
(1987) 05 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No. 554 of 1986 and Cross-objection No. 89-C/II of 1986

Labh Singh

APPELLANT

Vs

Sunehri Devi and Others

RESPONDENT

Date of Decision : 27-05-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 103, 103A, 110A, 29A, 31

Citation : (1987) 2 ACC 282 : (1988) ACJ 170 : AIR 1988 P&H 149 : (1989) 65 CompCas 273

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Judgement

1. This first appeal is directed against the award dt. 29-3-1986 made by the learned Motor Accidents Claims Tribunal, Kurukshetra (for short "the Tribunal") and has been filed by Labh Singh--one of the owners of the offending vehicle. One of the grievances made in the appeal is that the learned Tribunal wrongly absolved the National Insurance Company, respondent 4(for short "the Insurance Company") of its liability. When the appeal came up for motion hearing before the Division Bench, notice was issued to the insurance Company alone which means that as against Smt. Sunehri Devi and Jai Bhagwan. claimant-respondents 1 and 2 the appeal was dismissed. Roshan Lal respondent No. 3 was the driver and also a co-owner of the offending vehicle. He filed cross-objection No. 89-CII of 986. Notice of the same was issued to the claimants and these were directed to come up with the main appeal. So, this judgment shall dispose of the appeal as also the cross-objections mentioned above.

2. At the outset it may be mentioned that Shri P.S. Chauhan, counsel for respondent 3, who is also counsel for the appellant, contended that since notice of the cross-objections was issued to the claimants, it is open to respondent 3 to assail the finding of the learned Tribunal to the effect that respondent 3 was negligent in driving the vehicle and determining the amount of compensation payable to the claimant respondents at Rs. 40 000/- . I do not agree with this

submission. The appeal was admitted only as against the Insurance Company. Respondent 3 who has filed the cross-objections has interest identical to that of the appellant. The scope of his cross-objections cannot be enlarged beyond what can be contended in the appeal. I, therefore, reject this submission.

3. Before I come to grips with the submission made by the learned counsel for the appellant as regards the, liability of the Insurance Company, I find it necessary to narrate in brief the facts of the case. Smt. Sunehri Devi respondent 1 and her husband Jai Bhagwan respondent 2 filed the claim application before the learned Tribunal under S. 110A of the Motor Vehicles Act, 1939(for short "the Act") for compensation in respect of the death of their two minor sons, namely, Rakesh Kumar and Vicky aged 7 and 5 years respectively in the motor accident. They were the residents of village Bandrana, tehsil Kaithal. district Kurukshetra. Respondent No. 1 along with her two aforesaid children had gone to see her parents at village Jirbari. On 7-6-1984 at about 5.30 A.M. she along with the two children had gone out in the fields to ease themselves. After answering the call of nature they were returning from the fields and were near the G.T. Road when car No. CH-2614 being driven by respondent No. 3 came at a high speed from Pipli side and struck against the minor children. Both of them received multiple serious and grievous injuries on various parts of their bodies. Vicky was removed to the L.N.J.P. Hospital at Kurukshetra where he died on the same day as a result of the injuries sustained by him in the accident. Rakesh Kumar was, however, referred by the Civil Hospital. Kurukshetra, to the P.G.I. Chandigarh, where he died on 9-6-1984. A case F.I.R. No. 1,10 dt. 7-6-1984 under Ss. 279/338/304A, I.P.C. was registered at Police Station, Sadar Thanesar. It was averred in the claim application that the accident took place due to rash and negligent driving of the car by respondent 3. Claim for compensation to tune of Rs. 1,00,000/- along with interest and costs was made by respondents 1 and 2 on account of the death of their two minor children. The appellant and respondent 3 filed a joint written statement denying the accident. They also denied that they were the owner and owner-cum-driver respectively of the offending car. It was contended that the claim petition was false and respondents 1 and 2 had no locus standi to file the same. It was further maintained that the claim petition was barred by limitation.

4. The Insurance Company in its written statement pleaded that there was no cause of action against it and that the claim was bad for misjoinder of unnecessary parties and non-joinder of necessary parties. It was pleaded that the insurance was in the name of the previous owner and there was no change in the policy regarding the change of ownership and, therefore, the Insurance Company is protected under S. 103 of the Act. On merits, it was denied that the accident had been caused due to rash and negligent driving of the vehicle. Replications were filed by respondents 1 and 2 to both the written statements. On the basis of the averments made in the pleadings, the learned Tribunal framed the following issues :--

1. Whether the accident in question was caused due to the rash and negligent driving of Car No. CH-2614 by respondent 1.? OPP
2. Whether the claimants are entitled to recover any amount of compensation ? If so to what amount and whom ? OPP
3. Whether there is no cause of action against the insurance company "? OPR
4. Whether the insurance company is protected under S. 103 of the Motor Vehicles Act in view of the sale of the car by Shamsheer Parkash to Labh Singh "? OPR 3.
5. Whether the claim petition is bad for non-joinder and misjoinder of necessary parties ? OPR
6. Whether the claimants have no locus standi to file the claim petition ?OPR 1 & 2.
7. Whether the claim petition is not maintainable in the present form ? OPR
8. Whether the claim petition is time barred ?OPR
9. Relief.

5. Issues Nos. 1 and 2 were decided in favour of claimant-respondents 1 and 2 and against the appellant and respondent 3. Issues Nos. 3 and 4 were decided in favour of the Insurance Company and it was held that there is no cause of action against it and that because of the sale of the car by its original owner Shamsheer Parkash to Labh Singh appellant the Insurance Company is protected under S. 103 of the Act. Issues Nos. 5, 6 and 7 were decided in favour of claimant-respondents 1 and 2 as no evidence was led on these issues by any of the respondents to the claim petition. Issue No. 8 was also decided in favour of respondents 1 and 2 and it was held that the claim petition was well within time. The appellant and respondent No. 3 were jointly and severally held liable for the payment of compensation amounting to Rs. 40,000/- to respondents 1 and 2 besides interest at the rate of 12% per annum from the date of institution of the claim petition besides costs which were assessed at Rs. 200/- .

6. I have heard the learned counsel for the parties and have also gone through the record of the Tribunal. The learned counsel for the appellant has assailed the finding of the learned Tribunal on issues Nos. 3 and 4. He submits that Shamsheer Parkash, the previous owner of the offending car, continued to be liable in respect of third party risk so long as the insurance policy was not transferred by the Insurance Company in their favour as the transferees of the vehicle. He further submitted that under S. 96(2) of the Act it was not open to the Insurance Company to defend its liability on the ground that because of transfer of the car by the original owner, whose liability was insured by it, to the appellant and respondent 3 its liability ceased for the reason that the insurance policy had not been transferred in favour of the transferees of the vehicle. For these submissions, he placed reliance on a Full Bench judgment of the Andhra Pradesh

High Court in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, . The learned counsel for the insurance Company, on the other hand, submitted that in view of the provisions of S. 103 read with S. 103A of the Act, because of transfer of the vehicle by the original owner and in view of the fact that there is no evidence on the record that the original owner ever sent any application in the prescribed form to the Insurance Company for the transfer of the certificate of insurance to the transferees, the liability of the Insurance Company ceased.

7. Having heard the learned counsel for the parties, I find that there is no force in the appeal and the cross-objections and these must fail. In Madineni Kondaiah's case it has been held that sub-section (2) of S. 96 should be interpreted in narrow terms to hold that the Insurance Company cannot raise defences other than what is set out in sub-sec.(2); that it cannot raise the defence that the policy has lapsed because of sale of vehicle; it cannot contend that its contract is with the transferor and, therefore, it is not liable to redeem the compensation payable by the transferee, as such defences are not contemplated under S. 96(2) of the Act. There is a catena of authorities taking a contrary view which has been discussed elaborately by this Court in New India Assurance Co. Ltd. v. Jolly Engineers and Contractors (P) Ltd. Amritsar After dis(1985) 87 PLR 187. cussing the case law pro and con the above proposition,, it was held that it is only where the liability of the insured subsists that the question of the insurer satisfying the claim or indemnifying the insured arises. It is cases where the liability of the insurance is established that the provisions of sub-section (2) of S. 96 as to the grounds on which the insurer may defend himself shall. become applicable. In case, however, where the plea is that the insured himself was not liable for the reason that he had transferred the vehicle by the date of the accident, the restrictions contained in sub. section (2) of S. 96 as regards the defence open to an insurer cannot apply. That sub-section only deals with grounds on which the insurer may avoid his liability even though the person insured is liable for the accident. Again to canvass his second submission, the learned counsel placed reliance on Madineni Kondaiah's case (supra) wherein the Full Bench of the Andhra Pradesh High Court has held that the public liability of transferor so far as third party risk is concerned continues till he discharges statutory obligation under Ss. 29-A and 31 read with S. 94 of the Act and that the insurance policy does not lapse on transfer of the vehicle so far as the third party risk is concerned. When due respect to the learned Judges in Madineni Kondaiah's case. AIR 1986 A.P 2) I prefer to follow the interpretation on the law placed in M/s. Jolly Engineers" case 1985(87) PLR 187. The case law was discussed therein succinctly thus--

"The overwhelming weight of judicial precedent, however, points to the contrary view, namely, that the change of ownership of a vehicle puts an end to the policy of insurance even if the original policy-holder continues to be shown as the registered owner of the vehicle concerned. The rationale behind this being that a policy of insurance is a contract of personal indemnity and the insurance cannot, therefore, be compelled to accept responsibility in respect of a third party, who

may be quite unknown to him. Mr. L.M. Suri, counsel for the Insurance Company cited a string of authorities in support. It would be apt to begin with the judgment of the Division Bench of the High Court of Rajasthan in *Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others*, where the earlier view of that Court in *Padma Devi v. Gurbaksh Singh* 1973 Acc CJ 460 ; AIR 1973 Raj 317) was expressly dissented from. It was pointed out in this behalf that in *Padma Devi's* case (supra), the Court followed the judgment of the Single Bench of the High Court of Delhi in *Vimal Rai v. Gurcharan Singh* 1967 Acc CJ 115, which was however later overruled by a Division Bench of that court. in *Insurance Company Limited Vs. Vimal Rai and Others*, where it was held that the endorsement of the transfer of vehicle in the records of the registering authority was not a condition precedent to its transfer nor did it deal with the legality or authority of the transfer, which fell to be determined by other provisions of law. It was accordingly held that it was the real owner who was thus liable whether or not he was the registered owner of the vehicle too. This view was followed and approved in this case too.

As regards the *Madras Motor Insurance Co. Ltd., Madras Vs. Mohamed Mustafa Badsha and Others*, what was stated there too was expressly dissented from by the Division Bench of the High Court of Madras in *Hema Ramaswami Vs. K.M. Valarance Panjani and Others*, where it was held that it did not lay down correct law. The view expressed being that if there is a transfer of a vehicle, the insurance policy taken by the transferor cannot be taken to subsist unless the benefits of the policy are also transferred to the transferee. It was further observed that S. 96 of the Motor Vehicles Act, 1939 did not warrant the view that a sale or transfer of an insured car by the insured during the currency of the policy did not terminate the policy. The earlier view of that Court in *The South India Insurance Co., Bombay Vs. Lakshmi and Others*, was reiterated where it had been laid down that if there has been a transfer of ownership of the vehicle before the date of the accident, the liability for the accident cannot be fastened on the transferor even though the transfer had not been recognised by the regional transferring authority and the registration has continued in the name of the transferor.

A similar view was expressed by the High Court of Madhya Pradesh in *Balwant Singh v. Jhannubai* 1980 Acc CJ 126, where it was held, "It is also well settled law that a contract of insurance is nothing but a contract of indemnity. The policy is with reference to a specified vehicle owned by the policy-holder and consequently the policy remains effective while the policy holder retains an interest in the vehicle. In the absence of any express stipulation to the contrary in the policy the moment the insured parts with the car, the policy relating to it lapses. The insurance policy being a contract of personal indemnity, the insurer cannot be compelled to accept responsibility in respect of third party who may be quite unknown to them."

8. It was thus held that the position of law is well settled that transfer of

ownership of a motor vehicle puts an end to the liability of the Insurance Company with which it was insured even though the insured continues to be shown as the registered owner of the vehicle in the records of the registering authority. The liability for the accident, besides that of the person actually causing it, is of the real owner whether or not he also happens to be the registered owner thereof.

9. It is required to be noted here that initially in their joint written statement the appellant and respondent 3 denied that they were the owners of the offending car. It was only during the course of his statement in the witness box as R.W. 1 that respondent 3 stated that he and the appellant are the owners of Car No. CH-2614 and he produced the insurance certificate and insurance policy Exs. R. 1 and R. 2 respectively. He denied that his car was involved in the accident. He further, stated that he and the appellant had purchased the car a week earlier to the date of accident. Section 103A of the Act provides for the contingency of transfer of an insured vehicle. It provides that the owner of the vehicle shall apply to the insurer that he proposed to transfer the motor vehicle and if within 15 days of the receipt of such an application by the insurer, the insurer has not intimated the insured his refusal to transfer the certificate of insurance and the policy to the transferee of the vehicle, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of" the person to whom the motor vehicle is transferred with effect from the date of its transfer. The principle underlying S. 103A was elaborated in *Oriental Fire and General Insurance Company Ltd. Chandigarh v. Thakur Dass*, F.A.O. No. 91 of 1980 decided on 14-12-1982 by S.S. Sodhi. J. (reported in ILR (1983) P&H 251) and it was held that the provisions contained therein are by their very nature beneficial and thus call for a liberal construction so as to advance the underlying object for their enactment. So, there is no escape from the conclusion that the provisions thereof are applicable to the transfer of a motor vehicle whether the request for the transfer of the policy of insurance is made before or after the transfer of the vehicle concerned. The fact that the request for the transfer of the policy and certificate of insurance was made after the transfer of the vehicle cannot result in any prejudice to the Insurance Company as the section provides it a period of 15 days to refuse the transfer of certificate of insurance.

10. In *National Insurance Co. Ltd. v. Pritam Singh and others*, F.A.O. No. 596 of 1982 decided on 7-1-1983, a Division Bench of this Court dealt with a situation where the transferor applied to the Insurance Company for transfer of the policy and the certificate of insurance to the transferee of the vehicle prior to the date of the accident and the Insurance Company did not refuse transfer of the policy and the certificate of insurance within a period of 15 days and in fact transferred the policy in favour of the transferee on 1-4-1980, i.e. after the date of the accident, the Insurance Company sought to ward off its liability on the ground that the policy of insurance had not been transferred in favour of the transferee of the vehicle on or before the date of the accident. The plea was not accepted

and it was inter alia held thus--

"The matter here is clearly covered by the provisions of S. 103A of the Motor Vehicles Act and in terms thereof, there is no escape from the conclusion that the contention raised is wholly devoid of merit. It is the admitted case here that the policy of insurance was transferred to the new owner Karnail Singh respondent. Section 103A of the Act lays down that such transfer must relate back to the date of the transfer of the motor vehicle concerned. The Insurance Company cannot thus be absolved of liability merely on the plea that the policy of insurance was transferred to respondent Karnail Singh on April 1, 1980, as upon the transfer of the policy the provisions of S. 103A of the Act relate it back to Feb. 25, 1980, that is, a date prior to the accident in the present case."

11. It is to be noted that the provision of S. 103A which governs the interregnum between the transfer of the name of the transferee of the insurance policy in the name of the transferee of the vehicle has not been adverted to in Madineni Kondaiah's case AIR 1986 A&P 62(supra).

12. It would result in chaotic situation if it is held following Madineni Kondaiah's case that so long as the registration of the motor vehicle as also the policy of insurance are not transferred in the name of the transferee of the vehicle the original owner and transferee of the vehicle shall remain liable in respect of the third party risk if the transferred vehicle is involved in an accident after the date of transfer. It has been held even in Madineni Kandaiah's case that it cannot be said that the transfer of a motor vehicle is incomplete till the registration is effected in favour of the purchaser. The transfer of the vehicle is governed by the provisions of Sale of Goods Act. In the absence of any agreement to the contrary, payment of price and delivery of vehicle make the sale complete and the title passes to the purchaser. The application to register the vehicle is for the purposes of controlling and regulating the movement of vehicles by the authorities under the Act and they do not stand in the way of passing title to the purchaser.

13. In my view, there is no void left in the provisions of the Act and S. 103A of the Act governs the period. between date of transfer and delivery of the vehicle by the original owner till the date of transfer of the policy of insurance by the insurer in the name of its transferee or till the refusal of the insurer to transfer the insurance policy, whichever is earlier.

14. In the present case, the appellant and respondent No. 3 have miserably failed to bring complete facts on the record. They have not produced the original owner of the car nor is there any evidence that the original owner at the time of transfer of the car had applied to the Insurance Company for transfer of the insurance policy in their favour. For this lacuna in evidence they have to suffer. By no process of reasoning can the liability resulting from the fatal accident be passed on to the original owner of the car. who was not even a party either to the claim application or to the present appeal. If we go by the logic of Madineni

Kondaiah and Others Vs. Yaseen Fatima and Others, , the liability for the payment of compensation can be fastened on the Insurance company only in case the original owner is held liable for the death of the two children in the accident which took place after he had transferred the vehicle to the appellant and respondent 3, This in my view cannot be done.

15. I, therefore, find no force either in this appeal or in the cross-objections. Both of them are, therefore. dismissed with costs.

16. Appeal and cross-objections dismissed.