

(2008) 12 GUJ CK 0084
In the Gujarat High Court

Case No : First Appeal No. 5521 of 2008 with Civil Application No. 13910 of 2008 in First Appeal No. 5521 of 2008

New India Assurance Co. Ltd.

APPELLANT

Vs

Ajitsinh Jagatsinh Darbar and Another

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 157, 165(1), 166, 167

Citation : (2009) 1 GLH 521

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Shalin N. Mehta, for the Appellant;

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. Shalin N. Mehta appearing on behalf of appellant -New India Assurance Company Limited. The appellant - Insurance Company has challenged the award passed by Motor Accident Claims Tribunal (Aux.), Fast Track Court No. 2, Baroda in Motor Accident Claim Petition No. 1821 of 1992 Exh.64 dated 20th May 2008. The Motor Accident Claims Tribunal, Baroda has awarded Rs. 61,400/- with 7.5% interest in favour of respondent claimant.

2. Learned advocate Mr. Shalin Mehta raise one contention before this Court that Claims Tribunal has failed to appreciate that the insured M/s. Katariya Metals & Alloys Pvt. Ltd. had committed a breach of insurance policy by leasing the insured vehicle to M/s. Mahakali Roadlines w.e.f. July 1991, much before the accident. Therefore, from the date of accident, insured vehicle was not in use of insured M/s. Katariya Metals & Alloys Pvt. Ltd. Therefore, Insurance Company was under no liability to indemnify the insured. The third party M/s. Mahakali Roadlines to whom the vehicle was leased out had no insurable interest in present Insurance Company. As the insured vehicle was in the use of M/s. Mahakali Roadlines on the date of accident, present Insurance Company was not

liable to indemnify M/s. Mahakali Roadlines under the terms and conditions of the insurance policy. In support of his submission, learned advocate Mr. Mehta relied upon two decisions of Apex Court; (i) National Insurance Co. Ltd. Vs. Deepa Devi and Others, . The Apex Court has considered Section 165(1), 166 and 2(30) the definitions of owner. The liability to pay compensation; the word "owner" has been interpreted when statutory definition is not applicable; where the motor vehicle was requisitioned under a statute by the statutory authority and accident occurred while the vehicle remained under continued requisition, held, the State and not the registered owner nor the insurer, liable to pay compensation. The definition of "owner" in the 1988 Act or 1939 Act, held, did not envisage such a situation. Therefore, it has been held that word "owner" in such a case has to be understood from common sense point of view. Under the definition Clause, the interpretation of Statutes; internal aids; definition clause; interpretation of a word when the statutory definition thereof cannot be given effect. Relying upon the aforesaid decision, he submitted that M/s. Katariya Metals & Alloys Pvt. Ltd. has leased out vehicle in favour of M/s. Mahakali Roadlines. The facts of reported decision as referred above are altogether different in present case. Here the M/s. Katariya Metals & Alloys Pvt. Ltd. has leased out the vehicle to M/s. Mahakali Roadlines. Therefore, according to my opinion, the facts of both the cases are different, therefore, ratio which has been laid down by Apex Court is not applicable to the facts of present case. He relied upon another decision of Apex Court in case of Godavari Finance Co. Vs. Degala Satyanarayanamma and Others, . Here liability of financier in case of hire-purchase vehicle. The name of financier incorporated in registration book who is the owner, respondent was the owner of a vehicle; a mini truck, which was purchased by him having been financed by appellant. The Tribunal held that financier liable along with owner of the vehicle, driver and insurance company to pay amount of compensation to claimants of deceased. The Apex Court held that definition of owner in the Act is a comprehensive one. The interpretation clause itself states that vehicle which is the subject-matter of a hire-purchase agreement, the person in possession of vehicle under that agreement shall be the owner. Thus, the name of the financier in certificate would not be decisive for determination as to who was owner of vehicle. The financier cannot ordinarily be treated to be owner and so person in possession liable to pay damages for motor accident.

3. Now, in this case, M/s. Katariya Metals & Alloys Pvt. Ltd. has leased out vehicle to M/s. Mahakali Roadlines for use of it. Therefore, M/s. Katariya Metals & Alloys Pvt. Ltd. remained owner and there is no change in ownership. Therefore, in case of accident, when this leased out period was continued, then, liability of original owner is to be remained for compensation though vehicle was in control of M/s. Mahakali Roadlines. Therefore, the facts of above referred decision is not applicable to the facts of the present case. The definition Section 2(30) suggests as under :

"owner" a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor

vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

4. The aforesaid definition include the person those who are in actual possession and control of the vehicle, therefore, in facts of this case, merely to have an agreement of lease in favour of M/s. Mahakali Roadlines. the ownership of the vehicle is not changed and ownership is remained with M/s. Katariya Metals & Alloys Pvt. Ltd. Therefore, Insurance Company insured the vehicle and that policy always goes with the vehicle. The contention raised by learned advocate for Insurance Company has been considered by Claims Tribunal at Page 15 where Claims Tribunal has discussed submissions made by advocate of Insurance Company that M/s. Katariya Metals & Alloys Pvt. Ltd. was owner of Truck No. GJ-I-W-4485 and that truck was hired by M/s. Mahakali Roadlines. So, there was a breach of condition of insurance policy and they are not liable to pay the amount of compensation as awarded by Claims Tribunal with interest. They also produced written statement of Workmen Compensation Application No. 6 of 1992 by Exh.51 that claim was filed by legal heirs of deceased driver Vishnubhai. They also produced written statement of M/s. Katariya Metals & Alloys Pvt. Ltd. by Exh.52 and in that written statement, opponent mentioned that deceased driver of truck served with M/ s. Mahakali Roadlines and not join them as a party in this claim petition as a party as they are necessary party and as there was a breach of condition. So, they are not liable to pay compensation amount. Opponent No. 2 is also produced valid insurance policy vide Exh.53, copy of RTO book vide Exh.54, voucher of deceased Vishnubhai vide Exh.55 and notice given to M/s. Katariya Metals & Alloys Pvt. Ltd. by Exh.56. Opponent also produced First Appeal No. 4214 of 2007 filed by Insurance Company by Exh.58, in that appeal. Insurance Company challenged the order of Commissioner of Workmen Compensation of Baroda, Workmen Compensation Application No. 6 of 1992 and that appeal is admitted and pending in the High Court filed by Insurance Company against the driver of truck No. GJ-1-U-4485. Opponent also produced Insurance Company letter regarding above by Exh.57. First Appeal No. 4214 of 2007 filed by Insurance Company against the order of Workmen Compensation Act and admitted on 27th August 2007 and returnable on 10th September 2007. Opponents produced certified copy of insurance policy vide Exh.60 and argued that his Insurance Company is not liable to pay compensation. That aspect has been considered by Claims Tribunal and considering Section 167 of the MV Act of Chapter X as per that; "Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923. the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both." Therefore, applicant have a right to choose the Tribunal and as present applicant not filed any claim petition under Workmen's Compensation Act. It is principle that policy goes with vehicle and

accordingly, Claims Tribunal has rejected the contentions raised by advocate of the Insurance Company.

5. This aspect is considered by Madhya Pradesh High Court, Gwalior Bench in case of Pushpa Bai and Others Vs. Gulab Chand Vaishya and Others, . The relevant Para 11 is relevant, therefore, the same is quoted as under :

"11. The Apex Court in G. Govindan v. New India Assurance Co. Ltd., 1999 ACJ 781 (SC), laid down that in a case of transfer of vehicle, policy does not lapse. The insurer remains liable to a third party to make the payment of compensation. Even, if no intimation of transfer was given to the insurer, it was held to be of no consequence. A Full Bench of this court in National Insurance Company Ltd. Vs. Kansram and Others, Kunj Bihari and Others, Dashrath and Others, Prabhat and Others, Ku. Nirmala and Others, Leela Bai and Others and Dodbhe and Others, , has taken a similar view and it was held that policy remains effective. In new India Insurance Co. Ltd. (supra) and in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , law to similar effect has been laid down. Thus, it is held that registered owner and insurer would remain liable to make the payment of compensation after vehicle has been transferred and mere non-intimation of transfer to the insurer does not absolve the insurer from making payment of compensation but on the other ground, in this case, violation of policy has been found."

6. Similarly, the High Court of Punjab and Haryana has also held the same in case of United India Insurance Company Limited Vs. Smt. Hargian Devi and Others, . The relevant Para 3 to 5 are relevant, therefore, quoted as under :

"3. Originally the offending vehicle No. HRH 4301 was registered in the name of Minaxi Gram Floor Mills, of which Karan Pal Gupta, appellant in F.A.O. No. 269 of 1988 was the partner. At the time of accident, admittedly, he had purchased that truck from the firm but no entry to that effect was made in the registration certificate. Objection was raised by the insurance company that as the offending vehicle was transferred not in terms of the provisions of Motor Vehicles Act, no entry was made in the registration certificate and also no intimation was given to the insurance company, so it was not liable to pay the compensation amount. It was further contention of the insurance company that in view of the transfer of the vehicle, the insurance policy had lapsed and there was no subsisting contract between the insurance company and the transferee of the vehicle, Karan Pal Gupta. That contention was negated by Claims Tribunal. The same objection has been raised before this court also. Counsel for respondent Nos. 1 to 3 and also claimants in cross-objections refuted the arguments, raised by counsel for the insurance company.

7. Counsel for respondents has placed reliance upon the judgment of the Hon'ble Supreme Court in United India Insurance Co. Ltd. v. Tilak Singh, 2006 ACJ 1441 (SC), in support of his contention that even if vehicle, which was insured, has been transferred and no intimation has been sent to the insurance company and

further that no entry has been made in the registration certificate, even then insurance company is liable to make the payment of compensation. The ratio of the judgment, referred to above, fully supports the contention, raised by counsel for the claimants-respondents. The Apex Court, while analysing similar situation in the above said judgment, held as under :

"Thus, in our view, the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether u/s 103-A of the 1939 Act or u/s 157 of 1988 Act insofar as the liability towards a third party is concerned."

8. Similar view was also expressed by Hon"ble Supreme Court in G. Govindan Vs. New India Assurance Co. Ltd. and Others, and Rikhi Ram and Another Vs. Smt. Sukhrania and Others, ."

9. According to my opinion, the said finding or conclusion of Claims Tribunal cannot consider to be erroneous. The question is that if such contention raised by Insurance Company if it is entertained then question arise that in between, insurance policy was in existence or not. Compulsory insurance being a statutory mandatory provisions running and remain continue so long the vehicle is running and remain. So, both things are continue mandatory statutory provision is running and remain so long vehicle is running and remain. So, there may not be any vacuum of the insurance when vehicle was on road. Therefore, the scheme to have compulsory insurance for the third party must have to be implemented with a spirit and object of the MV Act. If the submission made by learned advocate Mr. Mehta is to be accepted then the moment an agreement to be leased arrived at by M/s. Katariya Metals & Alloys Pvt. Ltd. to M/s. Mahakali Roadlines, this vehicle becomes uninsured, that itself is contrary to statutory provisions. Therefore, merely to have the agreement of lease but ownership upon the vehicle is remained with M/s. Katariya Metals & Alloys Pvt. Ltd. and policy was obtained by owner but considered to be insured must have to be indemnified by Insurance Company in case if such accident is occurred. In this case, alleged breach of policy not proved by appellant before Claims Tribunal. Merely vehicle is given on hired how the policy is breach not demonstrated by company. It is also not proved that in such kind of agreement of lease terms and condition of policy is violated. For that, no detail submissions are made and no oral evidence was led by company. Therefore, Claims Tribunal has rightly decided the matter.

10. The contention raised by Insurance Company that M/s. Katariya Metals & Alloys Pvt. Ltd. insured had committed a breach of the insurance policy by leasing the insured to M/s. Mahakali Roadlines w.e.f. July 1991 much prior to accident. In respect to this contention. Insurance Company has not been able to point out that which condition of insurance policy is violated because of agreement of lease between M/s. Katariya Metals & Alloys Pvt. Ltd. and M/s. Mahakali Roadlines. The Insurance Company is entitled to raise contention covered Section 149(2) of M.V. Act. This contention raised before this Court is

not covered by u/s 149(2) of the M.V. Act. The breach of condition of insurance policy must have to be established by Insurance Company before Claims Tribunal by leading proper evidence, but, Insurance Company failed to do so. The ownership remains with M/s. Katariya Metals & Alloys Pvt. Ltd. This ownership is not transferred to M/s. Mahakali Roadlines. The Insurance Company is statutory liable to third party. The insurance policy was in existence on the date of accident. The provision of compulsory insurance is remained continued and the accident was occurred. Therefore, original owner insured is liable and for that. Insurance Company is statutory liable to indemnify the original insured. Therefore, the contention raised by Insurance Company cannot be accepted and rejected. Even in case of transfer of the vehicle, so long, ownership is remained with the original owner, insurance policy is deemed to be continued. Even after transferring the ownership for remaining period, the insurance policy is deemed to be continued and Insurance Company is liable. But, in here case, ownership is not transferred, but, it remained with M/s. Katariya Metals & Alloys Pvt. Ltd.

11. Therefore, according to my opinion, the statutory provision is having a sufficient safeguard to cover this situation and circumstances, otherwise, a risk of third party being a statutory protection cannot be available in such situation. Therefore, contention raised by learned advocate Mr. Mehta cannot be accepted, otherwise, it amounts to encourage the violating position of statutory mandate of MV Act. Therefore, that contention is rejected. Except that, no other contention is raised by learned advocate Mr. Mehta. Therefore, this Court is not examining the other contentions.

12. Therefore, there is no substance in the present appeal. Accordingly, present First Appeal is dismissed.

13. When the First Appeal is dismissed by this Court, no order is required to be passed in Civil Application. Hence, the Civil Application is also dismissed. The amount, if any, deposited by appellant - Insurance Company before registry of this Court, be transmitted to the Claims Tribunal concerned immediately.