HIGH COURT OF GUJARAT

TATA MOTORS LIMITED (TATA FINANCE LTD)
Versus
KAPILABEN WD/O DECD PRAVIN BHAI KESHURBHAI CHAUHAN & 6

Date of Decision: 28 August 2014

Citation: 2014 LawSuit(Guj) 1135

Hon'ble Judges: Bhaskar Bhattacharya

Eq. Citations: 2016 ACJ 825, 2016 2 ACC 610, 2014 3 GCD 2714

Case Type: First Appeal

Case No: 3288 of 2007

Subject: Motor Vehicle

Acts Referred:
Motor Vehicles Act, 1988 Sec 173, Sec 2(30)

Final Decision: Appeal dismissed

Advocates: Chudgar, Nanavati Associates, Mohsin Hakim, M T M Hakim, Sunil B Parikh

Cases Referred in (+): 3

Bhaskar Bhattacharya, J.

[1] This appeal under Section 173 of the Motor Vehicles Act is at the instance of a financier and is directed against the award dated 16th December 2005 passed by the Motor Accident Claims Tribunal (Main) Vadodara, in Motor Accident Claims Petition No.970 of 1993 thereby awarding compensation of Rs. 2,50,400/- with interest at the rate of 9% p.a. from the date of filing of the claim petition till realization with a specific finding that the amount to be paid by the owner and the financier of the vehicle bearing registration No.GJ-1U-7952 as the other vehicle was driven by the victim himself and he had 20% negligence and an amount to that extent was deducted from the amount of compensation.

[2] The claimants filed the claim application by making the owner of the vehicle driven by the victim and its insurer, the National Insurance Company, as opponent nos.1 and 2 and the driver and owner of the other vehicle were opponent nos. 3 and 4.

Subsequently, name of the driver of the other vehicle was deleted and, on an application filed by the claimant, Tata Finance Company, the appellant before this Court, was made additional respondent being respondent no. 5 as it appears from the RC book that the other vehicle was financed by the Tata Finance Company under the agreement of hypothecation.

[3] The present appellant being dissatisfied with the said order impleading it as additional respondent preferred a Special Civil Application before this Court but a learned single Judge of this Court dismissed such Special Civil Application holding that it was not a fit case for interference because the added opponent will not be aggrieved in any manner unless it is established on evidence at the final hearing that at the time of accident, the vehicle was in possession of the financier.

[4] It further appears from the record that, after such addition, the financier did not file any written statement asserting that it was not in possession of the vehicle.

[5] As indicated earlier, the tribunal below, on consideration of the materials on record, held the owner of the vehicle as well as the financier jointly and severally were liable to pay the awarded sum as it was not covered by any insurance policy.

[6] Mr.Chudgar, the learned advocate appearing on behalf of the appellant, has vehemently contended before this Court that the tribunal below committed substantial error of law in holding that his client jointly and severally was liable to pay the awarded sum, notwithstanding the fact that his client was merely a financier and not the owner of the vehicle. Mr.Chudgar contends the claimant failed to prove that his client was in actual possession of the vehicle and, thus, there was no justification of drawing adverse presumption against his client when it is the primary duty of the claimant to prove that his client was the owner of the vehicle. According to Mr.Chudgar, by virtue of the definition of 'owner' mentioned in Section 2 (30) of the Motor Vehicles Act, his client does not become automatically the owner unless it is established that by virtue of agreement of hypothecation his client is in actual possession of the vehicle. In support of his submission, Mr.Chudgar relies upon the decision of the Supreme Court in the case of Godavari Finance Company v. Digala Satyanarayanamma and Others, 2008 5 SCC 107 and also a decision of Division Bench of this Court in the case of Bank of Baroda v. Rabari Bachubhai Hirabhai, 1986 1 GLR 144.

[7] Mr.Hakim, the learned counsel appearing on behalf of the claimants has, on the other hand, opposed the aforesaid contention of Mr.Chudgar and has, by relying upon the definition of 'owner' as contained in Section 2 (30) of the Motor Vehicles Act, contended that once the financier has been made party, a duty is cast upon the financier to show that even according to the definition of 'owner' in Section 2 (30) of

the Act, in the facts of the present case it has no liability. In other words, according to Mr.Hakim, a duty is cast upon the financier to show that though the vehicle was hypothecated, it has no liability in the case by virtue of the admitted hypothecation and for not producing the document of hypothecation, the tribunal below rightly took adverse presumption against the financier. In support of his contention, Mr.Hakim relies upon the decision of the Supreme Court in the case of Mohan Benefit Private Limited v. Kachraji Raymalji and Others, 1997 ACJ 1438.

[8] Mr.Parikh, the learned counsel appearing on behalf of the insurance company of the vehicle driven by the victim did not make any submission as his client has not been fastened with any liability.

[9] Therefore, the only question that falls for my determination in this appeal is whether the tribunal below in the facts of the present case was justified in holding the financier liable for compensation jointly and severally with the purchaser of the vehicle.

[10] After hearing the learned counsel for the parties and after going through the materials on record it appears that initially the financier was not made party and from the RC book of the offending vehicle the fact that the same is hypothecated to the appellant before this Court being disclosed, the claimant decided to make the financier a party. As pointed out earlier by this Court in the Special Civil Application filed by the financier against the order impleading it as a party, the liability of the financier will be decided at the time of hearing depending upon the fact whether the financier was in actual possession of the vehicle.

[11] In spite of being added as the respondent, for the reason best known to the financier, it decided not to file any written statement asserting that by virtue of the agreement of hypothecation it was not in actual possession of the vehicle and the entire liability should be with the owner. In the present case, the owner has also not come forward to disclose any document of hypothecation.

[12] In such circumstances, in my view, the tribunal was justified in drawing adverse presumption against the appellant for not disclosing the document of hypothecation and at the same time for not denying its liability in spite of the fact the financier was made a party.

[13] I am at one with Mr.Hakim that the best evidence as to the liability of the financier as well as the actual purchaser of the vehicle was the document of hypothecation, which would disclose the liability of the parties and which was within the special knowledge of the parties to the document of hypothecation and a third party is not supposed to know such fact. In such circumstances, if both the purchaser and the financier decide not to produce the document in question there was no wrong

on the part of the tribunal below in holding them jointly and severally liable to pay compensation when admittedly there was no valid insurance of that vehicle at the time of the accident. The document of hypothecation would disclose whether the liability to insure the vehicle against third party accident was upon the financier.

[14] In the case of Mohan Benefit Private Limited v. Kachraji Raymalji and Others , in a circumstance similar to the one of the present case, the Supreme Court pointed out that had the document which reflected the true relationship between the financier and the purchaser been produced, they would have exploded the case of the appellant viz. the financier and consequently, adverse inference drawn by the High Court in that case was justified.

[15] As regards the decision of the Supreme Court in the case of Godavari Finance Company relied upon by Mr.Chudgar, from paragraph 7 of the judgment where the Supreme Court quoted the reasoning of the tribunal, it appears that in the said case the financier took specific plea that the vehicle was under the control of the purchaser, the respondent no.2 therein, and, in such circumstances, the Supreme Court held that by virtue of the finance agreement, the financier had no liability. In the case before me, after being added as the respondent no written statement has been filed asserting that the financier was not in possession of the vehicle or that it had no liability to take the burden of insurance and, in such circumstances, the principle laid down by the Supreme Court in the case of Godavari Finance Company cannot have any application. So far the other decision of the Division Bench of this Court in the case of Bank of Baroda v. Rabari Bachubhai Hirabhai is concerned, it appears that the Division Bench in the said decision did not take into consideration the definition of 'owner' in the Motor Vehicles Act and simply discussed the doctrine of Hypothecation and on that basis came to the conclusion that by mere hypothecation the creditor does not become liable for the liability of the actual owner and the said decision relied upon Corpus Juris Secundum (Volume XLII) and also Halsbury's Laws of England (Fourth Edition) at page 438 (paragraph 635). In my view, having regard to the definition of 'owner' made in Section 2(30) of the Motor Vehicles Act the possession of the financier is to be considered not on the basis of ordinary doctrine of pledge or hypothecation but according to the provision of the Act in question as interpreted by the Supreme Court in the above two decisions.

[16] On consideration of the entire materials on record, I find that, in the facts of the present case, the tribunal rightly held the financier was liable in absence of the specific denial on its part that it was not in possession of the vehicle at the relevant point of time or that it had no liability to insure the vehicle against third party risk and even to the sole witness of the claimant in cross-examination, no suggestion was given that it was not in possession of the vehicle.

[17] The appeal is, thus, dismissed. No order as to costs.

[18] It appears that by virtue of an order passed by this Court, the appellant had deposited the entire amount before the tribunal, and except 5% as well as periodical interest on the entire amount being permitted to be withdrawn by the claimants, the balance amount is lying in fixed deposit. The appeal having been dismissed, the entire amount lying in the fixed deposits should be returned to the claimants and, accordingly, the tribunal is directed to return the amount to the claimants, however, after expiry of one month from today. Let the lower Court record be sent back immediately.