

(2005) 02 AP CK 0004
In the Andhra Pradesh High Court
Case No : A.A.O. No. 76 of 2005

National Insurance Co. Ltd.	Vs	APPELLANT
K. Yadamma and Others		RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Motor Vehicles Act, 1939 — Section 94, 95
Motor Vehicles Act, 1988 — Section 156, 157, 157(1), 157(2)
Workmens Compensation Act, 1923 — Section 3(1)

Citation : (2005) 3 ACC 760 : (2007) ACJ 1343

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : T. Mahender Rao, for the Appellant; G. Narender Reddy, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard both sides.

2. This is an appeal arising under the Workmen's Compensation Act, 1923 (for brevity "the W.C. Act").

3. This civil miscellaneous appeal is directed against the award dated 28.9.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I at Hyderabad (for brevity "the Tribunal"), partly allowing the application in W.C. No. 102 of 2003 and granting a sum of Rs. 3,79,141 towards compensation to the applicants for the death of the deceased by name one K. Shekar, who died on 14.7.2003 due to the injury sustained by him in the accident occurred on 13.7.2003.

4. The appellant is the insurance company, the respondent Nos. 1 to 4 are the applicants and the respondent No. 5 is the present owner of the vehicle.

5. For the sake of convenience, the appellant, the respondent Nos. 1 to 4 and the respondent No. 5 will be referred to as "the insurance company" "the applicants"

and "the transferee owner", respectively.

6. The brief facts, which are not in dispute, are that the deceased, while driving the lorry bearing No. AAT 4056 of the transferee owner, met with an accident. The narration of the method and the manner in which the deceased died are not very much relevant for the purpose of deciding this appeal. The deceased was an employee under the transferee owner. The vehicle, which was being driven by the deceased, was originally owned by one D. Raghuvendra Rao (hereinafter referred to as "the transferor owner"), who was not made a party to the claim application before the Tribunal. The insurance policy was issued on 22.1.2003 in the name of the said D. Raghuvendra Rao. But, even before policy was actually issued, said D. Raghuvendra Rao had transferred the vehicle in the name of the transferee owner on 17.1.2003 itself. The fact remains that as on the date of the accident, the vehicle was covered by an insurance policy. The applicants filed the claim application under the W.C. Act against the transferee owner and the insurance company only. The Tribunal having considered the entire material, including the evidence, both oral and documentary, available on record, determined the compensation. Challenging the said award, the present civil miscellaneous appeal is filed.

7. Mr. T. Mahender Rao, the learned standing counsel for the insurance company assails the impugned award mainly on two grounds. Firstly, that the transferor owner, i.e., the original owner of the vehicle, in whose name the insurance policy was issued was not made a party to the claim application. Hence, fastening the liability against the transferee owner and consequently fastening the liability on the insurance company is illegal.

8. In this connection, it is further contended by learned standing counsel for the insurance company that so long as the policy was in the name of the original owner and since the said original owner, i.e., the transferor owner, is not made a party to the claim application, the insurance company is not liable to pay the compensation, since the liability has to be first fastened against the original owner, who obtained the policy for the vehicle.

9. Secondly, that since the deceased was in an intoxicated condition at the time of his death in the accident, no compensation can be paid as postulated u/s 3(1) proviso (b)(i) of the W.C. Act.

10. Repelling the said submissions, the learned Counsel appearing for the applicants contended that merely because the transferor owner was not made a party, the insurance company cannot be absolved from its liability by virtue of operation of law as envisaged u/s 157 of the Motor Vehicles Act, 1988 (for brevity "the M.V. Act"). He further contended that so far as the intoxicated condition of the deceased at the time of the accident is concerned, the same was not actually pleaded before the Tribunal. Therefore, it is not permissible for the insurance company to take that ground at this appellate stage.

11. As regards the first contention, the learned Counsel for the insurance

company places reliance on a decision of Punjab and Haryana High Court in *Raj Chopra v. Sangara Singh* 1985 ACJ 209 (P&H).

12. In the said case, both the transferor owner and the transferee owner along with the insurer were made parties and in such circumstances, it was held that the owner of the vehicle at the time of the accident was made liable along with the insurer and further held that liability in respect of the same, falling upon the vehicle, thus falls upon driver of the vehicle and the owner of the vehicle at the time of accident.

13. It appears from the said decision that the scope of Sections 156 and 157 of the M.V. Act had not fallen for consideration at all before Punjab and Haryana High Court and there is no categorical reason as to why the insurance company was absolved from its liability in spite of the subsistence of the insurance policy. Hence, it is necessary to read Sections 156 and 157 of the M.V. Act, which are applicable while dealing with a case falling under the W.C. Act also, for the purpose of fastening the liability against the insurer.

14. Section 156 of the M.V. Act, which deals with the effect of certificate of insurance, reads thus:

156. Effect of certificate of insurance.-When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then-

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

15. Section 157 of the M.V. Act, which deals with the effect of transfer of certificate of insurance, reads thus:

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 rights 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 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.

16. A bare reading of Sub-section (1) of Section 157 of the M.V. Act makes it abundantly clear that the certificate of insurance and the policy described in the certificate shall automatically have the effect of transfer in favour of the transferee owner. In fact, by the language employed in the above said provision, it is deemed to have been transferred in favour of the transferee owner with effect from the date of its transfer.

17. The Explanation to Sub-section (1) of Section 157 was inserted by Act 54 of 1994. The very language employed therein makes it further clear that it was declared that such deemed transfer includes the transfer of rights and liabilities of the certificate of insurance issued u/s 156 of the M.V. Act.

18. The transfer in such cases shall mean that transfer is with all obligations. In other words, by virtue of the transfer of the vehicle, all the obligations of the transferor owner would automatically stand transferred in the name of the transferee owner. Consequently, the transferee owner would step into the shoes of the transferor owner. The further corollary is that the terms and conditions of insurance policy would automatically cease between the transferor owner and insurance company and take a fresh birth between the transferee owner and the insurance company.

19. To put it in a different way, even after the transfer of the vehicle, the liability of the insurance company would not cease inasmuch as the vehicle is still under the coverage of the policy. Merely because the vehicle had been transferred in favour of another person, the said liability of the insurance company under the policy would not get obliterated or superseded. The transferee owner alone would and should be fastened with the liability and consequently, subject to the subsistence of the insurance policy, the same would get extended to the insurance company also.

20. Further, it should be borne in mind that it is the vehicle that was actually insured but not the person/owner of the vehicle.

21. The Apex Court in *Rikhi Ram and Another Vs. Smt. Sukhrania and Others*, , while dealing with Sections 94 and 95 of the Motor Vehicles Act, 1939, at paras 5 and 6, held as under:

(5) The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an

action on a contract; and secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

(6) On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

22. From the above, it is further clear that when once the vehicle is insured, it covers any third party risk, including the transferee owner of the vehicle. It would further suggest that any person who uses the vehicle with the consent of the owner, not being actually a transferee owner, for consideration also, comes under the purview of the third party and even in such cases also the owner of the vehicle at the time of the accident alone has to be considered as the owner of the vehicle for the purpose of liability to pay the compensation either under the M.V. Act or under the W.C. Act by the insurance company.

23. Similar view was taken by a learned single Judge of this court in *Oriental Insurance Company Ltd. Vs. S. Babaiah and Others*, wherein the scope of Section 157 of the M.V. Act was discussed and eventually held that the insurance policy would be deemed to have been transferred under the deeming provision of Section 157 of the M.V. Act.

24. It was further contended by the learned standing counsel for the insurance company that the obligation on the part of the transferee owner cannot be found in the present case, inasmuch as Sub-section (2) of Section 157 of the M.V. Act ordains that the transferee owner shall apply within 14 days from the date of transfer to the insurer about the transfer for making the necessary changes in its records and since the transferee owner has failed to comply with the aforesaid requirement of law, the insurance company is not liable to pay the compensation. This contention also cannot be accepted.

25. In fact, the said contention was answered by the Apex Court in *Rikhi Ram's* case 2003 ACJ 534 (SC), at para 7, in the following terms:

For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.

26. Further, in *Oriental Insurance Company Ltd. Vs. S. Babaiah and Others*, a

learned single Judge of this court also held that non-compliance with the procedure prescribed u/s 157 of the M.V. Act does not automatically invalidate the deemed transfer that had taken place by virtue of the operation of law as contemplated under Sub-section (1) of Section 157 of the M.V. Act.

27. Therefore, in the present case, even though the transferor owner was not made a party, the transferee owner being respondent No. 5 [since admittedly the owner of the vehicle at the time of accident], is the "employer" for the purpose of the liability under the W.C. Act. That is enough. Adding of the transferor owner as a party to the proceedings is only a mere formality, in cases of present nature. Hence, the first contention of the learned standing counsel for the insurance company cannot be countenanced.

28. Apropos the second contention, which is to the effect that the deceased was in an intoxicated condition at the time of the accident and hence the applicants cannot claim any compensation by virtue of a bar created under proviso (b)(i) of Sub-section (1) of Section 3 of the W.C. Act, it is on record that this contention was not raised initially before the Tribunal.

29. The wife of the deceased was examined as AW 1 on behalf of the applicants. The first information report was marked as Exh. A1 through AW 1. She stated that in the F.I.R., which was given by some other third person it was mentioned that the deceased was in an intoxicated condition and because of a small accident to the vehicle of the deceased, the deceased stopped his vehicle and thereafter when he was crossing the road on foot to inform his owner about the said accident, an unknown vehicle which was running at high speed hit him, thus resulting in his instantaneous death.

30. The person who gave the F.I.R., conspicuously, was not examined. The non-examination of the person who gave the F.I.R., in my considered view, renders the contents of the F.I.R. inadmissible inasmuch as the same were not spoken to by the person who lodged the F.I.R.

31. It is to be further noted that the contents of the F.I.R., need not necessarily be always wholly true. The object of lodging F.I.R., in ordinary course, would be only to the limited extent of setting the criminal law in motion. The contents of the F.I.R. must be proved by examining the person who lodges the same and shall always be subject to judicial scrutiny in the competent court. Not even the scribe of the F.I.R. was examined. Therefore, AW 1, who is the wife of the deceased, cannot be said to be the competent person to testify the contents of the F.I.R. Inasmuch as the scribe of the F.I.R., was not examined, the evidence of AW 1, who is the wife of the deceased, cannot be relied on to come to the conclusion that the deceased was in an intoxicated condition at the time of the accident. But, as already stated, the veracity of the contents of the F.I.R., was not corroborated.

32. Furthermore, the post-mortem certificate, which was marked as Exh. A3, does not contain the details about the intoxicated condition of the deceased. It is

only recorded in the post-mortem certificate that "rupture was present". Nothing can be found from the post-mortem report that the deceased was in intoxicated condition at the time of accident. Therefore, the medical evidence also does not support the said contention of the learned standing counsel for the insurance company. Hence, this contention also cannot be accepted.

33. Since these are the only two grounds urged before this court and since the other aspects, i.e., the relationship between the deceased and the transferee owner, respondent No. 5, as employee and employer and the factum of the death of the deceased arising out of and during the course of his employment were not urged, I do not find any reason to advert to the said aspects.

34. For the foregoing reasons, the civil miscellaneous appeal is devoid of any merit and is liable to be dismissed.

35. Accordingly, the civil miscellaneous appeal is dismissed, at the stage of admission, confirming the award of the Tribunal. However, there shall be no order as to costs.