(2008) 06 SHI CK 0021

In the High Court Of Himachal Pradesh

Ishwar Lal Chaudhary and Another APPELLANT

Vs

National Insurance Company and Others RESPONDENT

Date of Decision : 18-06-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 103A, 31, 94

Citation : (2009) ACJ 37 : (2008) 2 ShimLC 310

Hon'ble Judges : Kuldip Singh, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Kuldip Singh, J.—Ishwar Lal Chaudhary subsequent purchaser of motor-cycle and Sajjan Singh who was driving the motor-cycle at the time of accident have filed the present appeal against the award dated 11.10.1993 passed by learned Motor Accident Claims Tribunal-II, Solan, Camp at Nalagarh in MAC Petition No. 16-NL/2 of 1990/1989 awarding a sum of Rs. 65,000/- alongwith interest at the rate of 12% per annum from the date of petition to claimants Bali Mohd. and Sairan parents of deceased Suleman. The liability of the appellants has been held to be joint and several and the insurer has been exonerated from the liability to pay compensation.

2. The facts in brief are that Suleman aged about 19 years who was riding on a bicycle on 17.4.1989 was hit by motor-cycle bearing registration No. CHN-7437 at about 7 a.m. opposite Hypine Carbon Factory near Nalagarh. Suleman sustained multiple injuries including a head injury, he was brought to Nalagarh Hospital where he succumbed to his injuries, Bali Mohd. and Sairan parents of the deceased filed claim petition u/s 110(A) of Motor Vehicles Act, 1939 (for short Act) claiming Rs. 2,00,000/- compensation along with interest. It was alleged that motorcycle at the time of accident was registered in the name of Arvind Kumar who sold it to Tilak Raj Kakkar and the latter sold the same to Ishwar Lal Chaudhary. At the time of accident the motor-cycle was being driven rashly and negligently by Sajjan Singh. The National Insurance Company is the insurer of the motor-cycle.

3. Arvind Kumar registered owner of the motor-cycle in his written reply has pleaded that he sold the motor-cycle to Tilak Raj Kakkar and according to his information Tilak Raj Kakkar had further sold the motorcycle to Ishwar Lal Chaudhary, therefore, Arvind Kumar deinied his liability to pay any compensation. Ishwar Lal Chaudhary and Sajjan Singh denied that the accident took place due to rash and negligent driving of Sajjan Singh. Their case is that a truck came from behind and hit both motor-cycle as well as bicycle on which deceased Suleman was riding which caused fatal injuries to the cyclist as well as multiple injuries to Sajjan Singh. They pleaded that motor-cycle was insured with National Insurance Company vide insurance certificate and policy dated 14.4.1989. According to Insurance Company the insurance became effective from 19.4.1989. It has also been pleaded that the insurance of the motorcycle was in the name of Arvind Kumar who was not the owner of the motor-cycle at the time of accident, therefore, insurance company is not liable to indemnify Ishwar Lal Chaudhary, who was the owner of the motor-cycle at the time of the accident. The Insurance Company also took objection of validity of registration certificate of the motorcycle at the time of the accident as well as that Sajjan Singh was not possessing a valid driving licence. The Insurance Company has also taken the plea of collusion between the claimants on one side and Arvind Kumar, Ishwar Lal Chaudhary, Sajjan Singh on the other side. In these circumstances. Insurance Company has denied the liability to pay the compensation. The learned Tribunal has framed the following issues:

1. Whether Shri Suleman died due to the rash and negligent driving by respondent No. 3 Sajjan Singh of vehicle/motor-cycle No. CHN-7437, as alleged? OPP.

2. Who was the owner of the vehicle No. CHN-7437 at the time of accident? Onus kept common on petitioner and respondents.

3. Whether the petitioners are entitled to any compensation, if so, to what amount and from whom? OPP.

4. Whether the Insurance Company, respondent No. 4 is not liable to pay the compensation, as alleged by it in the written reply? OPR.

4. The learned Tribunal ultimately allowed the petition as noticed above, hence present appeal. In the appeal Bali Mohd. and Sairan filed Cross-objections and claimed enhancement of the compensation. Sairan died during the pendency of the appeal/cross-objections and her name was ordered to be deleted on 20.9.1995 as her legal representative was already on record.

5. On 25.8.2004, this Court directed the Tribunal to record the evidence of Insurance Company as to the validity of the certificate of insurance Ex. R-4 and the conflict as to the dates of the commencement of the insurance in certificate of insurance Ex.R-4 and policy of insurance Ex. R-3, and if the insurance company led evidence, to record the rebuttal evidence of the other parties and then submit report whether the certificate of insurance Ex.R-4, is a valid

certificate of insurance and what is the date of commencement of insurance. The Tribunal vide order dated 28.9.2004 has ordered that evidence of insurance company was not present. In terms of the order dated 25.8.2004 of this Court, the right of insurance company to adduce evidence was closed and the record was sent back to this Court. The Tribunal vide report dated 28/30.9.2004 has reported that insurance company has led no evidence as to the validity of the certificate of insurance Ex.R-4 or the conflict of the date of the commencement of the insurance.

6. We have heard Mr. Ankush Sood, learned Counsel for the appellants, Ms. Devyani Sharma, learned Counsel for respondent No. 1 and Mr. Romesh Verma, learned Counsel for respondent No. 3 in the appeal as well as in Cross-objections and gone through the record. Mr. Ankush Sood, learned Counsel for the appellants has submitted that negligence of Sajjan Singh while driving motor-cycle has not been proved. He has also submitted that the insurance company has led no evidence despite the opportunity given by this Court vide order dated 25.8.2004 regarding the commencement of insurance of motor-cycle bearing registration No. CHN 7437. In these circumstances, it has been proved on record that the insurance of the motor-cycle had commenced on 14.4.1989 as per certificate of insurance Ex.R-4. The accident took place on 17.4.1989 and on that date the motorcycle was duly insured and therefore, insurer is liable to indemnify the insured. He has submitted that no fault can be found with the insurance of the motor-cycle in the name of Arvind Kumar registered owner of the motor-cycle who had insurable interest in the motor-cycle on the date of commencement of insurance vide Ex. R-4 and Ex. P-3 and on the date of accident dated 17.4.1989. He has submitted that learned Tribunal has erred in exonerating the registered owner of the motor-cycle and the insurer.

7. On the contrary Ms. Devyani Sharma, has submitted that it has been proved on record that Arvind Kumar had sold the motor-cycle to Tilak Raj Kakkar, who in turn had sold the motor-cycle to Ishwar Lal Chaudhary. On the date of accident Ishwar Lal Chaudhary was the owner of the motor-cycle, the policy on the date of accident was not in the name of Ishwar Lal Chaudhary, rather at the most it was in the name of Arvind Kumar who had no insurable interest. Therefore, on the basis of certificate of insurance Ex.R-4 and insurance policy Ex.R-3, the insurer is not liable to indemnify the insured. She has submitted that only owner of the vehicle can insure the vehicle in his own name, a person cannot get a vehicle insured in the name of a third person. She has submitted that in view of Section 103-A of the Act the insurer can be made liable, if transfer of vehicle and accident take place during the currency of insurance policy. According to her by invoking Section 103-A transferor and insurer of a vehicle can not be made liable in a situation where policy was over and transfer of vehicle takes place after the expiry of policy and thereafter transferee gets the vehicle insured in the name of transferor and accident takes place during the currency of such policy which was taken by transferee in the name of transferor. She has supported the impugned award. Mr. Romesh Verma, has submitted that less compensation has been

awarded to the parents of the deceased. He has submitted that Sairan mother of the deceased has also died and therefore, Bali Mohd. father of the deceased only is entitled to whole of the compensation as claimed in the Cross-objections.

8. In order to appreciate the rival contentions of the parties brief reference of evidence, which has come on record, is necessary. PW-1 Dr. M.S. Rana has proved post-mortem report Ex. PW-1/A concerning deceased Suleman. PW-2 Amar Singh No. 37 I.O. Police Station, Nalagarh has proved FIR Ex. PW-2/A and site plan of the place of occurrence Ex. PW-2/B. PW-3 Bali Mohd. alias Wall has stated that he is 50 years old and his son Suleman was 19 years of age who used to earn Rs. 35/- per day while working as labourer. He died in an accident involving motor-cycle on 17.4.1989. The age of his wife Sairan is 45 years. Suleman was his only son and he was totally dependant on Suleman. PW-4 Sadh Mohd. has stated that Suleman was hit by motor-cycle on 17.4.1989 which was being driven on wrong side and at a very high speed. Suleman suffered injuries in the accident and he died on way to hospital. In cross-examination he has denied that the motor-cycle was hit by a truck which came from behind, as a result of which Sajjan Singh and pillion rider fell on the road. PW-1 Arvind Kumar has stated that he sold the motor-cycle in question to Tilak Raj Kakkar on 12.4.1985 and delivered the motor-cycle along with its papers to Tilak Raj Kakkar on that date. Tilak Raj has issued certificate Ex. R-1 that he had taken possession of the motor-cycle. Tilak Raj has also sworn an affidavit Ex.R-2 to this effect. In cross-examination he has stated that he did not insure the motor-cycle after its sale to Tilak Raj. He did not inform the Registering Authority, Chandigarh regarding sale of motor-cycle to Tilak Raj. He has also stated that he did not inform the insurance company regarding the sale of the motor-cycle. RW-2 Naresh Kumar, Branch Manager National Insurance Company, Solan has appeared as a witness of the insurance company and has placed on record copy of Policy Ex. R-3. In cross-examination he has admitted that certificate of insurance Ex. R-4 was issued by an officer of his company. RW-3 Ishwar Lal Chaudhary appeared as a witness on behalf of Arvind Kumar and has stated that he purchased motor-cycle No. CHN-7437 from Tilak Raj Kakkar. The application for release of motor-cycle after the accident was given by him in the Court vide copy Ex. RW-3/B. In cross-examination he has stated that registration certificate of the motor-cycle was in the name of Arvind Kumar at the time of an accident. The owner of the vehicle was Arvind Kumar when accident took place. The insurance of the vehicle was in the name of Arvind Kumar. RW-4 Tilak Raj Kakkar has stated that motor-cycle No. CHN-7437 was purchased by him from Arvind Kumar in April 1987 and he further sold the motor-cycle to Ishwar Lal Chaudhary. He has also stated that registration certificate remained in the name of Arvind Kumar even after the purchase of the motor-cycle by him. He had made full payment to Arvind Kumar and he had also received full payment from Ishwar Lal Chaudhary. Only Rs. 200/- to Rs. 400/- remained for payment. Motor-cycle was delivered to Ishwar Lal Chaudhary when he sold it to him. He continued to get the motor-cycle insured in the name of Arvind Kumar. The copy

of judgment dated 30.4.1992 Ex.RX in criminal case was also tendered in evidence.

9. On the basis of evidence which has come on record it can be safely concluded that Arvind Kumar was the registered owner of the motor-cycle No. CHN-7437. He sold the motor-cycle to Tilak Raj Kakkar on 12.4.1985. Tilak Raj Kakkar sold the motor-cycle to Ishwar Lal Chaudhary in the year 1987. The accident took place on 17.4.1989. The Policy Ex.R-3 is in the name of Arvind Kumar and in Ex.R-3 date of commencement of policy is 19.4.1989 to 18.4.1990 and in certificate of insurance Ex.R-4 date of commencement is 14.4.1989. The burden of proof of breach of Policy is on the insurer. This Court vide order dated 25.8.2004 gave an opportunity to the insurer to lead evidence so as to prove the date of commencement of the Policy. The insurer has led no evidence despite the opportunity given by this Court. No doubt in Policy Ex.R-3 date of commencement of policy has been mentioned as 19.4.1989 but in certificate of insurance Ex.R-4 date of commencement is 14.4.1989. The insurer has not explained how the date of commencement 14.4.1989 has been recorded in certificate of insurance Ex. R-4. In these circumstances it is held that date of commencement of Policy of motor-cycle No. CHN-7437 is 14.4.1989 and not 19.4.1989. The accident took place on 17.4.1989, therefore, on the date of accident the motor-cycle was insured with the insurer. On the basis of material on record the learned Tribunal has rightly held that Suleman died of injuries sustained by him in motor-cycle accident which was being driven rashly and negligently by Sajjan Singh.

10. Ms. Devyani Sharma, learned Counsel for the insurer has submitted that the claimants cannot take benefit of the insurance of the motorcycle even on 17.4.1989 on the ground that on 17.4.1989 motor-cycle was insured in the name of Arvind Kumar who had no insurable interest in the motor-cycle. On 17.4.1989 Ishwar Lal Chaudhary was the owner of the motor-cycle and on that date there was no insurance in the name of Ishwar Lal Chaudhary who was the owner of the motor-cycle. Therefore, even in presence of Policy Ex. R-3 and certificate of insurance Ex. R-4 the insurer cannot be made liable to pay compensation to the claimants. Ms. Devyani Sharma has further submitted that insurer cannot be made liable in the present case by invoking Section 103-A of the Act. She has submitted that Section 103-A will apply only if both transfer of vehicle and accident take place during the currency of insurance policy which was in vogue at the time of transfer of vehicle. In the present case the transfer of motor-cycle had not taken place during the currency of insurance policy which might have been taken by Arvind Kumar when he sold the motor-cycle. There is substance in the submission of Ms. Devyani Sharma that by invoking Section 103-A insurer cannot be made liable in the present case. It is no body''s case that transfer of motorcycle took place when Arvind Kumar was having policy of the motorcycle in his own name and during currency of that insurance he sold the motor-cycle and accident took place before expiry of the policy of insurance which might have been taken by Arvind Kumar.

11. There is another aspect of the case. The transferor and the transferee of the vehicle u/s 31 of the Act are required to fulfill their respective statutory obligations, by giving information to the concerned Registering Authority under that Section. In Sub-section 1-A of Section 31 it has been provided that if the transferor or the transferee fails to report to the Registering Authority the fact of transfer within the specified period then the Registering Authority may require the transferor or the transferee as the case may be to pay in lieu of any action that may be taken against the transferor or the transferee u/s 112, such amount not exceeding Rs. 100 as may be prescribed under Sub-section 1(C). It has also been provided that action u/s 112 shall be initiated against the transferor or transferee where they failed to pay the said amount. The Sub-section 2 of Section 31 further provides that a Registering Authority other then the original Registering Authority making any such entry shall communicate the transfer of the ownership to the original Registering Authority. In the present case it has not been proved on record that transferor or transferee discharged their statutory obligations by supplying requisite information to the concerned Registering Authorities of motor-cycle regarding the transfer of motorcycle from Arvind Kumar to Tilak Raj Kakkar and then to Ishwar Lal Chauhdary.

12. On behalf of the insurer support has been taken from Ashok Kumar and Another Vs. Mohan Lal Kehar and Another, on the point that if somebody takes a policy in the name of another person, then the insurance company would not be answerable to indemnify such person who has obtained the policy under the name of another person. Smt. Narbada and Ors. v. Smt. Rajni Kanta and Ors. Latest 2004 MHLJ 1181, has been cited to reiterate the submission that insurance policy can be issued in the name of owner of the vehicle and none else. As a general proposition of law, it is true that one person cannot obtain insurance policy of a vehicle in the name of another person and only the real owner can obtain insurance policy of the vehicle. The precise objection of the insurer in the present case is that since Arvind Kumar had no insurable interest in the motor-cycle, therefore, Ishwar Lal Chaudhary could not obtain the policy in the name of Arvind Kumar. It is not the objection of the insurer that Ishwar Lal Chaudhary under no circumstance could obtain policy of motor-cycle in the name of Arvind Kumar registered owner of motor-cycle even as his representative/ agent. In common law a person without legal disability can represent another person and for creating agency in common law writing is always not necessary unless it is the requirement of law. The authority can be inferred from conduct also. In the present case Ishwar Lal Chaudhary has obtained insurance policy of the motor-cycle in the name of Arvind Kumar. Arvind Kumar has no where stated that he never authorized Ishwar Lal Chaudhary to take insurance policy of the motor-cycle. Ishwar Lal Chaudhary has appeared as a witness and he was not cross-examined on behalf of the insurer that even as a representative/agent of Arvind Kumar he was not authorized to obtain insurance policy of the motor-cycle. In these circumstances it can be safely inferred that Ishwar Lal Chaudhary was authorized as representative/agent of Arvind Kumar to obtain insurance

policy of the motor-cycle.

13. The question now left is whether despite the fact that Ishwar Lal Chaudhary had acted as representative/agent of Arvind Kumar for obtaining insurance policy of the motor-cycle but in law could Ishwar Lal Chaudhary obtain the insurance policy of the motor-cycle in the name of Arvind Kumar. In other words at the time of taking of insurance policy in the name of Arvind Kumar whether Arvind Kumar had insurable interest in the motor-cycle. In G. Govindan Vs. New India Assurance Co. Ltd. and Others, the Supreme Court has approved following ratio of the Andhra Pradesh High Court in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others,

It is incorrect to assume that the moment the title of the vehicle passes to the transferee the statutory obligation u/s 94 ceases and the original owner is no longer guilty of cause or allowing the purchaser to use the vehicle. The question is when does the statutory liability cease? The mere passing of title in the vehicle to the transferee will not put an end to this liability. For this purpose we must examine two more provisions of the Act. u/s 31 the transferor shall within 14 days of the transfer report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee and within forty-five days of the transfer forward to the registering authority no objection certificate obtained by him u/s 29-A. Section 29-A contemplates issuing of no objection certificate both on the occasion of assignment of a new registration mark and also while transferring the motor vehicle. The registering authority is enjoined to issue a certificate within a period of thirty days and if no orders are passed the registering authority shall be deemed to have granted the no objection certificate. The failure to comply with Section 31 is made punishable u/s 112. However, as an alternative measure it also provided u/s 31 (1-A) that if the transferor or transferee fails to comply with the requirements of Section 31 they have to pay a fine of Rs. 100 or the prescribed amount considering the period of delay on their part by way of penalty. It is pertinent to note that Section 31 was amended by Act 100 of 1956. u/s 31 as it stood prior to this amendment in 1956 only the transferee was required to report the transfer of the ownership and was expected to forward a certificate of registration to the registering authority within thirty days of the transfer. Prior to this amendment there was no statutory obligation on the transferor as is now provided in Sub-Clause (a) of Sub-section (1) of Section 31 to notify the transfer to the registering authority within whose jurisdiction the transfer is effected. Thus we see till the transferor fulfils the statutory obligation u/s 31 his liability continues. Further he is the ostensible owner of the vehicle so long the registration is not changed. The liability to pay tax continues irrespective of his rights against the transferee for reimbursement. In fact it was ruled in Northern India General Insurance Co. Ltd. v. Kanwarjit Singh, that a registered owner would have sufficient interest to effect insurance because he is the ostensible owner. The question raised in that case was whether the registration in favour of benamidar is valid when the registered owner of the vehicle is only benamidar when the real owner never obtained the insurance. It was held that the registered owner has sufficient interest to effect insurance because he is ostensible owner and there is nothing in Section 94 which could be interpreted to mean that it is only the real owner who could effect the insurance. Any person who uses the vehicle or allows any other person to use the vehicle could also get the insurance effected. Thus, it is seen the public liability to notify the transfer and secure no objection certificate u/s 31 read with Section 94, would make the original owner retain the insurable interest.

14. It is thus clear that till the transferor fulfils the statutory obligation u/s 31 his liability continues. The registered owner has sufficient interest to effect insurance and there is nothing in Section 94 of the Act that only the real owner could effect the insurance. Any person who uses the vehicle or allows any other person to use the vehicle could also get the insurance effected. It has been established as fact in the present case that transferor Arvind Kumar had not fulfilled his statutory obligation u/s 31 of the Act, and he continued to be ostensible owner of the vehicle so long the registration was not changed from his name to the transferee. Therefore when vehicle was got insured in the name of Arvind Kumar, he had insurable interest in the vehicle. It has also come on record that after sale of motor-cycle by Arvind Kumar to Tilak Raj Kakkar and by Tilak Raj Kakkar to Ishwar Lal Chaudhary, the motor-cycle was always insured in the name of Arvind Kumar original transferor of the motor-cycle. Arvind Kumar never questioned the authorities of Tilak Raj Kakkar or Ishwar Lal Chauhdary to insure the motor-cycle in the name of Arvind Kumar. Arvind Kumar has thus impliedly consented insurance of the motor-cycle in his name, whenever it was insured in his name by the transferee. Arvind Kumar continued to remain registered owner of the moter-cycle, in asmuch as he never informed the transfer of motor-cycle to the concerned Registering Authorities u/s 31 of the Act. Arvind Kumar transferor of motor-cycle had insurable interest in the motor-cycle and therefore, contention of learned Counsel for the insurer has no force that Arvind Kumar had no insurable interest in the motor-cycle. Therefore, policy Ex.R-3 and certificate of insurance Ex.R-4 are binding on insurer.

As a result of above discussion, it is held that motor-cycle at the time of accident on 17.4.1989 was legally covered by the policy of insurance, at the time of accident of the motor-cycle on 17.4.1989 the motor-cycle was covered under effective policy Ex. R-3 and certificate of insurance Ex.R-4. The learned Tribunal has not appreciated the legal and factual position properly in exonerating the liability of insurance company to pay compensation on account of death of Suleman.

15. Mr. Romesh Verma, learned Counsel for respondent No. 2-Cross-objector has submitted that less compensation has been awarded to the claimant in view of proof of income of the deceased. The claimant PW-3 Bali Mohd. has stated that his son Suleman was 19 years of age and used to earn Rs. 35/- per day. Bali Mohd. has given his own age 50 years and that of his wife Sairan 45 years. In

the normal course Suleman was to be married shortly had he not died. It has been held in New India Assurance Company v. Prem Chand and Ors. Latest 2007 MHLJ 1046, that when the parents are the claimants, their dependency normally is to be assessed at 1/3rd of the total income. In that case keeping in view of the age of mother in between 45 and 50 years and that of father 52 years multiplier of 12 was applied. Applying the ratio of New India Assurance case (supra), even if, monthly income of the deceased is taken as held by learned Tribunal the surviving claimant Bali Mohd. is not entitled to more amount what has been awarded by learned Tribunal. Thus, surviving claimant Bali Mohd. is not entitled to any enhancement of compensation. Resultantly, cross-objections are dismissed.

16. No other point was urged.

17. The result of the above discussion, the appeal is partly allowed, The award dated 11.10.1993 passed by learned Motor Accident Claims Tribunal-II, Solan, Camp at Nalagarh in MAC Petition No. 16-NL/2 of 1990/1989 is modified. An award of Rs. 65,000/- along with interest at the rate of 12% per annum from the date of petition is passed in favour of respondent No. 3, claimant Bali Mohd. alias Wali and against appellants as well as National Insurance Company respondent No. 1 and respondent No. 2 jointly and severally. The motor-cycle at the time of accident was insured with respondent No. 1 National Insurance Company, therefore, whole of the award amount along with interest shall be paid by respondent No. 1 National Insurance Company to respondent No. 3, claimant Bali Mohd. alias Wali. The Cross-objection No. 235 of 1994 are dismissed.

