(2006) 07 SHI CK 0006

In the High Court Of Himachal Pradesh

New India Assurance Company APPELLANT

Vs

Mehta Balbir Singh and Others RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:
Motor Vehicles Act, 1939 — Section 103A

Citation : (2007) 2 ACC 251 : (2007) ACJ 788 : (2006) 3 ShimLC 78

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Gupta, C.J.—Reference is invited to Section 103-A of the Motor Vehicles Act, 1939 in support of the argument that no intimation was given by the original owner of the vehicle in question, namely, respondent No. 3 herein that the vehicle in question had been sold and its ownership transferred in favour of respondent No. 2. The accident in question had occurred on 4th May, 1989. The Motor Vehicles Act, 1988 came into force with effect from 1st July, 1989. It, therefore, clearly means that the claim petition filed by respondent No. 1 with respect to the aforesaid accident was regulated by the provisions of Motor Vehicles Act, 1939 at least in so far it related to the contract of insurance between the insurer and the insured. Section 103-A of the 1939 Act, therefore, did have application to the aforesaid contract of insurance relating to the aforesaid claim petition.

2. As many as eight Issues were framed in the claim petition, but only Issue No. 5 has been referred today before me for consideration. Issue No. 5 reads thus:

Whether the documents of Car No. HID 65 were not in order at the time of accident? OPR-3

3. Relevant extract of Section 103-A of 1939 Act reads thus:

103-A. 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 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 re-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 its transfer.

...

4. Whether the original owner-insured had intimated or applied in the prescribed form, to the appellant-insurer for the transfer of the certificate of insurance and the policy described in the said certificate in favour of the transferee, or whether this was not done was a fact known only to the appellant-insurer and this fact alone had a bearing to the applicability of Section 103-A of 1939 Act.

5. I have seen the written statement filed by the appellant-insurer in the Tribunal and find that no averment to this effect was made by the appellant- insurer before the Tribunal. It is because of total lack of any such averment on the part of the appellant-insurer that the learned Tribunal did not and rightly so, frame a specific issue to the aforesaid effect and as is seen Issue No. 5 was framed only in a very vague, generalized term.

6. In the background of the aforesaid facts, therefore, I have no hesitation in holding that onus to aver and establish as well as to prove the fact that the original owner-insured had not applied for the transfer of policy of insurance and the certificate, lay squarely upon the appellant and this onus was not discharged by the appellant. Therefore, this defence was not available to it before the Tribunal.

7. For the foregoing reasons, the appeal is dismissed, but without any order as to costs.

8. Whatever amount is lying in deposit either in this Court, or before the Tribunal shall be released in favour of the claimant as per the terms of the Award alongwith uptodate interest accrued thereupon.

Cross-objection No. 273/94

Dismissed as not pressed.

