2020 INSC 417

*'REPORTABLE'*

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 2526 OF 2020**
**(Arising out of SLP (C) No. 25793 of 2017)**

**U.P. STATE ROAD TRANSPORT CORPORATION** **Appellant**

**VERSUS**

**RAJENDRI DEVI & ORS.** **Respondents**

**J U D G M E N T**

**R. F. NARIMAN, J.**

1. Leave granted.

2. In the present case, death occurred to a 45 year old who was on a cycle and hit by a bus on 16.08.2001. The Motor Accident Claims Tribunal (hereinafter referred to as 'MACT') found that it was as a result of rash and negligent driving by the driver of the bus, which was hired by the appellant-Uttar Pradesh State Road Transport Corporation under an agreement between it and the bus owner.

Ultimately finding that the income would be Rs.18,000/- per year, minus one-third, and with a multiplier of 13, Rs.1.65 lakhs + 8 per cent interest was awarded by the MACT, but it was held, following *Rajasthan State Road Transport Corporation* v. *Kailash Nath Kothari* (1997) 7 SCC 481 ["Kailash Nath Kothari"], that it is only for the appellant-Corporation to pay this entire amount and not the insurance company. This was held as follows:

> "15. The bus is a private one. It ran under the control of the UPSRTC. The ld. counsel for the Insurance Company has argued that the bus under the control of UPSRTC devolved the responsibility of payment of any compensation upon UPSRTC because it is not the owner who is in control of the bus but the Corporation who controls the working of the driver. The ld. counsel for the company cites Rajasthan State Road Transport Corporation versus Kailash Nath Kothari 1997 ACT 1148. I find the case law referred to applies squarely to the present case at hand. The UPSRTC O.P. No. 3, and not the O.P. No. 1 and 2, is responsible to pay the award."

3. In the High Court, by a judgment dated 27.09.2016, the same judgment of *Kailash Nath Kothari* (supra) was referred to and followed, making it clear, therefore, that the appellant alone is vicariously liable to pay the victim's family the amount of compensation that has been ordered. It was therefore also stated, referring to the agreement between the Corporation and the owner of the vehicle, as follows:

> "Much emphasis has been laid by learned counsel for the appellant on Clause 10 of the agreement between the

> appellant and the owner to wriggle out of its responsibility to make payment of compensation. There is no reference of the said agreement in the impugned award. No such ground has been taken in the memo of appeal that it was filed before the Tribunal but has not been considered. In any view of the matter, even if such a clause exists in the agreement, it is between the appellant and the owner and shall not affect the rights of the claimants to receive compensation flowing from the provisions of the Act. Thus, the first argument advanced by learned counsel for the appellant is devoid of any force and not liable to be accepted."

4. Having heard learned counsel appearing for all the parties, we are of the view that the judgment relied upon, viz., *Kailash Nath Kothari* (supra), is itself distinguishable for the reason that the judgment itself records as follows:

> "3. . . . The insurance company took the plea, in its reply to the claim petitions, that the bus at the time of the accident was under the control of the RSRTC, therefore, it was the liability of the RSRTC to pay compensation and the insurance company was not liable. It was further pleaded by the insurance company that the liability of the insurance company, in any event, was limited and its liability could not exceed Rs.75000/- in respect of all the claim petitions arising out of one accident. . . .
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> 4. . . . Issue No. 2 was also decided in favour of the claim petitioners but it was held that in the light of the terms of the policy of insurance and relevant provisions of the Act, the liability of the insurance company was limited, in respect of the accident, to a total amount of Rs.75,000/- only."
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> xxx xxx xxx

> "7. . . . Learned counsel appearing for the insurance company, did not question the finding on Issue No. 2 and submitted that the specified amount had since been paid by the insurance company. . . ."

In addition to this, the Court also held, relying upon the definition of "owner" in Section 2(19) of the Motor Vehicles Act (as it then stood), as follows:

> "17. The definition of *owner* under Section 2(19) of the Act is not exhaustive. It has, therefore, to be construed, in a wider sense, in the facts and circumstances of a given case. The expression *owner* must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of "owner" to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. . . ."
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> (emphasis in original)

In this view of the matter, it was therefore held that since the insurance company's liability was limited only to Rs.75,000/- which had been paid, the insurance company would, on the facts of that case, not be liable to pay anything more. On this count, therefore, the amount payable beyond Rs.75,000/- was mulcted on to the Corporation in that case.

5. In a subsequent judgment, viz., *Uttar Pradesh State Road Transport Corporation* v. *Kulsum and Ors.* (2011) 8 SCC 142 ["Kulsum"], this Court stated the question of law that arose for consideration as follows:

> "3. The question of law that arises for consideration in the instant and connected appeals is formulated as under: if an insured vehicle (in this case a mini bus) is plying under an agreement of contract with the Corporation, on the route as per permit granted in favour of the Corporation, in case of an accident, whether the Insurance Company would be liable to pay compensation or would it be the responsibility of the Corporation or the owner?"

It then referred to the definition of "owner" under Section 2(30)[1] of the Motor Vehicles Act, 1988 and contrasted it with the definition of "owner" in Section 2(19)[2] of the 1939 Act.

It then went on to distinguish *Kailash Nath Kothari*(supra) as follows:

> "16. In *Kailash Nath Kothari* [*Rajasthan State Road Transport Corporation* v. *Kailash Nath Kothari* (1997) 7 SCC 481], a question had arisen with regard to the liability of the insurance company, where the bus plied as per the contract with Rajasthan State Road Transport Corporation. However, the said case was dealing with the earlier Motor Vehicles Act of 1939. Taking into consideration the definition of "owner" as it existed then in Section 2(19) of the old Act, it has been held in para 17 as

1 "2(30) '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;"

2 "2(19) '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;"

under: (SCC pp.487-88)

> "17. The definition of '*owner*' under Section 2(19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression '*owner*' must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of 'owner' to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the 'owner' is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. In this case, Shri Sanjay Kumar, the owner of the bus could not ply the bus on the particular route for which he had no permit and he in fact was not plying the bus on that route. The services of the driver were transferred along with complete 'control' to RSRTC, under whose directions, instructions and command the driver was to ply or not to ply the ill-fated bus on the fateful day. The passengers were being carried by RSRTC on receiving fare from them. Shri Sanjay Kumar was therefore not concerned with the passengers travelling in that bus on the particular route on payment of fare to RSRTC. Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of RSRTC for operation of the bus. So far as the passengers of the ill-fated bus are concerned, their privity of contract was only with the RSRTC to whom they had paid the fare for travelling in that bus and their safety therefore became the responsibility of the RSRTC while travelling in the bus. They had no privity of contract with Shri

> Sanjay Kumar, the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of the driver from the owner to RSRTC, the matter may have been somewhat different. But on facts in this case and in view of Conditions 4 to 7 of the agreement (supra), the RSRTC must be held to be vicariously liable for the tort committed by the driver while plying the bus under contract of the RSRTC. The general proposition of law and the presumption arising therefrom that an *employer*, that is, the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption."
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> (emphasis in original)

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> "18. In our considered opinion, in the light of the drastic and distinct changes incorporated in the definition of "owner" in the old Act and the present Act, *Kailash Nath's case* [*Rajasthan State Road Transport Corporation* v. *Kailash Nath Kothari* (1997) 7 SCC 481] has no application to the facts of this case. We were unable to persuade ourselves with the specific question which arose in this and connected appeals as the question projected in these appeals was neither directly nor substantially in issue, in *Kailash Nath's case* [*Rajasthan State Road Transport Corporation* v. *Kailash Nath Kothari* (1997) 7 SCC 481]. Thus, reference to the same may not be of much help to us. Admittedly, in the said case, this Court was dealing with regard to earlier definition of "owner" as found in Section 2(19) of the old Act."

Finally, the insurance company was held liable stating:

> "29. In the instant case, the driver was employed by Ajay Vishen, the owner of the bus but evidently through Clause 4.4

> of the agreement, reproduced hereinabove, driver was supposed to drive the bus under the instructions of the conductor who was appointed by the Corporation. The said driver was also bound by all orders of the Corporation. Thus, it can safely be inferred that effective control and command of the bus was that of the appellant.
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> 30. Thus, for all practical purposes, for the relevant period, the Corporation had become the owner of the vehicle for the specific period. If the Corporation had become the owner even for the specific period and the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred along with the insurance policy in existence to the Corporation and thus the Insurance Company would not be able to escape its liability to pay the amount of compensation.
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> 31. The liability to pay compensation is based on a statutory provision. Compulsory insurance of the vehicle is meant for the benefit of the third parties. The liability of the owner to have compulsory insurance is only in regard to third party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses the vehicle independently, a separate insurance policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice."

6. The law laid down in *Kulsum*'s case (supra) squarely applies to the facts of the present case. Also, the argument based on Clause 10, which states as follows,

> "CLAUSE 10: The second party (Bus owner) shall have full liability for any fault, negligence, accident, or other illegal acts of the driver and liability for payment of any compensation or other dues whatsoever in this regard shall be that of the owner of the bus or Insurance Company under the Acts. In no case, the First party (Petitioner Corporation) shall have any liability for fault, negligence, accident, or other illegal acts of the driver.

> In case any payment is made by the First Party in compliance of any order of any Court, etc., the First Party shall be authorized to recover the same."

is only between the Corporation and the bus owner and does not bind anybody who is not privy to the aforesaid agreement, least of all, the victim.

7. In this view of the matter, the appeal is allowed and the sum awarded by the MACT will now be payable only by the Insurance Company with interest at the stated rate, within a period of three months from today.

……,J.
[ ROHINTON FALI NARIMAN ]

……,J.
[ NAVIN SINHA ]

……,J.
[ B.R. GAVAI ]

New Delhi;
June 08, 2020.