

(1997) 05 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No's. 36, 44 and 53 of 1989 with Cross-objection No's. 133 and 134 of 1989

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Maheshwari and Others

RESPONDENT

Date of Decision : 26-05-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 31

Citation : (1998) 1 ACC 622 : (1998) ACJ 1268 : (1998) 1 ShimLC 108

Hon'ble Judges : Lokeshwar Singh Panta, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : G.C. Gupta, for the Appellant; K.D. Sood, Rajnish Maniktala, Jagdish Vats, Naresh Thakur, Deepak Gupta and S.S. Kanwar, for the Respondent

Judgement

Arun Kumar Goel, J.—We propose to take and dispose of these three appeals together as they have arisen out of the same accident but from two separate awards passed by Mr. Surjit Singh, Motor Accidents Claims Tribunal, Una. By means of impugned award passed in M.A.C. No. 5 of 1986 dated 3.12.1988, the Tribunal below has ordered that Suresh Kumar, Ramesh Kumar Thakur and Guru Dutt together with the appellant insurance company are liable for compensation awarded in the sum of Rs. 1,23,000/- along with interest at the rate of 12 per cent per annum from the date of petition, i.e., 17.2.1986 till the date of deposit along with costs of the claim petition and liability to satisfy the award was held jointly as well as severally on the parties whereas by an award passed in M.A.C. No. 8 of 1986 dated 3.12.1988, claim petition by Suresh Kumar has been rejected.

2. Appellant (hereinafter referred to as the "insurance company") has filed F.A.O. (MVA) No. 36 of 1989 against the aforesaid award of the Tribunal and Ramesh Kumar Thakur (hereinafter referred to as the "scooter owner") has filed the F.A.O. (MVA) No. 53 of 1989. Suresh Kumar (hereinafter referred to as the "scooter driver") has filed the F.A.O. (MVA) No. 44 of 1989. Guru Dutt,

respondent is being referred to as "transferee" of the scooter. Similarly, Subhash Chand Modgil is being referred to as "car owner" and New India Insurance Co. Ltd. (wrongly mentioned as "Insurance Co. Ltd.") is being referred to as "car insurer" hereinafter in this judgment.

3. In order to properly understand and appreciate the respective submissions on behalf of the parties, it is necessary to refer to a few relevant facts. Scooter bearing registration No. HPG 4147 belonged to scooter owner which stood insured with the insurance company, whereas car bearing registration No. HIU 232 belongs to car owner and was insured with the car insurer. On the fateful day, i.e., 20.9.1985, scooter was being driven by scooter driver at about 9.00 a.m. whereas the car was being driven by the car owner on Una-Hoshiarpur road. Case of the claimants as pleaded before the Tribunal below was that the deceased Amar Singh was working as Head Constable in the H.P. Police Department and was posted at Chamba, but had been deployed on temporary duty at Una. On the date of accident at about 9.00 a.m., he along with PW 8, Gian Chand was standing at Police Lines, Una for coming to Una town. At such point of time, according to the claimants, the deceased was hit by the scooter driver as he was driving the same in a rash and negligent manner. The deceased was removed in a mini bus to District Hospital, Una along with Suresh Kumar, scooter driver, who had also sustained injuries after having fallen down as a result of the accident along with his pillion rider Sarwan Kumar. Amar Singh, Head Constable succumbed to injuries at District Hospital, Una and it is in this background that compensation was claimed to the tune of Rs. 3,00,000/-. It was also alternatively pleaded by the claimants that the accident was with car No. HIU 232 on Una-Hoshiarpur road near the Police Lines, Una. So, the car owner and the insurer were impleaded as parties. It may be appropriate to mention here that the car was being driven by the car owner himself.

4. So far the stand of the scooter owner is concerned, he has categorically stated that the scooter in question had been transferred by him in favour of the transferee by means of agreement, Exh. R-2/A and affidavit had also been sworn by the transferee which was Exh. R-2/B.

5. The scooter driver while admitting the accident in question and his driving the same stated that his scooter had not knocked down or overrun the deceased. On the other hand, his stand was that the car had caused the accident after hitting the scooter in the hind portion and when the car was speeding away, it overran the deceased resulting in the accident in question. Vide Claim Petition No. 8 of 1986 before the Tribunal below, he lodged the claim against the car owner as well as the car insurer which is the subject-matter of F.A.O. (MVA) No. 44 of 1989.

6. So far the stand of the transferee is concerned, he has stated that he had taken the scooter for a test as he intended to purchase the same from the scooter owner and thus, he disowned his liability for payment of any compensation, as according to him, the sale was not complete.

7. Stand of the insurance company was that no doubt the scooter in question stood insured with it, but because the same had been transferred by the scooter owner to the transferee, as such, it denied its liability for payment of any compensation. Suresh Kumar not holding a valid driving licence was made another ground for disputing its liability for payment of compensation. Stand of the car owner was that his car was not involved in the accident in question resulting in injuries either to Amar Singh or to scooter driver. He disputed his liability in both the claim petitions, i.e., one by the claimants and the other filed by the scooter driver against him and the car insurer. Similarly, car insurer also disputed its liability as particulars of insurance of the car were not given. As such, it was not possible to say anything by it. It was also pleaded that since the accident had been caused by the scooterist, so the insurer with whom it was insured is liable for payment of compensation.

8. The parties went to trial in M.A.C. No. 5 of 1986 on the following issues:

(1) Whether Amar Singh died as a result of an accident which took place due to rash and negligent driving of scooter No. HPG 4147 by the driver as alleged? OPP

(2) In case issue No. 1 is not proved in affirmative whether death of Amar Singh was caused in an accident which took place due to rash and negligent driving of Maruti car HIU 232 by the driver, as alleged? OPP

(3) In case issue Nos. 1 & 2 are not independently proved whether Amar Singh died in accident which took place as a result of negligence of drivers of both the vehicles referred under issue Nos. 1 and 2 above, as alleged? OPP

(4) Whether the petitioners are entitled to compensation, if so, how much and from whom? OPP

(5) Whether there are sufficient grounds to condone the delay in filing the present claim petition against respondent Nos. 4 to 6? OPP

(6) Relief.

9. Similarly, following issues were framed in M.A.C. No. 8 of 1986:

(1) Whether claimant suffered injuries causing permanent disability to him on account of accident caused due to rash and negligent driving on the part of respondent No. 1 as alleged? OPP

(2) Whether the claimant is entitled to any compensation, if so, how much and from whom? OPP

(3) Whether petition is bad for non-joinder of necessary parties? OPR-2

(4) Whether car was being driven at relevant time by the driver who had no driving licence as alleged, if so, its effect? OPR

(5) Relief.

10. The Tribunal below after recording evidence and considering the entire evidence produced in the claim petition filed by the claimants held that the transfer of the scooter by the scooter owner was complete with the execution of Exh. R-2/A, agreement and Exh. R-2/B, affidavit. It was further held that the car HIU 232 was not involved in the accident in question. So, both the car owner as well as car insurer were exonerated in this case as well as in the case filed by the scooter driver. Finally, after placing reliance on a Full Bench judgment of Andhra Pradesh High Court in Madineni Kondaiah v. Yaseen Fatima 1986 ACJ 1 scooter driver, transferee and insurance company were held jointly and severally liable for payment of compensation, which findings have been called in question by both the insurance company as well as the scooter owner. In the claim petition filed by the scooter driver the Tribunal below after taking into account the evidence on record rejected his claim.

11. Scooter driver and transferee have filed Cross-objections No. 133 of 1989 in F.A.O. (MVA) No. 36 of 1989 & Cross-objections No. 134 of 1989 in F.A.O. (MVA) No. 53 of 1989. Scooter driver also filed F.A.O. (MVA) No. 44 of 1989 against the dismissal of his claim petition.

12. Mr. G.C. Gupta, learned Counsel for the insurance company has submitted that since the transfer in this case clearly stands established so far the scooter is concerned by the scooter owner in favour of the transferee, as such the Tribunal below has fallen into error by holding it liable for compensation. According to him, the contract of insurance subject to which the scooter in question had been insured with the insurance company came to an end between the contracting parties, i.e., his client as well as the scooter owner after the transfer was complete and his client could not be forced to cover the risk. According to Mr. Gupta, so far the matter relating to transfer being complete is established from Exh. RW-2/A and Exh. RW-2/B which documents have been proved by scooter owner, R2 W1, as well as by Anil Kumar, R2 W2.

13. These submissions on behalf of the insurance company have been controverted by Mr. Jagdish Vats, learned Counsel appearing on behalf of the scooter driver as well as the transferee. In order to further advance his submission, it was submitted that the sale being void in terms of Scooters (Distribution and Sales) Control Order, 1960, as such neither the insurance company nor the scooter owner are absolved of the liability for payment of compensation. In support of his submission, he placed reliance on a Division Bench judgment in Paulus alias Balan v. Natarajan 1987 ACJ 853 Alternatively, it was submitted that in case the insurance company as well as scooter owner are absolved, then his client had been able to prove that the accident was the result of rash and negligent driving on the part of car owner and in that case car insurer is liable for not only payment of compensation in this case, but also to indemnify Suresh Kumar, scooter driver, which is the subject-matter of F.A.O. (MVA) No. 44 of 1989.

14. In the appeal filed by the scooter owner, he has raised almost identical pleas

in support of his case that it is the transferee as well as the scooter driver who are responsible for payment of compensation and so far the scooter owner is concerned, after having transferred the scooter in question in favour of the transferee and sale being complete coupled with Exh. R-2/A and Exh. R-2/B, it was submitted that the liability for payment of compensation is not that of the scooter owner.

15. So far the matter relating to transfer is concerned, there is ample evidence on record both oral as well as documentary. In this behalf, reference can be made to the statements of Ramesh Kumar, R2 W1, scooter owner as well as Anil Kumar, R2 W2, who is a signatory to Exh. R-2/A. These two statements coupled with the documents clearly show that the sale of the scooter in question was complete which position is further supported by the agreement Exh. R-2/A and the affidavit sworn by the respondent, Exh. RW-2/B. At this stage, it may be appropriate to reproduce the order passed by the Tribunal below on 14.10.1986 which is to the following effect:

Reply filed by Guru Dutt to the application moved by the petitioner for seeking to implead said Guru Dutt and other as party to the present proceedings. His plea is that he has no objection if he is impleaded as respondent, if this Tribunal considers it just. Keeping in view the pleadings of the parties, I feel that impleading of Guru Dutt as party is necessary for the sake of fair play and to arrive at the just decision of the claim matter. Guru Dutt is accordingly ordered to be impleaded as respondent. The original documents, i.e., agreement to sell scooter vehicle No. HPG 4147 and affidavit dated 22.3.1986 have been placed on the record by the respondent No. 2. Guru Dutt admits the presence of his signatures encircled with red pencil therein.

Service has been attempted to be effected upon the other proposed respondents Subhash Chander as per address known to the petitioner on the basis of the reply filed by Suresh Kumar, respondent No. 1. Service upon said Subhash Chander be got effected by way of affixation of notice on a conspicuous place outside his residential house as per last known address. Fresh service be also effected on the Divisional Manager of New India Insurance Company, 6 Gulab Bhawan, Bahadur Shah Zafar Marg, New Delhi returnable for 3.11.1986.

16. Guru Dutt is the transferee of the scooter who had admitted his signatures on both the documents, viz., agreement as well as affidavit, although his explanation is that those were got signed by him on previous date by the scooter owner. This plea does not seem to be correct in view of the statement made by him while appearing as R1 and W4. In his statement he states that the scooter was got released by the scooter owner and the scooter had been taken by him one day before the accident for trial. In his cross-examination, he gave a very evasive reply regarding his signatures on Exh. R-2/A as he was unable to identify those. While denying the payment of Rs. 10,000/- to scooter owner, he volunteered that a sum of Rs. 9,000/- was paid that too after five or six months of the accident. This stand appears to be contrary to record. In case the

transferee Guru Dutt had not purchased the scooter in question, there was hardly any occasion for his having executed the bond for release of the scooter in question on supardari which fact he admitted in his examination-in-chief. Similarly, once he had admitted his signatures on 14.10.1986 as is evident from the order reproduced hereinabove, there is no plausible much less tenable explanation given by him for holding that the transfer was not complete on 5.5.1984. In fact, after having purchased the scooter in question and having executed the agreement Exh. R-2/A and having sworn the affidavit Exh. R-2/B, scooter having met with accident on account of driving by a person who was not holding licence, this plea appears to have been cooked up by the transferee to overcome his liability as well as to save his money which he states to have paid after 5-6 months of the accident. That being so, stand taken up by him is not correct. In this context, it is noteworthy to say that so far the scooter driver is concerned, he is none else but the real brother of the transferee. In the face of this position also, the stand taken by the transferee is not correct.

17. Once it is held, as in the present case, that the sale of scooter was complete on the part of the scooter owner in favour of the transferee, then the next question that needs to be considered is who is liable for payment of compensation. This matter is being considered in the light of the law laid down in *Panna Lal v. Shri Chand Mal* 1980 ACJ 233 wherein it has been held that the transfer of a vehicle is complete when the owner sells the same to the transferee with the handing over of the registration papers and sale memo. In case the registration continues to remain in the name of owner and the transferee having failed to move the Registration Authority for effecting transfer, then the sale is not ineffective and at the same time it has been further held that the transferee cannot claim refund of purchase money or damages from the owner. This decision of the Apex Court covers the present case so far the matter relating to transfer of scooter is concerned. In *United India Insurance Co. Ltd. Vs. Smt. Bimla and Others*, the matter came up for consideration before a Division Bench of this Court whether the insurance company is liable for payment of compensation where the vehicle stood transferred on the date of accident by the insured to a third party. After considering the decided cases, it was held that the insurance company is not liable for payment of compensation. It was also held that the transferee is liable to pay compensation to the claimants. This case is nearer to the facts of the present case on the question of liability of the insurance company as well as the owner who transfers a motor vehicle.

18. In *Anand Samp Sharma v. P.P. Khurana* 1989 ACJ 577 a Full Bench of the Delhi High Court has taken an almost similar view. A learned single Judge of this Court in *Kanta Devi and Another Vs. Dayal Singh and Others*, while following the view taken by Delhi High Court has held as under:

(13) A contract of insurance is between the insurer and the insured, the subject-matter is the vehicle specified in it and it is the risk arising out of its use that the insurer undertakes to compensate against. Where such a contract provides for

indemnity to the assured against the third party risks, the third party who is a stranger to the contract, cannot enforce it against the insurer. Neither the general principles of law relating to contracts, nor the common law give third party a cause of action against the insurer. If a third party risk arises under the policy it is entirely a matter between the insurer and the insured governed by the terms of the policy. Section 96(1) of the Act makes it obligatory on the part of the insurer to meet or satisfy an award made by the Accidents Claims Tribunal against the person insured in respect of such third party risks. Thus, for the purpose of Section 96(1) the insurer could be deemed to be a judgment-debtor. u/s 96(2) of the Act the insurer can be made a party, so that he may defend the action by the third party against the insured which also enumerates the grounds, the insurer may take up for defending himself. The scheme of the provision is that no insurer who had notice u/s 96(2) is entitled to avoid liability to the party otherwise than in the manner provided for in Sub-section (2) thereof. Thus, after the insured has parted with his vehicle, he has no longer any insurable interest to which the policy in his favour can relate and continue to have force affecting thereby the basis of contract of insurance as also the specified vehicle to which the indemnity relates, as is clear from the details required to be set out in the policy. It is with reference to those details and the history of vehicle and its owner, including claims or no claims in the past that premium payable on the insurance is determined and the contract is formed. Thus, in the absence of express stipulation in the policy to the contrary, the moment the insured parts with his vehicle, the policy relating to it lapses, inasmuch as the vehicle is the subject-matter of the very foundation of contract of insurance. Neither Section 96(1) nor Section 96(2) of the Act results in a policy of motor insurance being continued to operate and not lapse, notwithstanding the fact that the insured during the currency of the policy has parted with the ownership of the vehicle to which the insurance relates. Section 96(1) itself proceeds on the basis that there is a "subsisting policy" and the words to the effect "being a liability covered by the terms of policy" are of particular significance. It is no doubt true that where insurer has been given notice of action, the grounds of his defence in the action are limited to those stated in Section 96(2) and it is not open to the insurer to avoid liability under the policy but the continued ownership of vehicle with the insured is basic to the subsistence of policy and once the subject-matter of policy is gone, as when parted by the insured, the policy automatically lapses and there is nothing for the insurer to avoid it. The policy of insurance is with respect to the insured person and not the vehicle and the liability of insurer ceases on transfer of ownership of vehicle.

(14) The third party liability of an insurance company ends on the transfer of vehicle by the insured. This view has been followed by various High Courts in *South India Insurance Co, Ltd. v. Puma Chandra Misra* 1973 ACJ 46 *Gulab Bai Damodar Tapse v. Peter K. Sunder* 1975 ACJ 100 ; *Indian Mutual Insurance Co. now merged in United India Fire & Genl. Ins. Co. Ltd. v. Vijaya Ramulu* 1978 ACJ 366 ; *Labh Singh v. Sunehri Devi* 1988 ACJ 170 ; and *National Insurance Co. Ltd.*

Vs. Mallikarjun and others,

19. In the face of two decisions of this Court referred to hereinabove coupled with the decision of the Apex Court in Panna Lal v. Shri Chand Mal 1980 ACJ 233 this Court feels that it is not bound by the Full Bench decision referred to by the Tribunal below for holding the scooter owner as well as the insurance company liable jointly and severally together with the scooter driver and the transferee.

20. In R. Venkatappa Naidu and Another Vs. Thammivevi Sugunamma and Others, it has been held that the sale is complete despite the transferee having failed to get the registration transferred by the Registration Authority u/s 31 of the Motor Vehicles Act, 1939, unless there is a contract to the contrary between the transferee and the transferor. The moment the possession of the vehicle together with documents is delivered, title stands transferred and the transferee becomes the legal owner.

21. To be fair to Mr. Jagdish Vats, we may refer to his plea to the effect that in the event of sale of scooter being held to be complete in favour of the transferee, then the same being in violation of the Scooters (Distribution and Sales) Control Order, 1960, his client is not liable for payment of compensation and the liability, if any, is that of the scooter owner as well as of the insurance company. He has referred to a judgment in Paulus alias Balan v. Natarajan 1987 ACJ 853. In order to succeed on this argument, it was incumbent upon the transferee to have proved that the sale of scooter in his favour was covered and governed by the aforesaid order of 1960. There is not even an iota of evidence to show that whether the scooter sold to the transferee was a new one or a second-hand scooter and further whether the same is governed by the said order or not. In the absence of foundation having been laid either in the pleadings or in evidence, no benefit can be derived by the transferee in this behalf.

22. Another reason for rejecting the claim of the transferee is that in the cross-objections filed by him, his stand was that the claim of respondent No. 6, Suresh Kumar, scooter driver has been wrongly rejected against which he has filed F.A.O. (MVA) No. 44 of 1989 and thus, both he as well as respondent No. 6 are not liable for payment of compensation. Identical stand has been taken by the transferee and the scooter driver in their Cross-objections No. 133 of 1989 in F.A.O. (MVA) No. 36 of 1989.

23. The further question that remains to be considered in this case is whether the accident had occurred due to rash and negligent driving on the part of the scooter driver, who was driving the scooter in question at the time of accident or was the result of rash and negligent driving on the part of the car owner. In this behalf, statement of Gian Chand, PW 8, who had seen the occurrence is of significance. So far the scooter having caused the accident resulting in injuries to deceased Amar Singh is concerned, it is clear from the statement of PW 8 as well as other evidence on record. On the other hand, scooter driver has failed to prove that after hitting him, the car owner had caused the accident resulting in

injuries to the deceased which led to his death. It appears that this plea was raised by the scooter driver in order to stake his claim for compensation probably after having verified from the Multi Purpose Barrier of the vehicles which came to and fro on Una-Hoshiarpur road. In this view of the matter, the claim made by the scooter driver Suresh Kumar has been rightly rejected by the Tribunal below.

24. Another reason for rejecting his claim is that Suresh Kumar has described himself to be a minor at the relevant point of time and he has sued through his father and next friend, Nand Lal. As a minor, he could not have held a driving licence. This is in addition to the fact that it is admitted case of the parties that at the time of accident, he had no licence at all. On this count also, his claim must fail. In addition to this, Sarwan Kumar, a pillion rider was the other independent and disinterested witness who could have thrown some light on the case. It is not in dispute that this Sarwan Kumar on whose statement u/s 154, Criminal Procedure Code, a case was registered by the police regarding the accident in question, was not examined during the course of proceedings for the reasons best known to the scooter driver. No explanation has come forth for non-examination of the pillion rider.

25. In view of the aforesaid facts and circumstances, there is no merit in F.A.O. (MVA) No. 44 of 1989 and it is dismissed accordingly.

26. F.A.O. (MVA) Nos. 36 of 1989 and 53 of 1989 are partly allowed thereby modifying the award holding that neither the insurance company nor Ramesh Kumar Thakur, owner of the scooter, is liable for payment of compensation as held by the Tribunal below. The liability for payment of compensation is that of Suresh Kumar, scooter driver and Guru Dutt, transferee of the scooter, who had purchased the same on 5.5.1984. While holding so, cross-objections filed by both of them vide Cross-objections No. 133 of 1989 in F.A.O. (MVA) No. 36 of 1989 and Cross-objections No. 134 of 1989 in F.A.O. (MVA) No. 53 of 1989 are dismissed. Parties are left to bear their own costs.

27. Since the amount has been deposited by the insurance company, the claimants would be entitled for the release of the same and the insurance company would be entitled to recover the same from the aforesaid two persons, namely, Suresh Kumar and Guru Dutt in terms of this judgment without being driven to any other or further litigation. In this behalf it is further made clear that the insurance company would be entitled to execute this award as if it were a decree of the Court in its favour and against Guru Dutt and Suresh Kumar jointly and severally.