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**(2006) 09 GAU CK 0101**  
**In the Gauhati High Court**

Jagjit Kaur and Another

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

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**Date of Decision :** 13-09-2006

**Acts Referred:**

Contract Act, 1872 — Section 124

Motor Vehicles Act, 1988 — Section 145, 146, 147, 148, 149

**Citation :** (2007) 2 GLT 142

**Hon'ble Judges :** H.N. Sharma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

H.N. Sarma. J.

1. This appeal arises out of the judgment and decree passed in MS No. 1/97 dated 24.5.99 by the learned District Judge, Dhemaji, dismissing the suit of the appellants/plaintiffs.

2. I have heard Mr. A.S. Choudhury, learned senior counsel for the appellants. None appears on behalf of the respondent insurance company.

3. The aforesaid Money Suit was filed pleading, inter alia, that the plaintiff is the owner of a vehicle (Truck) bearing registration No. AR-07/0113 (previous registered as AMB-4593). The plaintiff become owner of the vehicle by purchasing it from the original owner Shri Ram Sevak Gupta. The said vehicle met with an accident on 13.7.92 at Tirban Dapo, West Siang District, Arunachal Pradesh and the said fact of accident was immediately reported to the nearest Police Station. It is further pleaded that at the time of the accident, the vehicle was driving (sic.) by a competent driver having valid license and the vehicle was covered by the comprehensive insurance policy No. 13782/31/21/1916 dated 12.9.91 in the name of the earlier owner Sri Ram Sevak Gupta. The appellant spent a sum of Rs. 5,222.00 in pulling up the vehicle from the capsize and also a sum of Rs. 3,000.00 for towing the vehicle to the site of the repairing at

Silapathar. To indemnify the loss and damage caused to the vehicle due to the aforesaid accident, the plaintiff approached the defendants under whom the vehicle was insured to settle the claim but without any result. Finally, on 30.3.95 the defendants having refused to entertain the claim of the plaintiff, the suit claiming Rs. 2,12,611.72 in total including damage, interest and loss for business.

4. Summons having been served, the defendants contested the suit by filing written statements denying their liability to indemnify the alleged loss to the plaintiff. Though it was not denied that the vehicle was insured in the name of Shri. Ram Sevak Gupta, the original owner but the transferee/plaintiff did not get any novation of contract of insurance in respect of the property and hence, the Insurance Company is not entitled to indemnify any loss in the absence of such novation of contract. On the basis of the pleadings, the learned trial Court framed the following issues:

1. Whether the vehicle of accident was under coverage of policy at the time of accident?

2. Whether the claimant is the owner of the vehicle?

3. Whether the claim is barred by limitation?

4. Whether the amount claim is justified?

5. During the course of trial, the plaintiff examined 2 witnesses and exhibited some documents including the policy of the Insurance as Exhibit-3. The defendants also examined 1 witness and exhibited one document which contained the provisions of general Insurance guidelines so far it relates to transfer of Insurance policy and procedure to be adopted for transfer of the policy. After conclusion of the trial, the learned trial Court decided Issue Nos. 2 & 3 in favour of the plaintiff and Issue Nos. 1 & 4 against the plaintiff resulting dismissal of the suit, vide Judgment and order dated 24.5.99. Hence, this appeal.

6. Mr. Choudhury, learned Senior counsel, submits that the learned trial Court committed error in law and facts in deciding the Issue No. 4 thereby denying the claim of the appellant. Mr. Choudhury argued that it is an undisputed fact that the plaintiff intimated the transfer of the insured vehicle in his name from Shri Ram Sevak Gupta as required u/s 157 of the Motor Vehicles Act, 1988 and once such intimation is given it is the duty, obligation and liability of the Insurance Company to record the same of transferee and consequently, to indemnify any loss suffered by such transferee during the continuance of the policy. Submitting in the aforesaid manner, Mr. Choudhury prays for setting aside the finding in Issue Nos. 1 & 4 and for passing a decree in favour of the plaintiff.

7. In the conspectus of the facts of the case and submissions made by the learned Senior counsel as well as the dispute that has arisen for adjudication in this appeal in view of the dismissal of the suit by the learned trial Court, the point that falls for consideration is as to whether the defendant is liable to indemnify the appellants during the continuance of the earlier Insurance policy.

8. Although the records of the case disclose that the intimation was given by the appellant within 21 days of the transfer against the necessary statutory limitation of 14 days as required u/s 157 of the Act, submission of such intimation has not been denied by the defendants. In fact, vide Ext-10 the defendants have admitted that such intimation was given by the appellant that was inadvertently not attended to by them. The learned trial Court in deciding Issue No. 2 held the appellants to be the owner of the vehicle and the accident in question was also found to have been proved. But the learned trial Court on interpretation of Section 157 of the MV Act accepted that the provisions contained in Clause-10 of the General Regulations of the Tariff Advisory Committee is applicable in the case of transfer of policy and held that the claim of the appellant is not covered without there being a fresh policy issued in their names.

9. Section 157 of the MV Act falls within Chapter-11 of the MV Act under the caption "Insurance of Motor Vehicles Against Third Party Risks". The said Chapter-11 contains Sections 145 to 164 of the Act. Section 146 provides the necessity for insurance of a vehicle against party risk, Section 147 deals with the requirements of policies and limits of liability. Section 150 relates to right of third parties against insurers on insolvency of the insured. Section 151 provides for duty to give information as to Insurance as and when required. Section 156 deals with the effect of certificate of Insurance and Section 157 provides for transfer of certificate of insurance and giving information about the change of ownership of vehicle covered under an Insurance policy. It is further provided therein that such transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of Insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of Insurance in regard to the transfer of Insurance.

10. Section 157 of MV Act has been interpreted by the Apex Court in the case of M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd., and the Hon"ble Chief Justice Ahmedi speaking for the Court has held as follows:

There can be no doubt that the said chapter provides for compulsory Insurance of vehicles to cover third party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of Insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party i.e., person other than the insured. This is clear from Section 147(1)(b)(i) which clearly refers to "damage to any property of a third party" and not damage to the property of the "insured" himself. And the limit of liability fixed for damage to property of a third party is rupees six thousand only as pointed out earlier. That is why even the claims Tribunal constituted u/s 165 investigated with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising,

or both. Here also it is restricted to damage to third party property and not property of the insured. Thus, the entire Chapter-XI of the New Act concerns third party risks only. It is, therefore, obvious that insurance is compulsory only in respect of third party risks since Section 146 prohibits the use of a motor vehicle in public unless there is in relation thereto a policy of Insurance complying with the requirements of Chapter-XI. Thus, the requirements of that chapter are in relation to third party risks only and hence the fiction of Section 157 of the New Act must be limited thereto. The Certificate of Insurance to be issued in the prescribed form must, therefore, relate to third party risks. Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaiah's case because the transferee-insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that Section 157 of the New Act provides that the certificate of insurance together with the policy of Insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred". If the policy of Insurance covers other risks as well, e.g. damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter-XI of the New Act and in realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of Insurance in relation thereto to transferee, the insurer was not liable to make good the damage to the vehicle. The view taken by the National Commission is therefore correct.

11. Thus, in view of the ratio of the aforesaid decision and the scheme provided under the MV Act, it is seen that if a policy, being comprehensive policy, covers other risks such as damage caused to the vehicle or the insurer himself, it falls out side the Chapter-11 and, therefore, Section 157 of the Act cannot be pressed into service.

12. The basic theory of the Insurance contract in such respect is the contract of indemnification. Section 124 of the Contract Act defines the contract of indemnity according to which when one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity. For the purpose of availing the benefit of indemnification, it is absolutely necessary that a specific contract with the promisor is required to be made, which is lacking in the instant case. On such principle, the insurers, are adopting the general regulations issued by the Tariff Advisory Committee which provides that on transfer of a vehicle the benefit under the policy in force on the date of transfer shall automatically accrue to the new owner. If transferee is not entitled to the benefit of the bonus or subjected to Malus already shown on the policy, the recovery of the differences between his entitlement (if any) and that shown on the policy shall be waived till the expiry of

the policy. However, on expiry and/or termination of the existing policy the transferee will be eligible for bonus or subjected to Malus as per his entitlement. If the transferee wants to change the policy in his name it may be done on getting acceptable evidence of sale and a fresh proposal from duly filled and signed. If a new Certificate of Insurance in the transferee's name is required, his old Certificate of Insurance must be surrendered and a fee of Rs. 15.00 must be collected.

13. In the instant case no such specific contract of indemnity has been entered into between the appellant and the insurance company. The appellant is not entitled to get the benefit of indemnity merely by giving information u/s 157 of the MV Act without anything more and the said provision u/s 157 is applicable so far it relates to a claim of a third party. In view of the above legal and factual position, the learned trial Court has not committed any error of law or facts in dismissing the claim of the appellant.

14. For the foregoing reasons, I do not find any merit in this appeal and accordingly dismissed.

No costs.