
(1979) 02 RAJ CK 0023

In the Rajasthan High Court

Case No : Civ. Miscellaneous Appeal No. 125 of 1974

National Insurance Co. Ltd.

APPELLANT

Vs

Ajit Doshi and Others

RESPONDENT

Date of Decision : 09-02-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110D, 94

Citation : (1979) ACJ 433

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : Rajendra Mehta, for the Appellant; A.L. Mehta and M.R. Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This is an appeal by the insurer u/s 110-D of the Motor Vehicles Act against the award dated 22.5.74 passed by the Motor Accidents Claims Tribunal (District Judge), Udaipur whereby the claim of Respondent No. 1 Ajit Doshi was allowed to the extent of Rs. 7,802/-.

2. The claimant Ajit Doshi submitted an application u/s 110-A of the Motor Vehicles Act for award of compensation for the injuries sustained by him in the accident. It was alleged by him that on 11th June, 1970 at about 8.30 a.m, he was driving a car No. MHX 5633 and was proceeding from Ashok Nagar to Madhuban. His family was also along with him in the car and his nephew Manish and his friend Jogendra Singh were also with him. The car had almost crossed the road-crossing, then the truck No. RJY 140 proceeding from north to south, struck against the back wheel of the car with the result the car turned to the right side causing injuries to the claimant. The truck was being driven at that time by Mr. Rama non-Applicant No. 1. The claimant alleged that in all he received three injuries out of which injury No. 1 was grievous and the other two injuries were simple. There was a fracture at the elbow joint near right Ulna and there was profuse bleeding from this injury and operation had to be performed.

It was found by Dr. Bajaj that all the muscles of the right arm upto the bone had been cut. Plaster was applied for six weeks and the claimant remained as an indoor patient from 11.6.74 to 16.6.74 and thereafter was treated as an outdoor patient. The medical opinion further was that the claimant had 15% loss of function on the right extremity below the shoulder joint and this disability was of a permanent nature. The claimant claimed Rs. 10,000/- for permanent loss of efficiency, Rs. 2,000/- pecuniary loss caused on account of medical aid, Rs. 1,500/- loss of leave for a month and Rs. 17,500/- as compensation for pain and suffering and shock, total Rs. 30,000/-.

3. The claim application was opposed by the non-Applicants, Rama, the driver of the truck, Roshanlal, the owner of the truck and the insurer. The insurer raised a plea that it never covered any risk of Mr. Roshanlal. The insurer had covered the risk of Prithvi Raj in respect of the truck in question for third party claim from 10.6.70 to 9.6.71 vide policy No. 48518 as such no liability of the insurer arises.

4. The Claims Tribunal framed the following three issues:

(1) Whether the accident took place on account of rash and negligent driving by Rama non Applicant No. 1 P.

(2) Whether the claimant is entitled to damages asked for ? P.

(3) Whether the non-Applicant No. 3 Ruby General Insurance Co. had not covered the risk of the present truck owner Roshan Lal and hence is not liable for any compensation ?

O.P. No. 3.

The Claims Tribunal recorded the evidence of the parties and after hearing them, passed the award for a sum of Rs. 7,802/-. It decided issue No. (1) in favour of the claimant. It also decided issue No. (2) in favour of the claimant to the extent of Rs. 7,802/-. Issue No. (3) was decided against the insurer. While dealing with issue No. 3, the Tribunal found that Prithvi Raj was the registered owner of the vehicle but the defence raised by the insurer is not open to it and it was not necessary for the claimant to implead Prithvi Raj. In case of joint tortfeasors, their liability is joint and several. Two documents were placed on record:-(1) Ex. P. 1, a sale letter submitted by Prithvi Raj to registering authority informing it that he has sold the truck to Shri Roshanlal for valuable consideration. It is dated 31.3.1970. (2) Ex. P. 2 certified copy of the certificate of registration showing the transfer entry of the vehicle from the name of Prithvi Raj to Shri Roshanlal of 19th June, 1970. Aggrieved against the award, the insurer has preferred this appeal.

5. I have heard Mr. Rajendra Mehta, learned Counsel for the Appellant and Mr. A.L. Mehta and Mr. M.R. Singh counsel for the Respondents.

6. Mr. Mehta on behalf of the Appellant, vehemently contended that insurance is a personal contract of indemnity. According to the insurance policy the insurer

undertook to indemnify the insured Prithvi Raj in respect of third party claims and the insurer did not enter into any contract of indemnity with the owner of the truck Mr. Roshanlal. He urged that Prithvi Raj may be the registered owner of the truck on the date of insurance but admittedly title in the truck had already passed in favour of Mr. Roshanlal which is evident from sale letter dated 31st March, 1970. Prithvi Raj was not the owner of the truck and the insurer did not cover the risk of Mr. Roshanlal the owner of the truck. It was urged that in the claim proceedings Prithvi Raj was not impleaded as a party. If there is no liability of the insured for payment of any compensation, no liability can arise against the insurer as well. The learned Counsel supported his contention by citing *Mangilal Vs. Parasram and Others*, ; *Kesavan Nair Vs. State Insurance Officer Chanchalaben and Others* Vs. *Shaileshkumar and Others*, ; *Smt. Gulab Bai Damodar Tapse Vs. Peter K. Sunder and Others* and *New India Assurance Company Ltd. Vs. Parvathamma and Others*,

7. Mr. A.L. Mehta & Mr. Singh counsel for the Respondents on the other hand submitted that on account of the sale of the truck no doubt Roshanlal became the owner of the truck but Prithvi Raj continued to be the registered owner till 19.6.70. Even if he got the insurance effected, that will ensure for the benefit of the real owner of the truck, for it cannot be found that there was any concealment of material fact on the part of Prithvi Raj as has been held in *Northern India General Insurance Co. Ltd., Bombay Vs. Kanwarjit Singh Sobti and Others*, This view has been approved by the Division Bench of this Court in *Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others*, In the alternative, it was argued that the real insured is Roshanlal and not Prithvi Raj in as much as the policy was summoned by the insurer from Roshanlal. If policy would have been taken Prithvi Raj even after sale of the truck, the policy would have been in the possession of Prithvi Raj but it appears that the policy was obtained by Roshanlal and it is possible that the registration till then stood in the name of Prithvi Raj, so the policy was issued in the name of Prithvi Raj. It was urged that the insurer had not led any evidence to prove that in fact the policy even after sale was obtained by Prithvi Raj and the formalities were completed by him and premium was paid by him. In the absence of such necessary proof simply on the basis of the name appearing in the policy, it cannot be found that Prithvi Raj was the real insured. It was pointed out that the insurer has not produced any record nor has examined Prithvi Raj. The very fact that policy was not summoned from Prithvi Raj and summoned from Roshanlal, it should be found that the real insured was Roshanlal and ostensible insured was Prithvi Raj. Thus, in the peculiar circumstances of the case, it was urged that insurer is liable in respect of of the present claim.

8. I have given my serious and earnest consideration to the contention advanced before me. No doubt legal position may be that the insured is only liable to indemnify the insured if the latter is found to be liable to pay damages. If insured has not been made a party to the claim proceedings, the insurer will be absolved from liability of the payment of compensation. The cases cited by Mr. Rajendra

Mehta undoubtedly support his stand. But the question arises as to how the policy came into custody of the transferee of the vehicle when the vehicle stood transferred much before the obtaining of insurance. It is not in dispute that the vehicle had been sold on 31st March, 1970, vide sale letter Ex. P 1 Prithvi Raj had no insurable interest thereafter. After the sale where was any interest for him to obtain the insurance. There is no evidence on record to show that the fact of transfer was not brought to the notice of the insurer. On behalf of the insurer, none has been examined to prove that the fact of transfer or sale was not known. After the sale, it cannot be conceived that premium for insurance would be paid by the previous owner of the truck Mr. Prithvi Raj. It appears that as the registration did not change, insurance was obtained by the real owner in the name of the registered owner and this is how the real owner came into possession of the policy. If the real owner had nothing to do with obtaining of the insurance, the policy would have been in the hands of Prithvi Raj and the insurer would have summoned the same from Prithvi Raj but the policy was not in fact summoned from Prithvi Raj. The insurer has produced Roshanlal as its witness after summoning the policy from him. Mr. Roshanlal stated that he has not brought the policy but he admitted Ex. C(I) to be its copy. He further stated that registration had already been surrendered. In such a situation, the insurer must have satisfied as to the Registration has been surrendered. To me it appears that the insurer wants to get itself absolved of its liability only on the basis that the name of the registered owner admittedly appears in the policy but the circumstances of the case suggests that Prithvi Raj was not the real insured, the real insured was Roshanlal. To dispel all doubts in this connection, it was the duty of the insurer to have produced its record and to have examined Prithvi Raj as well. It should have led evidence to the effect that the sale of the vehicle was not brought to the notice of the insurer and in fact the policy was obtained by the registered owner of the truck but no such evidence has been adduced. It is quite probable that as registration had not changed, so on that account policy was issued in the name of the registered owner, and there may be an impression on the basis of case law or otherwise that transfer of vehicle is not to be recognised till registration is changed. In this view of the matter I need not examine the contention advanced on behalf of the Respondents based on the authority of Northern India General Insurance Co. Ltd., Bombay Vs. Kanwarjit Singh Sobti and Others, approved by this Court in the case Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others, In Kanwarjit Singh's case it has been held as under:

There was nothing in Section 94 of the Motor Vehicles Act, 1939, which could be interpreted to mean that it was only the real owner who could affect the insurance. Any person who used it or allowed any other person to use it could also get the insurance affected. The use by a person of a motor vehicle in a public place or allowing the use of a vehicle in a public place is sufficient for the purposes of affecting insurance because that would be sufficient insurable interest for the purpose of affecting a third party insurance. A registered owner

would have sufficient interest to effect the insurance because he is the ostensible owner.

In Kanwarjit Singh's case the registered owner obtained the policy covering the vehicle in his own name and the real owner of the vehicle was someone else. The question arose as to whether the policy was void because the registered owner had no insurable interest, it was held that it was not void and it was further, held that it was not only the real owner who was entitled to obtain the policy but also the person using the vehicle or allowing it to be used because they also have an insurable interest in the vehicle. So far as the present case is concerned, as considered above in my opinion in the circumstances of the case, the insurer has failed to prove that Prithvi Raj was the real insured and as such the insurer cannot be absolved from liability. The insurance in the present case was obtained on 10.6.70 and the accident occurred on 11.6.70 during the currency of the policy so the insurer is liable to indemnify to the real insured.

9. The learned Counsel for the Appellant submitted that the view taken in Kanwarjit Singh's case approved by this Court requires reconsideration, although the observations are only obiter and not of the ratio of the case as in the Automobile Transport Co.'s case the finding was that the transfer is not proved. There appears to be some substance in the submission made by the learned Counsel and the proposition of law may require reconsideration but in the view which I have taken, I do not think it necessary.

10. No other point has been pressed before me.

11. In the result, I do not find any force in this appeal; so this appeal is hereby dismissed. In the circumstances of the case I leave the parties to bear their own costs of this appeal.