal in order to deny the ownership or the possession of the offending vehicle.

15. The findings rendered by the Supreme Court in the case of Godavari Finance Co. Vs. Degala Satyanarayanamma and Others, , which is

heavily relied upon by the Learned Counsel for the Appellant, are apposite in this regard. In the said case, the question before the Supreme Court

was whether a financier could be said to be an owner of a motor vehicle financed by it within the meaning of Section 2(30) of the Motor Vehicles

Act, 1988. The facts were that the Appellant, M/s Godavari Finance Company, was impleaded in the proceedings on the premise that it was the

financier of the vehicle which caused the accident. As the vehicle was the subject matter of a hire-purchase agreement, the Appellant''s name was

mentioned in the registration book. Notwithstanding, the Supreme Court, setting aside the judgments of the learned Tribunal and of the High Court

holding that the Appellant as a registered owner was liable for payment of compensation, held that in the case of a motor vehicle which is subjected

to a hire-purchase agreement, the financier cannot ordinarily be treated to be the owner. The Supreme Court further observed as under: (SCC,

pages 110-112)

12. Section 2 of the Act provides for interpretation of various terms enumerated therein. It starts with the phrase ""Unless the context otherwise

requires"". The definition of ""owner"" is a comprehensive one. The interpretation clause itself states that the vehicle which is the subject matter of a

Hire Purchase Agreement, the person in possession of vehicle under that agreement shall be the owner. Thus, the name of financier in the

Registration Certificate would not be decisive for determination as to who was the owner of the vehicle. We are not unmindful of the fact that

ordinarily the person in whose name the Registration Certificate stands should be presumed to be the owner but such a presumption can be drawn

only in the absence of any other material brought on record or unless the context otherwise requires. 13. In case of a motor vehicle which is

subjected to a hire purchase agreement, the financier cannot ordinarily be treated to be the owner. The person who is in possession of the vehicle,

and not the financier being the owner would be liable to pay damages for the motor accident.

14. x x x x x

15. x x x x x

16. The question came up for consideration before this Court in Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other

etc., where the owner of a vehicle rented the bus to Rajasthan State Road Transport Corporation. It met with an accident. Despite the fact that the

driver of the bus was an employee of the registered owner of the vehicle, it was held: (SCC P.488, Para 17)

17.....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 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 there from 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 rebut table 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 to 7 (supra), which go to show that the

owner had not merely transferred the services of the driver to RSRTC but actual control and the driver was to act under the instructions, control

and command of the conductor and other officers of RSRTC.

17. The question again came up for consideration recently before this Court in National Insurance Co. Ltd. Vs. Deepa Devi and Others, . This

Court in that case was dealing with a matter where the vehicle in question was requisitioned by the State Government and while holding that the

owner of the vehicle would not be liable it was opined: (SCC Page 417, Para 10)

10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondents 3 and

4 continued to be the registered owners of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of the

power conferred upon him under the Representation of the People Act. A vehicle is requisitioned by a statutory authority, pursuant to the

provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy

Commissioner. While the vehicle remains under requisition, the owner does not exercise any control there over. The driver may still be the

employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in-charge thereof. Save and

except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control there over. He has no say as to

whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver

could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle

remains under the control of the State and/or its officers, the owner is only entitled to payment of compensation therefore in terms of the Act but he

cannot not (sic) exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that the Parliament while

enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given

effect to in letter and spirit, the same should be understood from the common sense point of view.

In so opining the Court followed Kailash Nath Kothari (supra). 18. The legal principles as noticed hereinbefore, clearly show that the Appellant

was not liable to pay any compensation to the claimants.

16. The findings rendered in the aforesaid judgment, in my opinion, leave no manner of doubt that it is the effective control and actual possession of

the vehicle in question on the date of the accident which is the determining factor. Registration of a vehicle at the most is one of the several factors

to be kept in mind while determining the question of ownership of the vehicle. In the present case, in view of the evidence adverted to hereinbefore,

there is, in my view, not an iota of proof to suggest that the vehicle was in the possession and control of the Appellant on the date of the accident.

Indubitably, the Appellant was the financier of the vehicle. Indubitably also, he had got the vehicle released on superdari, but the mere

circumstance of his getting the vehicle released on superdari is by itself not sufficient to hold that he was the owner of the vehicle, more so, when

his explanation for having the vehicle released on superdari and subsequently purchasing the same was that the Respondent No. 4 had never paid

the hire installments in time and had habitually defaulted in payment of the same, leaving him with no other option and the said explanation is

unrebutted on record.

17. The reliance placed by the Learned Counsel for the Respondents No. 1 and 2 on the decision of the Supreme Court rendered in the case of

Mohan Benefit Pvt. Ltd. Vs. Kachraji Raymalji and Others, , is also misplaced. The facts in the said case are clearly distinguishable. In the said

case, the conclusion of the Tribunal, which was affirmed by the High Court in appeal, was that the real documents executed between the parties at

the time of the alleged loan had been kept back from the court with ulterior motive and, in that situation, all possible adverse inferences should be

drawn against the Appellant. On consideration of the aforesaid facts, the Supreme Court held that the High Court was justified in drawing adverse

inference against the financier and in mulcting liability on the financier alongwith the owner and the driver on the ground that had the documents,

which reflected the true relationship between them been produced, they would have ""exploded"" the case of the financier. In the instant case, the

facts are altogether different. There is a clear endorsement on the Registration Certificate of the Respondent No. 4 to show that the Appellant was

the financier of the vehicle in question. Furthermore, the evidence adduced by the Appellant to show that he was neither in possession of the

vehicle nor the vehicle was plying under his supervision and control is unrebutted on record. It is nobody''s case that any ""real documents"" have

been suppressed by the Appellant. True, the hire-purchase /hypothecation agreement is not on record. But the endorsement of hypothecation on

the Registration Certificate of the vehicle is proved by the Appellant by adducing the evidence of the concerned witness from the Transport

Authority, which is unassailed on record.

18. In view of the aforesaid, the inevitable conclusion, in my opinion, is that the Appellant on the date of the accident was only the financier of the

vehicle and no liability can be fastened upon him. Resultantly, the appeal succeeds and it is held that the Appellant shall not be liable for payment of

the award amount to the Respondents No. 1 and 2. The Respondents No. 1 and 2 shall, however, be at liberty to recover the same from the

Respondent No. 4, the registered owner of the offending vehicle as on the date of the accident.

19. The appeal stands disposed of accordingly.

20. Records of the Claims Tribunal be sent back to the concerned Tribunal forthwith.