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**(1980) 11 P&H CK 0006**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : F.A.O. No. 258 of 1975**

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|--------------------------------------------------|------------|
| Oriental Fire and General Insurance Company Ltd. | APPELLANT  |
| Vs                                               |            |
| Sant Ram and Others                              | RESPONDENT |

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**Date of Decision :** 12-11-1980

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 102A, 103A, 103A(1), 96

**Citation :** (1981) 2 ILR (P&H) 188

**Hon'ble Judges :** J.V. Gupta, J

**Bench :** Single Bench

**Advocate :** V.P. Gandhi, for the Appellant; Ravinder Seth, for the Respondent

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## Judgement

J.V. Gupta, J.—This appeal filed on behalf of the Oriental Fire and General Insurance Company arises out of a claim-petition in which an award of Rs. 12,000 has been given in favour of the claimants (Respondents Nos. 1 and 2) in equal shares against Joginder Singh, the owner of the truck and the Insurance Company, both individually and collectively.

2. The accident took place on 24th of January, 1970, at about 8.30 a.m., in which Joginder, who was coming to Jullundur City from village Khurla Kingra on his cycle, was crushed due to rash and negligent driving of Gurmail Singh, driver of the truck No. PNO-207. At the time of the accident, the owner of the truck was Joginder Singh, Respondent No. 6. In the claim-application, it was averred that the truck in question was insured and owned by Girdhari Lal Respondent and that the same was insured with the Oriental Fire and General Insurance Company Limited. This claim petition was contested on behalf of Joginder Singh, the owner of the truck and its driver Gurmail Singh. In the written statement filed on behalf of the Insurance Company, a preliminary objection was raised that the accident, if any, was due to the negligence and non-observance of the traffic rules, by the deceased for which the Insurance Company is not liable to pay any damages. It was also pleaded that the Insurance Company is also not liable to pay any damages as the vehicle was transferred to another person and as such, the

vehicle was not insured at the time of the accident, with the Insurance Company.

3. On the pleadings of the parties, the learned Motor Accident Claims Tribunal, Jullundur, framed the following issues:

1. Whether Respondent, Gurmail Singh was driving vehicle No. PNO-207 at the time of alleged accident i.e. on 24th January, 1970 at 3.30 a.m.?

2. Whether the alleged accident took place as a result of which Joginder Singh died?

3. If issue No. 2 is proved, whether the said accident took place on account of rash and negligent act of Respondent Gurmail Singh?

4. Whether the vehicle in question was not insured with Respondent No. 3 at the time of the alleged accident?

5. Whether Respondent Gurmail Singh was not holding a valid licence at the time of the accident, if so, to what effect?

6. Whether Applicants or any of them is entitled to receive compensation for the accidental death of Joginder?

7. To what amount of compensation, if any, the Petitioners are entitled?

8. Relief and against whom?

4. All the material issues were decided in favour of the claimants. On issue No. 4, which is relevant for the decision of this appeal, it has been held that the Respondents have not been able to prove that the truck in question was not insured with the Insurance Company at the time of the accident, and, therefore, this issue was decided against the Respondents and in favour of the Petitioners. As a result of these findings, an award in the following terms was passed:

For the foregoing findings, I hereby award Rs. 12,000 as compensation to the Petitioners Nos. 1 and 2 in equal shares against the Respondents who shall be liable to pay the damages to the Petitioners, both individually and collectively.

Feeling aggrieved against this award, only the Insurance Company has filed the present appeal. As stated earlier, the only issue contested in this appeal is issue No. 4. learned Counsel for the Appellant contended that the said truck PNQ-207 was transferred by its earlier owners M/s. Ram Kishore Prem Kumar, Jullundur City, in favour of Joginder Singh Respondent on 20th January, 1970 and it has been so stated by RW 1 Darshan Kumar, Licence Clerk, who had brought the summoned record regarding this truck. He has further stated that on 24th of January, 1970, the date of accident the registered owner of the said truck was Shri Joginder Singh Bhatia, son of Shri Partap Singh Bhatia,--vide transfer orders, dated 20th of January, 1970, entry No. 1695. An application for transfer of the Insurance Certificate in the name of the transferee Joginder Singh was moved by him on 31st of January, 1970 (the original file of the Insurance

Company was sent for by this Court in order to see the date of application for transfer of the interest of the said policy of insurance). The interest in the said original policy issued earlier in favour of M/s. Ram Kishore Prem Kumar transferor, which was valid from 18th of July, 1969 to 17th of July, 1970, was transferred in the name of Joginder Singh from 31st of January, 1970 to 17th of July, 1970. The receipt of Rs. 36 paid as transfer-fee by Joginder Singh is also dated 31st January, 1970. The period of insurance given in the proposal form is from 31st January, 1970 to 17th of July 1970 and the certificate ultimately issued, which was marked PW6/A, is also from 31st of January, 1970 up to 17th of July, 1970. According to the learned Counsel for the Appellant, it has been wrongly held by the learned Motor Accident Claims Tribunal that the truck in question had been transferred to Joginder Singh Bhatia on 31st of January, 1970 and not on 20th January, 1970. According to the learned Counsel, after the truck was transferred on 20th of January, 1970, to Joginder Singh, the policy in favour of M/s. Ram Kishore Prem Kumar comes to an end unless the interest therein is transferred in favour of the transferee in accordance with the provisions of the Motor Vehicles Act, 1939. The interest in the policy was transferred in favour of Joginder Singh on 31st of January, 1970, and the Insurance Company was liable only after that date and not earlier. In this respect, he referred to Section 96 of the Motor Vehicles Act. In support of this contention he also referred to *Oriental Fire and General Insurance Company Ltd. v. Meena Sharma and Ors.* 1975 A.C.J. 335. and *Alwar Motor Association Private Ltd., Alwar and Anr. v. Hazari Lal and Ors.* 1964 P.L.R. 804. It has been held in *Oriental Fire and General Insurance. Company Limited's* case (supra):

It is well settled that a contract of insurance is nothing but a contract of indemnity. The policy issued is with reference to a specified vehicles owned by the policy holder and consequently the policy remains effective while the policy holder 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 vehicle, the policy relating to it lapses.

5. On the other hand, the learned Counsel for the Respondent submitted that the policy was issued for one year commencing from 18th of July, 1969 to 17th of July, 1970 in favour of the transferor M/s. Ram Kishore Prem Kumar. After the transfer of the vehicle on 20th of January, 1970, the interest in the said policy was also transferred in favour of the transferee Joginder Singh. According to the learned Counsel, even if the transfer was made on 31st of January, 1970, it will be effective from the date of transfer of the truck, i.e., on 20th of January, 1970. In support of his contention, he referred to the provisions of Section 103-A of the Act, which is in the following terms:

(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 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 persons to whom the motor vehicle is transferred with effect from the date of its transfer.

(2) The insurer to whom any application has been made under Sub-section (1) may refuse to transfer to the other person the certificate of insurance and the policy described in that certificate if he considers it necessary so to do, having regard to--

(a) the previous conduct of the other person,--

(i) as a driver of motor vehicles; or

(ii) as a holder of the policy of insurance in respect of any motor vehicle; or

(b) any conditions which may have been imposed in relation to any such policy held by the Applicant; or

(c) the rejection of any proposal made by such other person for the issue of a policy of Insurance in respect of any motor vehicle owned or possessed by him.

(3) Where the insurer has refused to transfer, in favour of the person to whom the motor vehicle has been transferred, the certificate of insurance and the policy described in that certificate, he shall refund to such transferee the amount, if any, which, under the terms of the policy, he would have had to refund to the insured for the unexpired term of such policy.

6. I have heard the learned Counsel for the parties at a great length. It is common case of the parties that the truck in question, i.e., truck No. PNQ-207, was transferred in the name of Joginder Singh on 20th of January, 1970 whereas the accident has taken place on 24th of January, 1970. It is also clear from the record and is not being disputed here in this appeal that the application for transfer of the interest in the insurance policy was made on 31st January, 1970 by the transferee Joginder Singh and the certificate issued in favour of Joginder Singh commences from 31st January, 1970 to 17th July, 1970. The only dispute between the parties to be determined in this appeal is whether the transfer made by the Insurance Company on 31st of January, 1970, will take place retrospectively, i.e., from the date of transfer of the vehicle on 20th of January, 1970. u/s 102-A of the Motor Vehicles Act, reproduced above, it has been provided that if the transferor makes an application 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 15 days of the receipt of this application by the insurer, the insurer does not intimate to 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. The reading of the said provisions makes it quite clear that if a person 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 therein in favour of the person to whom the motor vehicle is proposed to be transferred and in case the insurer fails to intimate its refusal to transfer the said certificate then it will be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred subsequently with effect from the date of its transfer. In other words, an application in anticipation is made at the time of proposal of the transfer of vehicle and if the transfer takes place subsequently, then the insurance policy will be deemed to have been transferred in favour of the transferee with effect; from the date it is transferred i.e., transfer of the vehicle which will be under the circumstances of the case, subsequent to the date of the application made by the transferor to the insurer. In this view of the matter, the provisions of Section 103A of the Motor Vehicles Act do not help the claimant-Respondents in this respect. In the present case, admittedly no such application of the proposed transfer was made on behalf of the transferor. It was only the transferee Joginder Singh, who moved the Insurance Company on 31st of January, 1970 and on that very day, the remaining interest in the policy of insurance v/as transferred in his name from 31st of January, 1970. In these circumstances, it cannot be held that this transfer of interest will relate back to the date of accident, i.e., 24th of January, 1970 which is admittedly after the date of transfer of the truck, i.e., 20th of January, 1970. It has been held in Ahvar Motor Association's case (supra) that the third party has, first of all, to establish the liability of the assured and it is only then that it can recover the amount of compensation awarded against the assured through the insurer, if he is unable to prove his claim against the assured he cannot get any compensation from the insurer. In the present case, since Joginder Singh, the owner of the truck was not insured for the truck on the date of accident with the Insurance Company Appellant, the same cannot be held liable to indemnify Joginder Singh u/s 96 of the Motor Vehicles Act. The liability of the Insurance Company to indemnify Joginder Singh commences from 31st of January, 1970 when a certificate was issued in his name by the Insurance Company. In this view of the matter, the finding of the Motor Accident Claims Tribunal on issue No. 4 is liable to be set aside and it is held that truck No. PNQ-207 was not insured with the Insurance Company Appellant at the time of the accident on 24th of July, 1970, in favour of Joginder Singh Bhatia.

7. In view of the above finding, the appeal filed on behalf of the Insurance Company is accepted and the award is accordingly modified to the extent that

the Respondents. Joginder Singh, owner of the truck, and Gurmail Singh, driver of the truck, shall be liable to pay the damages to the claimants to the tune of Rs. 12,000 as held by the Motor Accident Claims Tribunal.