

Case No. 51

1997 (II) CTC 269

IN THE HIGH COURT OF MADRAS

S.M. Abdul Wahab,J

A.A.O. No. 869 of 1987 and C.R.P.No 1954 of 1986

11.3.1997

Bimalchand

Appellant

Vs.

Rajammal and 4 others

Respondents

**Hire purchase agreement - vehicle involved in accident - nature of Hire purpose transaction - only hirer liable to pay compensation - financier not liable.**

#### Cases Referred

1985 ACJ 179 (7) 1980 ACJ 377 (6)

Mr. P. Sugamar, Advocate for Appellant,

Mr. A. Natarajan, Advocate for Respondents.

A.A.O. ALLOWED

#### ORDER

1. C.M.A.No.869 of 1987 is against the order dated 15.4.1987 made in O.P.No.981 of 1984 on the file of the Motor Accident Claims Tribunal, Madras, awarding a sum of Rs.59,000 against respondents 1 and 2 for the death of one Annamalai in a motor vehicle accident of 19.6.1984.

2. C.R.P.No. 1986 arises out of an order dated 21.1.1986 in M.P.No. 1563 of 1984 in O.P.No. 981 of 1984 directing the first respondent therein to pay a sum of Rs.15,000 as compensation under section 92-A of the above said accident.

3. The first respondent is the financier of the vehicle involved in the accident. He has preferred the civil revision petition. The petitioner in the civil revision petition has raised a specific objection denying his liability to pay any amount to the claimants in the accident. According to him he is only a financier and not the owner of the vehicle. But the Tribunal in Para 9 of its judgment, has held that since the financier is entitled to take possession of the vehicle under the hire purchase agreement, he could be considered as a joint owner along with the hirer. Only in that view, he has made the appellant/revision petitioner liable for compensation.

4. The learned counsel for the appellant/revision petitioner urged before that the view of the Tribunal is wrong. On the other hand the learned counsel for the respondents/claimants contended that under section 92-A of the Motor Vehicle Act the Appellant will also be liable.

5. As per the definition contained in section 2(19) of the Motor Vehicles Act, 1939 'owner' is defined as follows:-

"Owner means, where the person in possession of 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 an admitted case that the vehicle involved in the accident has been under the hire purchase agreement. It is true that the hire purchase agreement has not been produced and that Ex.R.1 has been produced in this case. From Ex.R-1 it is seen that the vehicle in question was registered originally in the name of one Elumalai of Kancheepuram and then it was transferred to Byder sheriff with effect from 24.6.1982 subject to the hire purchase agreement with Bimalchand. It is not in dispute that at the time of the accident, the vehicle was in the possession of the registered owner of the vehicle, namely, Hyder Sheriff on 19.5.1984. Even before me what is contended by the learned counsel for the respondent is that if the hire amounts are not paid as per agreement, the financier is entitled to take possession of the vehicle. If a person has a right to custody or possession on the happenings of certain contingences, he cannot be deemed to be in possession until the happening of the contingency and he actually takes possession. Therefore, as far as the present case is concerned there cannot be any dispute that the person in possession of the vehicle was the second respondent Hyder Sheriff. Therefore, he alone was liable to pay the compensation .

6. The learned counsel for the appellant/revision petitioner cited the decisions **L.I.C. of India v. Raj Kumari Mittal**, 1985 ACJ 79 and **Sundaram Finance Ltd., Madras v. P.G. Nanjamma**, 1980 ACJ377 in support of his contention. In **Sundaram Finance Ltd., Madras v. P.G. Nanjamma**, 1980 ACJ 377, a Division Bench of the Karnataka High Court has held in paragraph 25 that the registered owner of the bus, who was in possession and control over the bus and was giving directions to the driver, was liable to make good the compensation under the doctrine of vicarious liability. In the same judgment in paragraph 24, the learned Judges have held that the liability has to be said on the registered owner, viz., M/s. Rajendheswara Motor Service and not on the financier who is no doubt the owner of the vehicle at the time of the accident under the terms of hire purchase agreement. The learned Judges of the Karnataka high Court had taken the said view in after considering, the definition of owner contained in section 2(19) of the Motor Vehicle Act, 1939.

7. In **L.I.C. of India v. Raj Kumari Mittal**, 1985 ACJ 179, a Division Bench of the Allahabad High Court has taken a similar view. After considering the definition of owner contained in Section 2(19) of the Act, the learned Judges of the Allahabad High Court have held as follows :-

“It is obvious that the legislature in its wisdom confined the ownership of a vehicle under hire purchase agreement to the person in possession of the vehicle under the agreement. It has done away with the reality of ownership under a hire purchase agreement.”

8. I am in full agreement with the views of the learned Judges of the Karnataka and Allahabad High Courts. Therefore, the appellant-revision petitioner is not liable to pay the compensation awarded in O.P. No. 981 of 1984. In the result, the appeal and the revision petition are allowed. However, there will be no order as to costs.