

**IN THE HIGH COURT OF FIJI AT LAUTOKA**

**CIVIL JURISDICTION**

**HBC NO. 117 OF 2010**

**BETWEEN** : **GYAN SINGH** of 5 Huon Street, Suva, Fiji, Businessman  
**FIRST PLAINTIFF**

**A N D** : **RAKESHWAR SINGH** of Yalalevu, Ba, Driver.  
**SECOND PLAINTIFF**

**A N D** : **RONIL PARWESH CHAND** of Teidamu, Lautoka.  
**FIRST DEFENDANT**

**A N D** : **SIMON GOPAL** of 32 Captain Withers Street, Field 40,  
Lautoka  
**SECOND DEFENDANT**

**A N D** : **SUBHAS CHANDRA** of Lautoka.  
**THIRD PARTY**

**Counsel** : Ms L Devon for plaintiffs  
Mrs Prem Narayan for the second defendant

**Date of Trial** : 11 July 2016

**Date of Decision** : 23 September 2016

**DECISION**

**[On preliminary issue]**

**Introduction**

1. This is the judgment of the court on preliminary issue.

2. By way of summons dated 15 march 2016, the second defendant made an application for the following issue to be tried as a preliminary issue:-

*“Whether the second defendant was the owner of the motor vehicle registration number DP 831 as at 2 July 2007?”*

3. Trial proceeded with on the preliminary issue formulated by the second defendant. At the trial of the preliminary issue, three witnesses gave evidence; namely (i) Simon Gopal, the second defendant, (ii) Ronil Parwesh Chand, the first defendant and (iii) Subhas Chandra, the Third Party. In addition both parties have filed their respective submissions.

### **Background**

4. In June 2010, Gyan Singh and Rakeshwar Singh, the plaintiffs instituted action against Ronil Parwesh Chand and Simon Gopal, the first and the second defendant respectively.
5. It is pleaded by the plaintiffs that on 2 July 2007 while they were both travelling in a vehicle No. ET451 along the Kings Road, the first defendant negligently caused his motor vehicle No. DP831, which he was driving at the material time to collide with vehicle No.ET451. In the process, the plaintiff suffered injuries causing them loss and damages.
6. The plaintiffs also assert that as at the date of the accident, the second defendant was the owner of the vehicle registration No. DP 831.
7. Upon leave of the court being granted, Subhas Chandra was added as a third party to these proceedings.

8. By the current application, the second defendant seeks determination on the preliminary issue he has raised.

### **The Law**

9. The *Land Transport Act* ('LTA') section 2 defines the "owner" as when used in reference to a motor vehicle or trailer means-

- (a) **subject to paragraph (b), if the vehicle is registered, the person registered as the owner of the vehicle and includes a person in lawful possession;**
- (b) *if a registered vehicle is sold or otherwise disposed of by the person registered as the owner of the vehicle, and he has given notice thereof to the Authority, the purchase;*
- (c) *if a trade plate is placed on the vehicle under the authority of a trader identification permit, the person to whom or to which the plate was issued; or*
- (d) *if the vehicle is not registered, the person who is entitled to the immediate possession of the vehicle, solely or jointly or in common with some other person; and 'owns' has a corresponding meaning;*

10. Halsbury's Laws of England at para 165 (Vol.40, 4<sup>th</sup> Ed) explains the difference between the registered owner and the legal owner of the vehicle thus:

*"The registration book is issued to the owner of the vehicle, that is the person by whom the vehicle is kept and used, and although provision is made for changes of ownership to be recorded in the registration book the name appearing in the registration book may not be that of the legal owner of the vehicle, and will not be that of the legal owner if the vehicle is subject to a hire purchase agreement. The registration book is not a document of title but is evidence of title, and its absence at the time of sale should put a purchaser on inquiry."*

## **The Evidence**

11. The evidence of the second defendant was that he sold the vehicle registration DP831 to Subhas Chandra through his father in law (Babla). Upon the payment of \$5,000.00 he signed the transfer documents and went to the Land Transport Authority (LTA) with Subhas Chandra to have the motor vehicle DP 831 transferred. After he handed over the key and the vehicle to Chandra, he did not have possession of it. He did not know the first defendant. He learned about the plaintiff's injuries involving the vehicle registration DP831 when he was served with the writ of summons. He saw Subhas Chandra after that and Subhas told him that he (Subhas) will take care of it.
12. Under cross examination the second defendant admitted that he is the registered owner according to the LTA document. He said that he did not have copy of the Transfer Form and he did not checked with LTA whether or not it has been transferred to Subhas.
13. In his evidence the First Defendant stated that he was an employee of Subhas Chandra (the Third Party). Subash allowed him to use the vehicle DP831 to drive in the course of his employment. He was allowed to drive the vehicle on 2 July 2007. The vehicle was in the possession of Subhas and it was always parked in his yard in Tavua. He has known that Subhas was the owner of the vehicle registration DP 831. He further said that he made a statement to police and mentioned owner's name as Subhas Chandra.
14. The plaintiff did not cross examine the first defendant.
15. Subhas Chandra's evidence was that he paid a sum of \$5,000.00 to Babla (Simon Gopal's father in law). He also said that he has been in possession of the motor vehicle DP831 since September 2006. He allowed his employee to drive the motor vehicle DP831. He was informed about the accident by a bus driver.

16. Under cross examination Subhas admitted to owning the vehicle and the contents of Exhibit being his statement to the Police. He was evasive about the payment. He said that he did not pay off and he did not know how much he paid.

**Second Defendant's submission**

17. Counsel for the second defendant submits that the true owner of the vehicle registration DP831 is Subash Chandra (the Third Party) on 2 July 2007 as he was using it as his own for his business purposes.

**Plaintiffs' submission**

18. Counsel for the plaintiffs conversely argues that it is undisputed fact that Simon Gopal (the second defendant) is the owner of the vehicle to date.

**Determination**

19. The court is to determine the preliminary issue that whether the second defendant was the owner of the motor vehicle registration number DP 831 as at 2 July 2007, the day when the accident occurred.
20. If the preliminary issue is decided in favour of the second defendant, him including the third party insurer might be absolved from all liabilities in relation to the claim.

21. It is common ground that the second defendant was (still he is), according to the LTA vehicle registration certificate, the registered owner of the vehicle No. DP 831 at the time of the accident.
22. However, the second defendant had sold and transferred the vehicle to Subhas Chandra for the consideration sum of \$5,000.00. In evidence the second defendant stated that in June 2006, well before the accident, he signed the transfer documents and went to LTA office with Subhas Chandra to have the motor vehicle DP 831 transferred to him (Subhas Chandra). Subhas Chandra did not deny this. Since the transfer of the vehicle, Subhas has been using it and known as owner of that vehicle.
23. It is to be noted that the above transfer was not registered in the LTA registration certificate. Possibly, Chandra might not have tendered the Transfer Forms to the LTA with the relevant fees. The registration should have been effected within 7 days of the transfer of the vehicle. After transferring the ownership, the second defendant also should have informed the LTA of the transfer within 7 days after the date of the change (see, regulation 14, LAND TRANSPORT (VEHICLE REGISTRATION AND CONSTRUCTION) REGULATION 2000).
24. The Land Transport Act (1998) section 2 defines the "owner" in relation to a motor vehicle or trailer as the person registered as the owner of the vehicle and includes a person in lawful possession.
25. According to Halsbury (see para 10 above), the name appearing in the registration book may not be that of the legal owner of the vehicle. It further explains that **the registration book is not a document of title but is evidence of title.**
26. In the case of *Joblin v Watkins and Roseveare (Motors) Ltd [1949] 1 All E.R.47*, it was held that:

***'The registration book was not a document of title within the definition in s.1 (4) of the Act or by virtue of the road vehicles (Registration and Licensing) Regulations, 1941, Reg.9. Although one reason for the book was to make known, who was the owner of the vehicle to which it referred, its primary purpose to show, who was the person liable to pay the road fund license tax in respect of the vehicle. (Emphasis added)***

27. In ***Vosawale v George transport Ltd*** [2004] FJHC 208; HBC0169.2003, on the issue of ownership of a vehicle, the Court held:

*The defendant says it is not the owner of the vehicle but City Transport Limited is. At the Land Transport Office, the vehicle AY 192 is registered in the name of City Transport Limited. The claim in the present proceedings is under the common law not under the Land Transport Act.*

*Section 49(1) of the Land Transport Act makes registration of the vehicles by the owners compulsory. For the purposes of the Land Transport Act, the word owner is defined in Section 2. Section 2 commences with the word **"In this Act unless the context otherwise requires"** and then it sets out definitions of various words including the word **"owner"** and it sets out who for purposes of the Act and can be considered owners. **'Owner'** has been given an extended meaning in the Act. The owner for the purposes of the Act includes **"a person in lawful possession"**. However we are concerned with the concept of owner under the common law.*

*The unchallenged evidence in the present case is that City Transport Limited and George Transport Limited are sister companies which use the same set of buses including the bus subject of present proceedings AY 192. The bus had the words George Transport painted on its side and that is how the witnesses identified it. There is no denial that George Transport Limited was using the bus at the material time for its purposes. There is no denial that the driver was employed by it. These facts would be within the peculiar knowledge of the defendant. The defendant's witness who is a director of George Transport did not deny this. The arrangement to use vehicles interchangeably only confirms that George Transport was using the bus for its purposes and profit. One does not necessarily have to be the registered owner of a vehicle with the Transport Office before liability can be sheeted home. I am of the view that had City Transport Limited been made a defendant instead of George Transport Limited, City would have turned around and said that the bus was used by George Transport Limited for its purposes and not in the interests of City.*

*The defendant's witness Kiran Singh said that the two companies had separate account. He did not provide the court with the separate account*

numbers nor was this fact disputed when the Land Transport Officer gave his evidence.

In *Sada Nand v. Ram Indra* – FCA 35 of 1991 the court observed

**“Finally we might say a word whether registration of a vehicle under the provisions of the Traffic Act established (i) ownership, (ii) is necessary to establish ownership; (iii) is conclusive evidence of ownership; (iv) is merely evidence of ownership. Whilst it is unnecessary for the purposes of this appeal to do so, we nevertheless point out, that (iv) above clearly the situation.”**

*Even though the above remarks are obiter, I adopt them. Registration with the Land Transport Authority is not the conclusive evidence of proprietary rights at common law. One has to consider other facts as well.*

*Having looked at all the facts, I am of the view that George transport Limited was the owner at common law.”*

28. Fiji Court of Appeal in *National MBF Finance (Fiji) Ltd v Buli* [2000] FJCA 28; ABU0057U.98S (6 July 2000) observed:

*‘On the allegations made in this case it would be quite unreal to hold that ownership was not in issue apart from registration. Put more broadly ownership is a question of fact and the failure or otherwise of registration to establish that conclusively does not dispose of ownership in issue in the case’* (Emphasis provided)

29. In the matter at hand there is unchallenged evidence that the second defendant in June 2006 transferred the vehicle registration No.DP831 to Subhas Chandra for value and that he took possession, control and utilised the vehicle as the owner for his business benefit. I am satisfied on the balance of probability that the second defendant transferred the ownership of the vehicle to Subhas Chandra, the Third Party in June 2006.
30. I am fortified with case law authority (cited above) to say that the registration is a mere evidence of ownership and not conclusive proof of ownership. Ownership includes a person in lawful possession. As Subhas Chandra had possession and control of the vehicle in question



from the date of change of ownership although the change was not recorded in the LTA certificate of vehicle registration, he was the actual or true owner of that vehicle at the time of accident for all purposes.

**Conclusion**

31. Let me conclude, for the foregoing reasons, that Subhas Chandra, the Third Party was the actual or true owner of the vehicle registration number DP831 at the time of accident. That leads to answer negatively to the preliminary issue that whether the second defendant was the owner of the motor vehicle registration number DP 831 as at 2 July 2007.

**Costs**

32. The parties did not address the court on the issue of costs. I would therefore make no order as to costs.

**The result**

1. Preliminary issue decided in favour of the second defendant.
2. No order as to costs

*M H Mohamed Ajmeer*  
23/9/16  
.....  
**M H Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**23 September 2016**

