(2011) 06 KL CK 0057

In the High Court Of Kerala

Case No : M.F.A. No. 107 of 2011

The National Insurance Company Ltd.	APPELLANT
Vs	
Sindhu P.T. and Others	RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:
- Employees Compensation Act, 1923 — Section 30
- Motor Vehicles Act, 1988 — Section 147, 147(1), 157
- Workmens Compensation (Amendment) Act, 2009 — Section 5

Citation : (2011) 3 KLJ 403 : (2011) 4 RCR(Civil) 276

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : Lal George, for the Appellant;

Final Decision : Dismissed

Judgement

Basant, J.—This appeal u/s 30 of the Employees Compensation Act (hereinafter referred to, ''the Act'') is preferred by the insurer who was the second opposite party before the Commissioner. The only substantial question of law sought to be canvassed before us is:

whether the insurer is liable to discharge the liability under the Act of a transferee of a vehicle, the policy of insurance in respect of which is deemed to be transferred in his favour by the operation of Section 157 of the Motor Vehicles Act.

To the vitally relevant and crucial facts, first. There was a collision between a jeep and a car. The driver of the jeep succumbed to the injuries suffered in the accident. His dependents lodged the claim under the Act against the employer of the deceased. On the date of the accident, that employer was the owner of the jeep. The appellant is the insurer in respect of that vehicle. The registration certificate and the policy of insurance stood in the name of the transferor who had transferred the vehicle to the employer. It is not disputed that such transfer took place prior to the date of the accident.

2. The claimants contended and the Commissioner accepted that Section 157 of the Motor Vehicles Act does operate and thereby the transferee steps into the shoes of the transferor/insured person. Consequently, the insurer is liable to discharge the liability of the transferee/employer, it was held. The appellant insurance company, unsuccessfully contended that in respect of the liability under the Act, such deemed transfer shall not operate. Such transfer may operate only in respect of the liability under the Motor Vehicles Act, contended the appellant.

*The title to the Workmen''s Compensation Act, 1923 was amended as the Employee''s Compensation Act, 1923 as per the Workmen''s Compensation (Amendment) Act, 2009. Further, Section 5 of the Amendment Act provides that throughout the principal Act, for words "workman" and "workmen", wherever they occur, the words "employee" and "employees" shall respectively be substituted, and such other consequential amendments as the rules of grammar may require shall also be made - Editor

3. Certain legislative provisions must be visited again. Chapter XI of the Motor Vehicles Act, 1988 deals with "insurance of motor vehicles against third party risks". It is not any more the mere volition or option of an owner of a vehicle to insure his vehicle. Every vehicle must have a valid policy of insurance. Obviously, such a stipulation stems out of the compassion of the legislature conscious of the hardship which victims may face, if the discretion to have his vehicle insured were left to the owner. In such case, if owner is unable to meet liability, victim will be left in lurch. The scheme of Chapter XI is to identify the authorised insurers who alone can transact the business of vehicle insurance. All owners of vehicles and persons using the vehicles are bound to ensure that there is a valid policy of insurance in respect of such vehicles. Such policy of insurance must necessarily cover certain specified liabilities. The insurer and insured have no option in the matter of coverage of such compulsorily insurable liabilities/risks. The volition of the insured and the insurer is irrelevant. There must be a policy of insurance and such policy must necessarily cover the specific requirements of Section 147 of the Motor Vehicles Act, 1988.

4. Requirements of policies and limits of liabilities are stipulated u/s 147 of the Motor Vehicles Act. It is not necessary to advert to the other aspects. We are concerned in this case with the liability of the insured/employer under the Act in respect of a driver engaged in driving the vehicle. Proviso (i)(a) of Section 147(1) of the Motor Vehicles Act makes it crystal clear beyond the pale of controversy that the compulsory policy of insurance must cover the liability under the Act of the employer/insured in respect of a driver engaged by him to drive the vehicle.

5. We may in this context advert and clarify that such liability in respect of the driver/victim is a liability which is compulsorily coverable and the driver of the vehicle of the insured must be deemed to be reckoned as a third party for the purpose of Chapter XI. Insurer and insured are the first and second parties to the

Contract of Insurance and the victims who are covered by Section 147 are the third parties to the Contract of Insurance. Such liability in respect of the third party/driver is compulsorily insurable.

6. Problems arise when there is a transfer of a vehicle, and there is no transfer of the policy of insurance. In such cases for fault on the part of the transferor and the transferee to promptly effect and record the transfer in the records and to transfer the policy of insurance, innocent third parties may suffer. Liability will be that of the transferee. But he will not be the person insured as per the policy of insurance. Precisely to avoid such problems and difficulties of the third party victims, we find an express stipulation u/s 157 of the Motor Vehicles Act, 1988 which introduces the concept of deemed transfer of the policy of insurance. We extract Section 157 below:-

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 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 his 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.

7. The language of Section 157 of the Motor Vehicles Act is very clear. Where transfer of a motor vehicle takes place, then, notwithstanding the fact that the transfer has not been specifically noted in the policy of insurance, there is a deemed transfer of the policy of insurance from the transferor to the transferee. On such transfer, from the date of transfer, the certificate of insurance will operate to protect the interest of the transferee owner and the third party claimants against him. This is, notwithstanding the failure/omission on the part of the transferee to get the policy of insurance formally transferred to the name of the transferee. It is easy to identify the rationale behind Section 157. For fault/omission on the part of the transferor and transferee to effect transfer of the policy of insurance to the name of the transferee, the third parties/victims, the liability in respect of whom is compulsorily insurable, should not suffer. So reckoned, we find not a trace of doubt on the question whether the policy of insurance in so far as it relates to the compulsorily insurable liability u/s 147 must be held to be transferred to the name of the transferee. Proviso (i)(a) of

Section 147(1) includes the liability under the Act The deemed transfer of policy by no acceptable process of reasoning and logic, cannot be said to be inapplicable to such liability under the Act.

8. The language of the statute appears to be eminently clear. It does not admit of any doubt. No binding precedents on this particular aspect has been brought to our notice. We have no hesitation to agree that the policy of insurance will stand transferred to the name of the transferee with effect from the date of the transfer and such transfer will take within its sweep all compulsorily insurable risks, covered under the policy of insurance.

9. The learned counsel for the appellant places reliance on the decision in M/s. Complete Insulations (P) Ltd. v. New India Assurance Company Ltd., AIR 1996 SC 586 to contend that invocation of Section 157 is limited to third party risks under the Motor Vehicles Act only. A careful reading of the facts reveals clearly that the contention which was repelled by the Supreme Court was that the comprehensive policy of insurance including the liability of damage of own vehicle will be covered by the deemed transfer of policy u/s 157. The dictum, it appears to us, is clear and that is Section 157 will apply only to such compulsorily insurable risk/interest which are covered by Section 147 of the Motor Vehicles Act and not to other contractual stipulations under the policy of insurance not covered by Chapter XI of the Motor Vehicles Act.

10. The counsel has further relied on the decision in G. Govindan Vs. New India Assurance Co. Ltd. and Others, . We are unable to find any observation in that said judgment which can suggest that the deemed transfer will not take in the liability under the Act under the Proviso (i)(a) of Section 147(1). The counsel in fact, places reliance on paragraph (13) which is extracted below. To our mind the third party (victim) referred to in paragraph (13) must take in the driver of the insured whose liability under the Employees Compensation Act is covered squarely by Proviso (i)(a) of Section 147(1) of the Motor Vehicles Act. That decision cannot also help the learned counsel for the appellant. Paragraph (13) reads as follows:

In our opinion that both under the old Act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts.

(emphasise supplied)

11. The learned counsel later on has attempted to place reliance on two decisions of the Supreme Court in National Insurance Co. Ltd. v. Mastan & Anr. JT 2005(10) SC 440 and Gottumukkala Appala Narasimha Raju and Others Vs. National Insurance Co. Ltd. and Another, . We have been taken through the decisions in detail. To our mind, these decisions do not at all refer to the play of the deemed transfer u/s 157 of the Motor Vehicles Act. The defences available under Workmen''s Compensation Act and the Motor Vehicles Act may be different

and defences/contentions that are available in proceedings under one Act cannot possibly be raised in the proceedings under other Act. But that can have no bearing on the question whether the deemed transfer u/s 157 would apply to compulsorily insurable risks/liabilities u/s 147. We do not in these circumstances find any substantial question of law arising for consideration in this appeal. This appeal is dismissed in limine.

