

**HIGH COURT OF GUJARAT**

**HIMMATNAGAR NAGRIK SAHAKARI BANK LTD**

*Versus*

**SURESHKUMAR JAYANTILAL THAKKAR & 4**

**Date of Decision:** 04 December 2015

**Citation:** 2015 LawSuit(Guj) 2485

**Hon'ble Judges:** [M R Shah](#)

**Eq. Citations:** 2016 AIR(Guj) 68, **2016 4 GLR 3485**, 2016 ACJ 2821, 2016 2 ACC 815

**Case Type:** First Appeal

**Case No:** 2591 of 2002

**Subject:** Motor Vehicle

**Acts Referred:**

[Motor Vehicles Act, 1939 Sec 2\(19\).](#)

[Motor Vehicles Act, 1988 Sec 2\(30\).](#)

**Final Decision:** Appeal dismissed

**Advocates:** [R C Jani](#), [Ashish M Dagli](#)

**Cases Referred in (+): 5**

**M. R. Shah, J.**

**[1]** Feeling aggrieved and dissatisfied with the impugned Judgement and Award passed by the learned Motor Accident Claims Tribunal (Auxiliary), Banaskantha at Palanpur in Motor Accident Claim Petition No. 120 of 1986 dated 21/9/2002, by which the learned tribunal has held the original opponent No.4 jointly and severally liable to pay compensation for the injuries sustained by the original claimant in the vehicular accident, appellant herein original opponent No.4 financier Himmatnagar Nagrik Sahakari Bank Ltd. has preferred the present First Appeal.

**[2]** In a vehicular accident which occurred / took place on 5/12/1985, the original claimant, who was travelling as a passenger in a Jeep bearing registration No.GRN 1126, sustained severe injuries. Therefore, the original injured claimant filed Motor

Accident Claim Petition No. 120 of 1986 before the learned tribunal claiming compensation of Rs.50,000 for the injuries sustained by him. It was the case on behalf of the original claimant that due to rash and negligent driving of the opponent No.5, driver of aforesaid Jeep, the accident has occurred. That the jeep involved in the accident was owned by the opponent No.1 and was under hyperpurchase agreement with the appellant herein original respondent No.4 Himmatnagar Nagrik Sahkari Bank Ltd.

2.1 Though served, nobody appeared on behalf of the original opponent Nos.1 to 3 and 5. Therefore, the claim petition proceeded ex-parte against the original opponent Nos.1 to 3 and 5.

2.2 From the impugned Judgement and Award it appears that as such the original opponent Nos.2 and 3 were erroneously joined as opponents in the claim petition.

2.3 That the claim petition was opposed by original opponent No.4 financier Bank by filing Written Statement at Ex.7. That the financier Bank specifically denied its liability. It was specific case on behalf of the financier Bank original opponent No.1 that as such the original opponent No.1 AbdulLatif Ibrahimbhai Khadiwala was the owner of the Jeep in question and not the Bank and therefore, it was for him to pay tax, premium for insurance etc. It was also contended on behalf of the financier Bank that even in the RTO Book also, the original opponent No.1 was shown as registered owner of the Jeep and an endorsement "HPA with Himmatnagar Sahkari Bank Ltd." was made. It was also contended on behalf of the bank that the bank, except giving loan, has done nothing. It was also contended on behalf of the appellant herein original opponent No.4 bank that as such the original opponent No.1 was in actual and physical possession and use of the Jeep in question.

Therefore, it was requested to dismiss the claim petition.

2.4 The learned tribunal framed the issues and one of the issue i.e. Issue No.2 was with respect to liability and entitlement of the compensation and from whom.

2.5 That on appreciation of evidence, the learned tribunal held the driver of the Jeep sole negligent for the accident and injuries caused to the original claimant.

2.6 Considering definition of "owner" as per section 2(19) of the Motor Vehicles Act, 1939, and considering the Higher Purchase Agreement, in which it was specifically mentioned that the creditor i.e. the appellant Bank is in possession of the Jeep, as well as on interpretation of Higher Purchase Agreement - Ex.53 and Pledge Agreement produced at Ex.54, the learned tribunal has held that the appellant original opponent No.4 can be said to be "owner" of the Jeep being in actual

possession and therefore, has held that the appellant original opponent No.4 is also jointly and severally liable to pay compensation to the original claimant.

2.7 Feeling aggrieved and dissatisfied with the impugned Judgement and Award passed by the learned tribunal in so far as holding the appellant herein financier Bank jointly and severally liable to pay compensation to the original claimant, appellant herein financier Bank original opponent No.4 has preferred the present First Appeal.

**[3]** Mr.R.C. Jani, learned advocate has appeared on behalf of the appellant Bank and Mr.Nirav Sanghvi, learned advocate has appeared for Mr.Ashish Dagli, learned advocate appearing on behalf of the original claimant. Though served, nobody appears on behalf of the rest of the respondents.

3.1 Mr.R.C. Jani, learned advocate appearing on behalf of the appellant bank has vehemently submitted that the learned tribunal has materially erred in holding the appellant Bank financier jointly and severally liable to pay compensation to the original claimant.

3.2 Mr.R.C. Jani, learned advocate appearing on behalf of the appellant bank has further submitted that while holding the appellant bank financier jointly and severally liable to pay compensation to the original claimant, the learned tribunal has not properly appreciated the fact that the original opponent No.1 was registered owner of the Jeep involved in the accident and even in the RTO Book, the name of the original opponent No.1 was mentioned as registered owner. It is submitted that, therefore, being registered owner, the learned tribunal ought to have passed award against the original opponent No.1 only being registered owner and ought not to have held the appellant Bank liable to pay compensation.

3.3 Mr.R.C. Jani, learned advocate appearing on behalf of the appellant bank has further submitted that as such the appellant bank had advanced loan only to the original opponent No.1 to purchase the Jeep and the entire amount for purchase of the Jeep was paid by the original opponent No.1 only. It is submitted that therefore, thereafter after purchasing the vehicle - Jeep, by way of security only the Jeep was pledged with the appellant Bank and Agreement of Pledge was entered into Ex.54. It is submitted that therefore, even Hypothecation Agreement was also entered into between the bank and the opponent No.1, only with a view to secure the amount advanced and/or given by way of loan to the original opponent No.1. It is submitted that the entire liability to pay tax and insurance premium was of the owner of the Jeep opponent No.1. It is further submitted that even the actual possession, occupation and use of the Jeep was by the opponent No.1 only.

It is submitted that therefore, the learned tribunal has materially erred in misinterpreting the definition of "owner" contained in section 2(19) of the Motor Vehicles Act, 1939.

3.4 In support of his above submissions, Mr.R.C. Jani, learned advocate appearing on behalf of the appellant bank has heavily relied upon the decision of the Hon'ble Supreme Court in the case of [HDFC Bank Ltd. Vs. Kumari Reshma & Ors](#), 2014 AIR(SCW) 6673 as well as another decision of the Hon'ble Supreme Court in the case of [Godavari Finance Co. Versus Degala Satyanarayamma](#), 2008 5 SCC 107.

3.5 Mr.R.C. Jani, learned advocate appearing on behalf of the appellant bank has also relied upon the decision of the Division Bench of this Court in the case of [Bank of Baroda, Ahmedabad Versus Rabari Bachubhai Hirabhai and others](#), 1987 AIR(Guj) 1, in support of his submission that hypothecating bank can be said to be only a creditor and it can only recover its dues by sale of the vehicle and therefore, it is not liable to pay compensation to the victims of an accident.

By making above submissions and relying upon above decisions, it is requested to allow the present appeal and dismiss the original claim petition qua appellant herein original opponent No.4.

**[4]** Present appeal is opposed by Mr.Singhvi, learned advocate appearing on behalf of the original claimant. It is submitted by the learned advocate appearing on behalf of the original claimant that considering the definition of "owner" contained in section 2(19) of the Motor vehicles Act, 1939 and on interpretation of the documents produced at Ex. Nos.53, 54 and 56 and even deposition of the Bank employee examined on behalf of the appellant bank, it cannot be said that the learned tribunal has committed any error in holding the appellant bank liable to pay compensation to the victim of the accident.

4.1 It is further submitted by the learned advocate appearing on behalf of the original claimant that in the documents produced at Ex.Nos.53 and 54 i.e. Hypothecation Agreement as well as Agreement for Pledge, it has been specifically mentioned that the creditor appellant Bank is put in possession of the Jeep. It is submitted that thereafter the Jeep was given on rent only to the original owner opponent No.1. It is submitted that therefore, when the appellant herein - original opponent No.4 Bank - financier Bank creditor was put in possession under Hypothecation Agreement, it can be said to be "owner" within the definition of section 2(19) of the Motor Vehicles Act, 1939. It is submitted that therefore, being "owner" it is jointly and severally liable to pay compensation and therefore, no

error has been committed by the learned tribunal in directing the appellant to pay compensation to the original claimant.

4.2 It is further submitted by the learned advocate appearing on behalf of the original claimant that even the Hon'ble Supreme Court in the case of HDFC Bank Ltd. has also held that a person in possession can be said to be "owner" within the meaning of section 2(30) of the Motor Vehicles Act, 1988. It is submitted that while considering / interpreting section 2(30) of the Motor Vehicles Act, 1988 and definition of "owner", the Hon'ble Supreme Court in the aforesaid decision has observed that a person, in whose name a Motor Vehicle stands registered, is "owner" of the vehicle and where the Motor Vehicle is subject to higher purchase agreement or agreement of hypothecation, the person in possession of the vehicle under that agreement is the "owner". It is submitted that therefore, the aforesaid decision, as such, shall be helpful to the original opponent No.1 rather than the appellant Bank.

4.3 It is further submitted by the learned advocate appearing on behalf of the original claimant that even in the case of Godavari Finance Co. , the Hon'ble Supreme Court has taken similar view and while considering definition of "owner" contained in section 2(30) of the Motor Vehicles Act, it is held that definition of "owner" is a comprehensive one and interpretation clause itself states that the vehicle which is subject matter of higher purchase agreement, the person in possession of the vehicle under that agreement shall be the "owner". It is submitted that in the aforesaid decision it is also further observed and held by the Hon'ble Supreme Court that thus, the name of the financier bank in the registration certificate would not be decisive for determination as to who was the owner of the vehicle. It is further held that financier of the motor vehicle which is subject to higher purchase agreement, cannot ordinarily be treated to be the owner. It is submitted that it is further held that the person who is in possession of the vehicle and not the financier being owner would be liable to pay damages for the accident. It is submitted that therefore, as per the aforesaid two decisions of the Hon'ble Supreme Court, a person in possession of the vehicle under hypothecation agreement can be said to be "owner" within the definition of section 2(30) of the Motor Vehicles Act. It is submitted that, therefore, being owner it is liable to pay compensation to the victim.

4.4 Now, so far as the reliance placed upon the decision of the Division Bench of this Court in the case of Rabari Bachubhai Hirabhai , by the learned advocate appearing on behalf of the appellant is concerned, it is submitted by the learned advocate appearing on behalf of the original claimant that on facts, the said decision shall not be of any assistance to the appellant Bank. It is submitted that in

the aforesaid case, the Division Bench found that the hypothecating bank was only creditor and it has neither possession, nor title of the vehicle. It is submitted that even in the said decision, the Division Bench also further observed that the hypothecation defers from a pledge where possession of the article pledged is transferred to the pledgee or pawnee. It is submitted that in the present case, under the hypothecation agreement as well as under the agreement of pledge - Ex.Nos.53 and 54, the creditor original opponent No.4 appellant Bank was put in possession of the vehicle Jeep.

By making above submissions it is requested to dismiss the present appeal.

**[5]** Heard the learned advocates appearing on behalf of the respective parties at length.

5.1 Short but an interesting question of law posed for consideration of this court is :-

"Whether the appellant herein original opponent No.4 Bank being financier who entered into hypothecation agreement and agreement of pledge with the borrower original claimant, whose name is mentioned as registered owner in the RTO Book can be held jointly and severally liable to pay compensation to the victim of the accident?"

5.2 While considering the aforesaid question few facts and even conditions contained in the agreement of pledge and hypothecation agreement entered into between the appellant bank financier and the borrower original opponent No.1, are required to be first considered.

5.3 It is not in dispute that in the Registration Certificate issued by the RTO, the name of the original opponent No.1 is mentioned as registered owner of the vehicle Jeep and there is an endorsement in the Registration Book (RC Book) that "HPA with Himmatnagar Nagrik Sahakari Bank Ltd.". It is not in dispute that the original opponent No.1 was in actual occupation, possession and use of the Jeep. It is also not in dispute that on the Jeep, the appellant bank advanced a sum of Rs.56,000 to the original opponent No.1. It is also not in dispute that the appellant Bank and the original opponent No.1 have entered into an agreement of pledge as well as hypothecation agreement. On reading both the agreements, it can be said that the Jeep was put as security to secure the amount of loan advanced by the appellant Bank. Under the circumstances, ordinarily the appellant bank being financier cannot be treated to be "owner" of the Jeep. However, under the agreement of pledge as well as hypothecation agreement, the creditor was put in possession of the Jeep. Clause 1 of the agreement of pledge Ex.53 reads as under :

"Clause (1). That the pursuant to the said agreement and consideration of the creditors having agreed to grant the borrower loan facility (in their loan account) of Rs.56,000 (Rupees Fifty Six Thousand only) the borrower has this day handed to the creditors by delivery possession of the Jeep as pledge and security for repayment of monies hereinafter referred to."

5.4 Under the Agreement of Hire Ex.54, the appellant bank was put in possession of the Jeep, the relevant clause of which reads as under :

"This AGGEMENT OF HIRE made at Himmatnagar this 12th November, 1983 between Himmatnagar Nagrik Sahakari Bank Ltd., a Bank incorporated under the Bombay State Co-operative Societies Act, 1925 and having its registered office at Himmatnagar hereinafer called "the Creditors" of the One part and Shri A. Latif Ibrahimhai Khadiawala of Himmatnagar hereinafter called "the Hirer" on the other part WHEREAS the hirer have pledge with the creditors the Jeep and whereas the creditor by virtue of the said pledge are possessed of the said vehicle (hereinafter called the said vehicle) and whereas the hirer has requested the creditors to hire to them the said vehicle to the business at their own account during the subsistence of the security and whereas the creditors have agreed to do so the terms and conditions hereinafter appearing NOW this Agreement WITNESSTH and it is hereby agreed by and between the parties as under :-

- (1) That the creditors shall let and the hirer shall take on hire said as from the date hereof and in consideration whereof the hirer shall pay to the creditors monthly compensation of Rs.2240/- (Rupees Two Thousand Two Hundred Fourty only).
- (2) That the hirer or either of them shall ply the said vehicle for their business and personal use at their own risk and account.
- (3) That during the period of hire, the hirer shall pay all rates, taxes and other outgoings relating to the said vehicle and shall keep the creditors indemnified against all claims relating to the rates, taxes and other outgoings.

5.5 Even Mr.Sureshchandra Chhotalal Upadhyay, officer of the appellant bank who was examined as a witness on behalf of the appellant Bank has specifically stated in his cross-examination that the Bank had taken possession first and thereafter, after entering into hypothecation agreement, the Jeep was returned to the borrower for running the jeep.

5.6 Considering the aforesaid agreements Ex.Nos.53 and 54, the appellant bank also can be said to be in possession of the Jeep.

5.7 At this stage, definition of "owner" contained in section 2(19) of the Motor Vehicles Act, 1939 is also required to be referred to. Section 2(19) of the Motor Vehicles Act, 1939 reads as under :-

"Owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such a 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 the circumstances, considering the definition of "owner" contained in section 2(19) of the MV Act, the person in possession of the vehicle under hypothecation agreement also can be said to be the "owner". Considering the facts scenario, decision of the Hon'ble Supreme Court in the case of HDFC Bank Ltd. as well as Godavari Finance Co. relied upon by the learned advocate appearing on behalf of the appellant Bank are required to be considered.

5.8 In the case of HDFC Bank Ltd. , the Hon'ble Supreme Court was considering section 2(30) of the Motor Vehicles Act, 1988.

5.9 In the case of Godavari Finance Co. , the Hon'ble Supreme Court has observed and held that definition of "owner" is a comprehensive one. It is further observed and held that interpretation of clause itself states that the petitioner which is subject matter of a hypothecation agreement "person in possession of the vehicle under that agreement shall be the owner". It is further observed and held that thus, the name of the financier in the Registration Certificate would not be decisive for determination as to who was the owner of the vehicle. It is further observed that ordinarily the person in whose name the Registration Certificate stands should be presumed to be the owner but such a presumption can be drawn only in absence of any other material brought on record or unless context otherwise requires.

That thereafter, in para 16, the Hon'ble Supreme Court in the case of Godavari Finance Co. , has further observed and held as under :-

"16. An application for payment of compensation is filed before the Tribunal constituted u/s. 165 of the Act for adjudicating upon the claim for compensation in respect of accident involving death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Use of the motor vehicle is a sine qua non for entering a claim for compensation. Ordinarily if driver of the vehicle would use the same, he remains in possession or control thereof. Owner of the vehicle, although may not have anything to do with the use of vehicle at the time of the accident, actually he may

be held to be constructively liable as the employer of the driver. What is, therefore, essential for passing an award is to find out the liabilities of the persons who are involved in the sue of the vehicle or the persons who are vicariously liable. The insurance company becomes a necessary party to such claims as in the event the owner of the vehicle is found to be liable, it would have to reimburse the owner inasmuch as a vehicle is compulsorily insurable so far as a third party is concerned as contemplated u/s. 147 thereof. Therefore, there cannot be any doubt whatsoever that the possession or control of a vehicle plays a vital role."

At this stage, it is required to be noted that in the aforesaid decision in the case of Godavari Finance Co. , the Hon'ble Supreme Court also considered its earlier decision in the case of Rajasthan State Road Transport Versus Kailash Nath Kothari and others, 1977 7 SCC 481 as well as another decision in the case of [National Insurance Co. Ltd. Versus Deepa Devi and others](#), 2007 14 Scale 168.

5.10. That the decision of the Hon'ble Supreme Court in the case of Godavari Finance Co. again came to be considered by the Hon'ble Supreme Court recently in the case of HDFC Bank Ltd. . In the said decision, the Hon'ble Supreme Court also considered its earlier decision in the case of Kailashnath Kothari and others as well as in the case of Deepa Devi and others which were considered by the Hon'ble Supreme Court while deciding the case of Godavari Finance Co. .

5.13. After considering various earlier decisions, the Hon'ble Supreme Court in the case of Godavari Finance Co. , in para 10 has observed and held as under;

"10. On a plain reading of the aforesaid definition, it is demonstrable that a person in whose name a motor vehicle stands registered is the owner of the vehicle and, where motor vehicle is the subject of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under that agreement is the owner. It also stipulates that in case of a minor, the guardian of such a minor shall be treated as the owner. Thus, the intention of the legislature in case of a minor is mandated to treat the guardian of such a minor as the "owner". This is the first exception to the definition of the term "owner". The second exception that has been carved out is that in relation to a motor vehicle, which is the subject of hire-purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of vehicle under that agreement is the owner. Be it noted, the legislature has deliberately carved this exception from registered owners thereby making the guardian of a minor liable, and the person in possession of vehicle under the agreements mentioned in the dictionary clause to be the owners for the purposes of this Act."

5.14. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decisions and even considering the definition of "owner" contained in section 2(19) of the Motor Vehicles Act, 1939, and considering the fact that the appellant bank creditor was in possession of the Jeep under both the agreements i.e. agreement of pledge as well as hypothecation agreement, the appellant bank can be said to be "owner" within the definition of Section 2(19) of the Motor Vehicles Act, 1929 and therefore, being "owner", the appellant bank is liable to pay compensation to the victim of the accident.

Under the circumstances, as such no error has been committed by the learned trial court in holding the appellant bank jointly and severally liable to pay compensation to the victim of the accident. The learned tribunal has rightly passed the award against the appellant bank also and has rightly held the appellant bank also liable to pay compensation to the victim of the accident.

5.15. Now, so far as the reliance placed upon the decision of the Division Bench in the Court of Rabari Bachubhai Hirabhai , by the learned advocate appearing on behalf of the appellant bank is concerned, on considering the same, I am of the opinion that the said decision shall not be applicable to the facts of the case on hand, more particularly in view of the finding that under the hypothecation agreement and agreement of pledge, the appellant was put in possession of the Jeep involved in the accident and therefore, the appellant was in constructive possession of the Jeep.

5.16. In view of the above and for the reasons stated above, present appeal fails and the same deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.