(2010) 12 BOM CK 0079

In the Bombay High Court

Case No : First Appeal No. 553 of 1996

New India Assurance Co. Ltd. — APPELLANT

Vs

Kausalyabai Onkar Lahudkar and Others — RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Motor Vehicles Act, 1939 — Section 103A, 94, 95
Sales of Goods Act, 1930 — Section 31

Citation : (2011) ACJ 2352 : (2011) 1 ALLMR 567 : (2011) 3 BomCR 122 : (2011) 2 MhLj 797 : (2011) 6 RCR(Civil) 2659 : (2012) 1 TAC 319

Hon'ble Judges : K.K. Tated, J

Bench : Single Bench

Advocate : S.L. Kulkarni, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Tated, J.—Heard the learned Counsel for the appellant. No one appeared for the respondents.

2. Present appeal is preferred by the original opponent No. 3 Insurance Company against the judgment and award dated 15031996 passed by the Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claims Petition No. 140 of 1989. The respondents original claimants filed application before the Motor Accident Claims Tribunal claiming compensation of Rs.1,50,000/-. The respondents original claimants are legal representatives/legal heirs parents and brother of the deceased Vilas Onkar Lahudkar. The deceased was working as cleaner on Tempo of Ashokkumar Purohit. He was getting Rs.700/- per month. He used to pay Rs.400/- per month to his family for household expenses. The deceased was the sole person who was managing the entire family. On 26121988 the deceased came from Baramati and was going towards Aurangabad alongwith tempo. After crossing Pandharipul, one bulb of head lamp of tempo became short. Therefore, the driver of the tempo asked the deceased to replace the same. For replacement of the said lamp, driver stopped the tempo at the left side of the

road. After replacing the bulb, the deceased was coming in front of the tempo. At that time, truck gave dash to the said tempo from the back side, due to which, the tempo was pushed ahead for a distance of 60 to 65 ft., and the truck turned turtle. In the said accident, Vilas Onkar Ladhudkar died. Therefore, the respondents original claimants filed claim petition claiming compensation in the sum of Rs. 1,50,000/-.

3. In that claim petition, the appellant Insurance Company filed their written statement dated 18111989 and resisted the claim petition. The appellant raised objection that "respondent No.7 owner of the truck which was insured under the policy, had transferred the said vehicle to one Mr. Liyakat Hussain Shaikh, who again transferred it to Mrs. Sangita Kishor Bhandari on 14121988 and also parted with possession of the said vehicle to her, without any intimation and without permission of the appellant. Therefore he had no insurable interest in the said vehicle on the alleged date of the incident i.e. on 26121988. As the said vehicle was transferred without any intimation and without the permission of the appellant, the policy of insurance issued by the appellant in favour of respondent No. 7 lapsed and so the appellant is not liable to pay any compensation.

4. I heard Mr. S.L. Kulkarni, the learned Counsel appearing on behalf of the appellant. The learned Counsel appearing on behalf of the appellant made a statement before the Court that they challenged the impugned judgment and award passed by the Tribunal on 15031996 only on the ground that respondent No. 7 owner sold the vehicle to third party before the date of accident, without intimating them and therefore, they are not liable to pay any compensation to the respondents original claimants. He submits that it has come on record in the pleadings that the vehicle was transferred by respondent No.7 and possession was handed over to the purchaser of the vehicle before the accident occurred. Under such circumstances, the claim petition should have been rejected for not impleading necessary party. He further submits that as per provisions of Section 31 of Sale of Goods Act, 1930, the transfer of ownership take place on the date of sale, though in registration of vehicle record maintained by the Regional Transport Authority, name of the transferor is recorded later on. Hence, the learned Tribunal ought to have held that the appellant Insurance Company was not liable to pay compensation. He further submits that the transfer of ownership takes place from the sale date and not on the date on which the name of transferor is recorded in the office of the R.T.A. Therefore, relying on evidence of witness Prakash at Exhibit 68 the learned Tribunal has given erroneous finding on issue Nos.3 and 4 and same are against law. He further submits that the Tribunal has committed an error in relying on Exhibit 69 certificate issued by the R.T.O. showing that the vehicle stands in the name of respondent No.7 on the date of accident to fasten the liability on the Insurance Company.

5. On the basis of these submissions, the learned Counsel appearing on behalf of the appellant Insurance Company submits that the impugned judgment and award passed by the Tribunal against the Insurance Company, is liable to be set

aside.

6. The issue involved in the present case is whether the Insurance Company is liable to pay compensation once vehicle is sold but not transferred in the record of R.T.O. as per Motor Vehicles Act before the date of incident?

7. The appellant brought on record that Mrs. Sangita Kishor Bhandari filed application before the Judicial Magistrate, First Class, Newasa for possession of the vehicle which was attached in Crime No. 260/1988 stating that she is owner of the vehicle. The said truck was released in her favour on the basis of sale transaction dated 14121988. It is to be noted that though Mrs. Sangita Bhandari filed application for release of the vehicle from Judicial Magistrate, First Class, Newasa in Crime No. 260/1988, her name was not entered in the office of R.T.O. as owner on the date of accident i.e. on 26121988. It is to be noted that as per Motor Vehicles Act, ownership transfers from one person to another person when the purchaser''s name entered into R.C. book maintained by the office of R.T.O. Our High Court in the matter of Union of India (UOI) Bharat Raghoji Kedare @ Mhaske and Anr. 2009 B.C.I. 223 held that unless and until purchaser''s name entered into R.T.O. records, it is not possible to hold the purchaser as registered owner of the vehicle. Para21 of that judgment reads as under.

21. The reference of ownership recorded in SCC No. 799/1997 by the learned Judge in his order dt. 20th Jan., 2004, in paragraph 13 thereof, will not mean and lead to draw an inference that the vehicle was owned by Sayyad Chand s/o Sayyad Waliuddin as on the date of accident. Said Sayyad Chand making an application to the Court concerned on 3.7.1997 requesting to hand over the seized auto rickshaw on Supurdnama (undertaking) claiming himself to be owner of the auto rickshaw, annexing therewith xerox copies of the sale letter dt. 7.4.1997, xerox copy of tax book dt. 4.3.1992 or copy of R.C. Book by itself will not exonerate the respondent Sk. Elias. No such plea was raised before the learned Judge. That apart, the accident is taken on 12.5.1997 while the so called sale letter is dt. 7.4.1997 but there is no such entry in the R.T.O. records showing such transfer of the vehicle from Sk. Elias Sk. Burhan to said Sayyad Chand Sayyad Waliuddin. The R.T.O. particulars are also short of acceptance of such theory as they are in the name of respondent Sk. Elias.

8. In the similar way, our High Court in the matter of Anguribai Babulal Patodi v. United India Insurance Co. Ltd. and Ors. 2003 Bom. C.R. 530 held that unless and until there is a breach of terms and conditions of the insurance policy, the Court cannot compel the insurance company for payment of compensation. Head Note A reads thus :

Motor Vehicles Act, 1939, Sections 103A, 94 and 95 Vehicle transferred from one owner to another insurer''s liability During currency of insurance MACT exonerating insurer from liability because ownership of vehicle had been transferred in January 1989 and registered with RTO in March 1989 Insurance cover was for period 16189 to 14190 Accident took place on 101189 Held, so far as 3rd party risk is concerned insurer is liable during the currency of insurance even if the ownership of the vehicle has changed and it has not been intimated to the insurer. It is not effected by terms or conditions of the policy. Sections 94 and 95 of the Act fortify the position that any person who will use the vehicle is not required to insurer it separately. Transferee of vehicle may not get personal benefit in such case, but as far as third party risk is concerned, he can enforce it.

9. Similar view was taken by our High Court in the matter of National Insurance Co. Ltd. v. Bhargavi Gopala Krishnan and Ors. 2006(4) Bom.C.R. 608. Head Note A reads as under.

Motor Vehicles Act, 1939, Sections 31, 94 and 103 Insurable interest of insurer On sale of vehicle Accident occurred on 14031984 Due to dash of jeep against rickshaw Death of rickshaw driver Respondent No. 6 who owned jeep, that he sold same on 30.1.1984 to respondent No. 6 On 221984 informed Insurance Co. to cancel policy and to refund balance premium Contention of respondent No.6, on date of incident he was not owner of vehicle Claim for compensation granted Challenged Held, though respondent No.6 had given intimation to appellant about sale of jeep and made request to refund remaining amount of premium, request was accepted and acted upon by appellant only after accident in question. Tribunal justified in holding that respondent No. 6 had insurable interest in offending vehicle and liable to pay compensation. 1993(3)S.C.C. 97 relied and followed. Shantilal Mohanlal and Another Vs. Aher Bawanji Malde and Others, implied by overruled no longer a good law. (Paras 13 and 14)

10. In view of the above mentioned cited authorities and facts of the present case, the submission made by the learned Counsel appearing on behalf of the appellant that as per Sale of Goods Act, on the date of accident, the vehicle stood transferred in the name of Mrs. Sangita Bhandari and therefore, they are not liable to pay compensation though insurance policy was well in force, is not acceptable. It is crystal clear from the above cited authorities that when it is held that the original owner of the vehicle is liable to pay compensation, the insurance company with whom the said vehicle is insured is also liable. In the present case, though the vehicle was sold before the date of the accident, the same was not duly transferred in the name of purchaser in the office of the R.T.A. Therefore, the insurance company is liable to pay compensation.

11. In view of the above mentioned facts and circumstances, I do not find any reason to interfere with the judgment and award passed by the Tribunal dated 15031996 holding the Insurance Company also responsible for payment of compensation. First Appeal is dismissed. No order as to costs.

