

(2009) 12 KAR CK 0032

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2685 of 2007

New India Assurance Co. Ltd.

APPELLANT

Vs

Barkathulla, T.H. Sadashivappa, Smt. Batul Jan and Mansoor
Sab

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 147 (5), 157 (1)

Citation : (2010) ACJ 2347 : (2010) ILR (Kar) 2535 : (2010) 1 KCCR 776

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : A.K. Bhat, for the Appellant; Mahesh R. Uppin, for R.2 and S.V. Prakash, for R.3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—This appeal is by the insurer, questioning the award dated 6.12.2006 on the file of Commissioner for Workmen's Compensation, Davangere (hereinafter referred to as "the Commissioner").

2. Respondents-3 and 4, who were the claimants before the Commissioner, had filed a claim petition inter alia alleging that the husband of the third respondent was working as loader and unloader on a lorry bearing No. KA-17/B-3650 belonging to respondent No. 1. While he was travelling in the said lorry on 12.6.2004 at the direction of the respondent No. 1, on account of rash and negligent driving by the driver of the lorry, the said lorry met. with an accident, as a result of which, third respondent's husband died. Respondent Nos. 3 and 4 in their claim petition alleged that, deceased was earning Rs. 250/- per day and also Rs. 50/- batta and accordingly, they sought for compensation.

3. The Commissioner on the basis of the material produced before him held that the vehicle is insured and also held that the deceased was an employee under respondent No. 1 and further held that the dependants respondents-3 and 4 are

entitled for compensation of Rs. 2,03,340/-. As against the said award, this appeal has been filed.

4. Heard Sri. A. K. Bhat, learned Counsel for the appellant, Sri. Mahesh Uppin, learned Counsel for respondent No. 2 and Sri. S.V. Prakash, learned Counsel for respondents-3 and 4.

5. Sri. A.K. Bhat submitted that, as the respondent No. 1 had transferred the vehicle in favour of respondent No. 2, as such, there was no relationship of master and servant between respondent No. 2 and the deceased. Since the vehicle is transferred by respondent No. 2 in favour of respondent No. 1 without the intimation to the appellant. - insurer, the Insurance Company is not liable to pay the compensation, as it is opposed to Section 157 Sub-section (2) of the Motor Vehicles Act. ("Act" for short). In the alternative, he also submitted that, even if the insurer is held liable to pay compensation as regard to the risk of the third party is concerned, it should be only on the basis of pay and recovery.

6. In this regard, he relied on the judgment of Division Bench of this Court reported in United India Assurance Company Limited Vs. M.N. Ravikumar and Others, and submitted that, Division Bench of this Court considering the judgment of the Apex Court in Rikhi Ram and Another Vs. Smt. Sukhrania and Others, has ordered for pay and recovery and as such, the award passed by the Commissioner without ordering for pay and recover is not sustainable in law. He also submitted that, the Commissioner has awarded interest @ 12% per annum from 30 days of the date of accident, which is contrary to the decision of the Apex Court reported in 2009 AIR SCW 3717 in the matter of Oriental Insurance Co. Ltd. v. Mohd. Nasir and Anr.

7. Sri. Mahesh R. Uppin, learned Counsel for respondent No. 2 submitted that, there is no provision under the Act for ordering pay and recover. Section 157 Sub-section (1) of the Act provides for deemed transfer. If the vehicle is transferred, the policy also gets transferred, however, it may not. cover the risk of the transferee till the transfer is intimated to the insurer and there is no question of pay and recovery arises in this case. In this regard, he relied on the judgment of the Apex Court reported in G. Govindan Vs. New India Assurance Co. Ltd. and Others, and submitted that the Apex Court considering the provisions of the Act has held that, insofar as third party is concerned, the insurer is liable to pay the compensation even in case the transferor had not been intimated to the insurer.

8. Sri. S.V. Prakash, learned Counsel appearing for the claimants supporting the argument of Sri. Mahesh Uppin, further submitted that, as far as the third party is concerned, insurer is statutorily liable under the provisions of Section 147 Sub-section (5) of the Act. A transfer does not in any way disentitle the claim of the third party is concealed, as this risk is statutorily covered and even in case if there is any transfer, the insurer is liable to indemnify and submitted that, when the Apex Court decided the matter in case of Rikhi Ram and Anr. v. Smt. Sukhrania and Ors. reported in 2003(1) Supreme 1000, it had relied on the

provisions of Section 103-A of the old (repealed) Act and as was no deeming provision of transfer of policy, in this context, the Supreme Court in exercise of its power under Article 142 of the Constitution had passed an order for pay and recovery and that cannot be treated as the law declared by the Apex Court or is applicable to this case.

9. In the light of the contentions raised by the learned Counsel appearing for the parties the points that arise for consideration are:

(i) Whether in case of transfer of insured vehicle, without intimation to the insurer u/s 157(2) of the Act, the insurer is liable to pay the compensation covering the risk of third party?

(ii) Whether the insurer is entitled for pay and recovery?

10. It is not in dispute that, the vehicle belonging to respondent No. 2 is insured with the appellant. It is also not in dispute that, the second respondent has transferred the vehicle in favour of respondent No. 1. However, there is no material to show that, the intimation of the transfer is given to the insurer. In the light of these admitted facts, the claimants - respondent Nos. 3 and 4 are concerned they are third parties to the contract. Whether the risk of third party covered under the provisions of the Act is required to be considered?

11. Section 147 of the Act deals with requirements of policy and limits of liability. What is disputed is that there is a transfer of a vehicle from respondent No. 2 to respondent No. 1 and as such, there is no relationship of master and servant between respondent No. 2 and the deceased. If the deceased being the third party to the contract, in case of a claim by the third party, Section 147 Sub-section (5) of the Act statutorily fixes the liability on the insurer issuing a policy to indemnify the person or classes of persons specified in the policy, in this case, as regard to the coverage of the deceased as an employee, the insurer has collected the extra premium and that is not in dispute. Notwithstanding anything contained in any law for the time being in force, an insurer is liable to indemnify the person or class of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

12. As far as the transfer of the vehicle is concerned, Section 157 of the Act provides for transfer of certificate of insurance. It is useful to refer to Section 157 of the Act in its entirety.

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 in regard to the transfer 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.

13. From the reading of the provisions of Sub-section (1) of Section 157 of the Act, it is clear that, in case of transfer of vehicle insured with the insurer on its transfer, 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. No doubt, Sub-section (2) of Section 157 requires that, within fourteen days from the date of such transfer, an intimation is required to be given to the insurer. However, Sub-section (2) of Section 157 makes it clear that, such intimation is required only for the purpose of making necessary changes in the certificate as regard to the transfer. There is no provision, which provides for any consequence on failure to issue intimation of transfer. If there is a deeming provision of transfer of policy, in law, it is deemed to have been transferred, however, when question arises as regard to the liability, since necessary changes, which required to be made in the policy having not been made for want of intimation, the policy would continue in the name of the original owner. But that does not absolve the insurer from the coverage of risk of the third parties. This aspect of the matter has been considered by the Apex Court in G. Govindan's case (supra) wherein the Apex Court on interpretation of the provisions of the Act has held that, when the policy of an insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property (vehicle) and the third party claim on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is novation. So far the third party risk is concerned, the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation.

14. The coverage of risk of the third party by the insurer does not depend on the effective changes to be made in the certificate of insurance and the policy, as the transferee may be the third party to the contract, the transferee may not be entitled to secure any personal benefit under the policy unless there is a novation i.e., the insurance company, the transferor of the vehicle, and the transferee must agree that the policy must be assigned to the transferee so that the benefit derivable or derived under the policy by the original owner of the vehicle is transferred to the transferee.

15. The requirement of law is clear that, if the transferee either for his personal

benefit or the property (vehicle) wants to make a claim, he can do so only if there is an effective transfer by necessary changes made in the policy. To this extent, the transferee may not be able to get the benefit of any claim for his personal or property loss. But as far as third party is concerned, irrespective of transfer of policy, the insurer is liable to indemnify the risk of the third party, it is not dependant: on the compliance of the requirement u/s 157 Sub-section (2) of the Act and there is also no provision, which restrict the liability of the insurer for want of necessary intimation insofar as third party is concerned nor any provision, which indicates that in case of failure of giving intimation of transfer of vehicle to the insurer would result in absolving the insurer of the coverage of the risk, if there are no consequences flow from non-compliance of the provisions cannot be said to be mandatory on the part of the transferee to make an intimation to cover the risk of the third party is concerned. What is statutorily fixed and what is statutorily made liable could not be dependent on the inaction on the part of transferee in giving the intimation.

16. No doubt, the Division Bench of this Court in M.N. Ravikumar's case (supra) relying on the decision of the Apex Court in Rikhi Ram's case (supra) has held that, the insurer is liable to pay compensation insofar as third party is concerned and has observed that, the insurer may pay and recover. The Rikhi Ram's case referred to above was based on the provisions of Section 103-A of the Act. Section 103-A of the Act, 1939 i.e., prior to the amendment reads as under:

103A. (1) Where a person in whose favour the Certificate of Insurance has been issued in accordance with the provisions of this Chapter proposes to transfer 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, he may apply in the prescribed form to the insurer for the transfer of the certificate of insurance and the policy described in the certificate in favour of the person to whom the motor vehicle is proposed to be transferred, and if within fifteen days of the receipt of such application by the insurer, the insurer has not. intimated the insured and such other person his refusal to transfer the certificate and the policy to the other person, 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 his transfer.

(2) The insurer to whom any application has been made under Sub-section (1) may refuse to transfer to the other person the certificate of insurance and the policy described in that certificate if he considers it necessary so to do. having regard to:

(a) the previous conduct of the other person,

(i) as a driver of motor vehicles; or

(ii) as a holder of the policy of insurance in respect of any motor vehicle; or

(b) any conditions which may have been imposed in relation to any such policy

held by the applicant; or

(c) the rejection of any proposal made by such other person for the issue of a policy of insurance in respect of any motor vehicle owned or possessed by him.

(3) Where the insurer has refused to transfer, in favour of the person to whom the motor vehicle has been transferred, the certificate of insurance and the policy described in that certificate, he shall refund to such transferee the amount, if any, which, under the terms of the policy, he would have had to refund to the insured for the unexpired term of such policy.

From the provisions of Section 103-A of the Act, 1939, it is clear that there was a requirement of law that, in case of transfer of vehicle, the transferor is required to intimate the insurer within fifteen days of its transfer and the insurer had option that, in case the intimation is not received from the insurer, there was no deemed provision of the transfer of policy and the certificate. However, under the provisions of the Act, 1988, the legislation has thought it fit for providing a deemed transfer u/s 157 Sub-section (1) of the Act, the moment the vehicle is transferred, there is a deemed provision of transfer of certificate of insurance. However, the transferee is required to give intimation of the transfer to take the benefit of the policy for coverage of his personal and property damage. Section 157(2) requires the transferee to give intimation of transfer to the insurer, to avail the benefit for his personal benefit. There is quite vast difference between the provisions of Section 157 of the Act, 1988 and Section 103-A of the Act, 1939. Section 103-A of the Act, 1939 requires that, the transferor to intimate the transfer, but from the reading of Section 157(1) and (2) of the Act, 1988, Sub-section (1) deals with deemed transfer of policy of certificate and Sub-section (2) deals with the transferee to intimate the transfer within fourteen days. Fact that, it is the transferee, who is required to give intimation clearly indicates that, transferee to take the benefit of the policy for his personal and property damage, which requires him to give the intimation and also to get. necessary changes made in his favour in the certificate and the policy. Under 1939 Act, there was no deemed provision, option was there with the insurer to make changes and under such circumstances, the Apex Court has held that the insurer can pay and recover.

17. In view of the provisions of Section 157 read with Section 147(5) of the Act. and the decision in Rikhi Ram's case being under the old M.V. Act. 1939, which is now repealed, the Apex Court had observed that, pay and recovery, but in view of the provisions of the Act, when law itself provides for deemed transfer, of pay and recovery does not arise insofar as third party is concerned. As such, the observation in the decision of the Rikhi Ram's case (supra) for pay and recovery is not applicable to the facts and circumstances of this case. So also the observation made by the Division Bench based on Rikhi Ram's case is also not applicable and in turn, this Court in a decision reported in 2009(4) KCCR 215 in the matter of Sri Krishnashetty v. The Oriental Insurance Co. Ltd., Davangere and Ors. has held that, the intimation of transfer of vehicle to the Insurance

Company is not mandatory, but is directory.

18. In the light of the provisions of Sections 147(5) and 157 of the Act and the decision of the Apex Court, I am of the opinion that, the insurer is liable to pay the compensation to third parties even in the absence of intimation of transfer of vehicle by the transferee to the insurer and such a payment is not recoverable from the insured i.e. respondent No. 2 herein.

Accordingly, both the points are answered. The appeal falls and same is dismissed. Insofar as interest is concerned, the Apex Court in the judgment reported in 2009 AIR SCW 3717 in the matter of Oriental Insurance Co. Ltd. v. Mohd. Nasir and Anr. has observed that, payment of interest arises from the date of adjudication and not from the date of accident and in view of the interpretation, the appellant is liable to pay interest. @ 7 1/2% from the date of petition till the date of judgment and 12% from the date of judgment till payment or deposit, whichever is earlier. The amount in deposit be transferred to the Commissioner.