

(1976) 11 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. (sic) and 105 of 1969

Automobile Transport Pvt. Ltd.

APPELLANT

Vs

Dewalal and Others

RESPONDENT

Date of Decision : 08-11-1976

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1976) WLN 783

Hon'ble Judges : M.L. Jain, J;A.P. Sen, J

Bench : Division Bench

Judgement

M.L. Jain, J.—This judgment will dispose of two appeals namely, D.B. Civil Misc. Appeal No. 14/ 1970 and D.B Civi1 Misc. Appeal No. 105/1969. These appeals arise out of an order made by the Motor Accidents Claims Tribunal, Ajmer on September 12, 1969.

2. A bus RJZ 202 was travelling from Bandarwara to Ajmer on May 31, 1966 When it was about six miles and two furlongs from Ajmer, it found the road blocked near Makhupura by a tree fallen on the road While other vehicles were passing on the right side of the road, the driver of this vehicle instead chose to pass his vehicle by the left side of the tree where it la alleged, there was not much space for the vehicle to pass wish the result that the vehicle must dashed against the aids wail which gave way and the vehicle then over-turned and fell down.

3. Ore of the consequences of the accident was that one Dharam Chand a passenger sustained fatal injuries & died instantaneously on the spot. His widow, three minor children and his parents filed a claim petition in the aforesaid Tribunal on July 30, 1966, claiming Rs. 50,000/ as pecuniary has and Rs. 5000/- on account of mental agony, suffering and lose of expectation of life, and loss caused to the a estate of the deceased. There were several respondents, namely, Motor Owners Insurance Company, Automobile Transport (Rajasthan) Private Limited, its Chairman Nerayandas Lohiya, driver Raghunath, National Insurance

Company and some more, which will better be described as respondents No. 2(a) to 2(f). The learned Tribunal held that the accident took place on account of the rash and negligent act of the driver Raghunath, respondent No. 3. As regards the quantum of damages, the finding of the learned Tribunal was that the deceased was at the time of his death 30 years of age and his expected span of life was an others 15 years of age at the least. It was found that he was a shareholder in his parental firm M/S. Dewalal. Raglal. The average income from that firm of the deceased was Rs. 180/- per month. It was also alleged that the deceased was looking after his agricultural farm and in his absence, a servant was required to be engaged, whose wages were claimed at Rs. 250/- per month, but the Tribunal allowed such wages only at the rate of Rs. 70/- per month. The result was that the pecuniary loss estimated after making a reasonable deduction on account of lump sum grant of compensation, the learned Tribunal awarded a sum of Rs. 30,000/- as compensation to all claimants but only against the Automobile Transport (Rajasthan) Private Limited Co. respondent No. 2(g), Narayandas Lohiya, respondent No. 2(b) and their insurers respondent No. 1, the Motor Owners Insurance Company. It dismissed the petition against the remaining respondents. The learned Tribunal further decreed that Rs. 20,000/ shall be paid by the insurer, namely, the Motor Owners Insurance Company and the remaining amount of Rs. 10,000/ shall be paid by the respondents No. 2(g) and (h). It may be mentioned here that the Automobile Transport (Rajasthan) Private Limited Company is under liquidation.

4 D.B. Civil Misc. Appeal No. 105/1959 was filed by the insurer, while the other appeal is by the Automobile Transport (Rajasthan) Private Ltd. Company and Narayandas Lohiya. An application was made on behalf of the appellant Automobile Transport (Rajasthan) Private Ltd. Company under Order 41 Rule 27 C.P.C. requesting, this Court to permit them to file some documents which they have listed in annexure "A" the application was made on 1-12-1971.

5. The claimants also filed a cross-objection in which they challenged that the Tribunal was in error in reducing the compensation from Rs. 50,000/. to 10,000/. They prayed that the remaining amount of Rs. 20,000/- should also be directed to be paid by the appellants, the Automobile Transport (Rajasthan) Private Limited Company and Narayandas Lohiya.

6. Before proceeding to deal with the merits of the appeals, it will be proper to dispose of the application made by the appellants under Order 41 Rule 27 C.P.C. In their written statement, they had specifically pleaded that they had sold the aforesaid Bus to one Chouthmal son of Kalyanmal Mahajan for a consideration of Rs. 14000/- by an agreement dated January 1, 1964, and that on the date of the alleged accident, they neither owned, nor managed, nor controlled the vehicle in question. But in support of this contention, they did not file these documents in the learned Tribunal which had to close their evidence on 12-10-1969. Besides, even the sale agreement was not proved before the lower court. Now the appellants want to produce certain assessment orders of one firm M/s.

Mangalchand Gograj of the Income Tax Department and also of the Passenger and Goods Tax Authorities and Commercial Taxes Officers. They also want to file the balance-sheet of the Automobile Transport (Rajasthan) Private Limited Company and some ledger and cash accounts. According to Order 41 Rule 27 C.P.C., the parties to the appeal are not entitled to produce any additional evidence unless the appellate Court allows them to do so where the lower court had refused to admit evidence which ought to have been admitted, or the appellate Court requires any documents to be produced, or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. We do not think that we require these documents at all for enabling us to pronounce a judgment in this case, nor is it a case in which the documents were produced before the learned lower court and it refused to admit them. No other substantial cause for production of this additional evidence has been shown except saying that Bhawansingh, one of the Directors, of the Automobile Transport Rajasthan Pvt. Ltd. Company who was incharge of the business of the Company, has been out of Ajmer during the relevant period. Certainly, this can provide no valid ground for admission of these documents, nor do they appear to be relevant, because the main agreement by which the vehicle is said to have been transferred was not even put into evidence by the appellants. The application of the appellants deserves to be and is, therefore, rejected.

7. In respect of the cross-objection it was urged that it was not maintainable as there is no provision for filing cross objections in the Motor Vehicles Act, 1939. (here in after referred to as "the Act"). Section 110D there of only provides for an appeal by any person aggrieved by an award of a Claims Tribunal. This provision it is said, entitled the respondents to file an appeal if they felt aggrieved by the award of the Tribunal in question. Some decisions were also cited in support of this contention but they do not appear to us to be good law. We agree respectfully with the opinion expressed in *K. Chandra Shekar v. Narayan* (1) that in an appeal u/s 110D of the Act, the respondents can file cross-objections by invoking the provisions of Order 41 Rule 22 CPC because where a statute directs that an appeal shall lie to a court already established, then that appeal must be regulated by the practice and procedure of that court, vide *Collector Varansi v. Gaurishanker* (2). We accordingly over rule the contention that it is not permissible to the claimants to invoke the provisions of Order 41 Rule 22 CPC in order to file their cross-objection. But as will presently follow, since the award has been reduced by us, we reject this cross-objection.

8. We will, now, proceed first to take up the appeal filed by the Automobile Transport (Rajasthan) Private Limited Company. They challenged the award of Tribunal on the following grounds, namely, firstly, that the finding of the learned Tribunal that the accident occurred on account of the rash and negligent driving of the driver Raghunath was erroneous. Secondly in view of the several such cases decided in this country, the quantum of damages fixed at Rs. 30,000/- was highly excessive. Thirdly, there was no vicarious liability of the appellants because they were not the owners of the vehicle at the time of the accident and

the driver was neither their servant nor agent. Fourthly, appellant Narayandass was the Chairman of the Auto-mobile Transport (Rajasthan) Private Limited Company and he could not be saddled with any personal liability of the debts of the company.

9. As regards the first ground, the appellants in their written statements, simply pleaded that the claimants be put to proof of the liability but a suggestion was thrown to the witnesses of the claimants that the deceased Dharamchand apprehending disaster at the time of the collusion, jumped out of the bus and it was on account of his own inosculation that he met his death. Such suggestion was stoutly denied by the witnesses, and the learned Tribunal rightly rejected the suggestion as no evidence was led in support of this entirely a reckless conjecture. The learned Tribunal has observed that when all the vehicles were passing by the right side of the tree which alone provided sufficient space for the vehicles to pass, it was certainly not only an act of rashness but also of negligence on the part of the driver to have attempted to pass the vehicle by the left side inspite of the protests of its occupants. There is no doubt that want of reasonable care and speed in driving has primarily to be established by the claimants, but as held by the learned Tribunal the claimants, have discharged this burden satisfactorily and were in agreement with the findings of the Tribunal below in the respect. In *Gobald Motor Service v. Veluswami* AIR 1962 SC 114, the Supreme Court held that apart from positive evidence, the circumstances in which the accident took place could give rise to a presumption that the accident was caused by the negligence of the driver. These are the cases in which *res ipsa loquitur* applied. In *Sushila Devi v. Ibrahim* 1974 ACJ 150, which was a case arising from Madhya Pradesh to which my learned brother was a party a motor bus entered a bridge and having crossed some twenty one spans of the bridge, suddenly applied brakes, geared across the bridge to the out-side, dashed against and crashed through the railings and fell down into the rocky bed of the river. It was held that this was a case where the doctrine of *res ipsa loquitur* must apply. The same principle can successfully be applied to the instant case. There was not only the positive evidence led by the claimants that the cause of the accident was the negligence of the driver, but the circumstances which we have stated above clearly tell their own tale. The respondents have not only failed to rebut the inference raised against the driver, but they canvassed a plea which was found totally false by the Tribunal. It was urged before us that it was the duty of the driver to drive on the left side of the road and that is what he did. We are not impressed by this argument, because this rule applies only when the road is clear. In a case where the road is blocked for some reason or the other, the vehicles has to pass through the space that is available. When other vehicles were successfully negotiating on the right side of the road, there was hardly any ground for the driver to have left the right side and tried to pass the vehicle by the left side of the tree, which even according to the site plan was not so spacious as on the right side. It is also not a case of a mere error of judgment when there is evidence to show that all the occupants of the vehicle were urging

upon the driver not to carry the vehicle by the left side of the tree. We, therefore, find no substance in any of the arguments and affirm the finding of the learned Tribunal that the accident occurred on account of the negligent act on the part of the driver.

10. As regards the second point, several rulings were cited before us showing how in case of death of the people in situation in like as the deceased Dharamchand was, the Tribunal and the High Courts have awarded far less amount of compensation. Without doing mere, we wish to observe that all these cases are simply illustrative and there is nothing like a doctrine of precedent in fixing the quantum of damages. In the United India Fire and General Insurance Co., Ltd. v. Sayar Kanwar and Ors. 1976 WLN 187 this Court has recently said down that this Court should not interfere in the calculation of damages awarded by the Tribunal, unless it feels that they are too high or too low or they are not in proportion to the loss or injury caused or unless there is some error in principle or in approach adopted by the Tribunal below. The best way of showing how the quantum of just and proper compensation in cases of motor accidents should be determined would be to refer to the observations of their Lordships of the Supreme Court in Gobald Motor Service v. Veluswami AIR 1962 SC 114 and Sheikhpura Transport Co. v. Northern India Transport 1971 CJ 206 wherein it was laid down that in calculating pecuniary loss to the dependents, many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependents may depend upon the date which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand the loss to the claimants of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained. In Sushila Devi and Ors. v. Ibrahim and Anr. 1974 ACJ 150. Some important guidelines were briefly stated, as follows:

- (1) When the Court awards damages to the dependents for death due to negligence, it awards one lump sum calculated by taking the yearly pecuniary loss and multiplying it by the number of years' purchase.
- (2) It does not divide it into two parts, such as special damages upto the date of trial and future loss after the date of trial. The Court treats it as damage inflicted once and for all at the time of accident.
- (3) It has to follow the rule of basic figure, a certain number of years' purchase, and allowance for Jump sum down.
- (4) If the period is a long one, the "multiplier" will be much smaller than the number of years, even where the contingencies which are allowed for are of small account. The reason is that while in so far as the lump sum of damages is still unspent, it will be earning interest and the damages and interest together

will be adequate to last out for the period. The reason is that a prudent person receiving a lump sum, to make good this loss over a periods, expected to invest it and to use it up gradually.

(5) The sum to be awarded as damages should be equal to the cost of purchasing an annuity of the relevant amount for the relevant period.

(6) In a claim for damages for death u/s 110B of the Act as it now stands, sums payable on death under any contract of social assurance or insurance are to be disregarded, but the reasonable prospect(s) of receiving benefits such as compulsory employers' insurance, whether contributory or non-contributory gratuity and pension have to be taken into account.

11. The Tribunal has correctly applied the principle of multiplier. No case was put forward in respect of any pecuniary advantage that the claimants were going to receive. The only point urged was that the deceased was a sharer in a family business to which his successors have now been admitted and thus no pecuniary loss can be said to have been suffered by them. As regards the loss of labour on agriculture, it was urged that it is also a mere matter of conjecture. We have considered the quantum from all aspects. The mere fact that the dependents have been admitted to the benefits of the family business will not go to show that the children and the widow and the parents have suffered no loss on account of the death of Dharamchand. We are also unable to say how the findings of the learned Tribunal can be disturbed in respect of the loss of supervising services which the agricultural land was going to suffer on account of the death of the deceased Dharamchand. No evidence to the contrary has been led in this respect. It appears to us that the quantification of the loss of services in this respect of Rs. 70/- per month is not excessive but we do however notice that the learned Tribunal while fixing the monthly income at Rs. 180/- per month of the deceased, failed to estimate and deduct the amount which the deceased was most likely to spend on himself. While determining the present value of the prospective loss, contingencies such as future risk of business illness or death otherwise, have also to be borne in mind. The Court has also to make a deduction for lump sum payment. We are of the view that a further reduction of Rs. 100/- a month on account of these factors should have been made and taking all the circumstances into consideration, an award of Rs. 30,000/- is on the high side and an award of Rs. 20,000/- will be a just and proper compensation in the case. The second contention therefore, succeeds to this limited extent.

12. The third contention of Mr. Jindal on behalf of the appellants is that the appellants M/S. Automobile Transport (Rajasthan) Private Limited Company were not the owners of the vehicle at the time of the accident and, therefore, no liability arises against them. On the other hand, learned Counsel for the respondents Mr. Bhargava strenuously urged that according to the view of this Court reported in *United Motors of Rajasthan v. Mathralal* RLW 1970 589, *Padmadevi v. Gurbaksh Singh* RLW 1973 529, *Champalal v. Ramchandra* RLW 1975 366 , and *Maina and Others Vs. Niranjana Singh and Others*, it is the

registered owner who shall be deemed to be the owner of the vehicle under the Act. A mere transfer of ownership accompanied by a delivery of possession of a transport vehicle registered under the Act does not confer any title on the transferee unless the registration is changed in the name of the transferee in accordance with Section 31 of the Act. If the vehicle stands in the name of the original owner, he will be taken to be the owner inspite of the transfer and will be liable for damages for the death caused by the accident. Mr. Bhargava then pointed out that the appellants have not proved by any evidence documentary or otherwise that the vehicle had been transferred by them to some Chouthmal who is not even a party to these proceedings.

13. We have bestowed our earnest consideration to this question. It appears to us that the views of this Court in *Maina v. Niranjan Singh* and so also in *Champalal v. Ramchandra* RLW 1975 366 were based upon the earlier decision of this Court in *Pannadevi v. Gurbaksh* RLW 1973 529 which again heavily relied upon a still earlier decision in *United Motor of Rajasthan v. Mathra Lal*. RLW 1970 589 of this Court and *Vimalroy v. Gurucharnsingh* 1967 ACJ 115. It will be noticed that a learned Single Judge of the High Court of Orissa in *Orissa Co-operative Insurance Society v. Sahu and Ors.* 1971 ACJ 49 arrived at a similar conclusion. But the decision in *Vimalroy v. Gurucharansingh* 1967 ACJ 115 was considered by the High Court of Madras in *Muthuswamy Gounder v. Thulasiammal* 1970 ACJ 18 and it found itself unable to agree with the same. Similarly the High Court of Punjab in *Phul Bus Serviceves. Financial Commissioner, Taxation, Punjab & ors.* 1968 ACJ 57 also expressed its agreement with that view. In *Viswanath v. Shanmugham* AIR 1964 SC 493 it was pointed out that the Act does not expressly or by implication bar "benami" transactions or persons owing buses "benami" and applying for permit on that basis. It cannot be said to be requirement of the Act that in each case the person in whose favour a permit has been issued should necessarily be the owner of the vehicle governed by it. This Supreme Court decision was brought to the notice of *Lodha J.* in *United Motors of Rajasthan v. Mathralal* RLW 1970 589 but he held however as follows:

For the purposes of this case, it is not necessary to decide whether the ownership of a motor vehicle can be recognised only when the fact of transfer of ownership is reported to the registering authority. But there is no doubt; in my mind that by the provisions of Section 31 of the Act, responsibility has been placed both on the transferee and the transferor to report the fact of transfer to the registering authority within a certain time and thus law requires something more for the sale of motor vehicle than what is necessary for sale of other Immovable (sic) property.

These views were not so categorical and yet they were adopted in *Padmadevi v. Gurbaksingh* RLW 1973 529. Unfortunately, the decision of the Delhi High Court in the *Oriental Fire & General Insurance Co. Ltd. v. Vimalroy* 1972 ACJ 314 was not brought to the notice of the learned Judges who constituted the Division

Bench of this Court in *Padmadevi v. Gurbaksh Singh* RLW 1973 529. This later decision of Delhi High Court has expressly reversed the view adopted in *Vimalroy's case* 1967 ACJ 115. We need not reproduce the entire discussion which was undertaken by the learned Judges and it will be sufficient to state that the sale of a motor vehicle is not governed by Section 54 of the Transfer of Property Act, but it being a movable property was to be governed by the provisions of the Sales of Goods Act. The fallacy that the provisions of the Act require that the owner of a vehicle cannot use the vehicle unless it is registered under the Act or cannot carry passengers or goods in the vehicle unless a permit in that respect is obtained by the owner and which led to the conclusion that it is only the ostensible owner who is to be considered to be the owner of the motor vehicle irrespective of the fact that the real ownership may be with some-body else, was pointed out in the *Oriental Fire and General Insurance Co.'s case* 1972 ACJ 314. The provision of the Act regarding registration and issue of permit have nothing to do with the ownership of the vehicle. They only provide for regulation of the use of the motor vehicles in public places and if the requirements of the Act were not fulfilled, penalties were attracted. We are in respectful agreement with the views of the later decision of the Delhi High Court that the endorsement of the transfer in the records of the Registering Authority is not a condition precedent to the transfer nor does it deal with the legality of validity of the transfer which must be determined by other provisions of the law. Moreover, even in *Padmadevi's case* RLW 1973 529 the learned Judges held both the transferor and the transferee liable for the claim of damages caused by the accident. That view is in accordance with the Single Bench decision in *Northern India General Insurance Co. Limited v. Kanwarjitsingh* 1973 ACJ 119 wherein it was observed that the real owner would be liable for the tort committed by his driver because the vehicle was used for his purposes, whereas the registered owner would be liable because he gave himself out to be the owner of the vehicle by getting it registered in his name. Thus, a person though registered as owner may or may not be a real owner and for the purpose of awarding compensation it is the real owner who should be found but by the Court on the facts of each case.

14. In the instant case, the controversy whether the registered owner is the owner liable for damages arising out of the accident is not of much consequence because the appellants have failed to prove by evidence of any kind that they had transferred the vehicle before the accident. However, it appears from the evidence of the claimants, namely, from that of Chhotu PW/2 who was the conductor on the ill-fated Bus that he was an employee of one Prakashji. Perhaps this Prakashji is respondent No. 2(a). He has further deposed that at the time of the accident, the driver was Raghunath. That shows that the driver Raghunath was certainly not an employee of the appellants. Whether in that situation the driver can be considered to be an agent of the owners of vehicle, which for our purposes, is a pertinent question to be considered. In *Ormord v. Grossville Motor Service Limited* (1953) 2 All ER 753, Denning L.J. observed:

The Law puts an especial responsibility on the owner of a vehicle who allows it to

go on the road in charge of some one else, no matter whether it is servant, his friend, or anyone else. If it is being used wholly or partly on the owner's business or for the owner's purposes the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern.

This dicta was not accepted in *Kedar Pandey Vs. Narain Bikram Sah*, The majority judgment delivered by Hidayatullah J. stated that an agent will make the principal responsible so long as the agent does the act within the scope of his authority or does so under the actual control of the principal. There is however, a presumption that a vehicle is driven on the master's business and by his authorised agent or servant but the presumption can be met. It will be interesting to note that a similar view was later on expressed by the House of Lords in *Morgans v. Launchbury* and Ors. 1973 ACJ 127 which reversed the decision in *Ormord's* case and expressed disagreement with the attempt of Denning L.J. to extend the principle of vicarious liability. With unanimity the House of Lords held that to fix vicarious liability on the owner of a motor car in a case such as the present, it must be shown that the driver was using it for the owner's purposes under the delegation of a task or duty; that the owner's interest in or concern for the safety of the car or its occupants was not sufficient. To extend the doctrine of vicarious liability, if that is a desirable course, is a matter for the legislature to consider as a matter of policy and not for courts. Lord Wilberforce categorically stated that it has never been held that mere permission is enough to establish vicarious liability. He observed:

I accept entirely that "agency" in contexts such as these is merely a concept, the meaning and purpose of which is to say "is vicariously liable ", and that either expression reflects a judgment of value respondent superior is the law saying that the owner ought to pay. It is this imperative which the common law has endeavored to work out through the cases. The owner ought to pay, it says, because he has authorised the act, or requested it, or because the actor is carrying out a task or duty delegated, or because he is in control of the actor's conduct. He ought not to pay (on accepted rules) if he has no control over the actor, has not authorised or requested the act, or if the actor is acting wholly for his own purposes. These rules have stood the test of time remarkably well.

15. Viscount Dilhorne referred to *Hewitt v. Bonvin* (1940) 1 KB 188 wherein Du Parc L.J. put the case on the basis of agency as follows;

The driver of a car may not be the owner's servant, and the owner will be nevertheless liable for this negligent driving if it be proved that at the material time he had authority, express or implied, to drive on the owner's behalf. Such liability depends not on the ownership, but on the delegation of a task or duty.

16. Viscount Dilhorne further commented that whether it be alleged that the driver was the servant or the agent, to establish liability on the part. of the

employer or the principal, it must be shown that the driver was acting for the owner's purposes and that it does not suffice to say that the driver was permitted. Just as the inference may be drawn, from proof, that the vehicle was owned by another, that the driver was driving as servant or agent of the owner, so may a presumption arise, where it is proved that the driver at the time of the negligence was doing something which was in the interest of the owner or for his benefit, that the driver was then acting as a servant or agent of the owner. But when the full facts are known, such an inference and presumption may be unwarranted. A person permitted to drive another's car does not become the latter's agent if, on his own volition he uses it for the owner's benefit.

17. Keeping in view the legal presumption that a vehicle is driven on the master's business or by his authorised agent or servant. Can it then be said that the driver Raghunath was driving the vehicles for the purposes of the appellants under delegation of a task or duty? Mere permission or consent will of course not be sufficient.

18. In the instant case, such presumption has to be raised against the appellants because they have not led any evidence to show that the vehicle at the time of the accident was not driven for their purpose and under their delegated task or duty. Until that presumption is negated, the appellants can-not escape the liability. We, therefore, reject the third contention advanced by Mr. Jindal.

19. The last objection of Mr. Jindal should however fully prevail. Narayandass is the Chairman of the owner company and, therefore, he cannot be held personally liable because the vehicle does not belong to him, nor can it be said that it was being operated under his control. There is no provision in the Act that the Director incharge of the conduct of the business of the company shall be responsible as if he were the owner of the vehicle. The claimants had stated that the respondents No. 2(a) to 2(h) were the owners of the vehicle, vide para 9 of the claim petition. Narayandass Lohiya submitted a written statement both on behalf of himself as well as on behalf of the company In reply to para 9 of the claim petition, it was expressly stated that the opposite parties No. (g) and (h) were no longer the owners of the vehicle. The vehicle formerly belonged to M/s. Automobile Transport (Rajasthan) Private Limited Company. It has been sold to Shri Chouthmal vide sale deed dated 1.6.1964 and the possession of the vehicle was also handed over to him and the answering opposite parties were no longer the owners thereof and were not liable for the claim. They had also given an application in writing to Shri Chouthmal addressed to the Registering Authority to record the transfer. In face of this denial, burden was cast upon the claimants to show how the Chairman of the Company could personally be held liable for the compensation.

20. The result of D.B. Civil Misc. Appeal No. 14 of 1970 of the Automobile Transport (Rajasthan) Private Limited Co. & its Chairman Narayan Das Lohiya is that while it has been proved that Narayandass is not at all responsible for payment of compensation, the liability of the Automobile Transport (Rajasthan)

Private Limited Company extends only to Rs. 20,000/-.

21. In the other appeal filed on behalf of the Motor Owners Insurance Company Limited, it was urged that the Insurance Company was not liable because insurance was obtained by non-disclosure by the insured of a material fact that the vehicle had been transferred. As soon as a vehicle is transferred, the liability of an insurer comes to an end. There was yet another insurer who should be held liable for the accident and the Tribunal should have apportioned the liability, if any, between the two companies. It was finally urged that at any rate the statutory liability of the company cannot exceed Rs. 2000/- u/s 95(2) of the Act.

22. As regards the objection that the vehicle was insured with M/s. National Insurance Co. Ltd., there is no evidence to show that such an insurance exists and, therefore, that objection cannot be valid.

23. The insurer has drawn our attention to Clause (c) of Sub-section (2) of Section 96 of the Act under which the validity of the insurance policy can be questioned on the ground that it was obtained by non-disclosure of a material fact or by a representation of fact which was false. It was urged that the policy was void because the policy was issued on 18-6-1965, while according to the insured, the vehicle had been transferred on 1-6-1964. On the date of the insurance, therefore, the insured had no insurable interest in the vehicle and the policy was obtained by non-disclosure of this material fact. Here again, the contention has to be rejected, because neither the insurer nor the insured has proved that the vehicle had been transferred. u/s 94 of the Act, it is not only the real owner of the vehicle who can effect insurance in compliance with the provisions of Chapter VIII of the Act; any other person using a motor vehicle or allowing it to be used at a public place can also effect insurance. The disclosure, therefore, of the real owner of the vehicle to the insurer would not be a material fact for effecting the policy. Sub-section (5) of Section 96 lays down that the expression "material fact" means a fact of such a nature as can influence the judgment of a prudent insurer in determining whether he will take the risk and if so, at what premium and on what conditions. We are not satisfied as to how the insurer would have been influenced in his judgment as to the premium and other conditions whether or not it was disclosed that the ostensible and registered owners of the vehicle were not the real owners of the vehicle. If any authority requires to be cited for this proposition, then we may refer to *Northern India Insurance Co. v. Kanwarjitsingh* 1973 ACJ 119.

24. Several authorities were then cited before us in this respect and a consensus appears to be that upon the transfer of a vehicle, the policy comes to an end. It has been held that in the absence of stipulation to the contrary, an insurance policy, which is a personal contract of indemnity lapses upon the transfer of the motor vehicle and the benefit of the policy is not available to the transferee without any express agreement with the insurance company. In view of the facts and circumstances of this case, the insurance company cannot escape its liability. Since transfer has not been proved, it will not be necessary for us to enter in to a

discussion whether, upon the transfer of vehicle, the policy of insurance had come to an end. But the last contention of the appellant insurer must prevail that the liability of the insurance company is limited only to Rs. 2000/-. The liability of the insurer cannot exceed the one that is provided in the statute, unless there is a contract to the contrary. No such contract has been brought to our notice. The insurer had specifically taken this plea and the Tribunal, therefore, appears to have fallen in to error by fixing the liability of the insurer to an amount of Rs. 20,000/-.

25. The result of the aforesaid discussion, therefore, is (1) the D.B. Civil Misc. Appeal No. 14/1970 succeeds in full as far as Narayandass Lohiya is concerned, but succeeds partly in respect of the Automobile Transport (Rajasthan) Private Limited Company in as much as the compensation is reduced from Rs. 30,000/- to Rs. 20,000/- (2) the appeal No. 105/1969 to the Motor Owners Insurance Company also succeeds partly that their liability shall be reduced from Rs. 20,000/- to Rs. 2,000/- only; (3) the cross-objection of the claimants is dismissed ; and (4) in the circumstances of this case, there shall be no order as to costs.