
(1984) 11 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 520 of 1980

New India Assurance Co. Ltd.

APPELLANT

Vs

Jolly Engineers and Contractors (P) Ltd. and Others

RESPONDENT

Date of Decision : 20-11-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1986) 59 CompCas 808 : (1985) 2 ILR (P&H) 126

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : L.M. Suri and Ravinder Arora, for the Appellant; Satya Prakash Jain, Subhash Jain and Sarita Gupta, for the Respondent

Judgement

S.S. Sodhi, J.—Does transfer of ownership of the vehicle by the insured prior to the accident absolve the insurance company from liability for the compensation awarded ? Herein lies the controversy raised in appeal.

2. A sum of Rs. 65,000 was awarded as compensation to the widow and children of Naranjan Singh, deceased, who was knocked down and killed by bus PUE-5895. This happened on March 6, 1977, near a petrol pump on the G.T. Road, at Jullundur Cantt, The finding being that the accident had been caused by the rash and negligent driving of the bus driver.

3. The offending bus stood insured with the New India Assurance Co. at the time of the accident with the insured being its registered owners, M/s. Jolly Engineers and Contractors (P.) Ltd. The Tribunal consequently held them and the bus driver liable for payment of the amount awarded.

4. The plea put forth by M/s. Jolly Engineers and Contractors (P.) Ltd., as also the insurance company, however, was that the bus was in fact owned and possessed by M/s. Navrang Bus Service, Amritsar, and no liability could thus be fastened upon them. What was stated by M/s. Jolly Engineers and Contractors (P.) Ltd., in their return, was that they had sold their buses along with route-permits to M/s.

Navrang Bus Service, Amritsar, but this transfer could not be entered in the records of the transport authorities on account of some administrative reasons and they consequently continued to be the registered owners although the vehicles had been sold and possession and control over them had been given to the purchasers, M/s. Navrang Bus Service, Amritsar. At the time of the accident, the bus PUE-5895 was under the control and possession of M/s. Navrang Bus Service, Amritsar.

5. The insurance company on its part took the preliminary objection that as the vehicle involved in the accident had been transferred by M/s. Jolly Engineers and Contractors (P.) Ltd. to M/s. Navrang Bus Service, Amritsar, the insurance company could not be held liable. It deserves mention that M/s. Navrang Bus Service had been named as one of the owners of the offending bus in the claim application too and were, therefore, impleaded as respondents. M/s. Navrang Bus Service did not, however, choose to contest the claim application as no appearance was put in on their behalf despite notice and they were consequently proceeded against ex parte.

6. The only evidence on record relevant to this aspect of the case is the testimony of A.W.-1, Vinod Kumar Puri, the general manager of M/s. Jolly Engineers and Contractors (P.) Ltd., who deposed that the real owners of the bus PUE. 5895 were M/s. Navrang Bus Service, Amritsar, as they had purchased it in May, 1976. The bus, it was stated, was however, registered in the name of M/s. Jolly Engineers as the permit was then in their name. In 1979, however, when the permit was transferred to the name of M/s. Navrang Bus Service, the bus too was transferred to their name. It was stated that possession and control of the bus was always with M/s. Navrang Bus Service. As regards insurance, the witness deposed that until early 1979, the bus continued to be in the name of M/s. Jolly Engineers and Contractors (P.) Ltd. in the records of the insurance company and that the insurance company had never been asked to transfer the policy in favour of M/s. Navrang Bus Service, even though possession and control of the bus had been delivered to them.

7. This being the state of the record, Mr. L.M. Sun, counsel for the insurance company, contended that as the insured, M/s. Jolly Engineers and Contractors (P.) Ltd., were not the owners of the offending bus when the accident occurred, they had no insurable interest therein in respect of which the insurance company could be held liable.

8. The point canvassed by Mr. S.P. Jain, counsel for the claimants, on the other hand, was that it was not open to the insurance company to seek to avoid liability on the ground of transfer of ownership of the offending vehicle as the only defences open to it were those set out in Section 96(2) of the Motor Vehicles Act, 1939, and this was not one of them. Reference was here made to the judgment of the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, ; where it was held that the insurer could defend an action only on the grounds enumerated in Section 96(2) of the Motor Vehicles

Act, 1939, and further that these grounds could not be added to. It was argued, therefore, that despite transfer of ownership, the insurance company continued to be liable until the policy of insurance was cancelled or discharged. Support for this proposition is indeed to be found in the authority cited, namely, *Padma Devi v. Gurbaksh Singh* [1973] ACJ 460 (Raj), where a Division Bench of the High Court of Rajasthan held that the only defences available to the insurance company were those specified in Section 96(2) of the Motor Vehicles Act, 1939, and it was, therefore, not open to it to raise the plea that the policy had lapsed on transfer of the vehicle to a third party. In so holding, the court relied upon the judgment of the single Bench of the High Court of Madras as also Delhi; these being, *Madras Motor Insurance Co. Ltd., Madras Vs. Mohamed Mustafa Badsha and Others*, ; and *Vimal Rai v. Gurcharan Singh* [1967] ACJ 115. The judgment in *Padma Devi's* case [1973] ACJ 460 was also mentioned with approval by *Vijayvargiya J.* of the High Court of Madhya Pradesh in *Mohammad Ramzan v. Sharifanbai* [1982] ACJ 445 though in a somewhat different context, the point for consideration there being with regard to the liability of the registered owner and the insurer upon transfer of the vehicle with a view to circumvent the provisions of the Scooter (Distribution and Sale) Control Order, 1960. It was held that if a vehicle is transferred by the owner thereof to circumvent any provision of law and the owner continues to remain the registered owner thereof, and if the vehicle is also insured in the name of the registered owner, the registered owner or the ostensible owner must be held liable for the negligence of his transferee or his servant or agent in the course of his employment or within the scope of his authority, because in transferring possession of the vehicle in contravention of the provisions of law, the ostensible owner must be deemed to have knowledge that the vehicle will be used by the transferee or his agent or servant and that they might use it negligently or rashly causing injuries to a third party.

9. The overwhelming weight of judicial precedent, however, points to the contrary view, namely, that the change of ownership of a vehicle puts an end to the policy of insurance even if the original policyholder continues to be shown as the registered owner of the vehicle concerned. The rationale behind this being that a policy of insurance is a contract of personal indemnity and the insurer cannot, therefore, be compelled to accept responsibility in respect of a third party, who may be quite unknown to him. *Mr.L.M, Suri*, counsel for the insurance company, cited a string of authorities in support. It would be apt to begin with the judgment of the Division Bench of the High Court of Rajasthan in *Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others*, ; where the earlier view of that court in *Padma Devi's* case [1973] ACJ 460 was expressly dissented from. It was pointed out in this behalf that in *Padma Devi's* case [1973] ACJ 460 the court followed the judgment of the Single Bench of the High Court of Delhi in *Vimal Rai v. Gurcharan Singh* [1967] ACJ 115, which was, however, later overruled by a Division Bench of that court in *Oriental Fire & General Insurance Co. Ltd. v. Vimal Rai* [1972] ACJ 314, where it was held that the endorsement of the transfer of a vehicle in the records of the

registering authority was not a condition precedent to its transfer nor did it deal with the legality or authority of the transfer, which fell to be determined by other provisions of law. It was accordingly held that it was the real owner who was thus liable, whether or not he was the registered owner of the vehicle too. This view was followed and approved in this case too.

10. As regards the case of *Madras Motor Insurance Co. Ltd. v. Mohamed Mustafa Badsha* [1960] 30 Comp Cas (Ins) 25, what was stated there too was expressly dissented from by the Division Bench of the High Court of Madras in *Hema Ramaswami Vs. K.M. Valarance Panjani and Others*, , where, it was held that it did not lay down the correct law, the view expressed being that if there is a transfer of a vehicle, the insurance policy taken by the transferor cannot be taken to subsist unless the benefits of the policy are also transferred to the transferee. It was further observed that Section 96 of the Motor Vehicles Act, 1939, did not warrant the view that a sale or transfer of an insured car by the insured during the currency of the policy did not terminate the policy. The earlier view of that court in *South India Insurance Co. Ltd. v. Lakshmi* [1971] 41 Comp Cas 537 (Mad) : [1971] ACJ 122 was reiterated where it had been laid down that if there has been a transfer of ownership of the vehicle before the date of the accident, the liability for the accident cannot be fastened on the transferor even though the transferor had not been recognized by the regional transport authority and the registration has continued in the name of the transferor.

11. A similar view was expressed by the High Court of Madhya Pradesh in *Balwant Singh v. Jhanubai* [1980] ACJ 126, where it was held :

" It is also well-settled law that a contract of insurance is nothing but a contract of indemnity. The policy is with reference to a specified vehicle owned by the policy holder and consequently the policy remains effective while the policyholder retains an interest in the vehicle. In the absence of any express stipulation to the contrary in the policy, the moment the insured parts with the car, the policy relating to it lapses. The insurance policy being a contract of personal indemnity, the insurers cannot be compelled to accept responsibility in respect of a third party who may be quite unknown to them."

12. Finally, as regards the contention that in view of the enumeration of defences available to an insurance company u/s 96(2) of the Motor Vehicles Act, 1939, it was not open to it to seek to take up any other defence, namely, that it was absolved from liability on account of the transfer of the vehicle by the insured, reference must be made to the judgment of the High Court of Andhra Pradesh in *Indian Mutual Insurance Company (now merged in the United India Fire and General Insurance Co. Ltd). v. Vijaya Ramulu* [1978] ACJ 366, where this argument was specifically raised and repelled. Regarding Section 96(2) of the Motor Vehicles Act, 1939, it was observed:

" This provision deals with the liability of the insurer to satisfy judgments against persons insured in respect of third party risks. One of the essential requirements

to be fulfilled before the insurer is held liable to satisfy the judgment against the insured is that before or after the judgment against the insured, the insurer should have been given notice. That presupposes that the insured himself would be liable for compensating the third party for the damage caused by the accident. If one of the terms of the insurance stipulates that upon transfer of the ownership of the vehicle by the insured to the third party, the insurer would be absolved from liability, the provisions of Section 96(2) obviously cannot apply. It is only where the liability of the insurer subsists, the question of the insurer satisfying the claims or indemnifying the insured arises. It is in cases where the liability of the insured is established, on what grounds the insurer may defend himself is laid down in Sub-section (2) of Section 96. In a case where the plea is that the insured himself was not liable for the reason that he had transferred the vehicle by the date of the accident, the restrictions contained in Sub-section (2) of Section 96 as regards the defence open to an insurer cannot apply. That Sub-section only deals with the grounds on which the insurer may avoid his liability even though the person insured is liable for the accident. "

13. It must be taken, therefore, that the position in law is now well-settled that transfer of ownership of a motor vehicle puts an end to the liability of the insurance company with which it was insured, even though the insured continues to be shown as the registered owner of the vehicle in the records of the registering authority. In other words, the liability for the accident, besides that of the person actually causing it, is of the real owner whether or not he also happens to be the registered owner thereof. This being so, there can be no escape from the conclusion that no liability for the compensation awarded could be fastened upon M/s Jolly Engineers & Contractors P. Ltd. or upon the New India Assurance Co. Ltd. The liability was thus only that of the driver of the offending vehicle and the owner thereof, M/s Navrang Bus Service, Amritsar. It shall be open, therefore, to the claimants to recover the amount awarded from both or either of these respondents.

14. This appeal is accordingly accepted. In the circumstances, however, there will be no order as to costs.