(2011) 07 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : CIMA No. 261 of 2008 and CMP No. 362 of 2008

Mohinder Singh APPELLANT

Vs

Ashok Kumar RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 157, 166

Citation : (2012) ACJ 2469 : (2011) 3 JKJ 370

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—Challenge in this Civil 1st Miscellaneous Appeal is to the interim award of MACT, Jammu dated 24.08.2007,

whereby the Tribunal has deleted the respondents-Insurance company from array of the respondents and directed the registered owner of the

vehicle to pay an amount of Rs. 25,000/- in terms of Section 140, Motor Vehicles Act, 1988 as also the order dated 31.10.2008, whereby the

review of the interim award is declined.

2. I have gone through the record and have heard learned counsels for the parties.

3. The Tribunal felt persuaded to delete the respondents-Insurance Company from the array of respondents and saddled the registered owner with

an obligation to pay compensation on the principle of ""no fault"" liability in terms of Section 140, Motor Vehicles Act, 1988, on the ground that the

registered owner transferred the motor vehicle involved in the accident during currency of the Insurance policy to respondent No. 4, without intimating the transfer to the respondents-Insurance company or getting the insurance policy transferred in favour of the transferee. Section 157,

Motor Vehicles Act, 1988 deals with the transfer of certificate of insurance. It would be advantageous to extract the provision hereunder;

157. Transfer of certificate of insurance - (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the

provisions of this chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together

with the policy of insurance relating thereto, 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.

Explanation - For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of right and liabilities of the said

certificate of insurance and policy of insurance.

(2) The 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 act 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.

4. A bare perusal of Section 157 of the Act would reveal that whenever the person, in whose favour certificate of insurance stands issued under

chapter XI of Motor Vehicles Act, 1998, transfers to another person the ownership of the vehicle for which the insurance has been taken with the

policy of the insurance relating thereto, the certificate of insurance is to be deemed to have been transferred in favour of the person to whom the

motor vehicle has been transferred with effect from the date of the transfer.

5. In the present case, though the transfer of the insured vehicle was not intimated to the Insurance company yet the certificate of insurance in terms

of Section 157 of the Act is to be deemed to have been transferred in favour of the transferee. The Insurance Company with which the vehicle

involved in the accident is insured cannot escape liability to pay compensation on account of ""no fault"" liability as also the just compensation

assessed in terms of Section 166, Motor Vehicle Act, 1988 only on the ground that transfer of the insured vehicle was not intimated to the

Insurance Company. The controversy, if any, is set at rest by the Apex Court in case titled ""United India Insurance Company Ltd., Shimla v. Tilak

Singh and Ors. "" 2006 (3) Supreme 332. The Supreme Court has held;

Section 157 of the 1988 Act, which corresponds to the earlier section 103-A of the 1939 Act, provides that upon the transfer of ownership of

the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, 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 explanation to the section makes it clear that such deemed transfer shall include transfer of rights and

liabilities of the said certificate of insurance and policy of insurance.

6. For the reasons discussed, the orders dated 31.10.2008 and 24.08.2007 impugned in the appeal do not stand legal scrutiny and are liable to be

set aside.

7. The appeal is accordingly allowed. Resultantly the respondents-Insurance company shall pay an amount of Rs. 25,000/- on account of ""no fault

liability in terms of Section 140, Motor Vehicles Act, 1988, less by the amount already paid by the appellant to the respondents/ claimants and

reimburse the appellant the amount deposited in wake of the order impugned in the appeal. The respondents-Insurance company shall be arrayed

as party to the claim petition and allowed to file its reply/objections, if any, to the claim petition and contest the claim.

8. Disposed of along with connected CMP(s).