
(2014) 02 BOM CK 0226
In the Bombay High Court
Case No : First Appeal No. 194 of 2011

Tarachand Shrawanji Shambharkar	Vs	APPELLANT
Prashant, National Insurance Co. Ltd. and Shri S. Anupsingh Bhatia		RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 157 157(1) 157(2)
Workmens Compensation Act, 1923 — Section 22

Citation : (2015) ACJ 714 : (2015) 2 AnWR 77 : (2015) 1 BomCR 745 : (2014) 3 MhLj 440

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : Asghar Hussain, for the Appellant; Shashikant Borkar, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S.B. Shukre, J.—This appeal is directed against the judgment and order dated 28th October, 2010, in W.C.A. No. 19 of 1999 by the Commissioner appointed under the Workmen's Compensation Act, 1923 and 3rd Labour Court, Nagpur. The Claim petition u/s 22 of the Workmen's Compensation Act, 1923 was filed by the present appellant claiming compensation for the injuries he suffered while driving a truck bearing registration No. MH-31-W-2717 on 29th June, 1997. The appellant contended that the accident occurred during the course of his employment with respondent No. 1 and it arose out of that employment. He submitted that at the time of accident, respondent No. 1 was the owner of the said truck, while respondent No. 3 was its previous owner. He also claimed that the truck was insured with respondent No. 2 with the insurance policy having been issued in the name of previous owner-respondent No. 3. The petition proceeded ex parte against the respondent No. 1 and respondent No. 3, but the respondent No. 2-Insurance Company Ltd. resisted the application contending that the accident took place due to negligent act of the appellant himself and

that the insurance policy of the offending truck was not issued in the name of respondent No. 1. The learned Commissioner, after considering the evidence available on record and hearing rival parties, recorded a finding that the appellant was the workman as defined under the Workmen's Compensation Act, 1923 and as he sustained injuries during the course of employment he was entitled to receive compensation together with penalty. Learned Commissioner, also found that the insurance policy not being issued in the name of respondent No. 1, only respondent No. 1 was liable to pay compensation and he absolved respondent Nos. 2 and 3 of any liability to pay compensation. Thus, by his judgment and order passed on 28th October, 2010, learned Commissioner granted compensation of Rs. 1,29,576/- together with interest, penalty of Rs. 50,000/- and costs of Rs. 2,000/- to the appellant.

2. Not satisfied, the appellant has preferred the present appeal.

3. This appeal was admitted by this Court upon a substantial question of law on 8th April, 2013. The substantial question of law that arises for consideration is as follows:

Whether the present case is covered u/s 157(1) or 157(2) of the Motor Vehicles Act, 1988?

4. I have heard Mr. Asghar Hussain, learned counsel for the appellant and Mr. Shashikant Borkar, learned counsel for the respondent No. 2. None appears for the respondent Nos. 1 and 3, although duly served and put on notice that this matter would be taken up for final hearing on 14th February, 2014 as per the order passed by this Court on 22nd January, 2014.

5. Learned counsel for the appellant has submitted that the respondent No. 1 has been found to be the owner of the offending truck on the date of accident by the learned Commissioner and yet the learned Commissioner has not fastened liability for payment of compensation upon the insurer i.e. respondent No. 2 when there was no dispute about the existence of the insurance policy on the date of the accident. He submits that the learned Commissioner has ignored the deeming provision of Section 157, sub-section (1) of the Motor Vehicles Act, 1988 by which the insurance certificate and policy described in the certificate are deemed to be transferred in favour of transferee to whom the vehicle is transferred by the transferor and such deeming effect is from the date of the transfer of the vehicle. He further submits that the provision of sub-section (2) of Section 157 is only a procedural aspect and even if it is not complied with, it would not have any adverse impact on the deemed transfer of insurance policy to the transferee from the date of transfer. He, therefore, submits that this is a fit case to interfere with the impugned judgment and order.

6. On the other hand, learned counsel for the respondent No. 2 submits that as per the registration particulars, on the date of accident respondent No. 1 was not the owner of the vehicle and the transfer of vehicle from respondent No. 3 to respondent No. 1 was recorded in the month of March, 1988. He submits that

the benefit of deeming provision of sub-section (1) of Section 157 of the Motor Vehicles Act, 1988, can be given only from the date of transfer of the vehicle and not before that and in this case on the date of accident which took place on 29.6.1997, there was no transfer of ownership of vehicle from the respondent no. 3 to respondent No. 1. He further submits that it is an admitted position that there has been no compliance with the requirement of sub-section (2) of Section 157 by the appellant and, therefore, the insurance policy could not have been held to be transferred in the name of appellant by virtue of sub-section (1) of Section 157. He submits that even though no adverse consequences are stated in sub-section (2) for failure of the transferee to get the change effected in the record of the Insurance Company, the prohibition upon deemed transfer of insurance policy to the transferee in such a case is implicit in the scheme of Section 157 or otherwise the insurance company would be held liable under the contract of insurance even though it is not aware of the transfer of ownership of the insured vehicle and the details of the new owner.

7. For the sake of convenience Section 157 is reproduced as under:-

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 person 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.

8. It is clear from the language of sub-section (1) of Section 157 that when the vehicle is transferred together with the policy of insurance relating thereto, the certificate of insurance and the policy described therein are deemed to be transferred in favour of transferee from the date of transfer of the vehicle, so far as third parties are concerned. This is a deeming provision and, therefore, only by virtue of the event of transfer of vehicle together with its insurance policy happening that the effect of even the transfer of insurance policy of the vehicle takes place. This provision in sub-section (1) is independent of provision contained in sub-section (2), which is ministerial in nature and comes into operation after the transfer of ownership of vehicle together with its insurance policy takes place. Under sub-section (2), the transferee is only required to take

some steps, within fourteen days from the date of transfer, for formally transferring the insurance policy in the record of the insurance company. It does not contain any provision explaining the consequence of not taking any such procedural steps by the transferee. Absence of such a provision only emphasises the fact that transfer of insurance policy is controlled by sub-section (1) only, and it takes place the moment there is transfer of ownership of a vehicle together with its insurance policy. The vehicle being a movable property, transfer of its ownership, which can be by way of sale or gift, would be governed by the provisions of the Sale of Goods Act, 1930 (Chapters II and III) or the Transfer of Property Act, 1882 (Chapter VII) and under these provisions, essence of transfer of ownership is the transfer of property in the goods which can be ascertained from the conditions of the contract, intention of parties and/or delivery. That is the reason why sub-section (2) does not contain any provision stating consequence for non-compliance with it. If the transferee fails to apply within prescribed time or does not apply at all to the insurer for making necessary changes in regard to the factum of transfer in the certificate of insurance, it would not result in non-transfer of the insurance policy in favour of transferee. Of course, it casts a duty upon the transferee to comply with the requirement of sub-section (2), but that is only to add convenience to process of decision making as regards rights and liabilities under the insurance policy, and not for unsettling the transfer of ownership and deemed transfer of insurance policy under sub-section (1). I, therefore, find no substance in the argument of learned counsel for the respondent No. 2 in this regard.

9. Having considered the nature of provisions as contained in sub-section (1) and (2) of Section 157, it would now be necessary to examine facts of this case so as to find out the answer to the question as to which of these provisions were applicable to the facts of the instant case.

10. From the observations of learned Commissioner appearing in paragraph 16 of the impugned judgment and order it can be seen that the learned Commissioner has recorded a finding upon consideration of the evidence available on record that the respondent No. 1 was the owner of the offending truck and that the respondent No. 3 was its previous owner with respondent No. 2 the insurer of the vehicle. After giving such a finding, strangely enough, the learned Commissioner went on to say that from the particulars of registration of the offending vehicle, respondent No. 1 did not seem to be the owner of the truck. Particulars of registration of motor vehicle do not make transfer of ownership of a vehicle in the sense that they are not any documents of title. The transfer of ownership of a vehicle, as stated earlier, occurs when there is a transfer of property in the vehicle to the transferee. Registration particulars are only in the nature of supportive evidence of the factum of transfer of a vehicle and by themselves they do not effect transfer of property in the goods. Therefore, the learned Commissioner simply on the basis of particulars of registration should not have recorded a finding, which was in a way contradictory to his another finding regarding ownership of respondent No. 1 in respect of the offending

truck. The transfer of a vehicle can be established by other evidence and it appears that it has been so established in this case as the learned Commissioner has categorically found that the respondent No. 1 was the owner of the vehicle at the time of accident and has also found that the appellant being his employee, the respondent No. 1 was liable to pay compensation to the appellant for the injuries occurred to the appellant during the course of employment. In view of this, I am of the opinion that the learned Commissioner ought not to have given importance to the registration particulars so as to contradict himself about his opinion that the respondent No. 1 was the owner of the offending truck.

11. The above discussion would show that this is a case wherein the learned Commissioner on the basis of evidence available on record has found that the respondent No. 1 was the owner of the offending truck at the time of accident and that the respondent No. 3 was the previous owner of the offending truck. This would show that the ownership of the vehicle stood already transferred from respondent No. 3 to respondent No. 1. Once the transfer of the vehicle is established, the transfer of insurance policy at the time of transfer of ownership by transferor to transferee would also have to be presumed, unless there is some evidence showing that only the vehicle is transferred and insurance policy is not transferred. In this case, there is no evidence showing that at the time of transfer of ownership of vehicle, insurance policy was not transferred. Normally, when ownership of a vehicle is transferred, what is intended to be transferred is not only the property in goods but also in the documents, certificates of insurance of vehicle and so on unless it is clarified by the transferor that a particular document or insurance policy was not transferred. In this case, respondent Nos. 1 and 3, the present and previous owners were proceeded against ex-parte and so there was no question of such clarification coming forth from them. It is also not the case of respondent No. 2 that insurance policy was cancelled at the instance of respondent No. 3. Therefore, it would have to be presumed that insurance policy was also transferred at the time of ownership transfer and then provision of Section 157(1) would come into play and it would have to be held that even the certificate of insurance together with policy described therein were deemed to be transferred in the name of respondent No. 1. It would then follow that the respondent No. 2 would also have to be held jointly and severally liable to pay compensation along with respondent No. 1, so far as third parties are concerned. The respondent No. 3 being the previous owner and having no nexus in any way with the offending vehicle or the appellant, cannot be held liable in any manner. In the circumstances, I find that the impugned judgment and order insofar as they exonerate respondent No. 2 from any liability in this case needs to be quashed and set aside.

12. Accordingly, the point is answered in terms that provision of sub-section (1) of Section 157 of the Motor Vehicles Act, 1988, insofar as third parties are concerned, would be applicable to the instant case and by virtue of it, the policy of insurance would stand transferred in the name of the transferee of the vehicle from the date of transfer of ownership of vehicle, which on facts has been

determined by the learned Commissioner, to have been transferred already to respondent No. 1 on the date of accident. Point is answered accordingly. The appeal, therefore, deserves to be partly allowed. Accordingly, the appeal is partly allowed with proportionate costs and the impugned judgment and order are modified and it is directed that the respondent Nos. 1 and 2 both shall be jointly and severally liable to pay amount of compensation, costs and penalty as determined in the impugned judgment and order by the learned Commissioner.