

Maina and ors. Vs. Niranjan Singh and ors.

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Court : Rajasthan

Decided On : Aug-19-1975

Reported in : AIR1976Raj71; 1975()WLN442

Judge : V.P. Tyagi, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 31; [Evidence Act, 1872](#) - Sections 21

Appeal No. : Civil Misc. Appeal No. 80 of 1970

Appellant : Maina and ors.

Respondent : Niranjan Singh and ors.

Advocate for Def. : B.R. Mehta, Adv. for Nos. 2 and Mishri Lal and; R.R. Purohit, Adv. for No. 3

Advocate for Pet/Ap. : Ganpat Singh, Adv.

Judgement :

V.P. Tyagi, J.

1. This appeal has been filed by the claimants under Section 110-D of the [Motor Vehicles Act, 1939](#) challenging the award of the Motor Accident Claims Tribunal, Bikaner dated 6th June, 1970.

2. On 2nd June, 1966 one Ram Kumar was looking after his truck on the road between Gajner and Bikaner at a distance of about 5 miles from Nail. A truck bearing No. R. J. K. 3528 driven by Niranjana Singh driver came from Bikaner side and dashed against Ram Kumar who was standing on the road. As a result of that accident Ram Kumar sustained serious head injuries. He was immediately removed to the hospital but his life could not be saved. Ram Kumar's wife Smt. Maina, his minor son Babu, minor daughter Panchu and mother Smt. Chandra filed a claim before the Motor Accident Claims Tribunal, Bikaner for Rs. 10,000/- as damages for the death of Ram Kumar. In their application driver Niranjana Singh, owner of the truck Mohan Lal and the General Assurance Society Ltd. were made parties.

3. Mohan Lal came out with a plea that he had sold this truck which was registered in his name to one Karnail Singh son of Niranjana Singh on 15-1-1963, and Karnail Singh further sold the vehicle to another Karnail Singh son of Jag Singh resident of Padampur on 5-6-1963. He therefore, pleaded that without impleading the aforesaid two Karnail Singh, the claim petition could not be decided by the Tribunal.

4. Niranjana Singh driver denied to have driven that vehicle on the day when the accident had taken place. He also denied that he was ever in (the employment of Mohan Lal, the alleged owner of the truck.

5. Defendant No. 3 the General Assurance Society Ltd. in its written reply stated that on 2nd June, 1966 the truck which was responsible for causing the death of Ram Kumar was not insured with it. It was further averred that the truck was insured with the company on 21st of May, 1965 but that insurance policy had expired on 20th of May, 1966 and thereafter it was not renewed by the owner of the truck, and therefore, the Assurance Company was not liable for any damages caused to Ram Kumar.

6. As many as 12 issues were framed by the Tribunal. The claimant Smt. Maina came in the witness box produced two other witnesses namely P. W. 2 Rewat Ram and P. W. 3 Girdhari who were present at the spot where the incident had taken place. Mohan Lal on the other hand examined himself and produced the

sale agreement Ex. A.1 by which the said truck was sold by him in the month of January 1963 to Karnail Singh, son of Niranjan Singh. Karnail Singh D. W. 2 however supported the averment made by Mohan Lal that he had sold that truck to him on 15th January, 1963 and further deposed that the truck was thereafter sold by him to another Karnail Singh son of Jag Singh who has been examined as D. W. 4 and endorsed the statement of D. W. 2.

7. Niranjan Singh has also come in the witness box as D. W. 3 and denied to have driven that truck on that day and deposed that he was never in the employment of Mohan Lal.

8. It may be mentioned here that in a criminal case which was lodged against Niranjan Singh concerning this accident, it, was admitted by Niranjan Singh before the criminal court while examined under Section 342, Criminal P. C. that he was driving the truck which dashed against Ram Kumar and caused injuries to him on 2-6-1966. The findings of the Tribunal are that the applicants failed to prove that Niranjan Singh was in the employment of Mohan Lal as his driver; and that Mohan Lal owned the truck No. RJK 3528 and on the fateful day i. e. on June 2, 1966; and that the truck was driven by Niranjan Singh. In view of these findings the claim of the petitioners was dismissed by the Tribunal. It is in these circumstances that the petitioners have filed this appeal under Section 110-D of the Motor Vehicles Act.

9. It is admitted by the parties that the registration of the truck No. RJK 3528 stood on 2-6-1966 in the name of Mohan Lal. It is contended by learned counsel for the appellant that the oral testimony of Mohan Lal cannot be believed to hold that the ownership of the truck was transferred by him to Karnail Singh son of Niranjan Singh on 15th January, 1963. According to the learned counsel for the appellant it is necessary to complete the transfer of ownership of a vehicle registered under the Motor Vehicles Act, that the registration should be changed in the name of the purchaser and if the vehicle is plied on a route under a permit issued by the Regional Transport Authority then it is all the more necessary that before the vehicle is brought on the route after it was sold the permit must be transferred in the name of the purchaser. In support of this argument learned counsel placed

reliance on Vimal Rai v. Gurcharan Singh, 1967 Ace CJ 115 (Delhi); United Motors of Rajasthan v. Mathura Lal, 1970 Raj LW 589 and Padma Devi v. Gurbaksh Singh, 1973 Acc CJ 460 = (AIR 1973 Raj 317).

10. It was also argued that in order to establish the rash and negligent driving by the driver, it is sufficient if the claimant succeeded to show that a fatal accident had taken place on a high-way where, if the vehicle was driven with care and caution by the driver, the accident could have been easily averted and therefore, in such circumstance the maxim Res Ipsa Loquitur would be attracted, and it would be the duty of the delinquent party to show that he was discharging his duty as a driver with all caution and care. In support of this argument learned counsel cited a Supreme Court authority in Shyam Sunder v. State of Rajasthan, 1974 Ace CJ 296 = (AIR 1974 SC 890) and also relied upon the observations of the learned Judge of the Madhya Pradesh High Court in Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar, AIR 1968 Madh Pra 47.

11. It was also argued that the statements of P. W. 2 Rewat Ram and P. W. 3 Girdhari establish beyond all reasonable doubt that Niranjana Singh was the driver of the truck and this fact further gets corroboration from the admission of Niranjana Singh himself before the criminal court.

12. Learned counsel appearing on behalf of the company has submitted that the petitioners have miserably failed to bring any material on the record to show that on 2-6-1966 the day of the accident the truck RJK 3528 was insured with the defendant company and therefore, defendant No. 3 cannot be held responsible for any damages claimed by the appellants for the death of Ram Kumar.

13. As regards the case of respondents Nos. 1 and 2 it was urged by learned counsel for Mohan Lal respondent No. 2 that even if it is established that Niranjana Singh was driving the truck then it was a case of error of judgment of the driver and not of rash and negligent driving. He also urged that witnesses P. W. 2 and P. W. 3 could not have seen the occurrence and therefore their deposition with regard to rash and negligent driving cannot be relied upon.

14. Let me examine the first question whether Mohan Lal was the owner of the truck on the day when the accident had taken place.

15. Ex. A.1 is the sale deed on which reliance has been placed by Mohan Lal to show that he had transferred the ownership of the truck to Karnail Singh son of Niranjana Singh on 15th January, 1963 and therefore, thereafter if the truck was plied by Karnail Singh on the route without obtaining necessary permit then Mohan Lal cannot be held responsible for the act of Karnail Singh.

16. The main argument of learned counsel for the appellants is that unless the registration of the vehicle under Section 31 of the Motor Vehicles Act was transferred in the name of the transferee, the ownership of the truck cannot be said to have been transferred, as the transfer of ownership of a motor vehicle registered under the provisions of the Motor Vehicles Act can come into effect only after the authorities under the Motor Vehicles Act recognised such a transfer under the provisions of the Act. This question as to how and when the ownership of a vehicle registered under the provision of the M. V. Act is transferred and is complete came up for consideration before the Delhi High Court where the question was whether the sale of a motor vehicle is complete when the delivery of the vehicle is made to the purchaser in pursuance of an agreement of sale or not. The learned Judge in this connection in the case of Vimal Rai v. Gur-charan Singh, 1967 Ace CJ 115 (Delhi) observed as follows:--

'To my mind, the sale of a motor vehicle will not be governed by the ordinary law relating to sales of movable property. The [Motor Vehicles Act, 1939](#) makes it compulsory for every owner of a motor Vehicle to get the motor vehicle registered with the Registering Authority (vide Section 22). The Act prescribes by Section 24 the method of registration of a motor vehicle and by Section 31 of the transfer of ownership of a motor vehicle. A perusal of the various provisions of the Act leads to only one conclusion that ownership of a motor vehicle is to be evidenced by the registration as such with the Motor Registering Authority and the registration book which is supplied is the document of title. I think the Act proceeds on the basis that it is only the ostensible owner who is entered as such in the registration books, who is to be considered to be the owner of the motor vehicle irrespective of the

fact that the real ownership may be with somebody else.'

17. In United Motors of Rajasthan's case 1970 Raj LW 589 Lodha, J. also considered this question as to how the ownership in a motor vehicle running under a permit is transferred from one person to another. After quoting with approval the observation of Andley, J. in Vimal Rai's case 1967 Ace CJ 115 (Delhi) the learned Judge observed:--

'Law requires something more for the sale of Motor Vehicles than what is necessary for sale of other immovable property, under the provisions of T. P. Act.'

18. This question again came up for consideration before a Bench of this Court in Padma Devi's case (AIR 1973 Raj 317). Jain, J. after quoting with approval the observation of Andley, J. and Lodha, J. and considering some provisions of the Motor Vehicles Act held :--

'From these provisions of the Act and others referred to herein before, it is abundantly clear that a transport vehicle cannot be used nor can the owner cause the vehicle to be used in any public place except with the permit and in accordance with the condition contained therein. Even the transfer of a vehicle, which is covered by a permit, will not confer any title on the transferee unless the permission of the transport authority granting the permit has been sought in advance. It has not been disputed that the truck in question was used as a transport vehicle and it was covered by a permit granted to Harcharan Lal and Sons. On the date of the accident this was on the road. The mere fact that Harcharan Lal and Sons had transferred the possession of the vehicle to Brijendra Singh would not confer any title on the transferee as it has not been alleged or brought on record that the transfer was done after the permission of the transport authority granting the permit.'

19. It is not disputed that the truck RJK 3528 was plying on the route on the day when this accident took place. It is also admitted by Karnail Singh D. W. 2 and Karnail Singh D. W. 4 that they did not obtain any permit for the plying of this truck on the route nor was the registration of the truck changed in their names. Learned counsel for the respondents conceded that on that fateful day the permit of the

truck stood in the name of Mohan Lal and that it was insured while showing Mohan Lal as the owner of the truck. In view of these facts the observations of Jain, J. make it clear that even if the possession of the vehicle was transferred to D. W. 2 Karnail Singh and then to D. W. 4 another Karnail Singh then this transfer of possession did not confer any title on the alleged transferees namely Karnail Singh son of Niranjana Singh and Karan Singh son of Jag Singh of Padampur.

20. From the discussions referred to above it is clear that in the circumstances brought on the record Mohan Lal will be taken as the owner of the truck and he will therefore, be liable for the damages for the death of Ram Kumar on account of accident which took place on the 2nd June, 1966.

21. It was next urged by learned counsel for the appellants that Niranjana Singh was actually driving the truck when the accident had taken place. Both P. W. 2 Rewat Ram and P. W. 3 Girdhari have stated on oath that the driver of the truck was D. W. 3 Niranjana Singh. In a criminal case filed against Niranjana Singh in connection with this accident he had admitted himself as the driver of the truck. It is true that this admission in itself is not a substantive piece of evidence, but it can be pressed into service against Niranjana Singh to lend support to the testimony of P. W. 2 and P. W. 3 to prove that Niranjana Singh was the driver of the truck.

22. It was urged by Mr. Mehta that the appellants petitioners could not establish that Niranjana Singh was in the employment of Mohan Lal. I have come to the conclusion that the owner of the truck on that fateful day was Mohan Lal. If the truck was driven by Niranjana Singh then it will give rise to this presumption that he drove it with the express or implied consent of Mohan Lal. Here it is not necessary to prove the terms of the employment of Niranjana Singh with Mohan Lal. If Niranjana Singh was in the possession of the truck and it was driven by him, then there is no escape from this conclusion that Niranjana Singh did so with the consent of Mohan Lal and in such circumstance it will be presumed that Niranjana Singh was in the employment of Mohan Lal and for his negligent act Mohan Lal will be responsible.

23. It is contended by the respondent that even if Niranjana Singh was driving the truck with the express or implied consent of Mohan Lal it was the duty of the

claimants to prove that the vehicle was driven by him rashly and negligently and the cause of this accident was the rash and negligent driving of the driver, and unless it is established by the petitioner-claimants, no responsibility for damages can be fastened on Monan Lal or Niranjana Singh. To meet this argument, learned counsel for the appellant took shelter under the maxim '*res ipsa loquitur*' and placed reliance on the two authorities of the M. P. High Court in AIR 1968 MP 47 and that of the SC in 1974 Acc CJ 296 = (AIR 1974 SC 890). In the case of *Madhya Pradesh State Road Transport Corporation v. Sudbakar*, AIR 1968 Madh Pra 47 the learned Judge while discussing the application of the maxim '*res ipsa loquitur*' observed :--

'The maxim is not a rule of law. It is no more than a rule of evidence affecting onus. It is based on common sense, and its purpose is to enable justice to be done when the facts bearing on causation and on the care exercised by the defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant.

That if a motor vehicle under the control of the defendant or his servant overturned for no apparent cause while being driven along with the highway, that fact alone is evidence of negligence against the defendant and so is the fact that it leaves the road and falls down an embankment.'

24. Discussing the case of *Hunter v. Wright*, 1938-2 All ER 621, the learned Judge said:--

'It was a case of a vehicle knocking down a pedestrian. In that case the defendant succeeded in rebutting the presumption of negligence. For that reason it was held that the defendant was not liable for the damages. But where no particular cause can be assigned for the accident and the circumstances are consistent with the negligence of the defendant, the plaintiff can invoke the doctrine; and in that event the burden lies on the defendant to rebut the presumption arising on account of the application of the doctrine.'

25. The Supreme Court in 1974 Acc CJ 296 = (AIR 1974 SC 890) has held :--

'The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission, on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendants responsible for it, even when the facts bearing on the matter are at the outset unknown to him and often within the knowledge of the defendant.'

Their Lordships further observed :--

'Res ipsa loquitur is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where res ipsa loquitur is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or the particular cause of the injury was not associated with negligence on his part. Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of this type that the theoretical limitations of the maxim are quite overshadowed by its practical significance.

Over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age, less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance.'

26. These observations of the learned Judges are very significant and lay down a salutary rule of evidence, that if the accident in itself indicates lack of caution on the part of those who were responsible for handling the machine or vehicle, then the onus lies on the person handling the machine or vehicle that he was not negligent in handling the machine or the vehicle as the case may be. In the present case there were two persons P. W. 2 and P. W. 3 who were present at the spot of occurrence, but they were probably standing on the other side of the truck when the accident actually took place and therefore, they were not in a position to

minutely witness the actual cause of accident. It is apparent from the evidence of these two witnesses that Ram Kumar was on the road by the side of his own track and he was knocked down when he was standing on the highway where a little caution on the part of Niranjana Singh driver could have easily averted this mishap. The circumstance of this case was consistent with the negligence of the driver of the Tuck RJK 3528. In these circumstances the onus lay on Niranjana Singh to show that he took all precautions to avoid the accident. It is in my opinion, a fit case where the doctrine of *res ipsa loquitur* could be attracted with convenience. In these circumstances the liability can easily be fastened for the damages caused to Ram Kumar on Mohan Lal and Niranjana Singh.

27. As regards the quantum of damages I do not find sufficient material on the record to arrive at a reasonable figure to award damages to the claimants. I therefore, consider it a proper case to remand it back to the Tribunal for recording further evidence to determine the quantum of damages.

28. The appeal is therefore, allowed. The case is remanded to the Tribunal for recording further evidence to find out the exact amount of damages to be awarded to the claimants who were the dependents of Ram Kumar. The appellants shall get Rs. 200/- as costs from the respondents Nos. 1 and 2 for this appeal. No claim can however be awarded against the General Assurance Society Ltd. The appeal against respondent No. 3 therefore fails and it is hereby dismissed.