

(2003) 08 MAD CK 0084

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1028 of 2001 and CMP. No"s. 6481 to 6483 and 17837 of 2003

New India Assurance Company

APPELLANT

Vs

Nagarathinamma, Jayalakshmi, Govindan, Desayya Naidu
and N. Rmadoss

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Motor Vehicles Act, 1939 — Section 103A

Motor Vehicles Act, 1988 — Section 147(1), 157, 93(3), 94, 95

Citation : (2005) ACJ 880 : (2003) 3 LW 626 : (2003) 3 MLJ 357

Hon'ble Judges : S.K. Krishnan, J;E. Padmanabhan, J

Bench : Division Bench

Advocate : K. Padmanabhan, for Kurian Associates, for the Appellant; A.N. Viswanatha Rao, for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The above appeal has been preferred by the insurer challenging the award and decree dated 30th March, 1990 made

in MCOP.No.273 of 1983 on the file of the Motor Accident Claims Tribunal (II Additional Sub Judge) Chengalpattu.

2. With the consent of either side, the appeal itself is taken up for final disposal. Heard Mr.K.Padmanabhan, for M/s.Kurian and Associates for the

appellant and Mr.A.M.Viswanatha Rao, for respondents 1 to 3, the 4th and 5th respondent not appearing.

3. Respondents 1 to 3 herein instituted MCOP.No: 273 of 1983 on the file of the Motor Accident Claims Tribunal, Chengalpattu against the

appellant and respondents 4 and 5 herein claiming a compensation of Rs.1 lakh. The first claimant is the widow of Ravindran. The second and third

claimants being the mother and father of the deceased. On the date of death the deceased was aged 21 years. The first claimant was aged 19

years, second claimant was aged 38 years and third claimant was aged 45 years. The deceased Ravindran died in the accident that occurred on

6.9.1982 at 10.30 a.m. In the Kavarapettai-Sathiavedu Road.

4. According to the claimants, the deceased Ravindran was riding in a bicycle at 10.30 a.m., on 6.9.1982 on Kavarapettai-Sathiavedu Road. At

that time, the lorry bearing registration No. ATM-6543 driven rashly and negligently dashed against the deceased Ravindran and he died. It is

contended that the accident has been caused by the rash and negligent driving of the lorry by its driver. The deceased succumbed to the injuries as

he was knocked down by the lorry belonging to the first respondent insured with the second respondent insurance company. The deceased was a

Postal Carrier attached to Kavarapettai Sub Post Office.

5. The second respondent-insurer of the vehicle filed a counter pointing out that particulars of insurance coverage such as policy number has not

been furnished. Hence the second respondent is not liable to pay the compensation. The second respondent contested the claim both on the

ground of negligence as well as on the question of quantum of compensation claimed. It is also pointed out that the driver has been acquitted by the

criminal court. In the Additional counter it is contended by the insurer that the vehicle is found to be insured in the name of one K.R.P.Enterprises,

Sri Ramakrishna Boiled Rice Mill, Vayulur, Andhra Pradesh In Vijayawada Division, the insured owner of the vehicle has not been impleaded as

respondent and this is fatal. The Insurance Policy in respect of the lorry was transferred in favour of the third respondent owner of the vehicle only

on 7.9.1982 with a transfer endorsement on payment of Rs.5/= towards transfer fee. It is contended that there is no privity of contract and there

was no insurable interest for the third respondent on the date of the accident, as the third respondent came into picture only on 7.9.1982. Unless it

is established that the actual insured was in possession of the vehicle on the date of accident and that the driver was under its employment, the

second respondent-insurer is not liable to answer the present claim. The second respondent prayed for dismissal of the claim petition.

6. Before the Tribunal below the claimants marked Exs.P.1 to P.4, while the

respondents marked Exs.R.1 to R.4. The claimants examined two witnesses and the respondent examined two witnesses on his side. The Tribunal below framed the following three points for consideration:-

(i) Whether the accident has been caused by the rash and negligent driving of the respondent's lorry?

(ii) Whether the claimant is entitled to any compensation?

(iii) Whether the second respondent insurer is liable to pay compensation?

7. On the first issue the Tribunal below while accepting the evidence of P.W.2, recorded a finding that the accident has been caused by the rash

and negligent driving of the lorry driver. On the second point, the tribunal held that the claimants are entitled to compensation of Rs.1 lakh, in all

under various heads. On the third point, the tribunal held that the respondent including the insurer is liable to pay the compensation with interest at

12% and cost. The Tribunal apportioned the compensation among the claimants and the apportionment being RS.60,000/= to the first claimant,

widow of the deceased, Rs.30,000/= to the mother of the deceased and Rs.10,000/= to the third claimant the father of the deceased.

8. Challenging the said judgement and award the insurer alone has come before this court contending that the insurer is not liable to pay

compensation as there is no valid insurance on the date of accident.

9. The learned counsel appearing for the appellant while fairly stated that he is not challenging the finding of the tribunal below with respect to

negligence as well as quantum of compensation. The learned counsel for the appellant also fairly stated that there is no dispute with respect to the

relationship between the deceased and the three claimants. The learned counsel for the appellant mainly contended that the appellant herein, the

insurer, is not liable to pay compensation as there was no valid contract on the date of accident as the policy has been renewed in favour of the

third respondent a transferee after the accident and therefore the insurer is not liable and if at all it is the owner of the vehicle who has to pay. The

liability of the insurer alone is the point in issue and therefore we have to consider the said controversy. The points that arise for consideration are:

(i) Whether the appellant - insurer is liable to pay compensation awarded by the tribunal below to the claimants?

(ii) Whether there was a valid insurance coverage of the vehicle on the date of

the accident and

(iii) To what relief, if any?

10. Ex.P.1 is the Xerox copy of the RC Book. Ex.P.2 is the Insurance certificate. Ex.P.4 is the Insurance Policy. It is the main contention of the insurer/appellant that there was no existing contract of insurance between the appellant and the respondent No.3, the owner of the lorry on the date of accident. According to the insurer M/s.K.R.P.Enterprises was the owner of the lorry, who has insured the ill-fated lorry. On 6.9.1982, the date of accident, the owner of the lorry was M/s.K.R.P.Enterprises. The accident took place on 6.9.1982. Only on 7.9.1982 a day after the accident, the third respondent has sought for transfer of the insurance policy in his favour being the transferee of the lorry. It is pointed out by the appellant that on the date of accident there was no valid insurance in respect of the lorry owned by the third respondent, a transferee. As there was no contract of insurance between the third respondent and the insurance company, the insurer is not liable to pay the compensation is the only and substantial contention.

11. The third respondent, owner of the lorry on the date of the accident was examined as R.W.3. It is the evidence of R.W.3, the owner of the lorry that the said lorry was owned by Ms.K.R.P.Enterprises, that on 25.8.1982 the lorry was transferred in his name as seen from Ex.R.1 copy of RC Book. According to R.W.3, there was a valid insurance and therefore the insurer is liable to pay the compensation.

12. R.W.3 further deposed that RC Book and the Insurance policy were handed over to the Insurer for transfer of the insurance in his name much earlier to the accident. Ex.R.2 is the insurance policy. Therefore the second respondent insurance company is liable to pay the compensation. The evidence of R.W.3 has been analysed by the tribunal below. The lorry has been transferred in favour of R.W.3 on 25.8.1982 as seen from the entries in Ex.R.1. Ex.R.2 is the insurance policy issued in favour of the third respondent Ramadoss who is the admitted owner on the date of accident. On the date of accident there was valid insurance as has been admitted by the second respondent insurance company. But the second respondent contended that on 7.9.1982 alone the vehicle was insured and therefore in respect of the accident that occurred on 6.9.1982 there

being no valid contract of insurance, the insurer is not liable to indemnify the loss, nor it is liable to pay the compensation.

13. The evidence of R.W.3 has been accepted by the tribunal below and his evidence would show that R.W.3 has applied for transfer of policy on

25.8.1982. But the transfer of policy has been made only on 7.9.1982. R.W.2 representing the insurer deposed that the application for transfer of

policy was submitted only after the accident and that the vehicle owner did not disclose about the accident and had there been a disclosure, the

policy would not have been issued. In this respect the tribunal below after considering the evidence of R.Ws 1 and 2, disbelieved R.W.2 and held

that there was a valid insurance coverage in respect of the vehicle involved in the accident on the date of accident and therefore the appellant

insurer is liable to pay the compensation. The tribunal below relied upon the pronouncement of Supreme Court in Dharman and another Vs.

Srinivasan and others reported in 1989 (I) Law Weekly, page 315.

13. In the light of the said finding, the tribunal below passed an award against all the respondents while holding that the insurer who is the appellant

herein is liable to pay the compensation.

14. In this appeal, the learned counsel appearing for the appellant contended that the accident took place on 6.9.1982. The policy was transferred

only on 7.9.1982 and therefore the insurer is not liable as there was no valid contract of insurance between the third respondent, owner of the

vehicle and the appellant, the insurance company.

15. Mr.Viswanatha Rao, learned counsel appearing for the contesting respondents-claimants contended that there is a valid insurance and

therefore the insurer is liable and at any rate the insurance company should be directed to pay the entire amount of compensation as assessed and if

at all liberty be given to the insurer to proceed against the owner of the lorry.

16. All the points raised in this appeal could be considered together. There is no dispute about the dates mentioned above. The findings recorded

by the tribunal below that is the third respondent-owner of the lorry has applied for transfer of insurance policy earlier in point of time. But the

communication of transfer was issued only a day after the accident and it is a continuance of insurance cover. It is also pointed out by the counsel

for the respondent that the transfer of the insurance policy also cover the lorry

which was issued prior to the accident and transferred in favour of the third respondent-owner of the lorry who is the transferee long prior to the date of accident. The findings of the tribunal below deserve to be sustained on facts.

17. The counsel appearing for the appellant as well as the second respondent referred to various pronouncements in support of their respective contentions. The counsel of the appellant also relied upon the pronouncement of a Full Bench of this court in *Saroja and 3 others Vs. Gopal and 3 others*, and contended that the appellant insurance company cannot be fastened with the liability unless the intimation of transfer and sale of vehicle is given to the insurer. According to the appellant the insurance policy lapsed and therefore no liability could be fastened on the appellant.

18. Per contra, reliance is placed upon the Division Bench Judgment of this court in *Dharman and another Vs. N.C. Srinivasan and others*, where the Division Bench held that the insurance company cannot avoid its liability against third party by taking a plea that the policy had come to an end on the transfer of the vehicle before the accident and that such a defence is not available to the insurer u/s 96(2) as against third party claimants.

The Division Bench also held that it could be open to the insurer to work out its remedies against the parties concerned u/s 93(3) proviso or u/s 96(4) of the Act. Very many pronouncements were relied upon by either side.

19. In our considered view, it may not be necessary to refer to all the pronouncements on which the counsel on either side placed reliance. There is no dispute that the vehicle was transferred in favour of the third respondent herein prior to the accident and the transfer has also been effected prior to the accident and the transfer of the vehicle has also been intimated to the insurer prior to the accident. But the insurer has sent the intimation regarding transfer of policy a day after the accident and on that score the insurer seeks to avoid the liability. The case relied upon the counsel for the appellant as well as the counsel for the respondent relates to a case where the transfer of the vehicle has not been reported to the registering authority as well as to the insurer within the time prescribed. That is not the case here and therefore it is not necessary to refer to the said pronouncements relied upon by either side.

20. In the present case on facts transfer has been intimated not only to the

registering authority, but also to the appellant-insurer within the period stipulated and the insurer has taken time to effect transfer of the policy and factually after the accident only transfer of insurance policy has been intimated, but it is a continuation of policy and not a new policy. The tribunal below rightly held that the transfer has been intimated to the insurer well in time. But the transfer of policy has been intimated a day after the accident. It is not in dispute that the vehicle was covered by a policy of insurance on the date of accident, but it was issued in favour of the transferor. Immediately after transfer the transferee has also intimated about the transfer remitted the charges for continuation of the policy. Mere communication of intimation of transfer of policy, a day after the accident will not absolve the insurer as the insurer has already been intimated, collected the fees for the transfer of the policy well before the accident. In such cases the insurance company cannot avoid the liability in respect of third party claims.

21. On the facts of the case it has to be pointed out that the liability of the insurer to third party absolved, nor the insurer could contend that it is the owner of the vehicle alone is liable and that the insurer is absolved of its liability. Not only the transfer has been intimated and effected before the date with respect to the registration of certificate, but transfer of the policy has also been applied within the time stipulated by intimating the transfer and necessary fee has been paid in this respect which is prior to the accident and the communication of transfer as to the transfer of policy has been issued only after the date. On this score, the insurer cannot avoid its liability.

22. Madhya Pradesh High Court in New India Assurance Co. Ltd. Vs. Niranjan Sadangi and Others, held thus:-

5. The award was challenged by the claimant on various grounds mentioned in the memo of appeal. It may be pertinent to record that the Full

Bench in National Insurance Co Ltd., V. Kans Ram 2000 ACJ 405 (MP), on reference made by the Division bench of this court by order dated

23.9.1997 passed in Umed Chand Golcha V. Dayaram, M.A., BNo.192 of 1996, held that the insurance policy remains effective in respect of

third party risks but not in respect of transferee risks, even if there has been absence of application/intimation as stipulated u/s 103-A of the Act

and law laid down in Balwant Singh V. Jhannubai 1980 ACJ 126 and Sabir Hussain V. Maya Bai, 197 ACJ 1258 and similar other decision, I was

no more good law. Therefore, the claim of the insurance company that it was not liable to pay compensation awarded by the Tribunal for the

reasons that on transfer of vehicle without intimation to it, policy ceased to exist and there was no privity of contract between the company and the

transferee, stands rejected.

23. In the above decision, the Division Bench took the view that in respect of third party risks the insurance policy also remains effective even in

such circumstances and that the claim of the insurance company that it was not liable to pay compensation has been repelled. The case on hand is

identical in all respects.

24. The Supreme Court in M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd., while considering the scope of Section

103-A of the Old Act and Section 157 of the Motor Vehicles Act, 1988 held thus:-

10. There can be no doubt that the said Chapter provides for compulsory insurance of vehicles to cover third party risks. Section 146 forbids the

use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of

that Chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party, i.e.,

a person other than the insured. This is clear from Section 147(1)(b)(i) which clearly refers to damage to any property of a third party and not

damage to the property of the insured himself. And the limit of liability fixed for damage to property of a third party is rupees six thousand only as

pointed out earlier. That is why even the Claims Tribunal constituted u/s 165 is invested with the jurisdiction to adjudicate upon claims for

compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any

property of a third party so arising, or both. Here also it is restricted to damage to third party property and not the property of the insured. Thus,

the entire Chapter XI of the New Act concerns third party risks only. It is, therefore, obvious that insurance is compulsory only in respect of third

party risks since section 146 prohibits the use of a motor vehicle in a public place unless there is in relation thereto a policy of insurance complying

with the requirements of Chapter XI. Thus, the requirements of that Chapter are in relation to third party risks only and hence the fiction of

Section 157 of the new Act must be limited thereto. The certificate of insurance to be issued in the prescribed form (see Form 51 prescribed

under rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the new Act and

the old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal

Commission as right in the view it took based on the decision in Kondaiah's case, 1986 ACJ 1, because the transferee insured could not be said

to be a third party qua the vehicle in question. It is only in respect of third party risks that section 157 of the new Act provides that the certificate of

insurance together with the policy of insurance described therein shall be deemed to have been transferred in favour of the person to whom the

motor vehicle is transferred. If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that

would be a matter falling outside Chapter XI of the new Act and the realm of contract for which there must be an agreement between the insurer

and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case, since there was no such agreement and

since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage

to the vehicle. The view taken by the National Commission is, therefore, correct.

25. The Supreme Court in Rikhi Ram and another Vs. Smt.Sukhrania and others reported in 2003 (1) Supreme 1000 laid down that on the

transfer of a vehicle to a transferee, the liability of the insurer does not cease so far as the third party victim is concerned even if the owner or

purchaser does not give any intimation as required u/s 103-A of Motor Vehicles Act, 1939. In this respect, the Apex Court held thus:-

4. A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the

owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can

cover three kinds of risks. i.e. Owner of the vehicle; property(vehicle) and third party. The liability of the owner to have compulsory insurance is

only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:-

Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the

person or classes of person specified in the policy in respect of any liability which the policy purports to cover the case of that person or those

classes of person.

5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would

bring an action on a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an

insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94

does not provide that any person who use the vehicle shall insure the vehicle in respect of his separate use.

Xx xx xx xx xx

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of

insurer does not ceases so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under

the provisions of the Act.

26. In the light of the above pronouncement in Rikhi Ram and another Vs. Smt.Sukhrania and others reported in 2003 (1) Supreme 1000 the

appellant-insurer cannot avoid the liability.

27. It is also the settled law so far as the third party is concerned the insurer cannot avoid the liability as the insurance policy issued in respect of

the lorry was in force, the intimation has been given that the vehicle has been transferred and the intimation has been given much prior to the date of

accident and merely because the transfer of policy is intimated later, the insurer cannot avoid the liability. There is material to show that the

intimation has been given well in time and necessary fees has been remitted very much prior to the date of accident. Merely because the insurer

took time to issue communication of transfer, it will not absolve the liability of the insurer and particularly in respect of third party claim. It is well

settled law that the third party like the claimants cannot be made to suffer.

28. In the foregoing circumstances, the above appeal is dismissed with costs. Consequently connected CMPs are closed.