
(1999) 2 ACC 142 : (1999) ACJ 275 : AIR 1998 Ker 128 : (1998) 1 ILR (Ker) 476

High Court Of Kerala

Case No: M.F.A. No"s. 563 and 587 of 1990

Mathew Thankachan

APPELLANT

Vs

V.G. Manoharan and
Others

RESPONDENT

Date of Decision: Oct. 21, 1997

Acts Referred:

Motor Vehicles Act, 1939 " Section 110B, 31

Citation: (1999) 2 ACC 142 : (1999) ACJ 275 : AIR 1998 Ker 128 : (1998) 1 ILR (Ker) 476

Hon'ble Judges: P.A. Mohammed, J; P. Shanmugam, J

Bench: Division Bench

Advocate: P. Sukumaran Nayar and B. Radhakrishnan, for the Appellant; K.P. Dandapani, Jaiju Babu, Mathews Jacob, Jacob Murickan and George Jacob and Subhash Chand, for the Respondent

Judgement

Mohammed, J.

Two injured persons involved in a motor accident which took place on 3-5-1983 tiled claim petitions u/s 110-A of the

Motor Vehicles Act, 1939 (for short "the Act") before the Additional Motor Accidents Claims Tribunal, Mavelikara claiming compensation in

respect of the injuries sustained by them. The above petitions were decided by the Tribunal by a common award dated 6-10-1989. As against the

said common award the registered owner of the offending vehicle filed the above appeals u/s 110-D of the Act mainly praying to absolve his

liability to pay the compensation awarded by the Tribunal.

2. The registered owner of the offending vehicle was one Mathew Thankachan and he transferred it in favour of one M. K. Gopalan as per Ext.

R1 agreement dated 29-6-1982. M. K. Gopalan later transferred the vehicle to one E. I. John and when it was in his custody the accident

occurred. The offending vehicle had no insurance policy but the New India Insurance Company Limited was impleaded before the Tribunal. In the

absence of any valid insurance policy the liability of the said Company was absolved.

3. The accident occurred while the offending vehicle was driven by one Chandran Pillai- The tribunal after the enquiry found that Chandran Pillai

was responsible for the accident for, he had driven the vehicle in a rash and negligent manner. The tribunal ultimately after awarding the

compensation held that the amount of compensation shall be paid by Mathew Thankachan, Chandran Pillai and E. I. John. No liability had been

fastened on M. K. Gopalan who was the transferee of the vehicle from Mathew Thankachan as per Ext. R I.

4. The appeal number, claim petition number, amount claimed and the amount awarded by the Tribunal are tabulated hereunder :

Appeal No.	Claim petition No.	Amount claimed	Amount awarded
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MFA 563/90 O.P.(M.V)	392/83	Rs. 50,000/-	Rs. 29,360/-
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MFA 587/90 O.P.(M.V)	393/83	Rs. 50,000/-	Rs. 17,447/-
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5. On behalf of Chandran Pillai, the driver of the offending vehicle, the counsel contended that what is involved in this case was a composite

negligence, that is to say, the driver of the mini lorry and the rider and pillion rider of the bike were equally responsible for the accident. However,

it was pointed out that the Tribunal came to the conclusion that Chandran Pillai alone was responsible for the accident and, therefore, the counsel

pleaded that since the said finding being erroneous the matter should be remanded to the Tribunal for making the claimants also responsible for the

accident.

6. This is not a case where no evidence was let in by the Tribunal for holding that the driver of the offending vehicle was responsible for the

accident. In fact an issue has been framed by the Tribunal to that effect. The evidence available in the case has been evaluated and the Tribunal

while doing so considered the evidence of P.W.3, an independent witness who had deposed that the tempo van (mini lorry) came through the

wrong side in an excessive speed. At the same time, the Tribunal did not place reliance on the evidence of P. W. 3 on the ground that he cannot be

said to be an eye-witness. However, the Tribunal in detail discussed the nature of the accident with reference to the mahazar prepared by the

police in respect of the accident. From the description contained in the mahazar it could be seen that the mini lorry was on the wrong side of the

road and it was proceeding towards west. It was after analysing this evidence, the Tribunal came to a positive conclusion that Chandran Pillai was

responsible for the accident. This court while exercising powers u/s 110-D of the Act will not normally reverse a finding of the Tribunal which is

arrived at on appreciation of evidence unless there is total misreading or perverse appreciation. If any question of law arises on any interpretation

of the provisions of the Act or any other enactment subsists this court may examine and evaluate the evidence notwithstanding the finding entered by

the Tribunal for effective adjudication of the questions that arose for consideration. We do not find any justifying material to disturb the above

finding and hence it is confirmed.

7. On behalf of the claimants a contention has been advanced that the amount of compensation awarded by the Tribunal is inadequate. This

contention came up for consideration in view of the cross-objections filed by the claimants in these appeals. We have anxiously evaluated the

evidence on the record in this behalf and also the discussion of the Tribunal on this question. We do not think any sufficient reason exists to disturb

the quantum of compensation awarded by the Tribunal. Therefore, the contention on this score is negatived.

8. The only question that remains to be considered is who are the persons liable to pay the compensation awarded by the Tribunal. On behalf of

the common appellant, Mathew Thankachan, it was contended before us that the liability to pay compensation should not have been fastened on

him though he was the registered owner of the offending vehicle. His further case is that by Ext. R 1 agreement he transferred the vehicle to M. K.

Gopalan on 29-6-1982. Though M. K. Gopalan was one of the party respondents before the Tribunal, he remained ex parte. By virtue of the said

agreement M. K. Gopalan undertook all the liabilities in respect of the vehicle. It is also provided therein that in case any liability occurs to Mathew

Thankachan by virtue of his capacity as a registered owner of the vehicle the same would be satisfied by M. K. Gopalan. That necessarily

postulates the question whether Mathew Thankachan the registered owner of the vehicle can be absolved of all the liabilities for payment of

compensation under the Act in view of the transfer of the vehicle in favour of M. K. Gopalan.

9. Section 31 of the Act deals with transfer of ownership of registered motor vehicles. Subsection (1) of Section 31 which is relevant in the present

context is ectyped hereunder :

Transfer of ownership - Where the ownership of any motor vehicle registered-under this Chapter is transferred,

(a) the transferor shall

(i) within fourteen days of the transfer, report the fact of transfer 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;

(ii) within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i) --

(A) a no objection certificate obtained u/s 29-A; or

(B) in a case where no such certificate has been obtained,-

(I) a receipt obtained under sub-section (2) of Section 29-A; or

(II) a postal acknowledgment received by the transferor if he has sent an application in this behalf by registered post acknowledgment due to the

registering authority referred to in Section 29-A.

together with declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to

comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, 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." Section 31 does not deal with the

substantive law regarding the transfer of ownership of registered motor vehicles or its procedure. It only contemplates the duties and obligations of

the transferor and transferee arising out of the transfer of ownership of a motor vehicle from one person to the other and consequences of failure to

perform them. In other words it lays down the requirements to be complied with by the transferor and transferee in the case of transfer of

ownership of a motor vehicle registered u/s 24 of the Act and in default of compliance thereof the requirement of payment of the amount in lieu of

any action contemplated u/s 112. Clauses (a) and (b) of sub-section (1) of Section 31 provide the duties of the transferor and transferee

respectively. Clause (a) directs the transferor to report the fact of transfer to the registering authority within fourteen days of the transfer and to

send a copy of the report simultaneously to the transferee whereas clause (b) directs the transferee to report the transfer to the registering authority

within whose jurisdiction he resides within thirty days of the transfer and to 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 to enter the particulars in the certificate of

registration. Sub-section (1-A) confers power on the registering authority in default of compliance of provisions contained in sub-section (1) to

require the transferor or transferee as the case may be, payment of such amount in lieu of any action u/s 112, not exceeding one hundred rupees as

may be prescribed under sub-section (I-C). The above provisions do not indicate that the transfer of ownership of a motor vehicle by a registered

owner to another person is invalid for non-compliance of the provisions contained in Clause (a) or (b) of sub-section (1) of Section 31. So also

they do not prescribe that the transfer of ownership of the vehicle would be complete only on compliance of those provisions. Therefore, non-

compliance of the requirements contained in clause (a) or (b) of sub-section (1) of Section 31 by the transferor or transferee as the case may be,

does not invalidate the transfer of ownership of a registered vehicle which is otherwise valid. Likewise the endorsement of transfer on the certificate

of registration is not a condition, precedent for sale of vehicle. The certificate of registration is not a document of title but it is an important piece of

evidence as to title.

10. The position that emerges from the above analysis of Section 31 persuades is to agree with the observation of the Himachal Pradesh High

Court in Sudarshan Vs. Chuha Singh, to the effect that it cannot be said that the sale of the vehicle is complete only on the registration certificate

being transferred, for, the registration certificate can be transferred only after the ownership of the vehicle has been transferred. The completion of

sale of motor vehicle is not dependent on the transfer of its registration certificate. It has to be decided in terms of Section 5 of the Sale of Goods

Act, 1930 which deals with as to how a contract of sale to be made. The said Section runs as follows :

5. Contract of sale how made- (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The

contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by

instalment, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force; a contract of sale may be made in writing or by word of mouth, or partly in

writing and partly by word of mouth or may be implied from the conduct of the parties.

When there is an offer to buy or sell goods for a price and acceptance of such offer, it can be said that a contract of sale is made as contemplated

under sub-section (1). The essential pre-requisites for a contract of sale between two persons are the offer to buy or sale goods for a price by one

person and acceptance of such offer by another person. The contract of sale may provide for the immediate delivery of the goods or immediate

payment of the price or both. Sub-section (2) provides that a contract of sale may be made in writing or by word of mouth, or partly in writing and

partly by word of mouth or may be implied from the conduct of the parties. In this context it is appropriate to examine whether Ext. R 1 document

would evidence a completed contract of sale. The appellant Mathew Thankachan did not dispute Ext. R 1 agreement and in fact he placed reliance

on it. That means the transfer of vehicle in favour of M. K. Gopalan is admitted. In Ext. R 1 M. K. Gopalan concedes that the vehicle was

transferred to him for a consideration of Rs. 80,000/- and after taking delivery it was used by him. He further stated in Ext. R I that Mathew

Thankachan would not in any way be liable for any action in the capacity of being a registered owner of the vehicle. Thus there is a completed

transfer of vehicle in favour of M. K. Gopalan by reason of Ext. R 1 document. Ext. R 1 cannot be said to be a mere indemnity bond as observed

by the Tribunal. Ext. R 2 kychit executed by E. I. John sufficiently establishes that he was the owner of the vehicle at the time of the accident. By

the said kychit he got the vehicle released from police station as the owner of the vehicle.

11. It is a settled position that the sale of motor vehicle is governed by the Sale of Goods Act and is Complete when the consideration is paid and

the vehicle is delivered irrespective of the fact that the sale has been registered with the Registering Authority or not. (See : Insurance Company

Limited Vs. Vimal Rai and Others, : and Tulsi Dass v. Pannalal, 1976 Ace CJ 167 (Delhi). It is also settled that the registration of the vehicle in the

name of the transferee is not essential to complete the transfer. (See : Balwant Singh v. Jhannubai 1980 A CJ 126 (Madh Pra) and Nemanna

Yellappa Khanaji Vs. Syndicate Bank, Ankola and Others, .

In this context the following observation of the Privy Council in Sajan Singh v. Sardara Ali 1960 AC 167, is very appropriate.

Their Lordships do not overlook the fact that the defendant remained registered as the owner of the lorry and that no permission was given for the

sale; but this did not prevent the property in it passing to the plaintiff. The registration book is not in Malaya, any more than it is in England, a

document of title. The title passed by the sale and delivery of the lorry to the plaintiff. The absence of registration would no doubt put the plaintiff in

difficulty if he had to prove his title, but it would not invalidate it; see Bishopsgate Motor Finance Corporation Ltd. v. Transport Brakes Ltd.

Johnson, J. in Joblin v. Watkins and Roseveare (Motors) Ltd. (1949) 1 A11ER 47, with reference to a motor car registration book prescribed

under Road Vehicle (Registration and Licensing) Regulations, 1941, observed thus :

Although one reason for the book was to make known who was the owner of the vehicle to which it referred, its primary purpose was to show

who was the person liable to pay the road fund licence tax in respect of the vehicle.

Thus the primary purpose of the Registration Certificate is to make known who is liable to pay taxes and to perform the duties and obligations

under the Motor Vehicles Act.

12. It was brought to our notice the decision of the Supreme Court in Panna Lal Vs. Shri Chand Mal and Others, , where the provisions contained

in Section 31 came up for interpretation. That was a case where the transferee did not take steps to submit the required papers before the

registering authority after the vehicle was transferred in his name. Therefore, it was contended that the provisions contained in Section 31 have not

been complied with by the transferee and hence he is entitled to claim the refund of the purchase money. In this background the Supreme Court

said (at P. 872):

Under the provisions of this section, the transfer of ownership is permitted but the statute casts an obligation on the transferee to report to the

registering authority concerned regarding the transfer of the vehicle along with a certificate of registration and then get the registration transferred

in his name. It was, therefore, the duty of the plaintiff to have applied to the registering authority u/s 31 of the Motor Vehicles Act and got the

registration transferred in his name. It has been found by the Courts below that all the registration papers as also the memo of sale were handed

over to the plaintiff. In these circumstances, therefore, if the plaintiff did not choose to move the registering authority, he cannot be heard to say that

he is entitled for refund of the purchase money or claim damages.

Here the Supreme Court did not say that the transfer of ownership is invalid for the failure to perform the obligation by the transferee. On the other

hand, it said such transferee is not entitled to get back the purchase money from the transferor. The above decision was followed by a Division

Bench of this court in Swaminathan v. Jayalakshmi Amma (1987) 2 KLT 292. Placing reliance on the above decision the Division Bench observed

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Payment of price and delivery of the vehicle make the transaction complete and the title will pass to the purchaser under the provisions of the Sale

of Goods Act. For transfer of ownership of a motor vehicle mutation of, certificate is not necessary. Obligation to register the vehicle for controlling

and regulating the movements of the vehicle by the authorities under the Act. The vehicle can be sold and following the procedure prescribed in

Section 31 of the Act.

Another Division Bench of this Court in Kunjuraman v. Saramma 1986 K LT 142 emphatically observed :

Nowhere in the Act it is stated that non-reporting of the fact of transfer of ownership will render the transfer inoperative or ineffective." It further

said :

We are, therefore, fortified in taking the view that the actual owner can be different from the registered owner, and if it is proved that the

registered owner has transferred the ownership to a different person the tortious liability will have to be borne by the transferee despite the non-

transfer of the registration. In such cases the registered owner cannot be made liable.

13. In a considered judgment another Division Bench of this Court in *Sumathy v. Raghavan* (1996) 2 KLT 1018, held:

If the sale of the vehicle is complete according to the provisions of the Sale of Goods Act, 1930, notwithstanding the fact that there is no mutation

in the registration certificate in favour of the transferee the transferee becomes its owner. This has been the consistent view of this court as pointed

out in *Said Mohammed's* case with which we agree.

14. In View of the discussion hereinabove, the only possible conclusion is that even though the registration certificate of the vehicle stood in the

name of Mathew Thankachan he was not liable to pay the compensation since it was transferred to M. K. Gopalan under a completed contract of

sale. Then the liability to pay the compensation inevitably falls on M. K. Gopalan. Likewise Chandran Pillai and E. I. John who were the driver and

owner of the vehicle respectively at the time of accident are also liable to pay the compensation.

15. The Tribunal, however, held that the claimants are entitled to realise the amount of compensation with interest at 9% from Mathew

Thankachan, Chandran Pillai and E. I. John. This direction in view of the discussion hereinabove requires modification. We accordingly hold that

M. K. Gopalan, Chandran Pillai and E. I. John who are respondents 5, 3 and 4 respectively in both the appeals are liable to pay the compensation

jointly and severally. The appeals are allowed to the extent indicated above. No order as to costs.