

(1983) 01 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 203 of 1977 and Cross-Objection No. 17-CII of 1977

Oriental Fire and General Insurance Co. Limited

APPELLANT

Vs

Harbans Kaur and Others

RESPONDENT

Date of Decision : 20-01-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 102, 96

Citation : (1986) 59 CompCas 25

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

Bench : Single Bench

Advocate : V.P. Gandhi, for the Appellant; J.K. Mehta, for respondents Nos. 1 to 9 and H.S. Nagra, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The challenge in this appeal by the insurance company is to its liability for payment of the amount awarded as compensation to the claimants on the plea that the policy of insurance in respect of the vehicle involved in the accident, at the time thereof, stood in the name of a person who was presumed to be dead at that time.

2. The offending vehicle was the motor cycle MHI-174 which was owned by Flight Lieutenant S.B. Bhagwat.

3. During the Indo-Pak conflict of 1965, Flt. Lt. S.B. Bhagwat was reported missing and has not been heard of ever since. The evidence on record shows that the motor vehicle MHI-174 along with the other belongings of Flt, Lt. S.B. Bhagwat were handed over to his parents by the Air Force authorities. His parents, in turn, gave this motor cycle to his brother, Mr. B.B. Bhagwat, and since 1969, it has been in the use and possession of Mr. B. B. Bhagwat. It continued, however, to be in the name of Flt. Lt. S.B. Bhagwat as also the policy of insurance in respect thereof. The insurance premium continued to be paid, but in

the name of Flt. Lt. S.B. Bhagwat.

4. The accident in this case took place on September 24, 1974, at about 1.00 p.m. when this motor cycle was being taken for servicing by Madan Lal, the mechanic of a workshop, who had been sent to collect this motor cycle at the instance of Mr. B.B. Bhagwat. The motor cycle hit the cycle of Joginder Singh, deceased, on the Peeli Sarak, Raghomajra, Patiala. Joginder Singh later died as a result of the injuries suffered by him in this accident.

5. The Tribunal held that the accident took place due to the rash and negligent driving of Madan Lal. Rupees 20,000 were awarded as compensation to the claimants, who were the widow and seven minor children of Joginder Singh, deceased. The insurance company was held liable to pay the amount awarded.

6. Fastening of liability upon the insurance company for the amount awarded was assailed by Mr. V.P. Gandhi, counsel for the appellant. He argued that unless and until the insured was held liable, no award for the payment of compensation could be made against the insurance company. The point urged being that the liability of the insurance company was dependent upon that of the insured and as the insured was Flt. Lt. S.B. Bhagwat and no award had been made against him, the insurance company could not be held liable for the amount awarded. In support of this contention, the judgment of the Full Bench of this court in *Oriental Fire and General Insurance Co. Ltd. Vs. Bachan Singh and Others*, was cited, where in dealing with the provisions of Sub-section (1) of Section 96 of the M. V. Act, 1939, it was observed (at p. 35 of 55 Comp Cas) :

" A plain reading of Sub-section (1) of Section 96 would indicate that herein the pre-condition of the liability of the insurer arises when a judgment is obtained against the insured person who has taken up the policy of insurance. It is then and then alone that the insurer is obliged to pay the claimant the amount due under such a judgment as if the insurer was the judgment-debtor. Therefore, in the absence of a judgment obtained against the insured, no liability whatsoever would arise against the insurer, according to language of Sub-section (1)."

7. It was further stated that (at p. 35 of 55 Comp Cas) :

" Section 96 of the Act consequently makes it plain that it was never intended by the Legislature nor does it flow from its language that the insurer would become liable de hors the insured and even when the insured has been wholly exonerated of any liability."

8. Counsel for the claimants, Mr. I.K. Mehta, on the other hand, sought to contend that on the death of the insured, the policy of insurance does not lapse, but it enures to the benefit of the legal heirs of the insured for the duration of the remaining period of the policy. On these premises, he went on to argue and as there was a subsisting policy of insurance in respect of the vehicle involved in the accident on the date when the accident took place, the benefit thereof would be available to Mr. B.B. Bhagwat being the legal heir of Flt, Lt. S.B. Bhagwat. This

contention was founded upon the judgment of the High Court of Karnataka in K.G. Prabhavathi v. K. Nirmala [1982] ACJ 333 , K.G. Prabhavathi and Others Vs. K. Nirmala and Others, , where it was held (at p. 675 of 55 Comp Cas) :

" ...even if the insured dies, the policy of insurance survives for the benefit of the legal heirs till the period of policy is over."

9. The court here cited with approval the observations in the earlier case of Smt. Rangamma v. Thimmarayappa ILR [1980] Kar 804, where it was stated (at p, 675 of 55 Comp Cas) :

" The interest secured under a policy for the user of a motor vehicle in a public place can be deemed to be property and it passes to the legal representatives on the demise of the insured for the rest of the period insured."

10. A similar view was expressed in another judgment of the same High Court in Zakaria and Others Vs. Naoshir Cama and Others, , where again it was held that the policy of insurance was property which on the death of the insured passed on to his heirs and consequently the liability of the insurer does not cease to exist on the death of the insured during the period of the policy.

11. Both on principle as also having regard to the relevant provisions of the Motor Vehicles Act, the legal position as enunciated by the authorities referred to above cannot be subscribed to and I am, with respect, constrained, therefore, to take a contrary view.

12. The matter regarding the nature of a contract of insurance came up for consideration before the Full Bench in Oriental Fire and General Insurance Co. Ltd. Vs. Bachan Singh and Others, , where it was held that the very cornerstone of a contract of insurance was the principle of indemnity and thus under the general law, no right would accrue to any third party under such a contract. In a contract of insurance, privity of contract was strictly between the insurer and the insured and, therefore, under the general law, in a claim for damages for a tortious act against the tortfeasor, the insurer of the latter was neither a necessary party nor in any way liable to the claimant. Section 96 of the M. V. Act provided an exception to this rule, but here again the provisions thereof could not be construed so as to render the insurer liable independently of the insured. With this being the correct legal position, there can be no escape from the view that on the death of the insured, the liability of the insurer under the contract of insurance must come to an end.

13. In dealing with this matter, the provisions of Section 102 of the M.V. Act must now be adverted to. They provide for the shifting of the cause of action against the insured, after his death, on to his estate or the insurer. This is thus clearly an exception to the rule set out in Section 96 of the M. V. Act. It has, however, to be noted that it is expressly limited to causes of action arising out of a happening which occurs before the death of the deceased. It would be straining the language of the statute to hold that such cause of action would survive even in

the case of an accident arising after the death of the insured. In other words, the insurer cannot be held liable under a policy of insurance in respect of an accident which takes place after the death of the insured.

14. The settled position, therefore, is that a policy of insurance cannot be held to be property, which on the death of the insured, passes on to his heirs, who thereby become entitled to the benefits thereof. The liability of the insurance company under the policy of insurance must be held to come to an end upon the death of the insured except in the cases covered by Section 102 of the M.V. Act.

15. Coming back now to the present case, as the accident here had taken place long after the insured, Flt. Lt. S.B. Bhagwat, had been presumed dead, the insurance company was clearly not liable for payment of the amount awarded.

16. An attempt was made on behalf of Mr. B.B. Bhagwat by his counsel, Mr. H.S. Nagra, to argue that as the insurance company had been informed by Mr. Bhagwat, even though verbally, that Flt. Lt. S.B. Bhagwat was missing and despite this the policy of insurance continued to be issued in respect of the motor cycle, it must be held to cover the liability of Mr. B.B. Bhagwat arising from this accident. This is indeed an untenable contention. Even if it be assumed that the insurance company had been so informed, it cannot be held liable, in the absence of a policy of insurance in favour of Mr. B.B. Bhagwat, this not being a case to which the provision of Section 103A of the M. V. Act applied. Mere information to the insurance company regarding Flt, Lt. S.B. Bhagwat's presumed death cannot render it liable to indemnify any one other than the insured.

17. Counsel for Mr. B.B. Bhagwat next sought to contend that as the motor cycle was not owned by Mr. B. B. Bhagwat nor was the policy of insurance in respect thereof in his name, he could not be held liable for the accident caused by Madan Lal. There is no merit in this contention either. On Mr. B.B. Bhagwat's own showing, this motor cycle had been in his possession and use since 1969. It was further his statement that he had asked for the motor cycle to be taken from his residence for servicing and he had given it to Madan Lal for this purpose. In this situation, counsel could put forth no ground or reason on which Mr. B. B. Bhagwat could seek to avoid his vicarious liability for this accident. It follows then that both Madan Lal and Mr. B.B. Bhagwat are jointly and severally liable for the amount awarded as compensation to the claimants.

18. It now remains to deal with the claim for enhanced compensation put in by the claimants through the cross-objections filed by them. Joginder Singh, deceased, was found by the Tribunal to be about 50 years of age at the time of his death. According to his widow, AW. 8, Harbans Kaur, Joginder Singh and his brother, Harnam Singh, used to deal in purchase and sale of buffaloes and this was the source of livelihood of the deceased. She further stated that they used to procure and sell one or two buffaloes every month and they used to earn Rs. 100 in every deal. On this basis, keeping in view also the uncertainties inherent in

this business, the Tribunal could not be said to have been in error in awarding Rs. 20,000 as compensation. The loss was taken to be at the rate of Rs. 100 per month. Applying the principles laid down by the Full Bench in Lachhman Singh and Others Vs. Gurmit Kaur and Others, , even if a multiplier of 16 is applied in this case, the compensation to be awarded to the claimants would not work out to a sum larger than the amount already awarded. There is thus no warrant for awarding any enhanced compensation in this case.

19. In the result, the appeal filed by the insurance company is hereby accepted and the cross-objections filed by the claimants are dismissed. The claimants shall be entitled to recover the amount awarded from the respondents, Madan Lal and Mr. B.B. Bhagwat. There will be no order as to costs.