
(2008) 05 CHH CK 0002
In the Chhattisgarh High Court

Ramesh Kumar Singh and Another	Vs	APPELLANT
Kristo Sao and Another		RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 157, 31, 94

Citation : (2009) ACJ 2109 : AIR 2008 Chh 65 : (2008) 4 MPHT 114

Hon'ble Judges : D.R. Deshmukh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.R. Deshmukh, J.—This order shall govern the appeal preferred by the driver and the owner against the award dated 16-12-1997 passed by the Additional Motor Accidents Claims Tribunal, Jashpur, District Raigarh (henceforth "the Tribunal") in Claim Case No. 7/96, whereunder in a case of death of a third party, i.e., a girl Ku. Sangeeta, aged 10 years, while exonerating the insurer, liability was fastened on the driver and the owner to pay compensation of Rs. 65,000/- to the claimant. It would also govern the cross-objection preferred by respondent No. 1/claimant under Order 41 Rule 22 of the CPC for enhancement of compensation.

2. Admittedly, on 21-02-1996, the claimant Kristo Sao was going with his 10 years" old daughter Ku. Sangeeta near Ichkela Jamtoli when the was dashed by Truck No. OSC 6975 (henceforth "the truck") being driven in a rash and negligent manner by appellant No. 1, owned by appellant No. 2 and insured by respondent No. 2 on the date of accident.

3. The Tribunal exonerated the Insurance Company on the ground that although the truck had been transferred on 17-04-1994 by its owners Umashankar and Ghanshyam to appellant No. 1, the certificate of insurance and the policy of the truck continued in the name of Umashankar and Ghanshyam on the date of accident. The Tribunal held that in such a situation the Insurance Company could

not be held liable to pay compensation since such liability rested with the appellants.

4. Shri B.P. Gupta, learned Counsel appearing for the appellants placed reliance on the fiction created by Sub-section (1) of Section 157 of the Motor Vehicles Act, 1988 (henceforth "the Act") while arguing that in the above mentioned situation the certificate of insurance and the policy described as 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. Reliance was placed on United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , Rikhi Ram and Another Vs. Smt. Sukhrania and Others, , wherein it was held that the liability of an insurer does not cease even if the owner or purchaser fails to give the intimation of transfer to the Insurance Company as the purpose of the legislation was to protect the rights and interests of the third party.

5. Shri H.S. Patel, learned Counsel appearing for respondent No. 1/claimant placed reliance on Manju Devi and Anr. v. Musafir Paswan and Anr. 2005 (1) TAC 609 (SC), Samar Singh v. V.N. Shukla and Ors. 2007 CriLJ 374 and Subelal Banjare and Ors. v. Mohd. Ajaz Khan @ Pintu and Ors. Miscellaneous Appeal No. 365/2003, decided by a Division Bench of this Court on 11-02-2008 while arguing that in a case of death of a girl child aged 10 years, notional yearly income ought to be assessed at Rs. 15,000/- and compensation of Rs. 2,25,000/- ought to have been awarded by the Tribunal.

6. Shri Ajay Mishra, learned Counsel appearing for respondent No. 2/insurer argued that under Sub-section (2) of Section 157 of the Act, it is mandatory for the transferee of the vehicle to apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour, failing which, liability could not be fastened on the Insurance Company to pay compensation. Placing reliance on Rikhi Ram and Anr. v. Sukhrania and Ors. (supra), it was argued that where Sub-section (2) of Section 157 of the Act is not complied with by the transferee, he cannot claim any personal benefit under the policy.

7. Having considered the rival submissions, I have perused the record. Appellant No. 2 had, while deposing before the Tribunal, admitted in Paragraph 4 as under:

;g lgh gS fd 17&10&94 dks mDr okgu dz; dj vius vkf/kiR; es fy;k gS A lgh gS fd okgu dz; djus ds iwoZ okgu ls lacaf/kr lHkh nkf;Ro okgu ds iwoZ ekfyd ds Fks rFkk mlds mijUr lHkh nkf;Ro esjs gks x;s A lgh gS fd mek"kadj ls okgu dz; djus ds mijUr vius uke nLrkost esa lq/kkj ugh djok;k----

8. In this appeal, it is not in dispute that the truck was insured in the name of Umashankar and Ghanshyam by respondent No. 2 for the period from 15-09-1995 to 14-09-1996. Thus, the truck was insured by respondent No. 2 on the date of accident, i.e., 21-02-1996. It is also not disputed that Umashankar and Ghanshyam had sold the truck to appellant No. 2 on 17-10-1994, who took

no steps till the date of accident to get the registration or insurance transferred in his name. Obviously, therefore, the premium for the period from 15-09-1995 to 14-09-1996 must have collected by the insurer from appellant No. 2 and not from Umashankar and Ghanshyam, who had already sold the truck to appellant No. 2 on 17-10-1994.

9. Section 157 of the Act reads as under:

157. 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 transfers 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, 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.

Explanation.- For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

10. A careful reading of Sub-section (1) of Section 157 of the Act reveals that the fiction created thereunder arises from the date of transfer and not before. In the present case, since admittedly the truck was transferred on 17-10-1994 in favour of appellant No. 2/purchaser, the fiction created by Sub-section (1) of Section 157 of the Act comes into play. It shall be deemed that the certificate of insurance and the policy described in the certificate showing Umashankar and Ghanshyam as the insured have been transferred in favour of the purchaser, i.e., appellant No. 2 to whom the truck was sold on 17-10-1994. A duty is also cast on the transferee to apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer. As argued by learned Counsel for respondent No. 2/insurer, the transferee, i.e., appellant No. 2 cannot get any personal benefit under the policy unless there is compliance of the provision contained in Sub-section (2) of Section 157 of the Act. In *Rikhi Ram and Anr. v. Sukhrania and Ors.* (supra), it was held by the Supreme Court that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned even if the owner or purchaser do not give any intimation as required under the provisions of the Act. Since the provision contained in Sub-section (1) of Section 157 of the Act falls under Chapter XI relating to insurance of motor vehicles against third party risks and also in view of the statutory liability of the insurer to cover third party risks u/s

147 of the Act, the insurer is statutorily liable to pay compensation in respect of third party risks since the insurable interest of the insured is alive on the date of accident in view of the policy and certificate of insurance issued by the insurer.

11. In *Rikhi Ram and Anr. v. Sukhrania and Ors.* (supra), the Apex Court observed in Paragraphs 3 and 6 as under:

3. This Court in *G. Govindan Vs. New India Assurance Co. Ltd. and Others*, , has settled the controversy as regards liability of insurer to pay compensation to third party in the absence of any intimation of transfer of the vehicle to the transferee. It was held therein that since insurance against third party is compulsory, and once the Insurance Company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of the Act or by any condition in the policy....

6. ...So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

12. In the present case, the victim *Ku. Sangeeta*, aged 10 years, was admittedly a third party. Therefore, irrespective of the transfer of the truck prior to the date of accident and the policy of insurance not having been transferred in the name of the transferee of the truck, in view of the deeming fiction under Sub-section (1) of Section 157 of the Act, the Insurance Company is liable to pay compensation in respect of third party risks.

13. In *G. Govindan Vs. New India Assurance Co. Ltd. and Others*, , the Supreme Court approved the following ratio laid down by the Andhra Pradesh High Court in *Madineni Kondaiah and Others Vs. Yaseen Fatima and Others*, , as it advanced the object of the Legislature to protect the third party interest. It is apt to quote excerpts from the judgment as under:

The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the vehicle makes the transaction complete and the title will pass to the purchaser. When the policy of insurance obtained by the original owner of the vehicle is a composite one covering the risks for his person, property (vehicle) and the third-party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is a novation. So far the third-party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continuous till the transferor discharges the statutory obligation under Sections 29-A and 31 read with Section 94 of the Act. Till he complies with the requirement of Section 31 of the Act the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third-party risks are concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said

transitional period and accordingly till the compliance of Section 31, the liability of the transferor subsists and the policy is in operation so far it relates to the third-party risks. We answer the second question accordingly.

14. In view of the above, the tribunal erred in exonerating the insurance company from its liability to pay compensation.

15. As regards the quantum of compensation awarded by the Tribunal, I have considered opinion that it is niggardly low. The deceased Ku. Sangeeta was a student of Class-IV and was aged 10 years on the date of accident. In such a situation, a Division Bench of this Court has in *Subelal Banjare and Ors. v. Mohd. Ajaz Khan @ Pintu and Ors.* (supra) while placing reliance on *Manju Devi and Anr. v. Musafir Paswan and Anr.* (supra) held that the Tribunal ought to have taken the notional yearly income of the deceased at Rs. 15,000/- and awarded compensation of Rs. 2,25,000/-. In *Manju Devi and Anr. v. Musafir Paswan and Anr.* (supra) also the Supreme Court has held that compensation of Rs. 2,25,000/- would be adequate compensation in a case of death of a boy aged 13 years since the notional yearly income of the deceased ought to be taken at Rs. 15,000/- and multiplier of 15 ought to be applied. Placing reliance on the above decisions, I am of the considered opinion that the cross-objection filed by respondent No. 1/claimant deserves to be allowed.

16. In the result, while allowing the appeal, the cross-objection filed by respondent No. 1/claimant is also allowed. In substitution of the award passed by the Tribunal, compensation of Rs. 2,25,000/- with interest at the rate of 8.5 % per annum from the date of application till realisation is awarded to respondent No. 1/claimant against the insurer. Respondent No. 2/insurer shall deposit the compensation within eight weeks from today in the Tribunal. The amount of compensation already paid, if any, by appellant No. 2 shall be refunded to him. No order as to costs.