
(1999) 09 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.A. No. 292 of 1999

National Insurance Co. Ltd.	Vs	APPELLANT
Ram Murti and Others		RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 103, 146, 149, 157, 31

Citation : (2000) 2 ACC 238 : (2002) ACJ 1224 : (2000) 1 JLJ 176 : (2000) 1 MPLJ 415

Hon'ble Judges : S.P. Srivastava, J;R.B. Dixit, J

Bench : Division Bench

Advocate : B.N. Malhotra, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned Counsel for the insurer appellant.

Perused the record.

Feeling aggrieved by the award of Motor Accidents Claims Tribunal in the proceedings under the Motor Vehicles Act, whereunder the insurer also stands saddled with the liability in regard to the payment of the amount determined to be payable as compensation to the claimants apart from the driver and the owner of the offending motor vehicle, it has come up in appeal seeking modification of the award providing that the insurer will not be liable to pay the amount in question.

The facts in brief shorn of details in respect whereof there is no dispute lie in a narrow compass: The offending motor vehicle, an Ambassador car bearing registration No. CPK 7638, initially belonged to and was owned by Ram Kripal, the present respondent No. 6. Suresh Kumar, the present respondent No. 4, had purchased the same from Ram Kripal on 26.5.1990. On the date of accident, i.e.,

26.6.1990, the aforesaid motor vehicle was being driven by Sanjay Kumar, the present respondent No. 5. Insurance policy issued in favour of Ram Kripal in respect of the offending motor vehicle was to remain operative during the period 10.11.1989 to 9.11.1990.

It may be noticed that the transferee-respondent No. 4 had got the offending motor vehicle insured with the insurer appellant on 26.6.1990 and the insurer had issued an insurance cover note on that date covering third party risk in respect of the aforesaid vehicle at 12 o'clock acknowledging the receipt of Rs. 255 towards premium. The insurance policy was, however, issued on 28.6.1990 covering the period from 12 a.m. of 27.6.1990. The cover note had been issued from Gwalior and the accident had taken place in Datia at 8.30 p.m. on 26.6.1990 as is evident from the first information report lodged at Police Station, Unnao.

The factual position in the aforesaid circumstances which is apparent from the record is that although on the date of the accident, the offending motor vehicle stood registered in the name of the transferor, yet on the said date much before the accident, an insurance cover note had been issued in favour of the transferee, though the insurance policy had been issued on 28.6.1990 covering the third party risk from 27.6.90 in spite of the fact that the payment of premium was acknowledged to have been received from the respondent No. 4 and accepted by the insurer by the noon of 26.6.1990 itself taking upon the insurer the responsibility to indemnify the transferee recognising him as the registered owner of the offending motor vehicle.

The learned Counsel for the appellant has vehemently urged that in the aforesaid facts and circumstances in the absence of the communication of the fact of transfer of the offending motor vehicle to the insurer as stipulated in Section 157(2) of the Motor Vehicles Act, the insurer could not be saddled with any liability in regard to the payment of the amount of compensation determined as payable by the Tribunal. It has been urged that though the provisions contained in Section 157(1) of the Act contemplate a statutory fiction, yet this fiction could operate only when the requirements contemplated u/s 157(2) were complied with. The contention is that since the requirements contemplated u/s 157(2) of the Act had not been complied as prescribed thereunder and on the date of the accident, the insurer had no information about the transfer of the offending motor vehicle, it could not be held liable for payment of the amount of compensation.

We have given our anxious consideration to the aforesaid submission.

The provisions contained in Section 157 of the Motor Vehicles Act are to the following effect:

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.

(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.

(Emphasis supplied)

Ordinarily, a contract of insurance is a personal contract of indemnity against third party risk in relation to the use of the motor vehicle by a particular person which comes to an end and the policy lapses upon the transfer of the ownership of motor vehicle to another person, unless of course the insurance company agrees to accept the transferee as the insured person in relation to the vehicle. In the absence of any statutory provision or any express stipulation to the contrary in the policy, the moment the insured parts with the motor vehicle, the policy relating to it lapses, with the result that the insurer would not be liable for payment of any compensation indemnifying the owner/insured arising out of the accident involving the motor vehicle covered under the policy after such sale or transfer. However, the endorsement of the transfer in the records of registering authority cannot be taken to be the condition precedent to the transfer, as it is obvious that the sale of motor vehicle is not governed by the provisions of Section 54 of the Transfer of Property Act but the provisions of the Sale of Goods Act, whereunder the transfer is complete when the consideration amount is paid and the delivery of the vehicle is taken.

We are of the considered opinion that to achieve the object underlying the relevant provisions of the Motor Vehicles Act and to ensure that the amount awarded as just compensation is made available to the third party securing the discharge of the liability in regard to the said payment as against the insurer company so far as the third party risk only is concerned, the legislature has taken recourse to a statutory fiction which is envisaged under the provisions of Section 157(1) of Motor Vehicles Act.

Under the statutory fiction, on a transfer of the offending motor vehicle on the sale becoming complete as indicated hereinbefore, the certificate of insurance and the policy described therein has to 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.

It may, however, be noted that in its decision in the case of J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India (UOI) and Ors, , the Apex

Court had clarified that the legislature is quite competent to create a legal fiction, in other words, to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist. However, it has to be ascertained as to for what purpose the fiction has been created, but while assuming all those facts the consequences which are incidental or inevitable corollaries to give effect to the fiction, it has to be ensured that it is not to be extended beyond the purpose for which it is created.

The Apex Court, in its another decision in the case of *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, , had quoted with approval, the observations occurring in the decision in the case of *In re: Levy, Exparte Walton* (1881) 17 Ch D 746 , wherein it had been indicated that when a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which the fiction alone can operate.

In the present case, what we find is that the provisions, contained in Section 157(2) of the Act, cast a duty upon the transferee of the motor vehicle to apply within 14 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 further a duty is cast upon the insurer that it shall make the necessary changes in the certificate or in the policy of insurance in regard to the transfer of insurance.

Taking into consideration the implications arising u/s 157(1) and Section 157(2) of the Act, we are of the considered opinion that the legal fiction contemplated u/s 157(1) of the Act has been created only with the definite purpose of protecting the interest of the third parties and to ensure that the insurer does not escape the liability to pay the compensation to them in the event of the transfer of the offending motor vehicle even in the absence of communication or intimation of transfer of the offending motor vehicle having been given to the insurer, if an accident involving the transferred motor vehicle takes place within the period of fourteen days of the transfer, providing that the liability in regard to indemnifying the owner which would have been there but for the transfer is not to cease to exist and the policy cannot be taken to have lapsed with the transfer of the motor vehicle and non-intimation of the transfer to the insurer.

The period of fourteen days during which the statutory fiction is to remain operative so as to entitle the transferee owner to get indemnified from the insurer is to start from the date of completion of the transfer and is to end with the moving of the application by the transferee as contemplated u/s 157(2) of the Act. The purpose of the statutory fiction appears to be for protecting the interest of the third parties as well as the transferee/owner for a limited period to

get indemnified ensuring that the insurer does not escape the liability to pay the compensation in the event of the transfer of the offending motor vehicle on the ground that the policy is to be taken as having lapsed for want of intimation by the transferee about the change of ownership of the vehicle, as by virtue of the legal fiction the policy is deemed to be alive and in force making it obligatory for the insurer to discharge the liability arising out of the accident in respect of indemnifying the owner/transferor which would have been there but for such transfer, which remains uncommunicated.

The aforesaid statutory fiction it seems to us is intended to remain operative so far as the transferor and even the transferee for the maximum period of fourteen days within which the transferee has to move the application for requisite changes as contemplated u/s 157(2) of the Act, failing which unless the transfer of the vehicle is recognised by the insurer, he is to be taken as having lost his right vested in him by operation of law to get indemnified from the insurer, on the strength of the policy in effect prior to the transfer.

The legal fiction as envisaged u/s 157(1) of the Act, therefore, has to be limited to the aforesaid purpose and can be available only during the period of fourteen days referred to u/s 157(2) of the Act. Once the application has been filed by the transferee within the period stipulated u/s 157(2) of the Act, the insurer stands saddled with the statutory liability in respect of the payment of the amount of compensation which is cast upon the owner of the offending motor vehicle but in a case where an application is not filed by the transferee, such a transferee loses his right to get the liability discharged from the insurer, except in those cases where the transfer of the vehicle is recognised by the insurer company by effecting the necessary changes as contemplated u/s 157(2) of the Act without any objection in which case the transferee will be deemed to be substituted in place of the transferor and entitled to all the benefits secured in his favour under the policy.

It may be observed that it is always open to the insurer company to condone the default of the transferee in moving the application within time as contemplated u/s 157(2) of the Act. This condonation may be express or implied but in case the application is filed by the transferee within the time prescribed the insurer cannot escape the liability on the ground that the policy has lapsed on account of the transfer of the motor vehicle as the policy is to be deemed to remain alive and enforceable till the moving of the application by the transferor within the time prescribed u/s 157(2) of the Act and on the moving of the application without there being anything else in the policy it is to be taken to remain in force for the entire period covered by it. This is without prejudice to the right of the transferor to get the change of ownership recognised by the insurer company even after the expiry of the aforesaid period and once the insurer company grants the recognition the same consequences follow which are resultant upon the moving of the application.

In the present case, the policy of insurance initially issued in favour of the

transferor by the insurer appellant was effective for the period 10.11.89 to 9.11.90. The accident in question had taken place on 26.6.1990. The respondent No. 4 had by that date already got the necessary changes made in the registration certificate issued by the registration authorities under the Motor Vehicles Act and had become the registered owner of the offending motor vehicle. On 26.6.1990, on his application the insurer appellant had issued an insurance cover note accepting Rs. 255 as premium covering the third party risk recognising him as the registered owner of the offending motor vehicle. The accident had taken place much after the issuance of the insurance cover note. In the aforesaid circumstances, the insurer could not escape the liability in regard to the payment of amount of compensation to the claimant and could not be absolved from its liability.

The contention urged by the learned Counsel for the appellant in this regard is totally misconceived and is not at all acceptable.

It has been urged that the provisions contained in Section 157(2) of the Act require the transferee to apply within fourteen days from the date of transfer in the prescribed form to the insurer for making the necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour but this having not been done, the policy had to be taken to have lapsed absolving the insurer from its liability, if any, imposed it under the terms and conditions of the policy issued in favour of the transferor.

So far as the aforesaid provision is concerned, it appears to us that the legislative intent behind such a provision was to ensure that the insurer does not escape the liability which stands fastened upon it under the provisions of Section 157(1) of the Act on the ground that the policy was to be taken to have lapsed on account of omission to communicate to the insurer about the transfer. On the application having been filed, the insurer could not refuse or deny the effecting of the changes in the certificate in regard to the transfer of insurance. The insistence of law in the matter is in regard to the effecting of necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance clearly points out the legislative intent to give effect to the deemed transfer contemplated u/s 157(1) of the Act. In case the transferee fails to move an application within the period of fourteen days from the date of transfer, in that event though the statutory fiction envisaged u/s 157(1) of the Act ceases to be operative in the sense that the right of the transferor or transferee to get indemnified from the insurer is no longer enforceable, yet in the event of the insurer company having recognised the change of ownership, even after the aforesaid period, on the application of the transferee the same results and consequences follow as it is always open to the insurer to recognise the change of ownership and save the policy getting lapsed or even if it had lapsed to extend to the transferee all benefits to which the transferor would have been entitled to under the policy.

In the present case, in view of what has been noticed herein above, there can be

no manner of doubt that the insurer appellant had not only recognised the transferee as the registered owner of the offending motor vehicle, but accepting the premium had issued a fresh insurance cover note in the noon of 26.6.90 and had issued a fresh policy in favour of the transferee covering the third party risk. In the circumstances, whether it be on the strength of the initial policy or on the strength of the fresh policy, the insurer could not escape its liability in regard to the payment of compensation.

Learned counsel for the appellant has made an effort to suggest that Section 157(2) of the Act should be taken as a proviso to Section 157(1) of the Act laying down the minimum requisite conditions on the happening of which the statutory fiction contemplated therein could operate.

In the aforesaid connection, suffice it to say that a mechanical approach to construction is altogether out of step with the modern positive approach. The modern positive approach is to have a purposeful construction that is to effectuate the object and purpose of the Act. Both the provisions contained in Section 157(1) and Section 157(2) of the Act have to be read and understood as in harmony with each other. The interpretation suggested by the learned Counsel for the appellant will result in rendering the provisions contained in Section 157(2) of the Act to be nugatory. This provision cannot be read as a proviso to Section 157(1) of the Act and the statutory fiction cannot be taken to rest upon the happening of the event of moving an application contemplated u/s 157(2) of the Act. The statutory fiction in regard to the transfer of the motor vehicle becomes complete irrespective of the omission to communicate or intimate such a transfer to the insurer company which had issued the certificate of insurance in favour of the transferor in respect of the motor vehicle. The whole object of protecting the insurance policy from lapsing on account of such a transfer without intimation of ownership would have frustrated in case the provisions contained in Section 157(2) of the Act are taken to act as a proviso to Section 157(1) as suggested by the learned Counsel.

The contention urged by the learned Counsel for the appellant in this regard is totally devoid of merit and is not at all acceptable.

We are of the considered opinion that Section 157(2) of the Act contemplates giving effect to the statutory fiction and does not provide the foundation upon which the statutory fiction can be said to rest. The legal fiction in question as has already been indicated herein above continues to be available for a period of fourteen days within which the transferee owner of the offending motor vehicle has to move an application as contemplated u/s 157(2) of the Act securing his right to get the insurer saddled with the liability in regard to the payment of amount of compensation on the strength of the same policy which had been issued in favour of the transferor of the offending motor vehicle. This right is independent of the right flowing from the voluntary act of the insurer in recognising the transfer of the vehicle even after that period as has already been noticed herein above.

Learned counsel for the appellant has tried to draw support from the observations made in the decision of the Punjab & Haryana High Court in the case of Ram Chander Vs. Naresh Kumar and Others, , wherein it had been observed that no intimation as required u/s 157 of the 1988 Act having been given by the owner appellant to the insurance company, it could not be presumed that liability to indemnify the owner stood transferred from the transferor owner to the transferee of the offending motor vehicle so as to make the insurer liable to pay the amount of compensation.

The aforesaid decision has to be understood in its factual context. It had been found in that case that no intimation regarding the transfer of the truck or for the transfer of the policy was given by the transferee appellant to the insurance company and that there was no contract between the appellant and the insurance company for indemnifying him for any injury to a third party. It was in that situation that it was held that the transferee had to thank himself for the finding of the Tribunal that the insurance company was not liable to pay any compensation.

The Tribunal in its impugned order while holding that the liability of the insurer in regard to the payment of compensation continued to subsist in spite of the transfer of the offending motor vehicle had placed strong reliance upon the ratio of the Division Bench decision of this Court in the case of Nani Bai and Others Vs. Ishaque Khan and Others, .

In the aforesaid decision, this Court had observed that a plain reading of the conditions of the policy issued by the insurer in that case clearly indicated that the coverage was that of the offending motor vehicle and not the insurer. It had also been observed that the provisions contained in the Motor Vehicles Act insisted for the compulsory insurance against the third party risk and prohibited the user of the vehicle in a public place unless there was a policy of insurance. The words "unless there is in force in relation to the use of the vehicle of that person...a policy of insurance" indicated that it was the vehicle that was required to be insured and not the person or the owner of the vehicle and in these circumstances it was held that in such a situation the insurance company could not escape its liability.

The Division Bench in its aforesaid decision had taken notice of another decision of the Andhra Pradesh High Court in the case of Haji Zakaria v. Naoshir Cama 1976 ACJ 320 (AP), rendered by a Division Bench holding that the insurance company was liable to compensate the third party.

In the present case also, the policy issued in favour of the transferor clearly indicates that it was the motor vehicle which had been insured and not the person. The ratio of the decision of the Division Bench in the case of Nani Bai and Others Vs. Ishaque Khan and Others, , therefore stands clearly attracted in the facts and circumstances of the present case.

In yet another decision of this Court in the case of Har Charan Singh Vs. Smt.

Turza Bai and Others, , this Court had an occasion to consider the contention advanced on behalf of the insurance company that the contract of insurance is a personal contract of indemnity and the same comes to an end and the insurance policy lapses as soon as the ownership of the vehicle covered by the said policy of insurance is transferred to another by sale or otherwise. In support of this submission, reliance had been placed on the decisions in the cases of Gyarsilal Jagannath Prasad Mor v. Sitacharan Dubey 1958 ACJ 352 (MP); Balwant Singh v. Jhannubai 1980 ACJ 126 (MP) and Panna Lal v. Shri Chand Mal 1980 ACJ 233 (SC).

This court in its aforesaid decisions had observed that a statutory responsibility stood cast under the provisions of the Motor Vehicles Act both on the transferor and the transferee of the motor vehicle to inform the fact of transfer of the vehicle in the name of the transferee. A further responsibility stood cast upon the transferor in whose favour the certificate of insurance stood to inform the insurance company of the transfer and the insurance company might refuse the same only on the existence of certain conditions. Noticing the difference of opinion of several High Courts on the question as to whether the insurance company was liable even in the event of transfer of ownership of the vehicle and non-compliance of the parties of the provisions contained in Sections 31 and 103-A of the old Act, it was held that the mere transfer of the vehicle involved in the accident did not by itself absolve the liability under the policy which covered third party risk. Reference was made to the cases of Sonaram Vs. Jaiprakash and Others, and Chisalal (deceased by L.R's) Vs. Nihal Singh and Others, , as well as Maina v. Niranjan Singh 1976 ACJ 1 (Rajasthan) and Dharman and another Vs. N.C. Srinivasan and others, . This court after taking into consideration the various aspects of the matter came to the conclusion that the defence of the insurer is strictly limited to what the statute had chosen to provide and a defence that on the sale of the motor vehicle, during the period of cover, the policy had lapsed, is not the one that is available to the insurer under the provisions of the Act as against the third party claims.

In the aforesaid view of the matter, it was held in that case that although on the date of the accident the actual owner of the offending vehicle was not the registered owner, the insurance company, it was held, could not avoid the joint liability for payment of compensation to the claimant. It was further held that so far as the registered owner was concerned, if he had not discharged his statutory responsibility of informing the registering authority of the fact of transfer of the vehicle, his liability for the accident caused by the vehicle involved continued till the transferee is not registered as the owner.

In the present case, however, what we find is that the registered owner had also discharged his liability and the registering authority had registered the transferee as the registered owner of the said vehicle in place of the transferor.

The learned single Judge in his aforesaid decision had agreed with the view expressed by the Madras High Court in the case of Dharman and another Vs.

N.C. Srinivasan and others, , holding that the transfer of vehicle was not one of the grounds which the insurance company could advance as a defence for denying its liability to a third party.

After taking into consideration the various aspects of the matter and the fact that the legislative policy and the legislative intent underlying the provisions contained in Sections 31, 94, 96 (2) and 103-A of the Motor Vehicles Act, 1939 continues to be retained in Sections 50, 146, 149(2) and 157 of the Motor Vehicles Act, 1988, while affirming the view taken by the learned single Judge in the decision in the case of Har Charan Singh Vs. Smt. Turza Bai and Others, , we are of the clear opinion that the same consequences follow under the corresponding provisions retained in the new Motor Vehicles Act, 1988.

There is yet another aspect of the matter which cannot be lost sight of. In the present case, insurer company had issued a fresh cover note taking upon itself the liability to indemnify the owner and pay the compensation awarded by the Tribunal under the Motor Vehicles Act covering the third party risk. The insurance policy had however been issued w.e.f. 27.6.1990 and not from the date and time of the issuance of the cover note. There is nothing on the record to indicate that the recitals contained in the cover note issued on 26.6.1990 were incorrect in any manner. Further, there is nothing on the record to indicate that the premium had in fact not been received by the insurance company by the time as acknowledged in the insurance cover note issued on 26.6.1990. In such a circumstance, the Tribunal placing the reliance on the ratio of the decision in the case of Sunder Lal Vs. Haider Ali and Others, , had come to the conclusion that the insurer could not escape the liability in regard to the payment of compensation.

The finding in this regard returned by the Tribunal does not suffer from any such legal infirmity which may justify an interference therein.

In view of the facts and circumstances noticed herein above and our conclusions referred to hereinbefore, the Tribunal was fully justified in regard to the payment of the amount of compensation.

No other point has been pressed.

In the result, the finding of the Tribunal holding the insurer to be liable for the payment of the amount of compensation cannot be held to be vitiated in law warranting an interference in this appeal.

Accordingly, this appeal being devoid of merit deserves to be and is hereby dismissed.