

(2011) 08 DEL CK 0389
In the Delhi High Court
Case No : FAO 446 of 2002

The New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Godambri Devi and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Motor Vehicles Act, 1939 — Section 103A, 110C(2A)
Motor Vehicles Act, 1988 — Section 149(2), 157, 166, 170

Citation : (2011) 08 DEL CK 0389

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant;

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—This appeal seeks to assail the judgment and decree of the Motor Accident Claims Tribunal dated 9th May, 2002 whereby an award in the sum of Rs. 2,00,000/- (Rupees two lakhs only) alongwith interest thereon was passed in favour of the Respondents No. 1 to 6 and against the Appellant/ Insurance Company.

2. The brief facts relevant for the decision of the present appeal are that on 16th June, 1985, one Shiv Singh, who was waiting at the traffic signal alongwith his cycle was hit by truck No. UTT 7271, driven rashly and negligently by its driver, the Respondent No. 7 herein. Shiv Singh succumbed to the injuries sustained by him whereupon his legal representatives being the Respondents No. 1 to 6 herein, filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 seeking compensation for his untimely demise.

3. The Respondents No. 7 and 8, the driver and owner respectively herein of the offending truck, while admitting in their written statements filed before the learned Claims Tribunal that the Respondent No. 7 was in the employment of the Respondent No. 8, denied that on the fateful day he was involved in any

accident. The Respondent No. 8 also pleaded that the vehicle was insured with the Appellant/Insurance Company. The Insurance Company in its written statement while controverting the pleas raised in the petition, raised a plea that one Sh. Mahinder Singh, who was the owner of the offending vehicle and who had got insured the vehicle under the policy, had transferred the vehicle in favour of the Respondent No. 8 (i.e. Mukand Lal, the present owner) and, therefore, the insurance policy had lapsed due to the transfer of the vehicle prior to the alleged accident.

4. The Claims Tribunal while holding the Respondent No. 7 guilty of rash and negligent driving of the offending vehicle passed an award in the sum of Rs. 2,00,000/- (Rupees two lakhs only) in favour of the Respondents No. 1 to 6 and directed the Appellant to pay the entire award amount with interest.

5. Aggrieved by the aforesaid judgment and award, the Appellant has preferred the present appeal.

6. Mr. Pankaj Seth, the learned Counsel for the Appellant, assailed the award of the learned Claims Tribunal by contending that the learned Tribunal erred in relying upon the provisions of Section 157 of the Motor Vehicles Act, 1988 to come to the conclusion that the policy of insurance stood transferred in the name of the Respondent No. 8, who had purchased the vehicle from its erstwhile owner, Sh. Mahinder Singh in the first week of May, 1985 prior to the accident, which had occurred on 16.06.1985.

7. The only other contention sought to be raised by Mr. Pankaj Seth, the learned Counsel for the Appellant was with regard to the quantum of compensation awarded by the learned Tribunal. It is proposed to deal with this contention first.

8. On a query put to him, Mr. Pankaj Seth conceded that the quantum of compensation awarded by the Tribunal was sought to be challenged but no permission as specified in Section 110C(2A) of the Motor Vehicles Act, 1939 (which corresponds to Section 170 of the Motor Vehicles Act, 1988) had been obtained by the Appellant/Insurance Company to contest the claim petition on merits and that it was settled law that the Insurance Company has no right to contest the award on grounds available to the insured unless it has sought and obtained permission from the Tribunal to do so. Mr. Seth, however, pointed out that an application u/s 170 of the Motor Vehicles Act, 1988 had been filed by the Insurance Company on which no orders were passed by the learned Tribunal, and therefore the insurance company should be permitted to challenge the quantum of compensation.

9. On going through the records of the Tribunal, however, I find that such an application for permission was filed by the Insurance Company belatedly at the time of arguments and was accordingly not entertained by the Tribunal. It is no longer res integra that an application for permission to contest the claim of a third party must be made by the insured bona fide and filed at the stage when the insured is required to lead his evidence. It has been so held by three-Judge

Bench of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, The relevant part of the judgment reads as under:

29. For the aforesaid reasons, as well as that the learned Judges in United India Insurance Co. Ltd. (supra) have failed to notice the limited grounds available to an insurer u/s 149(2) of the Act, we are of the view that the decision in United India Insurance (supra) does not lay down the correct view of law.

30. It was then urged that if there is a collusion between the claimants and the insured or the insured does not contest the claim and the tribunal does not implead the insurance company to contest the claim on grounds available to the insured or the persons against whom claim has been made, or in such a situation when the insurer files an application for permission to contest the claim on merit and the same is rejected or where claimant has obtained an award by playing fraud, in such cases the insurer has a right of appeal to contest the award on merits and the appeal would be maintainable.

31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in Sub-sections (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence (emphasis added). So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

10. Adverting to the other contention of Mr. Seth that the Insurance Policy had lapsed on account of transfer of the vehicle by its erstwhile owner, Mahinder Singh to Mukand Lal, the Respondent No. 8 herein, the learned Claims Tribunal has elaborately dealt with the matter in paragraphs 12 to 14 of its judgment, which for the sake of convenience are reproduced hereunder:

12. Respondent No. 3 attempted to escape liability pleading that the vehicle was insured in the name of Mohender Singh who had transferred the vehicle to Respondent No. 2 before the alleged accident and, therefore, the person insured had no insurable interest in the offending truck as a result of which the policy

lapsed. It has thus been pleaded that Respondent No. 3 cannot be asked to indemnify Respondent No. 2 who was not the person insured.

13. Shri Mahinder Singh the previous owner of the offending vehicle has been examined by Respondent No. 2 as PW-1 Shri Mahinder Singh has testified that he had sold the offending truck bearing No. UTT 7271 to Shri Mukand Lal in the last week of May, 1985 that he had delivered the said truck alongwith all the relevant documents of transfer to the transferee. It is in the statement of Shri Mahinder Singh that the policy of insurance was in force from 6.7.1984 to 5.7.1985 and that he had sent letter Ex. PW1/8 to M/s. New India Assurance Company Limited, insurer of the offending vehicle for the transfer of policy for the uncovered period in the name of the transferee. According to him he had sent the intimation under UPC and he has placed on record postal certificates Ex.RW1/A. The statement of Shri Mahinder Singh could not be assailed during cross-examination on behalf of Respondent No. 3.

14. Under the provisions of Section 157 of the Act, where a person in whose favour certificate of insurance had been issued, transfers to another person the ownership of the motor vehicle in respect of which certificate of insurance was issued, the certificate of insurance of the policy described in the said certificate would be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred w.e.f. from the date of its transfer. In the instant case, the offending truck was transferred to Respondent No. 2 in the last week of May, 1995 as deposed to by Shri Mahender Singh in whose favour the certificate of insurance has been issued. Shri Mahender Singh had informed the insurer i.e. New India Assurance Company Limited about the transfer. In view of provisions of Section 157 of the Act, the policy of insurance stands transferred in favour of Respondent No. 2 and, therefore, Respondent No. 3 insurer of the offending vehicle is liable to indemnify Respondent No. 2 and is liable to pay the compensation due to the Petitioners on behalf of the person who was the owner of the offending vehicle at time of accident.

11. No cogent reason could be assigned by the counsel for the Appellant to enable me to differ with the aforesaid view taken by the learned Tribunal. It is on record that the erstwhile owner of the offending vehicle, Mahinder Singh appeared in the witness box as RW-1 to state that he had sold the offending truck alongwith the trolley to the Respondent No. 8, Mukand Lal in the last week of May, 1985, and that the delivery of the said truck and trolley had also been given to Mukand Lal alongwith all the relevant documents of the transfer of the vehicle in his name. RW-1 Mahinder Singh further deposed that the policy was operative from 6July, 1984 to 5th July, 1985, and on 31.05.85, he had sent letter to the Head Office of the Insurance Company at Bombay and its branch office at Ghaziabad with a copy to the Respondent No. 8 for the transfer of the policy for the uncovered period in the name of the Respondent No. 8. The said letter was proved on record by him as Exhibit RW1/B and the postal receipt is Exhibit RW1/A. In the course of his cross-examination by the counsel for the Appellant, RW1

Mahinder Singh affirmed that the original policy of the vehicle had been given to the Respondent No. 8. Significantly, this fact is not denied by the Respondent No. 8. Significantly also, no evidence in rebuttal was adduced by the Insurance Company to the effect that it did not receive the communication sent by RW1 Mahinder Singh vide Exhibit RW-1/B for the transfer of the policy. It, thus, stands established on record that the insurance policy had not lapsed, but stood automatically transferred to the Respondent No. 8 in view of the deeming provisions and Section 157 of the Motor Vehicles Act, 1988 {Section 103A of the Motor Vehicles Act, 1939}.

12. In view of the aforesaid, there is no merit in the present appeal, which is accordingly dismissed.