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Mukesh Kumar Vs. Smt. Kamlesh Devi and ors

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Court : Delhi

Decided On : May-11-2011

Judge : Reva Khetrapal, J.

Acts : Motor Vehicles Act - Sections 166, 140, 3; Indian Penal Code (IPC) - Sections 279, 304-A; Representation of the People Act, 1951

Appeal No. : MAC.APP.164/2010 and CM Nos.4807/2010 (stay) and 4809/2010

Appellant : Mukesh Kumar

Respondent : Smt. Kamlesh Devi and ors

Advocate for Def. : Mr. Bhupesh Narula; Mr. V.K. Goel; Mr. L.K. Tyagi, Advs.

Advocate for Pet/Ap. : Mr. Hari Shankar, Adv.

Judgement :

1. This appeal is directed against the judgment and award dated 27th May, 2009 passed by the Motor Accidents Claims Tribunal, Delhi.

2. The brief facts leading to the filing of the appeal are as follows.

3. The respondents No.1 to 4 filed a petition under Sections 166 and 140 of the Motor Vehicles Act against the appellant and the respondents No.5 to 7 for grant of compensation of ` 20 lakhs jointly and severally together with interest thereon. The said claim petition was filed as a result of a road accident which took place on

12.02.2005 at 2.30 p.m. when Shri Bishambar, the husband of the respondent No.1 and the father of the respondents No.2 to 4, was crossing the main road at Lal Bahadur Shastri Marg and was hit by a scooter bearing No.DL-7S-K-9664, being driven by the respondent No.5, who was coming from the side of Sudharshan Chowk rashly and negligently at a very high speed. A case bearing FIR No.54/05 was registered under Sections 279/304-A IPC against the respondent No.5, who was then arrested and charge-sheeted for the aforesaid offences as well as for the offence punishable under Section 3 of the Motor Vehicles Act, 1988 for not possessing a driving licence.

4. Although initially the petition was instituted under Section 166 read with Section 140 of the Motor Vehicles Act, it was subsequently converted into a petition under Section 163-A of the said Act with the leave of the Claims Tribunal. Notice of the filing of the petition was served on the respondents No.5 to 7 and the appellant. The driver of the alleged offending vehicle, the respondent No.5 herein, contested the case on the ground that he was not driving vehicle No.DL-7S-K- 9664 at the time of the accident. The appellant, Shri Mukesh Kumar contested the case on the ground that he had sold the vehicle in question to the respondent No.6 herein, Shri Om Prakash, son of Shri J.M. Aggarwal, resident of Kalyanpuri, Delhi on 20.07.2004. The respondent No.6, in his turn, contested the case on the ground that he was not aware of the accident and the death of the deceased as the alleged offending scooter was not in his possession at the time of the accident. He submitted that he had purchased the scooter from Shri Mukesh Kumar, the appellant in the month of July, 2004 and the latter had handed over the possession of the said scooter to him with the assurance that the requisite Forms 29 and 30 for change of ownership through the Registering Authority would be delivered to him within the prescribed period of one month from the date of the delivery challan, which was signed by him on 20.07.2004. However, despite his repeated requests the appellant did not deliver the required forms and delayed the matter on one pretext or the other for reasons best known to him, and as such, he could not get the vehicle transferred in his name within the prescribed period of one month. Thereupon, he claims that it was orally agreed that the appellant would take back the possession of the scooter and thus he handed over the possession of the scooter back to the appellant, and as a result the said scooter was in the

possession and control of the appellant at the time of the accident.

5. The respondent No.7 - Insurance Company in the written statement filed by it admitted that the offending vehicle was insured with it vide policy No.221504/31/04/01393, which was valid from 01.06.2004 to 31.05.2005. It, however, denied the remaining allegations and prayed for dismissal of the claim petition.

6. After the framing of issues, the parties adduced their respective evidence. The respondents No.1 to 4 summoned in the witness box PW1 Smt. Kamlesh Devi, the widow of the deceased and PW2 Shri Harish Chand Pandey, who proved on record the post-mortem report of the deceased. The appellant Mukesh Kumar, who is the recorded owner, examined himself as R2W1. The respondent No.7 - Insurance Company examined its Assistant Manager Shri R.K. Sharma as R3W1. The respondent No.6 Om Prakash examined himself as R4W1.

7. The learned Tribunal by its award dated 27.05.2009 held that the deceased Bishambar had sustained fatal injuries in the motor accident involving the offending vehicle and accordingly the respondents No.1 to 4/claimants in the claim petition had become entitled to receive compensation of ` 4,08,000/- with interest thereon @ 7% per annum from the date of the filing of the petition till the date of realisation of the award amount. As regards the apportionment of liability, the learned Claims Tribunal, after sifting through the evidence, came to the conclusion that the appellant Shri Mukesh Kumar was the registered owner of the offending vehicle and the respondent No.6 Shri Om Prakash was the de facto owner of the offending vehicle on the date of the accident. The learned Claims Tribunal noted that neither the appellant nor the respondent No.6 had disputed the driving of the offending vehicle by Shri Umesh Kumar, the respondent No.5, however, neither of them had adduced any evidence that they had ever engaged the said Shri Umesh Kumar as their driver to drive the offending vehicle or allowed the offending vehicle to be driven by him. The learned Claims Tribunal also noted that the Insurance Company had proved on record the copy of the charge-sheet filed by the police against Shri Umesh Kumar, the respondent No.5 as Ex.R3W1/E, showing that not only Shri Umesh Kumar was charge-sheeted for the trial of offences punishable

under Sections 279/304-A IPC, but was also charge-sheeted for the offence punishable under Section 3 of the Motor Vehicles Act, which section provides the necessity for a driving licence. The learned Claims Tribunal held that the material on record had established that the respondent No.5 did not have a driving licence to drive the offending vehicle on the date of the accident, inasmuch as even during the pendency of the case neither any copy of driving licence was filed nor proved on record. Since the respondent No.5 was not having any driving licence to drive the offending vehicle on the date of the accident and the registered owner as well as the de facto owner had failed to adduce any evidence that either of them had allowed the respondent No.5 to drive the offending vehicle after seeing his driving licence, the learned Tribunal held that the Insurance Company could not be held liable to make payment of the compensation awarded to the claimants.

8. After exonerating the Insurance Company in the aforesaid manner, the learned Tribunal deduced from the evidence on the record that on the date of the accident, the offending vehicle was in the possession of the respondent No.6, as he had failed to prove that he had given possession of it back to the appellant prior to the date of the accident. The learned Claims Tribunal, therefore, held that the appellant as the registered owner and the respondent No.6 as the de facto owner were both vicariously liable for the death of the deceased in the accident and thus, both were equally liable to pay compensation to the claimants.

9. Aggrieved by the aforesaid findings of the Claims Tribunal, the appellant, who is undeniably the registered owner of the offending vehicle, has assailed the same by filing the present appeal, which is contested by all the respondents albeit on different grounds.

10. Before me, the contention of Mr. Hari Shankar, the learned counsel for the appellant, was that it was the admitted case of the parties that the offending vehicle had been purchased for the sum of ` 8,000/- as total sale consideration from the appellant by the respondent No.6, Shri Om Prakash. It was also the admitted case of the parties that the respondent No.6 had taken possession of the aforesaid vehicle on 20th July, 2004. He submitted that both the said facts are not disputed either in the written statement filed by the respondent No.6 or in the

course of his cross-examination, and this conclusively proved that the appellant was not in possession and control of the offending scooter on the date of the accident. Thus, it is the respondent No.6 and not the appellant who could be held vicariously liable for the rash and negligent driving of the respondent No.5, as it was the respondent No.6 who had handed over the vehicle in question to the respondent No.5 to drive the same. Admittedly also, it was the respondent No.5 who was driving the vehicle in question and against whom case FIR No.54/05 had been registered for the offences punishable under Sections 279/304-A IPC and Section 3 of the Motor Vehicles Act, 1988. The execution of the delivery receipt by the respondent No.6, and the fact that physical possession of the scooter had been handed over to the respondent No.6 on the same day, showed that the appellant had no connection with the scooter on the date of the accident. This was sufficient to exonerate the appellant. Reliance was placed by the learned counsel for the appellant, in this context, upon a judgment of the Punjab and Haryana High Court rendered in the case of Harbans Singh vs. Krishan Lal and Ors. reported in 1984 ACJ 650 and in particular paragraph 5 of the said judgment, which reads as under:

> **"5. The point sought to be urged by Mr. G.L. Nagpal, counsel for the claimants was that as the tempo stood registered in the name of Harbans Singh at the time of the accident, he retained ownership over it and was thus liable. In other words, registration in the name of the purchaser was a necessary ingredient for transfer of title of the vehicle concerned. This is a contention wholly devoid of merit. A similar point was raised in Phul Bus Service (Regd.), Rampura v. Financial Commissioner, Taxation (1968) ACJ 57 (P & H), where it was held that ownership of a motor vehicle is transferred in the same manner and subject to the same limitations and rules as apply to all other movable property and an absolute transferee of a motor vehicle does not cease to be the owner thereof merely because his name has not yet been substituted for the name of the transferor in the registration certificate of the vehicle issued under the Motor**

Vehicles Act. It was specifically observed that registration under the Motor Vehicles Act was not a necessary ingredient of a completed title of ownership of a motor vehicle."

11. Further, in support of his contention that the learned Claims Tribunal had erroneously held the appellant to be vicariously liable, the learned counsel for the appellant referred to the meaning of the expression "vicarious liability" in Black's Law Dictionary, Seventh Edition, wherein "vicarious liability" is defined as follows: "Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) because of the relationship between the two parties."

12. The learned counsel for the respondent No.6, Shri V.K. Goel Advocate sought to rebut the aforesaid submissions of the learned counsel for the appellant by raising a two-fold contention. He contended that the Form Nos.29 and 30 placed on record by the appellant were signed only by the appellant and not by the respondent No.6. This clearly showed that at no point of time the appellant made any move to have the registration of the vehicle transferred to the new purchaser, viz., the respondent No.6. The second contention of Mr. Goel was that the onus of proving that the respondent No.5 - driver was driving the vehicle, and further that it was being driven under the instructions of the respondent No.6 was upon the Insurance Company, and the Insurance Company had failed to discharge the said onus.

13. In support of his aforesaid contentions, the learned counsel relied upon the testimony of the respondent No.6, Shri Om Prakash himself, who appeared in the witness box as R4W1 to tender his examination-in-chief by way of an affidavit, Ex.R4W1/A. In his said affidavit, the respondent No.6 though stated that he had purchased scooter No. DL-7S-K-9664 from the appellant Shri Mukesh Kumar on 20.07.2004 and the appellant had handed over the possession of the said scooter to him with the assurance that the requisite Forms 29 and 30 for change of ownership through the Registering Authority, viz., the Directorate of Transport, would be given within the prescribed period of one month from the date of delivery challan, which was signed by him on 20.07.2004, the said Forms were not

delivered by the appellant within the aforesaid period. He further stated that it was, therefore, agreed between him (the respondent No.6) and the appellant that the appellant will take back the possession of the vehicle and, as such, he (the respondent No.6) handed over the possession of the said scooter back to the appellant. Since the scooter in question was in possession of the appellant who was the recorded owner of the same, the respondent No.6 had no knowledge about the accident which took place on 12.02.2005. Significantly, the respondent No.6 in his affidavit, Ex.R4W1/A stated that he was not aware as to who was driving the scooter at the time of the accident and he had also not made any effort to take back the scooter on superdari from the concerned authority.

14. Mr. V.K. Goel, the learned counsel for the respondent No.6 contended that the aforesaid testimony of the respondent No.6 conclusively showed that he was not in possession and control of scooter No.DL-7S-K-9664 on 12.02.2005, when the accident took place and, as such, the liability to pay compensation to the respondents No.1 to 4 could not be fastened upon him.

15. Mr. L.K. Tyagi, the learned counsel for the respondent No.7 - Insurance Company, to rebut the contentions raised on behalf of the respondent No.6, argued that in the written statement of the respondent No.6, the respondent No.6 had clearly admitted that he had purchased the offending scooter from Shri Mukesh Kumar and the latter had handed over the possession of the said scooter to the respondent No.6. This being so, the burden lay heavily on the respondent No.6 to prove that he had returned the vehicle of the appellant on 30th August, 2004 as alleged by him or on any other date whatsoever. He had miserably failed to discharge the said burden. In such circumstances, his sworn testimony that he did not know who was driving the vehicle was not worthy of credence. Furthermore, Mr. Tyagi submitted, relying upon the judgments of Supreme Court in Ishwar Chandra vs. Oriental Insurance Co. Ltd. 2007 III AD (SC) 753, National Insurance Co. Ltd. v. Swaran Singh & Ors. (2004) 3 SCC 297, Sardari and Ors. v. Sushil Kumar and Ors. 2008 ACJ 1307 and United India Insurance Co. Ltd. v. Rakesh Kumar Arora & Ors. 2008 (13) Scale 35, that in view of the fact that the respondent No.5 - driver was charge-sheeted under Section 3 of the Motor Vehicles Act, for not possessing a driving licence, the breach of the conditions of

the insurance policy by the insured stood proved. In this context, the learned counsel referred to the testimony of R3W1 Shri R.K. Sharma, Assistant Manager of the Insurance Company, who proved on record the certified copy of the challan filed by the police under Sections 279/304-A IPC and Section 3/181 of the Motor Vehicles Act, 1988 as Ex.R3W1/E and pointed out that there was no cross-examination of this witness on the aspect of the aforesaid challan having been filed against the respondent No.5.

16. Mr. Tyagi also contended on behalf of the Insurance Company that there is a subtle but fine distinction between a case where the licence is fake and a case where the driver holds no licence at all. In the former category of cases, the learned counsel contended, the onus was on the Insurance Company to prove that the insured was aware that the driver of his vehicle was holding a fake licence. In other words, the Insurance Company was required to prove that a breach of the policy conditions had been wilfully committed by the insured/owner. However, in the latter category of cases, viz., the cases in which the driver holds no driving licence at all, as in the instant case, it is sufficient for the Insurance Company to prove that the offending vehicle was being driven by the insured or by his driver without a driving licence and nothing further has to be proved.

17. Mr. Bhupesh Narula, who appeared on behalf of the respondents No.1 to 4, the claimants in the claim petition, sought to counter the submissions of Mr. Tyagi by contending that it is the well settled position of law that if there is any breach of the policy conditions, the claimants should not be made to suffer for the same and it is always open to the Insurance Company to realise the amount from the insured in accordance with law. In the aforesaid context, Mr. Bhupesh Narula relied upon the decisions rendered in the following cases:

(i) New India Assurance Co., Shimla vs. Kamla and Ors. I (2002) ACC 346 (SC).

In this case, the question arose whether by virtue of Section 149(2)(a)(ii) an Insurance Company could avoid liability if it is proved that the driving licence was fake. The Supreme Court considered in detail the provisions of Section 149 of the Motor Vehicles Act, 1988 and concluded that the insurer has to pay to third parties on account of the fact that a policy of insurance had been issued in respect of the

vehicle. It was held that the insurer may be entitled to recover such amount from the insured if the insurer was not otherwise liable to pay such sum to the insured by virtue of the contract of insurance. The question as to whether or not the insured would be protected if he had made all enquiries was left open.

(ii) United India Insurance Co. Ltd. v. Lehru and Ors. I (2003) ACC 611 (SC).

This case came up before the Supreme Court subsequent to Kamla's case (supra) and it was submitted that the decision in Kamla's case was not correct. The Supreme Court once again considered the provisions of Section 149(2)(a)(ii) and categorically reiterated that it was not sufficient to show that the person driving at the time of the accident was not duly licensed and the Insurance Company must establish that the breach was on the part of the insured. In the penultimate paragraph of its judgment, the Court held:

> **"More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia's, Sohan Lal Passi's and Kamla's cases. We are in full agreement with the views expressed therein and see no reason to take a different view."**

(iii) New India Assurance Co. Ltd. v. Jyotirmayee @ Ranu Rout & Ors. II (2007) ACC 893 (DB).

In this case, relying upon the decisions of the Supreme Court in Kamla's and Lehru's case (supra), a Division Bench of the Orissa High Court held:

> **"In this regard it is well settled position of law that, if there was any breach of the policy condition it is always open to the Insurance Company to release (sic. realize) the amount from the insured in accordance with law and the claimants should not suffer."**

18. Having heard the learned counsel for the parties at considerable length and scrutinized the records, my findings on the various issues raised in the appeal, factual and legal, are as under.

19. The execution of the delivery receipt has been unequivocally admitted by the respondent No.6, Shri Om Prakash as also the fact that on the date of the execution thereof, i.e., on 20.07.2004, the delivery of the vehicle was handed over to him thereunder. Once the execution of a document has been admitted as in the present case, the well settled position of law is that no oral evidence contrary to that can be referred to. In other words, the subsequent oral arrangement set up by the respondent No.6, viz., that there was an agreement between him and the appellant whereunder he returned the offending vehicle to the appellant, cannot be proved by parol evidence. Section 91 of the Indian Evidence Act deals with the exclusion of evidence of oral agreement between the parties for the purpose of contradicting, varying, etc. any written agreement and lays down that where under law, a contract or disposition is required to be in writing and the same has been reduced into writing, its terms cannot be modified or altered or substituted by oral contract or disposition. (See S. Saktivel (dead) by LRs vs. M. Venugopal Pillai and Ors. (2000) 7 SCC 104). This being the law, this Court is unable to accept the version of the respondent No.6 that he had returned the vehicle to the appellant. The necessary corollary is that the respondent No.6 must be held to be in possession and control of the vehicle on the date of the accident.

20. The next question which arises for consideration is the question of the liability of the recorded owner of a vehicle, viz., the appellant herein, after its sale to another person. In the case of Pushpa @ Leela & Ors. v. Shakuntala & Ors., Civil Appeal No.6924/2005 decided on January 12, 2011, the Supreme Court has adjudicated upon the very same question which has been formulated in paragraph 1 of its judgment as follows:

> **"Whether in the fact and circumstances of the case the liability to pay the compensation amount as determined by the Motor Accident Claims Tribunal was of the purchaser of the vehicle alone or whether the liability of the recorded owner of the**

vehicle was coextensive and from the recorded owner it would pass on to the insurer of the vehicle?"

21. In the aforesaid case, the offending truck, as noted by the Apex Court, had a little history of its own. It earlier belonged to one Jitender Gupta, who was its registered owner. Jitender Gupta sold the truck to Salig Ram and gave its possession to the transferee. Despite the sale of the vehicle by Jitender Gupta to Salig Ram, the change of ownership of the vehicle was not entered in the certificate of registration. After the earlier policy issued by M/s. New India Assurance Co. Ltd. in favour of Jitender Gupta had lapsed, another policy was taken out by Salig Ram from M/s. Oriental Insurance Co. Ltd. in the name of Jitender Gupta, the earlier owner of the truck. It was during the subsistence and period of validity of this insurance policy that the accident took place. The Claims Tribunal held that there was no privity of contract between Salig Ram, the owner of the truck and the Insurance Company, M/s. Oriental Insurance Co. Ltd. Hence the insurance policy was of no use for the purpose of indemnifying Salig Ram. In short, Salig Ram alone was liable for payment of the compensation amount to the claimants. An appeal against the judgment and award made by the Claims Tribunal was preferred before the Himachal Pradesh High Court, which was dismissed. On further appeal, after examining at length the provisions of law with regard to ownership of motor vehicles, as incorporated in Section 2(30) of the Motor Vehicles Act, 1988 and Section 50 thereof, the Supreme Court held that it was undeniable that notwithstanding the sale of the vehicle neither the transferor Jitender Gupta nor the transferee had taken any step for the change of the name of the owner in the certificate of registration of the vehicle. It further held that in view of this omission, Jitender Gupta must be deemed to continue as the owner of the vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale on February 02, 1993. Significantly, in arriving at the aforesaid conclusion, the Supreme Court relied upon its earlier decisions in Dr. T.V. Jose vs. Chacko P.M. (2001) 8 SCC 748 and P.P. Mohammed vs. K. Rajappan & Ors. (2008) 17 SCC 624. The relevant portion of the judgment of the Supreme Court in Pushpa's case (supra) is reproduced hereunder:

"12. The question of the liability of the recorded owner of a vehicle after its sale to another person was considered by this Court in Dr. T.V. Jose vs. Chacko P.M. (2001) 8 SCC 748. In paragraphs 9 and 10 of the decision, the Court observed and held as follows:

"9. Mr. Iyer appearing for the Appellant submitted that the High Court was wrong in ignoring the oral evidence on record. He submitted that the oral evidence clearly showed that the Appellant was not the owner of the car on the date of the accident. Mr. Iyer submitted that merely because the name had not been changed in the records of R.T.O. did not mean that the ownership of the vehicle had not been transferred. Mr. Iyer submitted that the real owner of the car was Mr. Roy Thomas. Mr. Iyer submitted that Mr. Roy Thomas had been made party-Respondent No. 9 to these Appeals. He pointed out that an Advocate had filed appearance on behalf of Mr. Roy Thomas but had then applied for and was permitted to withdraw the appearance. He pointed out that Mr. Roy Thomas had been duly served and a public notice had also been issued. He pointed out that Mr. Roy Thomas had chosen not to appear in these Appeals. He submitted that the liability, if any, was of Mr. Roy Thomas. 10. We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However the Appellant still continued to remain liable to third parties as his name continued in the records of R.T.O. as the owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these Appeals. Mr. Roy Thomas was not a party either before MACT or the High

Court. In these Appeals we cannot and will not go into the question of inter se liability between the Appellant and Mr. Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so."

(Emphasis added)

13. Again, in P.P. Mohammed v. K. Rajappan and Ors. (2008) 17 SCC 624, this Court examined the same issue under somewhat similar set of facts as in the present case. In paragraph 4 of the decision, this Court observed and held as follows:

"4. These appeals are filed by the Appellants. The insurance company has chosen not to file any appeal. The question before this Court is whether by reason of the fact that the vehicle has been transferred to Respondent 4 and thereafter to Respondent 5, the Appellant got absolved from liability to the third person who was injured. This question has been answered by this Court in T.V. Jose (Dr.) v. Chacko P.M. wherein it is held that even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person. We are in agreement with the view expressed therein. Merely because the vehicle was transferred does not mean that the Appellant stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

(Emphasis added)

14. The decision in Dr. T.V. Jose was rendered under the Motor Vehicles Act, 1939. But having regard to the provisions of Section 2(30) and section 50 of the Act, as noted above, the ratio

of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount. Further, since an insurance policy in respect of the truck was taken out in his name he was indemnified and the claim will be shifted to the insurer, Oriental Insurance Company Ltd.

15. Learned Counsel for the insurance company submitted that even though the registered owner of the vehicle was Jitender Gupta, after the sale of the truck he had no control over it and the possession and control of the truck were in the hands of the transferee, Salig Ram. No liability can, therefore, be fastened on Jitender Gupta, the transferor of the truck. In support of this submission he relied upon a decision of this Court in National Insurance Company Ltd. v. Deepa Devi and Ors. (2008) 1 SCC 414. The facts of the case in Deepa Devi are entirely different. In that case the vehicle was requisitioned by the District Magistrate in exercise of the powers conferred upon him under the Representation of the People Act, 1951. In that circumstance, this Court observed that the owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remained under requisition, the owner did not exercise any control over it: the driver might still be the employee of the owner of the vehicle but he had to drive the vehicle according to the direction of the officer of the State, in whose charge the vehicle was given. Save and except the legal ownership, the registered owner of the vehicle had lost all control over the vehicle. The decision in Deepa Devi was rendered on the special facts of that case and it has no application to the facts of the case in hand.

16. In light of the discussion made above it is held that the compensation amount is equally realisable from Respondent No. 3, Oriental Insurance Company Ltd. and it is directed to make full payment of the compensation amount as determined by the Claims Tribunal to the Appellants within two months from the date of this judgment."

22. The facts of the present case are practically identical with the facts in the aforementioned case and thus this Court has no difficulty in arriving at the conclusion that on the date of the accident the appellant who was the registered owner of the offending vehicle must be deemed to continue as the owner of the vehicle for the purposes of the Motor Vehicles Act, even though under the civil law he ceased to be its owner after its sale on 20.07.2004. Accordingly, the appellant and the respondent No.6 are equally liable for the compensation payable to the claimants. Further, this Court also has no difficulty in holding that since the insurance policy in respect of the offending scooter was in the name of the appellant, he was indemnified and the liability to pay the claim amount will accordingly be shifted to the insurer, M/s. United India Insurance Co. Ltd.

23. A residual question remains to be addressed, to which it is now proposed to advert. Allegedly, the respondent No.6 - driver was driving without a driving licence in his possession. He was accordingly charge-sheeted by the police of the concerned police station for the offence punishable under Section 3 of the Motor Vehicles Act, apart from the offences punishable under Sections 279/304-A IPC. The residual question which arises for consideration is whether the insured in such circumstances committed wilful breach of the terms of the policy and thereby the insurance company is discharged from its liability to pay the compensation amount to the victims.

24. As mentioned hereinbefore, Mr. L.K. Tyagi, the learned counsel for the Insurance Company strongly relied upon the judgments of the Supreme Court in National Insurance Co. Ltd. v. Swaran Singh & Ors. (2004) 3 SCC 297 and National Insurance Company vs. Kusum Rai & Ors. (2006) 4 SCC 250. Both the said decisions were adverted to by the Supreme Court in its subsequent

decision in Ishwar Chandra & Ors. v. Oriental Insurance Co. Ltd. & Ors. 2007 III AD (SC) 753, paragraph 14 whereof is relied upon by the learned counsel for the Insurance Company. It was observed as under:

> **"14. This Court in Swaran Singh clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating: (SCC pp. 336-37, para 89)**
>
> **89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are goods carriage, heavy goods vehicle, heavy passenger motor vehicle, invalid carriage, light motor vehicle, maxi-cab, medium goods vehicle, medium passenger motor vehicle, motor-cab, motorcycle, omnibus, private service vehicle, semi-trailer, tourist vehicle, tractor, trailer and transport vehicle. In claims for compensation for**

accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for motorcycle without gear, (sic may be driving a vehicle) for which he has no licence. Cases may also arise where a holder of driving licence for light motor vehicle is found to be driving a maxi-cab, motor-cab or omnibus for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

(Emphasis added)

25. Mr. Tyagi, the learned counsel for the Insurance Company also relied upon the judgments of the Supreme Court rendered in the case of Kusum Rai (supra). In Kusum Rai's case, it was observed:

"(12) This Court in Swaran Singh's case, 2004 ACJ 1 (SC), clearly laid down that the liability of the insurance company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not in possession of valid licence was considered in Swaran Singh's case (supra)."

26. Indubitably, in the present case, the respondent No.5 was driving the offending vehicle without any driving licence at all and the Insurance Company cannot be mulcted with the liability to pay compensation to the claimants. At the same time, the respondents No.1 to 4, i.e., the claimants cannot be made to suffer for no fault of theirs and must be held entitled to receive the compensation from the Insurance Company in view of the fact that the vehicle was duly insured in the name of its recorded owner on the date of the accident. It is accordingly held that the Insurance Company shall pay the awarded amount to the respondents No.1 to 4 in the first instance and thereafter recover the same from the appellant and the respondent No.6, who have been held equally liable for the tortious act of the respondent No.5. No doubt, both the appellant and the respondent No.6 have denied that the respondent No.5 was their driver and the respondent No.6 has concocted a story that the vehicle purchased from the appellant was returned to the appellant by him after he had driven the same for one and a half month, but, as already discussed above, the said version of the respondent No.6 is unworthy of credence. The appellant also failed in his duty of ensuring that the ownership of the vehicle was transferred to the respondent No.6 in the records of the Registering Authority and for this lapse on his part, he too must be held liable to pay the compensation amount.

27. Accordingly, the appeal is allowed to the limited extent that the Insurance Company shall pay the award amount in the first instance. The Insurance Company shall, however, be at liberty thereafter to recover the same from the appellant and the respondent No.6, who are both held equally liable to pay the award amount. MAC.APP.164/2010 and CM Nos.4807/2010 and 4809/2010 stand disposed of in the above terms.

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