

(2014) 11 MAD CK 0564

Madras High Court (Madurai Bench)

Case No: Writ Appeal (MD) No. 1145 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

V. Parameswaran

APPELLANT

Vs

P. Rani

RESPONDENT

Date of Decision: Nov. 25, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 146, 2, 2(19), 2(30), 56

Hon'ble Judges: V.M. Velumani, J; V. Dhanapalan, J

Bench: Division Bench

Judgement

V.M. Velumani, J.

The appellant, who is the fourth respondent in the Writ Petition in W.P.(MD) No. 15891 of 2013, has come forward with this appeal challenging the order of the Writ Court, dated 24.07.2014, passed in W.P.(MD) No. 15891 of 2013.

2. The first respondent herein filed W.P.(MD) No. 15891 of 2013, directing the third respondent herein to release her bus bearing Registration No.TN-47-R-4141 plying in Theni to Kumuli Route (via Bodi, Thevaram, Kombai, Uthamapalayam, Cumbam, Kudaloore and lower camp).

3. According to the first respondent, her family is engaged in transport business in the name and style of S.B.T. Transport in Theni District. She purchased a Ashok Leyland bus in the year 2007, registered as Registration No.TN-47-R-4141, for plying in Theni to Kumuli Route (via Bodi, Thevaram, Kombai, Uthamapalayam, Cumbam, Kudaloore and lower camp). She was running without any complaints or deviations and has paid necessary tax and fees for operating the said bus.

4. Every year, fitness certificate was issued by the third respondent herein. On 26.08.2013, the fourth respondent herein issued fitness certificate to be in force till 25.08.2014. While so, the fourth respondent intercepted the vehicle on 28.08.2013 at about 12.40 hours and issued Certificate of Fitness Expiry for the defects pointed out therein and seized her bus bearing Registration No.TN-47-R-4141. Even after she

rectified the defects, the respondents 2 to 4 refused to revoke the Certificate of Fitness Expiry. She gave a representation, dated 21.09.2013, but no action was taken by the respondents 2 to 4.

5. According to the first respondent, due to intervention of private Financier, from whom she has taken loan, the third respondent herein has issued the Certificate of Fitness Expiry (CFX) to her bus. As the said Financier is having political affiliation, she is incurring huge loss. Hence, she filed W.P.(MD) No. 15891 of 2013, for the relief stated therein.

6. On an application filed by the appellant herein, this Court impleaded the appellant as fourth respondent therein. According to the appellant, he is the owner of the vehicle bearing Registration No.TN-47-R-4141. He has purchased the said bus from the first respondent for Rs.12,00,000/-. The Registration Certificate, Permit and Fitness Certificate stand in his name. He has borrowed monies from Karur Vysa Bank and has hypothecated the said bus in favour of the Bank. He knows the husband of the first respondent and is having financial transactions with the husband of the first respondent. Due to cordial relationship with the husband of the first respondent, the appellant was sharing the office premises with the husband of the first respondent. Taking advantage of the situation, the first respondent and her husband had taken all the certificates. The bus was not seized by the respondents 3 and 4 and the first respondent is not the owner. The first respondent has not approached this Court with clean hands.

7. The first respondent filed additional affidavit stating that she borrowed Rs.60,00,000/- from the appellant. As per the practice prevailing in Karur, she transferred the R.C. Book and permit in the name of the appellant and she is operating the bus and the appellant was never in possession of the bus. She had repaid the loan as per the agreed monthly installments. However, the appellant refused to transfer the R.C. Book and Permit in her name.

8. The respondents 2 to 4 in their counter affidavit stated that the bus was not seized by the fourth respondent. After issuing the Certificate of Fitness Expiry (CFX), the driver of the vehicle took the bus. The Registration Certificate, Permit and Fitness Certificate stand in the name of the appellant, who took time to produce the vehicle after rectifying the defects pointed out by the fourth respondent. The appellant had given a letter not to entertain any application from anybody for revocation of Certificate of Fitness Expiry (CFX).

9. On receipt of the counter affidavit of the respondents 2 to 4, the first respondent filed a petition to amend the prayer for a direction to revoke the Certificate of Fitness Expiry (CFX) issued by the fourth respondent on 28.08.2013 in respect of stage carrier bus bearing Registration No.TN-47-R-4141, plying in Theni to Kumuli Route (via Bodi, Thevaram, Kombai, Uthamapalayam, Cumbam, Kudaloore and lower camp), run by the first respondent under the name and style of S.B.T. instead

of the direction to release the vehicle. This Court allowed the said petition.

10. After hearing the learned counsel for the appellant and the respondents, the learned Judge allowed the writ petition directing the fourth respondent to revoke the Certificate of Fitness Expiry, dated 28.08.2013, within three days from that date in view of his inspection report, dated 14.07.2014.

11. Aggrieved by the said order, the appellant has filed the present appeal.

12. The learned counsel for the appellant argued that the appellant is the owner of the bus, and that the R.C. Book, Permit and Fitness certificate stand in the name of the appellant and that the first respondent has no locus standi to file the writ petition. He further argued that the permit was transferred to the name of the appellant after issuing notice and hearing both the appellant and the first respondent. It is also contended that the appellant borrowed monies from Karur Vysa Bank and hypothecated the bus and that the first respondent is not the owner of the bus and has not approached this Court with clean hands. He submitted that the learned Judge having found that there is a dispute with regard to ownership of the bus, erred in allowing the writ petition.

13. Further, he referred to Sections 2(30) and 56 of the Motor Vehicles Act and Rule 119 of the Motor Vehicles Rules. In support of his submissions, he also relied on paragraph No. 6 of the Judgment reported in [Godavari Finance Co. Vs. Degala Satyanarayamma and Others](#), and it would run thus:

6. The name of the appellant as a financier indisputably was incorporated in the registration book of the vehicle. However, the extract of registration book revealed that the vehicle was registered in the name of the fourth respondent only w.e.f. 3-6-1992. It further revealed that the said vehicle was held under a hire-purchase agreement with the appellant w.e.f. 6-2-1995 which was cancelled on 10-11-1995.

14. Contending that the writ petition for issuance of Writ of Mandamus is not maintainable in the facts and circumstances of the case, he argued that a Writ of Mandamus can be issued to direct a person to do certain act as per the powers conferred on him, but the first respondent is indirectly praying to quash the order already passed by the fourth respondent. He, therefore, concluded that the order of the learned Judge in directing the fourth respondent to revoke the Certificate of Fitness Expiry, is contrary to law and the same has to be set aside.

15. Per contra, the learned Senior Counsel appearing for the first respondent contended that the first respondent is the owner of the bus, and that she borrowed a sum of Rs.60,00,000/- from the appellant and that, as per the practice prevailing in the said area, she had transferred R.C. Book and Permit to the name of the appellant. Though she had repaid the entire loan amount borrowed from the appellant as per the agreed installments, the appellant, contrary to the agreement, refused to transfer the Registration Certificate and Permit in her name, the learned

Senior Counsel argued. The first respondent is in possession of the bus and is operating the bus in the route as per the permit. He further submitted that, therefore, the learned Judge, has rightly upheld the claim of the first respondent, warranting no interference at the hands of this Court.

16. In support of his submission, the learned Senior Counsel appearing for the first respondent, relied on the following Judgments:

(i) [National Insurance Co. Ltd. Vs. Deepa Devi and Others,](#) , wherein in paragraph No. 10, it has been held as follows:-

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 therefor 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 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.

(ii) [Godavari Finance Co. Vs. Degala Satyanarayanamma and Others,](#) , wherein in paragraph Nos. 11 to 13, it has been held as follows:-

11. The appellant admittedly was the financier. As the vehicle was the subject-matter of hire-purchase agreement, the appellant's name was mentioned in the registration book.

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.

(iii) [Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc.,](#), wherein in paragraph Nos. 16 & 17, it has been held as follows:-

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.

(iv) [Purnya Kala Devi Vs. State of Assam and Another,](#) wherein in paragraph Nos. 8 to 13, it has been held as follows:-

8. The 1939 Act was consolidated and amended by the 1988 Act. Section 2(30) of the 1988 Act defines "owner" to mean as under:-

"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. It is not in dispute that on 14.02.1993, the SDO, Udalguri requisitioned a Bus belonging to Md. Abdul Salam under the Assam Act. While under requisition, on 16.02.1993, the Bus involved in an accident and killed the husband of the appellant at 10.15 a.m. At that time, the vehicle was not insured.

10. The appellant/claimant claimed compensation of Rs.2,00,000/- against the owner of the vehicle, i.e., Md. Abdul Salam as well as the State of Assam-Respondent No. 1 herein. The registered owner filed the reply contending that Respondent No. 1 was liable to pay compensation. The SDO, Udalguri, Respondent No. 2 herein, filed

written statement before the Tribunal alleging that the vehicle was released on the date of accident at 10.30 a.m. In this regard, it is useful to refer the stand taken by the Sub- Divisional Officer (SDO) (C), Udalguri on behalf of the State of Assam in the following terms:

The fact of the case is that the vehicle was requisitioned by the Sub- Divisional Officer (Civil) Udalguri on public demand. The vehicle was handed to O/C of Police Udalguri for their duties.

As per police report in the absence of driver the Handiman of the Mini Bus drove the bus without any permission from the police and occurred the accident.

The vehicle was released on same date at 10.30 and the accident occurred at 10.30.

11. Though it was stated that the vehicle was released on the same date at 10.30 a.m., the State or its officers failed to place and substantiate the same by placing any material. It is relevant to refer Section 5(1) of the Assam Act, which reads as under:

5. Release from requisition. (1) The officer or authority requisitioning a vehicle may, at any time, release the vehicle from requisition and when it is decided so to do, a notice in writing shall be served on the owner to take delivery of the vehicle on or with such date and from such place and such person as may be specified therein.

12. It is clear that Section 5(1) of the Assam Act provides that a vehicle may be released from requisition after service of notice in writing on the owner to take delivery of the vehicle on or with such date and from such place or from such person as may be specified therein and with effect from such date no liability for compensation shall lie with the officer or authority. In spite of our repeated questions, learned counsel for the State of Assam has brought to our notice only the above-quoted plea taken by the SDO (C) and has not placed any material, such as notice in writing served on the owner, to prove that the delivery of vehicle was effected on such date and time in terms of Section 5(1) of the Assam Act.

13. Though the above point was pressed into service, the High Court, without advertng to Section 5 of the Assam Act, merely on the basis of the definition of "owner" as contained in Section 2(30) of the 1988 Act, mulcted the award payable by the owner of the vehicle. The High Court failed to appreciate that at the relevant time the offending vehicle was under the requisition of Respondent No. 1 " State of Assam under the provisions of the Assam Act. Therefore, Respondent No. 1 was squarely covered under the definition of "owner" as contained in Section 2(30) of the 1988 Act. The High Court failed to appreciate the underlying legislative intention in including in the definition of "owner" a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the "owner" and not alone the registered owner. The

High Court further failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control. The High Court also failed to appreciate that Section 146 of the 1988 Act requires that no person shall use or cause or allow any person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the State Government has violated the statutory provisions of the 1988 Act. The Tribunal also erred in accepting the allegation of Respondent No. 2 that the vehicle was released on the date of the accident at 10.30 a.m. and the accident occurred at 10.30 a.m. without any evidence even though in the claim petition, it was stated that the accident had occurred at 10.15 a.m.

17. The learned Special Government Pleader appearing for the respondents 2 to 4 reiterated the averments made in the counter affidavit filed in the writ petition and argued that the first respondent is not the owner and therefore, she is not entitled to the relief as sought for.

18. Heard, Mr.M.Palani, learned counsel for the appellant, Mr.M.Ajmalkhan, learned Senior Counsel appearing for the first respondent and Mr.N.Manohar, learned Special Government Pleader for the respondents 2 to 4.

19. We have carefully perused all the materials available on record, the provisions of the Act and the Rules referred to above and the Judgments relied on by either side.

20. Section 2(30) of the Motor Vehicles Act defines a owner of the vehicle, which reads as follows:

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;

21. A reading of the above Section makes it clear that the owner of the vehicle is a person in whose name, the vehicle stands registered or a person having possession as per hire-purchase agreement or an agreement of lease or an agreement of hypothecation.

22. In the present case, as per the directions of this Court, the learned Special Government Pleader appearing for the respondents 2 to 4 produced entire original files. We have perused the same. On perusal of the original files, we find that the Registration Certificate stands in the name of the appellant. Further, both the Permit as well as the Fitness Certificate stand in the name of the appellant.

23. But, the first respondent claims to be in possession of the said bus and she is not in possession as per hire-purchase agreement or lease agreement or hypothecation agreement. She had borrowed monies from the appellant and transferred the Registration Certificate, Permit and Fitness Certificate in favour of the appellant as

per the prevailing practice in Karur area. She did not hand over the possession of the bus at any time to the appellant and she is only operating the bus. She had discharged the loan in full. Despite the same, the appellant failed to transfer the R.C. Book, Permit and Fitness Certificate. These grounds will not amount to ownership, as the first respondent is not in possession of the said bus as per hire-purchase agreement or agreement of lease or agreement of hypothecation. Admittedly, the Registration Certificate stands in the name of the appellant.

24. Secondly, as per Rule 119 of the Motor Vehicle Rules, a Form is prescribed for applying the Fitness Certificate. In the said Form, the signature of the owner is a must. The first respondent not being the owner of the bus, cannot apply for issuance of such fitness certificate.

25. Thirdly, the contention of the learned counsel for the appellant that the learned Judge having found that there is a dispute with regard to ownership of the bus, which cannot be decided in a Writ proceedings, ought to have dismissed the writ petition, has considerable force and is acceptable.

26. The contention of the learned counsel for the appellant that the first respondent is not entitled to claim the relief of Mandamus, but she has to seek only the relief of Certiorari, is untenable. The fourth respondent suspended the Fitness Certificate pointing out certain defects. Once those defects are rectified, the fourth respondent is legally bound to revoke the said suspension. Therefore, a Writ of Mandamus can be issued directing the fourth respondent to revoke the suspension of Fitness Certificate. In the present case, all the documents would show that the appellant is the owner, and therefore, unless the first respondent establishes her ownership before the competent Court in the manner known to law, she is not entitled to apply for revocation of suspension of Fitness Certificate.

27. The Judgments relied on by the learned Senior Counsel appearing for the first respondent are not applicable to the facts of the present case, as those Judgments only relate to ascertaining the ownership for payment of compensation in the case of accident. The definition of "owner" as stated supra, will not apply to a person, who applies for permit or Fitness Certificate. We, therefore, find that the order of the learned Judge, in allowing the writ petition, is liable to be interfered with.

28. Accordingly, the writ appeal stands allowed and the order of the Writ Court, dated 24.07.2014, passed in W.P.(MD) No. 15891 of 2013, is hereby set aside. No costs. Consequently, connected miscellaneous petitions are also closed.