

Soma Devi and ors. Vs. Krishan Ram and ors.

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Court : Himachal Pradesh

Decided On : Apr-21-1997

Reported in : 1998ACJ282

Judge : Kamlesh Sharma and; Arun Kumar Goel, JJ.

Appeal No. : F.A.O. (MVA) No. 222 of 1986 with Cross-objection No. 14 of 1987

Appellant : Soma Devi and ors.

Respondent : Krishan Ram and ors.

Advocate for Def. : K.D. Sood, Bhupender Gupta and; Rakesh Jaswal, Adv.

Advocate for Pet/Ap. : B.P. Sharma, Adv.

Disposition : Appeal allowed

Judgement :

Kamlesh Sharma, J.

1. This appeal is directed against the judgment dated 24.9.1986, passed by Motor Accidents Claims Tribunal, Hamirpur, camp at Bilaspur, whereby the claim petition of the appellants-claimants was dismissed holding that the accident in which Dharam Singh had died had not taken place due to rash and negligent driving of tractor No. HPB 1024. However, under Section 92-A of the Motor Vehicles Act,

1939, the appellants-claimants were awarded lump sum compensation of Rs. 15,000/- in equal shares against no fault liability payable by respondent insurance company holding that there was no sale of the tractor by respondent Krishan Ram in favour of respondent Lekh Ram.

2. Appellant-claimant Soma Devi is the widow, Jashodha Devi is the mother and Ashok Kumar, Rishi Paul, Sunita Kumari, Anju, Raj Kumari are the sons and daughters and Lekh Ram is the brother of deceased Dharam Singh, who had died in the accident of the tractor on 8.10.1983. They had filed claim petition praying for compensation of Rs. 5,00,000/- alleging that accident had taken place due to rash and negligent driving of the driver of tractor against respondents Krishan Ram as well as Lekh Ram on the ground that they had entered into an agreement for the sale of the tractor. Respondent Krishan Ram had denied his liability claiming that the tractor in question was sold to respondent Lekh Ram who had also denied his liability on the ground that he was not the owner of the tractor as its sale was not complete before the accident had taken place. On the other hand, the respondent insurance company had taken a definite stand that since the tractor was transferred by the insured, the privity of contract of insurance stood automatically revoked. Though no separate issue was framed on the objection of respondent insurance company yet it was covered under issue No. 2 whether the appellants-claimants were entitled to any compensation and to what amount and from whom? This issue was answered in negative without dealing with the objection of the respondent insurance company as the Claims Tribunal had come to the conclusion that accident had not taken place due to the rash and negligent driving of the driver of the tractor.

3. This court has heard learned Counsel for the parties and has gone through the record. We have found that in answer to the allegation that accident had taken place due to rash and negligent driving of the driver of the tractor, respondent Krishan Ram has taken the stand that Dharam Singh had not died in the accident in question and in the alternative if it is found that he had died in the said accident it is for the respondent insurance company to pay the compensation as the tractor was insured with it. Another alternative plea was that he had sold the tractor to Lekh Ram much before the accident, as such, he was not the owner of the tractor

on the date of accident and liable to pay compensation to the appellants-claimants. Respondent insurance company in its reply took a number of preliminary objections, inter alia, that on the date of the accident the privity of contract of insurance did not exist as the tractor stood sold by the insured respondent Krishan Ram and that the tractor was being driven by an unauthorised person, who had no valid licence to drive the vehicle in hill area. Averments on merits were also denied. Respondent No. 2 Lekh Ram in his reply took the stand that he had nothing to do with the tractor in question and if it is found that Dharam Singh had died in the accident of said tractor it is the liability of its owner, i.e., respondent Krishan Ram and its driver to pay the compensation to the appellants-claimants. According to him, sale of tractor was not complete and he had only entered into an agreement to sell with respondent Krishan Ram. Rejoinder to respective replies was also filed on behalf of the respondents.

4. To prove the negligence of the driver of the tractor, the appellants-claimants have produced Deep Ram, PW 2, who happened to be at the place of accident at the time it had occurred. According to him, deceased Dharam Singh was walking on the kacha portion of the road towards khud when the ill-fated tractor, which was being driven at a high speed by its driver, crushed him. He has further stated that at the time of accident Dharam Singh had got down from the tractor and was guiding its driver for the purpose of reversing it so that stones could be loaded in its trolley from Makhni Khud. He has also stated that Dharam Singh had taken lease to extract stones from Makhni Khud which is at a distance of about 200 yards from bridge Bhakyunda. In his cross-examination, this witness has stated that he had worked as coolie in the mine of Dharam Singh. The cleaner of the truck, namely, Kaku Ram, who also received injuries in the accident in question, had appeared as witness in the connected case. As per this witness, his house is at a distance of 100 yards from the house of Dharam Singh and about one kilometre from the place of accident. He has denied that Dharam Singh was sitting on the mudguard of the tractor at the time of accident. Though, he had appeared at the instance of appellants-claimants but he has denied that he was deposing falsely as they were his co-villagers.

5. Perusal of the cross-examination of Deep Ram, PW 2, shows that his statement is not challenged to the extent that Dharam Singh was crushed by the tractor when it was being reversed rashly and negligently. His statement has been wrongly rejected merely on the ground that he is co-villager of the appellants-claimants and was a chance witness as he has stated that he was going to gharat when the accident in question had taken place. In fact the existence of gharat near the place of accident stands verified from the inspection report dated 23.9.1986 of the Tribunal and there is nothing on record to belie his statement that he was present at the place of accident when it had taken place. Had the accident not taken place in the manner as stated by Deep Ram, PW 2, the respondents could produce Kaku Ram, the cleaner of the tractor, who was the only other witness of the accident besides Deep Ram, PW 2. Kaku Ram had appeared in a connected case which was most probably of the driver of the tractor, namely, Bhagat Ram, who had also died in the accident and had the statement of Kaku Ram been in favour of respondents they would have surely produced him. Therefore, for non-production of Kaku Ram, adverse inference should also be drawn against the respondents.

6. If the statement of Deep Ram, PW 2, is read with the spot inspection report of the Tribunal, there remains no doubt that the accident had taken place due to rash and negligent driving of the driver of the tractor. It was noticed by the Tribunal that the tractor was being reversed downward towards the khud on the non-usable road which consists of sloppy rocks and was not visible. The distance between the open point near the bridge and the parapet was just 5 feet which was the distance between two tyres of the trolley. In the spot inspection report after giving full description of the spot it is opined by the Tribunal that it was almost impossible to take the tractor along with trolley towards the khud from the road in a reverse position as there was hardly a space of 5 feet between the bridge and the parapet from which tractor as well as trolley were sought to be taken to the khud which is about 50 metres downward. The Tribunal has further observed that driver of the tractor was trying to perform foolish and impossible act of taking the tractor along with trolley on a non-existent sloppy rocky place from a point where there was hardly a space for the tyres to cross as a result of which the tractor and trolley landed in the khud. According to the Tribunal, since the driver of the tractor was

reversing the tractor on the instructions of deceased Dharam Singh he cannot be held responsible for the rash and negligent driving causing the accident in question. We find ourselves unable to agree with these findings of the Tribunal. Even if the deceased Dharam Singh was giving instructions for reversing the tractor it was mainly for Bhagat Ram, the driver of the tractor, to make judgment whether the alleged road leading to the khud was fit for reversing the tractor along with the trolley. If he had failed in his judgment and had reversed the tractor and trolley at a place where it was impossible to do, he cannot be absolved of the responsibility of rash and negligent driving as a result of which the accident had taken place in which both he and Dharam Singh had died. The contribution of Dharam Singh to the rash and negligent driving is only negligible which we assess at 20 per cent.

7. Now the question arises what should be the amount of compensation to which the appellants-claimants are entitled and from which of the respondents. Appellant-claimant Jashodha Devi, the mother of Dharam Singh, has appeared as PW 1 and according to her he was working as a contractor and was also looking after his agricultural land wherefrom his income was Rs. 1,000/- per month. Though, she has stated that he was ex-serviceman and he had retired after putting in 15 years service, 1½ years prior to the accident yet she is not able to tell the amount of pension, if any, he was getting from the army. Deep Ram, PW 2, has also given the income of Dharam Singh as Rs. 1,500/- to Rs. 1,600/- per month but this was his guess work as admitted by him in the cross-examination. No other witness produced by either party has stated about the earnings of Dharam Singh. Further, his mother Jashodha Devi, PW 1, has given She age of Dharam Singh at the time of the accident as 35 years which has been disputed by the respondents. On the other hand, Lekh Ram, RW 8 has stated that the age of Dharam Singh was 50 to 60 years at the time of accident. But in the absence of any evidence on record to substantiate the statement of respondent Lekh Ram, RW 8 we are inclined to accept the age given by Jashodha Devi, PW 1, the mother of Dharam Singh, who had given her own age as 60 years when her statement was recorded on 13.3.1986. Respondent Lekh Ram, RW 8, has admitted that Dharam Singh was ex-serviceman and was earning pension though he could not give its exact amount. However, even if we presume that he was earning minimum pension and

was working as labourer his income would not be less than Rs. 1,000/- per month and Rs. 12,000/- per annum. Admittedly, at the time of the accident his mother Jashodha Devi, his wife Soma Devi and five minor children were dependent upon him besides his brother Lekh Ram, who was also a minor at the time of the accident, as per record. For arriving at the datum figure, we have to calculate how much Dharam Singh was spending on himself. As per unit system, there were 12 units in his family (2 units for adults and one unit for a child) and accordingly he was spending 1/6th of his income on himself which comes to Rs. 167/- which is rounded off to Rs. 170/- per month and the datum figure comes to Rs. 830/- per month and Rs. 9,960/- per annum. Looking to the age of Dharam Singh as about 35 years at the time of accident and other relevant factors multiplier of 15 will be just and proper. Applying this multiplier to the datum figure, the compensation comes to Rs. 1,49,400/- out of which the appellants-claimants are entitled to the extent of 80 per cent as 20 per cent amount of total compensation is to be deducted for contributory negligence of Dharam Singh as already held by us. Accordingly, the appellants-claimants will get Rs. 1,19,520/- plus conventional amount of Rs. 5,480/- the total of which comes to Rs. 1,25,000/-. They are also entitled to interest at the rate of 10 per cent from the date of application, i.e., 14.4.1984 to the date of payment.

8. The most important question in this case is as to which of the respondents is liable to pay the amount of compensation, as determined by this Court. The answer to this question depends upon another question as to who was the owner of the tractor in question on the date of accident, i.e., 8.10.1983. If in answer to this question it is held that owner of the tractor was respondent Krishan Ram he is liable to pay the compensation to appellants-claimants jointly with respondent insurance company which is liable to indemnify him as admittedly the tractor was insured with it as per the insurance policy, Exh. RW I/A, but if this Court comes to the conclusion that respondent Krishan Ram had sold the tractor to Lekh Ram on the date of accident he will be liable to pay the compensation to appellants-claimants and respondent insurance company is absolved of its liability as there is no privity of contract of insurance between it and Lekh Ram. The answer will depend upon the evidence produced by the parties mainly the agreements to sell, Exh. RW 5/A and RW 3/A, receipt, Exh. RW 5/B and application, Exh. RW 2/A,

besides the oral evidence on record. The learned Counsel appearing for Krishan Ram has urged that from the construction of agreements to sell Exh. RW 5/A and RWr 3/A it is clear that sale of the tractor was complete and respondent Lekh Ram was the owner of the tractor on the date of accident. On the other hand, learned Counsel appearing for Lekh Ram has urged that from the terms and conditions of these agreements to sell it is clear that sale of the tractor was not complete and respondent Krishan Ram continued to be the owner of the tractor on the date of accident. Learned counsel has also relied upon the application, Exh. RW 2/A, wherein Krishan Ram claiming himself to be the owner of the tractor sought its superdari, after the accident, under Section 457, Code of Criminal Procedure. He has also pointed out that since the tractor was returned to Krishan Ram on 13.3.1984, after the accident by receipt Exh. RW 5/B, there remains no doubt that the sale of the tractor was not complete and only agreements to sell were entered into. Learned counsel appearing for respondent insurance company has supported the stand of respondent Krishan Ram and has pointed out that by documents RW 5/A and RW 3/A the sale of the tractor was complete whereby they were absolved of their liability to indemnify the original owner respondent Krishan Ram for payment of compensation, if any, to the appellants-claimants. According to learned Counsel, application Exh. RW 2/A and receipt Exh. RW 5/B pertain to later period than the date of accident, as such, these should not be relied upon for determining the ownership of the tractor.

9. After giving our best consideration to the respective contentions of learned Counsel for the parties, we hold that in view of the terms and conditions of the documents Exhs. RW 5/A and RW 3/A these cannot be termed as the documents of sale of the tractor; these are only agreements to sell. By document Exh. RW 5/A, which was executed on 30.9.1983, respondent Krishan Ram had agreed to sell the tractor for an amount of Rs. 57,000/- out of which Rs. 10,000/- was received by him in advance and the remaining amount was to be paid by respondent Lekh Ram in quarterly instalments of Rs. 4,500/- to UCO Bank, Jandhuta. It is further stated that an amount of Rs. 57,000/-, which respondent Krishan Ram was to pay to UCO Bank, Jandhuta, will be the responsibility of respondent Lekh Ram and in the event of his not making the payment the amount already paid by him to Krishan Ram will stand forfeited and Krishan Ram will have

a right to take the possession of the tractor wherever he finds it. It is also stated that on the payment of Rs. 57,000/-either to the bank or to Krishan Ram he will transfer all the papers and the ownership of the tractor in the name of respondent Lekh Ram and if respondent Krishan Ram fails to do so respondent Lekh Ram will be entitled to get back the amount paid by him with interest. As per this agreement, Krishan Ram was also authorised to recover the balance consideration amount from the movable and immovable property of Lekh Ram, if he fails to pay the full instalments irrespective of any defect found in the tractor. This agreement was executed before Pradhan Gram Panchayat, Vehna and it was agreed that further agreement will be executed on 3.10.1983 at Tehsil Ghumarwin. Accordingly, Exh. RW 3/A was executed on non-judicial stamp paper on 3.10.1983 in which almost the similar terms and conditions were agreed between the parties. However, it was made clear that on the failure of respondent Krishan Ram to get the registration certificate of the tractor transferred in the name of respondent Lekh Ram after he pays the consideration amount, as agreed to, the sale of the tractor will be considered complete and it will become the property of respondent Lekh Ram.

10. By now it is well settled that the sale of the motor vehicles is governed under the Sale of Goods Act and not under the Motor Vehicles Act. So far Section 31 of Motor Vehicles Act, 1939 is concerned, it casts an obligation on the transferee to report to the registering authority concerned regarding the transfer of the vehicle along with certificate of registration and then get the registration transferred in his name. On his failure to do so, the transfer may involve some penalties under the Motor Vehicles Act but that certainly does not affect the passing of property in the vehicle to the transferee if the sale is complete. The ownership of the transferee may not be entered in the registration certificate of the vehicle which is only an evidence of title and not document of title of the vehicle. The document of title of the vehicle is one whereby the ownership of the vehicle is transferred in the name of transferee. [See: Panna Lai v. Shri Chanel Mai 1980 ACJ 233 (SC) and Nemanna Yellappa v. Syndicate Bank 1979 ACJ 386 (Karnataka)].

11. The distinction between sale and agreement to sell is clear from Section 4 of the Sale of Goods Act, which is as follows:

4. Sale and agreement to sell.-(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Interpreting the provisions of Section 4 of the Sale of Goods Act, the Supreme Court in *The Instalment Supply Ltd. v. S.T.O., Ahmedabad-I* (1974) 4 SCC 739, has observed that:

The points to be noticed are that the essence of sale is the transfer of the property in a thing from one person to another for a price. The term 'contract of sale' includes an agreement to sell. An agreement to sell is known as an executory contract of sale, while a sale is known as an executed contract of sale. The term 'contract of sale' thus includes both actual sale and agreement for sale. It is important to distinguish clearly between the two classes of contract. An agreement to sell is a contract pure and simple whereas a sale is a contract plus a conveyance. By an agreement to sell a *jus in personam* is created, by a sale a *jus in rem* also is transferred. Where goods have been sold and the buyer makes default, the seller may sue for the contract price on the count of 'goods bargained and sold', but where an agreement to buy is broken, the seller's normal remedy is an action for unliquidated damages. If an agreement to sell be broken by the seller, the buyer has only a personal remedy against the seller. The goods are still the property of the seller and he can dispose of them as he likes. But if there has been a sale, and the seller breaks his engagement to deliver the goods, buyer has not only a personal remedy against the seller, but also the usual proprietary

remedies in respect of the goods themselves. In many cases, too, he can follow the goods into the hands of third parties. Again, if there be an agreement for sale and the goods are destroyed, the loss as a rule falls on the seller, while if there has been a sale, the loss as a rule falls upon the buyer though the goods have never come into his possession. (Chalmers' Sale of Goods Act, 14th Edn., pp. 4 and 12; Halsbury's Laws of England, 3rd Edn., Vol. 34, paras 29 to 31)

(Emphasis supplied)

12. In order to understand the distinction between sale and agreement to sell reference to a Division Bench judgment of Madhya Pradesh High Court in Pathari-bai Karansingh v. Firm Lalji Shankarlal 1985 ACJ 526 (MP), will be of great assistance wherein it is held that in view of the terms and conditions of the agreement that only a part of the sale consideration was paid and the remaining was to be paid within a period of three months the sale was not complete as the property in the vehicle was intended to pass only on the payment of full consideration. For arriving at their conclusion, the learned Judges have taken support from another term and condition of the agreement that if the amount was not paid within three months the vendor will have a right to take back the possession of the truck and to retain the amount already paid. On the basis of this contention, the learned Judges have held that if the party had intended a complete sale on the date of agreement, it would not have contemplated return of possession to the owner for non-payment of price within three months. In another case of United India Insurance Co. Ltd. v. Mathurabai 1986 ACJ 1092 (Bombay), a Division Bench of Bombay High Court has also taken the same view that in view of the agreement between the parties that so long as the balance was not paid the vehicle will not be transferred in the name of the buyer though he would ply the same, the intention of the parties was clear that the vehicle was to pass from the seller to the buyer only after the payment of balance amount of sale consideration. The learned Judges have referred to Section 19 of the Sale of Goods Act, which provides that the property passes when intended to pass. This court also takes support from law laid down in a Full Bench judgment of Andhra Pradesh High Court in Madineni Kondaiah v. Yaseen Fatima 1986 ACJ 1 (AP).

13. In the judgment cited by learned Counsel appearing for insurance company in D.S. Sahni v. Faqir Singh AIR 1960 J&K; 6, the learned Judges have only held that in the case of unconditional contract of sale or specified sale of goods property passes to the buyer when the contract of sale is made though goods are delivered later on. The ratio of this judgment is not applicable in the case in hand as the agreement between respondents Krishan Ram and Lekh Ram was conditional and one of the terms and conditions was that in the event of the failure of the respondent Lekh Ram to make the payment of consideration amount as agreed between him and respondent Krishan Ram, the latter will have right to take possession of the tractor wherever he finds it. Another term and condition was that only on payment of full amount of sale consideration the registration certificate will be transferred in the name of respondent Lekh Ram by respondent Krishan Ram and on his failure to do so, the sale will be considered complete. These two conditions are sufficient to hold that the agreements Exh. RW 5/A and RW 3/A were only agreements to sell and not sale as the property in the tractor was intended to pass only on payment of full amount of sale consideration and the transfer of registration certificate and other papers in the name of respondent Lekh Ram. This construction of these documents is further fortified by the application Exh. RW 2/A filed under Section 457, Code of Criminal Procedure by respondent Krishan Ram praying for superdari of the tractor to him claiming its ownership and also by receipt Exh. RW 5/B whereby respondent Krishan Ram took over the possession of the tractor from respondent Lekh Ram on his failure to pay the instalments as agreed between them. No doubt these documents Exh. RW 2/A and RW 5/B had come into existence after the accident but there is nothing on record to show that respondents Krishan Ram and Lekh Ram had connived to make the respondent insurance company liable to indemnify the respondent Krishan Ram for payment of compensation amount to appellants-claimants. The application for compensation was filed on 31.3.1984 and in his reply to the application as well as in his deposition in the court respondent Krishan Ram had taken a specific stand that the tractor stood sold to respondent Lekh Ram on the date of accident and he is liable to pay the amount of compensation to the respondents-claimants though this stand has not been found correct.

14. In view of our findings that the sale of tractor No. HPB 1024 was not complete and the respondent Krishan Ram was its owner on the date of accident, the ratio of judgments of this Court in Kama Devi v. Dayal Singh 1991 ACJ 336 (HP) and United India Insurance Co. Ltd. v. Bimla 1994 ACJ 878 (HP), does not apply to the present case, as in those cases the sale of the vehicle was found complete. Further, in view of our findings, cross-objections of respondent New India Assurance Co. Ltd. that it is not liable to pay the sum of Rs. 15,000/- which has been awarded as no fault liability to the appellants-claimants, are also not maintainable and are liable to be dismissed. As we have found that there was subsisting contract of insurance in respect of the tractor in question between respondent Krishan Ram, the owner of the tractor and respondent New India Assurance Co. Ltd., the latter is liable to indemnify respondent Krishan Ram for the amount of compensation awarded to the appellants-claimants.

15. Therefore, we hold the respondent Krishan Ram liable to pay the amount of compensation determined by us jointly with respondent New India Assurance Co. Ltd. and since it is liable to indemnify respondent Krishan Ram, we direct the New India Assurance Co. Ltd. to deposit the amount of Rs. 1,25,000/- with interest at the rate of 10 per cent from 14.4.1984 to the date of payment in the Registry of this Court within a period of six weeks.

16. The appeal is allowed in these terms and the impugned judgment dated 24.9.1986 of Motor Accidents Claims Tribunal, Hamirpur camp at Bilaspur is set aside. The cross-objections of respondent New India Assurance Co. Ltd. are dismissed. There is no order as to costs.