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**(1960) 02 MAD CK 0007**

**In the Madras High Court**

**Case No : City Civil Court Appeal No. 88 of 1957**

Madras Motor Insurance Co. Ltd., Madras

APPELLANT

Vs

Mohamed Mustafa Badsha and Others

RESPONDENT

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**Date of Decision : 18-02-1960**

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 96(1), 96(2)

**Citation : AIR 1961 Mad 208 : (1960) 73 LW 486 : (1960) 2 MLJ 202**

**Hon'ble Judges : Anantanarayanan, J**

**Bench : Single Bench**

**Advocate : R. Gopalaswami Iyengar and M. Sundaram, for the Appellant; C.R. Krishna Rao and Habibullah, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Anantanarayanan, J.—This is an appeal by the Madras Motor Insurance Co, Ltd, defendant 4, in an action in the court below for damages

for rash and negligent driving if a motor car, which caused a very grave accident, killing the son of the two plaintiffs, by name Mohamed Mohideen.

The appellant company apparently came into the suit as the insurer, to whom notice of the proceedings was given, and who was entitled to be

made, a party and to defend the action, within the scope of Section 96(2) of the Motor Vehicles Act (4 of 1939). The main defence of the

appellant company is this.

The concerned vehicle (MSZ. 2556) belonged to defendant 1 (Sukumar Productions) and was covered by an insurance policy with the appellant

company, as well as by the certificate of registration in the name of the owner as required by the rules. The accident was on 13-1-1951 at about 3

p. m. The first defendant contended in the suit that he sold this motor car to

defendant 2, one Sri N. Ramakrishnan, even on 8-1-1951, and that he also delivered the car to the transferee earlier, as well as the C certificate, the insurance policy and other documents.

The person who actually drove the vehicle at the time of the accident, one Rajagopalan (defendant 3) was in the employment of defendant 2, and not a person employed by defendant 1. The appellant company affirms these facts, and maintains that, since the ownership of the car was transferred by the insured prior to the date of the accident, the insurable interest in the policy thereby disappeared, so that, in legal effect, the policy must be construed as having lapsed on the date of the accident.

It is admitted that (1) the policy had to run for a considerable period further (upto August of that year), before it was due for renewal by another policy with the appellant or some other company, and (2) that the alleged transferee, defendant 2, applied for transfer of the insurance policy in his name only some days after the accident. In other words, it is not in dispute by the appellant that, on the date of the accident, the policy was valid and current *ex facie*, that it stood in the name of defendant 1 as the insured, and that there had been no transfer of insurance.

Nevertheless, learned counsel for the appellant urges before me, mainly upon the strength of certain English authorities to which I shall refer later, that the disappearance of the insurable interest in the policy by virtue of the transfer amounts to a lapse. It is argued that, consequently the third party who sustained the injury cannot claim damages from the Insurance company.

2. The learned Judge who tried the suit went into the merits of evidence whether, in actual fact, the vehicle had been transferred from defendant 1

to defendant 2 on 8-1-1951, even prior to the accident. I may here conveniently state that the facts of the accident itself are not in dispute or the

fact that the driving of the vehicle on that occasion was rash and negligent, and that it resulted in the death of the son of the plaintiffs, aged about 13,

entitling the plaintiffs to claim for heavy damages. The learned Judge came to the conclusion that, for want of sufficient evidence, he could not hold

that the sale was established. He therefore held that the facts amounted to the ownership vesting in defendant 1 alone on the date of the accident.

3. Learned counsel for the Company, Sri R. Gopalaswami Aiyangar, argues that

this conclusion of the learned Judge is opposed to certain facts of the documentary record, such as the receipt dated 8-1-1951 (Ex. B-4, issued by Sukumar Productions to N. Ramakrishna (defendant 2) etc.

However, the receipt does not appear to have been properly proved, and the learned Judge felt some difficulty in accepting and acting upon it.

But, for purposes of the present argument, I shall assume that the car was actually sold on that date, and that defendant 2 became the owner of the car on that date, as far as defendants 1 and 2 are concerned.

Even so, it is not in dispute that, from the point of view of the State Authorities, the certificate of registration still stood in the name of defendant 1

on the date of the accident, and that the insurance policy was current and valid in the name of defendant 1 as the insured. The question is whether,

under these circumstances the insurance company can plead that there is virtual lapse of the policy, thereby entitling the company to claim

exemption from payment of damages to the third party who suffered the injury.

4. Whatever the English authorities might be on this aspect, this argument by the company is directly opposed to the very terms of the policy, and

to the law in this country. I have scrutinised the terms of the policy and, while I am able to discover there specified conditions, the breach of which

will render the policy liable to be cancelled, such as those set forth in Section 96(2)(b)(i), etc., of the Madras Motor Vehicles Act, there is

absolutely no condition to the effect that a sale of the car during the validity of the policy renders the policy void, or amounts to a lapse.

Even assuming that such a sale is a term which enables the insurer to claim as against the insured, and that the policy is liable to be avoided or

cancelled, which is the highest that the insurance company can claim, the law in this country makes it clear that this will not avail the company with

regard to liability for damages to the victim of the accident.

It is for this specific purpose that the Legislature has enacted Section 90(1) of the Motor Vehicles Act, and it is explicitly stated there that:

notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled, the policy, the insurer shall, subject to the

provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if

he were the judgment-debtor".

Again, in Section 96(2) itself, these conditions are specified, the infringement of which might entitle an insurer to avoid a policy. Undoubtedly, a

transfer of the vehicle during the currency of a policy has nothing to do with these conditions. It is also interesting to note in this context, that the

Supreme Court has recently held in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, , that the statute has expressly

confined the right of the insurer to avoid his liability to certain grounds, and that the Court cannot add to those grounds for reasons of hardship.

Their Lordships actually observed that, even if the insurer finds that the insured is a man of straw, and is thereby frustrated with regard to his

remedies,

the loss had to fall on some one, and the statute has thought fit that it shall be borne by the insurer.

The law in this country is therefore very clear that, even if the insurer has some ground which would entitle him, as against the insured, to avoid the

policy or to have it declared as void, that will not protect the insurer from liability to pay the victim of the accident to the extent covered by the

insurance. Nor is this unreasonable.

It is a necessary and logical implication of the entire theory of compulsory insurance in respect of third-party risks with reference to motor vehicles.

Any alternative view would involve the difficulty which would result in the injustice that the third parties, who may be injured by such accidents,

may be unable to obtain the benefit of the compulsory insurance, under a variety of enforceable circumstances such as the transfer of property in

the vehicle, or the death of the insured, resulting in an immediate devolution of title by operation of law, etc. Clearly it is in order to obviate these

obstacles to the remedy of the third party victims, that Section 95 was enacted, by the Legislature.

5. It is argued that the law in England appears to be somewhat different, mainly upon the strength of certain passages in *Shawcross on Motor*

*Insurance*, 2nd Edn. pp. 85 , the learned authors point out, on the strength of a line of cases in U. K. that, where the subject-matter of policy is a

specified vehicle, the policy lapses if the assured parts with his interest in the vehicle (see also *Peters v. General Accident, Fire and Life Assurance*

*Corporation Ltd.*, 1937 4 All ER 628). But, I note that in the relevant insurance

policy, there seems to have been an express condition that the policy, was liable to lapse, if the assured parted with property in the car.

In the decision quoted. Goddard, J., as he then was, expressed the view, that because of the transfer of property in the car, "the policy lapsed".

Now, we have no such term in the present policy, and it is at least doubtful in view of Section 96(2) and the Supreme Court decision referred to

above, whether any such term could be legally imported into motor insurance policies, thereby entitling the insurer to avoid the policy as a result of

the sale of the car. In any event, this may be as between the assurer and the assured. But the right of the third party to claim the benefit of the

decree has been put on a higher footing, and statutorily provided for in this country.

6. In the result, therefore, I hold that the decree of the lower Court was perfectly justified, even upon the basis (which was not proved, as I earlier

observed) that the insured had sold the car to another prior to the date of the accident, I make no observations here upon the right of the appellant

company to pursue any remedies against the original insured (defendant 1) or the transferee (defendant 2) or both.

It may be pertinent here to observe that, whether the driver in actual charge of the vehicle was employed by defendant 1 or defendant 2, defendant

1 should certainly be held to have permitted such employment, since defendant 1 was responsible for the car till the Certificate of registration was

transferred, as well as the insurance policy. It is no doubt true that there would be a substantial difference in law if the driver had been an

unqualified or unlicensed person. But that is not the case here. The appeal hence fails, and is dismissed with costs.