

Said Mohammed Vs. Rema

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Court : Kerala

Decided On : Aug-01-1995

Reported in : 1996ACJ477

Judge : K.T. Thomas and; K.S. Radhakrishnan, JJ.

Appeal No. : M.F.A. No. 183 of 1995

Appellant : Said Mohammed

Respondent : Rema

Advocate for Pet/Ap. : G. Hariharan and; Anitha U. Menon, Advs.

Disposition : Appeal dismissed

Judgement :

Thomas, J.

1. Mrs. Anitha U. Menon, learned counsel for the appellant, made a forceful plea that the legal position hitherto followed by this court regarding 'owner' of a motor vehicle needs reconsideration in view of the change in the definition as brought by Section 2(30) of the Motor Vehicles Act, 1988 (for short 'the Act').

2. Such a contention was put forward in the following background:

On 13.11.1987 around noon a bus driven by its driver with passengers inside capsized and a number of passengers sustained injuries. They filed claim petitions before the Motor Accidents Claims Tribunal (for short 'the Claims Tribunal') against one Divakara Menon who was then the registered owner of the said bus and also against the driver as well as the insurer. But the said Divakara Menon died before he could file his objections. However, his legal representatives who were impleaded filed objections and then contended that ownership of the bus was transferred by Divakara Menon even before the accident to some other person from whom the appellant bought it and its ownership rested with the appellant on the date of the accident. Hence, the appellant was impleaded as a party. Appellant in his written statement repudiated the claims and contended that he had no connection with the vehicle in question. Claims Tribunal, on evidence, concluded that the actual owner of the bus at the time of accident was the appellant and that the bus was then driven by a driver employed by the appellant. Claims Tribunal thereupon directed the appellant to pay the compensation amount awarded in favour of different claimants. These appeals are in challenge of two such awards.

3. In fairness to the learned counsel, we must put on record that she has also assailed the finding on fact that appellant was the real owner of the vehicle on the date of accident. But the evidence on that aspect seems to be strong against the appellant. RW 1 who is one of the legal representatives of Divakara Menon has deposed that on the date of accident the bus was in the ownership of the appellant. He produced Exh. R-3, agreement dated 4.4.1988, to show that ownership of the bus was transferred by the appellant to one Premarajan. Till then the appellant was its owner as the registered owner had transferred the ownership. If the above version of RW 1 can be accepted, then the position is that on the date of accident the ownership of the bus was with the appellant. In this context, we point out that the title displayed on the bus service, when the accident happened was 'P.V.S.'. That title is said to be the acronym formed with the first three letters of appellant's name. As against those items of evidence the appellant could not adduce any contra evidence. Even the appellant did not mount the witness-box. Claims Tribunal has, therefore, rightly concluded that the actual ownership of the bus rested with the appellant on the date of accident.

4. Before we deal with the contention now raised by the learned counsel, we may point out that this court has held on successive occasions that the liability to pay compensation in accident cases is that of the transferee owner of the vehicle if the registered owner had transferred its ownership before the accident. A Division Bench consisting of Paripoornan, J. (as his Lordship then was) and one of us (Thomas, J.) has observed in *Kunjuraman v. Saramma* 1987 ACJ 1081 (Kerala), 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 non-transfer of the registration.' Though without reference to the above decision, another Division Bench of this court (John Mathew and Balakrishnan, JJ.) has taken the same view in *Swaminathan v. Jayalakshmi Amma* 1988 ACJ 261 (Kerala). Yet another Division Bench (Bhat, J., as his Lordship then was and Guttal, J.) has also taken the same view in *United India Insurance Co. Ltd. v. Jameela Beev* 1991 ACJ 820 (Kerala).

5. Mrs. Anitha U. Menon, learned counsel, contended that those decisions were rendered without reference to the definition of the word 'owner' in the Act and that a different position would have been adopted if the said definition was pressed into service in those cases. For considering the said contention we would extract the relevant definition here:

'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;

No doubt the said definition makes only one of the two classes of persons as owner of a vehicle. He must be a registered owner unless the vehicle is subject to hire-purchase agreement or lease agreement or hypothecation agreement. The present definition of the word 'owner' is a departure from the definition of 'owner' used in the corresponding provision in the repealed Motor Vehicles Act, 1939 (for short 'old Act'). Section 2(19) of the old Act contained the definition of 'owner'. It

reads thus:

'Owner' means, where the person in possession of a motor vehicle is a minor, the guardian of such minor; and in relation to a motor vehicle which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement.

It is clear that under the old Act ownership of a vehicle rested mainly on the strength of possession of the vehicle. But the change in the definition is not sufficient to change the tortious liability of the actual owner of the vehicle. This is because the liability to pay compensation to victims of motor accidents is not the creation of the Act. Right to get compensation was recognised in common law and the said right remains unaffected by the advent of the Act except that Chapter XII of the Act lays down the procedure for adjudication upon claims for such compensation. Section 166 of the Act only enables a person to file application for such compensation. None of the provisions in the said Chapter has curtailed the right to get compensation. Everyone is entitled to get compensation from the person who caused or inflicted injury to him. The common law recognised that the master of such person also is liable to pay the compensation under the theory of vicarious liability.

6. Section 2 of the Act which contains various definitions starts with a preface that every definition is subject to alteration or change in accordance with the context. This is evident from employment of the words 'unless the context otherwise requires' in the prefatory portion of the section. The definition is, therefore, not exhaustive in regard to every context. If a particular context warrants departure from the contours of a definition, legislature permitted such departure to be made. The context here is such that mulcting the registered owner with the pecuniary liability of the tortious act of somebody else's servant or employee would result in manifest injustice to him. When a registered owner is not the real owner of the vehicle on the date of accident that registered owner has no vicarious liability for paying compensation, for, the driver of the vehicle would then have been acting in the course of the employment of the actual owner. So in the present context, a departure from the definition has to be resorted to.

We are, therefore, not inclined to entertain these appeals and accordingly we dismiss them in limine.

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