

(1994) 01 OHC CK 0020
In the Orissa High Court
Case No : A.H.O. No's. 33 and 34 of 1993

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Dinabandhu Pradhan and Another

RESPONDENT

Date of Decision : 03-01-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 103A, 157(1), 157(2)

Citation : AIR 1994 Ori 77 : (1994) 1 OLR 464

Hon'ble Judges : B.N. Dash, J;A. Pasayat, J

Bench : Division Bench

Advocate : A.K. Mohanty, for the Appellant; R.N. Mohanty, B.N. Rath, S.S. Das and Deepak Misra and B.P. Ray, as Amicus Curiae, for the Respondent

Judgement

Pasayat, J.—The effect of failure of a person to whom ownership of a motor vehicle has been transferred together with concerned policy of insurance to apply to the insurer in the prescribed manner is the subject-matter of controversy in both the appeals. The points of law and facts situation being identical, both are disposed of by this judgment. A learned single Judge did not consider this question to be a substantial question of law in order to attract the proviso to Section 30 of the Workmen's Compensation Act, 1923 (in short, the "Act"). It was observed that in view of the provisions contained in Section 157(1) of the Motor Vehicles Act, 1988 (in short, the "Motor Act") no substantial question of law was involved. With great respect we feel that the conclusion is not appropriate, and therefore the appeals were entertained.

2. Some unnecessary details (with) the almost undisputed facts situation is as follows :

Dinabandhu Pradhan and Bharat Das (hereinafter referred to as the "claimants") lodged claims before the Assistant Labour Commissioner-cum-Commissioner for Workmen's Compensation, Cuttack (in short, the "Commissioner") claiming compensation of Rs.50,000/- each for allegedly having sustained injuries in course of their employment under Jiten Kumar Mohapatra (hereinafter referred

to as the "owner"). According to the claimants, Dinabandhu was engaged as a driver and Bharat was engaged as a helper of a truck bearing registration No. ORJ 4226 belonging to the owner. On 5-5-1990, the truck met with an accident near Tulasipur (Harganga Road) under Banki Police Station as a result of which both the claimants sustained injuries. Claimant Dinabandhu was aged about 25 years and claimant Bharat was aged about 21 years at the time of accident. The former was getting Rs. 1200/- and the latter was getting Rs. 900/- as salary. Claimant Dinabandhu sustained compound fracture of left leg, fracture of spinal cord with multiple injuries all over his body resulting in complete invalidation to do any physical work. Claimant Bharat sustained compound fracture of right hand, fracture of right knee with multiple injuries all over his body for which he became quite unfit to do any physical work.

The owner contested the claim by way of written statement admitting the accident, employment and wages. The Oriental Insurance Company Limited (hereinafter referred to as the "insurer") was impleaded as a party in the proceeding. It took a stand that one Guru Charan Pradhan had taken insurance in respect of the concerned vehicle and, therefore, the question of Jiten Kumar Mohapatra getting any indemnification of owner of the vehicle did not arise. The Commissioner determined the entitlement of claimant Dinabandhu at Rs. 43,382/-, and of claimant Bharat at Rs. 40,087.80 paise. So far as ownership of the vehicle was concerned, it was concluded that u/s 157 of the Motor Act Jiten Kumar Mohapatra was to get indemnification.

3. In both the appeals, the learned Counsel for the insurer submitted that necessary application as warranted under Sub-section (2) of Section 157 of the Motor Act having not been made to the insurer for making necessary changes regarding transfer of the certificate of insurance and the policy described in the certificate in favour of the person to whom the motor vehicle is transferred, the transferee shall not be entitled to be indemnified. The owner and the claimants have, however, urged that by application of Sub-section (1) of Section 157 there is a deemed transfer in favour of Jiten Kumar Mohapatra to whom the vehicle is transferred and, therefore, the conclusions of the Commissioner are irreversible.

4. In order to appreciate the rival submissions it is necessary to refer to both the sub-sections of Section 157. The provision in its entirety reads as follows :

"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 person to whom the motor vehicle is transferred with effect from the date of its transfer.

(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."

A bare reading of the provision makes it clear that where a person in whose favour the certificate of insurance has been issued by the insurer in accordance with the provisions of Chapter IX relating to insurance matter against third party risks, 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, he may apply in the prescribed form to the insurer for the transfer of the certificate of insurance and the policy described in the certificate in favour of the person to whom the motor vehicle is transferred. Though in essence this provision corresponds to Section 103-A of the Motor Vehicles Act, 1939 (in short, the "old Act"), the provisions in both the Acts are intrinsically different. Sub-section (2) mandates 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 in the certificate of insurance and the policy described in the certificate in his favour and requires the insurer to make necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance. Section 50 of the Motor Act deals with the transfer of ownership while Section 157 deals with transfer of certificate of insurance. Sub-section (1) of Section 50 deals with obligations of the transferor and the transferee in the case of transfer of ownership. Clause (a) of Sub-section (1) of Section 50 deals with the obligations of the transferor while Clause (b) deals with those of the transferee. The transferor is required, in case the vehicle is registered within the same State, within fourteen days of the transfer, to report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected in such form with such documents and in such manner, as may be prescribed by the Central Government and to simultaneously send a copy of the said report to the transferee. In case of a vehicle registered outside the State, action is to be taken within forty-five days of the transfer by forwarding to the registering authority within whose jurisdiction the transfer is to be effected (of) certain documents. The transferee within thirty days of transfer is required to report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration. Sub-section (3) of Section 50 provides that if the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in Clause (a) or Clause (b) of Sub-section (1), as the case may be, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be,

to pay, in lieu of any action that may be taken against him u/s 177 such amount not exceeding one hundred rupees as may be prescribed under Sub-section (5). The said sub-section authorises the State Government to prescribe different amounts for the purpose of Sub-section (3) having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle. Sub-section (6) provides that on receipt of the report under Sub-section (1), or an application under Sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration. We have not dealt with the provision contained in Sub-section (2) of Section 50, as it is not relevant for our purpose. The registering authority making an entry in terms of Sub-section (6) of Section 50 shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority. Sub-sections (2) and (6) were not there in the corresponding Section 31 of the old Act. Other parts of Section 50 correspond to Section 31 of the old Act with minor changes. The procedures relating to transfer under Subsection (1) of Section 50 are laid down in Rule 55 of the Central Motor Vehicles Rules, 1989 (in short, the "Motor Vehicles Rules"). The transferor is required to report the fact of transfer in Form 29 to the registering authorities concerned. An application for the transfer of ownership of a motor vehicle under Sub-clause (i) of Clause (a) of Subsection (1) of Section 50 is required to be made by the transferee in Form 30 along with the certificate of registration, the certificate of insurance and appropriate fee is specified in Rule 81. In case of transfer of ownership of the motor vehicle under Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 50, an application is to be made by the transferee in Form 30, who shall, in addition to the documents and fee referred to in Sub-rule (2), be required to file certain other documents. It is to be noticed that Section 50 does not contemplate any enquiry regarding transfer. Once the transferee reports the fact of transfer within thirty days to the registering authority and certificate of registration is also submitted in order that particulars of the transfer of ownership may be entered in the certificate of registration together with the prescribed fee and a copy of the report received by him from the transferor, and the transferor also makes a report of the transfer to the registering authority, the registering authority has no option but to make the necessary entries in the registration certificate. Failure to report entails prosecution u/s 177, or to pay an amount not exceeding Rs. 100/- as required by the registering authority. Action u/s 177 is available to be taken if the amount is not paid. When the registered owner transfers the vehicle to some other person and does not take any step as provided u/s 50 of the Motor Act, then it shall be deemed that there is no transfer of the vehicle for the purpose of Motor Act. Inter partes transactions may exist, but, if they are not in accordance with law, they cannot be recognised. (See *Sonaram v. Jaiprakash* AIR 1986 MP 21). It has further to be noticed that the transfer cannot be complete till the registration is effected in favour of the purchaser. The transfer of vehicle is governed by the provisions of Sale of Goods Act, 1930. The fact of non-registration of the vehicle in the name of the purchaser does not vitiate the sale. The failure to report the

transfer may involve some penalties under the law relating to Motor Vehicles. But, that certainly does not interdict the passing of property in the vehicle to the transferee. It is a requirement of law that the transfer has to be notified; otherwise, certain penal consequences follow, but, that does not make the transfer invalid. The moment the sale of the vehicle is effected intending to pass the property therein forthwith vis-a-vis the vehicle, the registered owner ceases to have any proprietary interest. But, under the Motor Act till there is an endorsement on the registration certificate, ostensibly the transferor continues to be the owner.

5. As indicated supra Section 50 provides for recording of the transfer on the registration certificate merely on the report of the transferee. It does not contemplate any enquiry into the question of transfer by the Registering Authority before recording the same. Section 157, on the other hand, deals with the transfer of certificate of insurance. It provides that where the insured transfers the vehicle together with the policy of insurance, the certificate of insurance and the policy will be deemed to have been transferred to the transferee with effect from the date of transfer. Under the old Motor Act, it was necessary for the transferee to have the policy renewed. The provisions (Section 103-A of the old Act) read as follows :

"103-A. 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 proposes to transfer 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, he may apply in the prescribed form to the insurer for the transfer of the certificate of insurance and the policy described in the certificate in favour of the person to whom the motor vehicle is proposed to be transferred, and if within fifteen days of the receipt of such application by the insurer, the insurer has not intimated the insured and such other person his refusal to transfer the certificate and the policy to the other person, 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.

(2) The insurer to whom any application has been made under Sub-section (1) may refuse to transfer to the other person the certificate of insurance and the policy described in that certificate, if he considers it necessary so to do, having regard to-

(a) the previous conduct of the other person -

(i) as a driver of motor vehicles; or

(ii) as a holder of the policy of insurance in respect of any motor vehicles; or

(b) any conditions which may have been imposed in relation to any such policy held by the applicant; or

(c) the rejection of any proposal made by such other person for the issue of a policy of insurance in respect of any motor vehicle owned or possessed by him.

(3) Where the insurer has refused to transfer, in favour of the person to whom the motor vehicle has been transferred, the certificate of insurance and the policy described in that certificate, he shall refund to such transferee the amount, if any, which, under the terms of the policy, he would have had to refund to the insured for the unexpired term of such policy."

Under the old Act, an insurance policy stands released as soon as the vehicle is transferred. On transfer of vehicle, the insurance policy could not subsist, unless the benefits under the policy were also transferred. Transfer of vehicle to the knowledge of the insurance company did not amount to transfer of certificate of insurance and the company was not liable for any accident. (See *Hema Ramaswami Vs. K.M. Valarance Panjani and Others*, ; and *New India Insurance Co. Ltd. v. H. Gana-pathy* AIR 1982 Mad 300). Under the old Act the insured was required to apply to the insurer for transfer u/s 103-A(1) when he proposed to transfer the ownership of any vehicle in respect of which insurance had been taken together with the policy of insurance relating thereto. The mere intimation of the transfer did not satisfy the requirements of Section 103-A(1). There had to be an application for transfer in the prescribed form or at least a request therefor. Mere knowledge on the part of the insurance company of the change of ownership of the motor vehicle would not tantamount to transfer of the certificate of insurance and the policy described in the certificate in favour of person to whom the motor vehicle is transferred. Where the transferor or the transferee of the vehicle applied to the insurer for a transfer of the policy it was open to the insurer either to make the transfer, or to refuse it in accordance with the provisions of Sub-section (2). But if within 15 days of the receipt of the application the insurer did not intimate his refusal to transfer it was deemed that the certificate and the policy had been transferred with effect from the date of the transfer of the vehicle. Under Sub-section (1) of Section 257 of the Motor Act, there is no requirement for applying to the insurer for transfer of the policy. It gets transferred to the transferee by operation of law; and the insurer has no say in the matter.

6. By operation of a deeming provision 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. The difficulty arises when the transferor does not apply within fourteen days from the date of transfer in the prescribed form to the insurer. According to the insurer, the deemed transfer gets nullified in the absence of application as required in Sub-section (2). The claimant and the insured, however, submit that making of application under Sub-section (2) is merely a procedural requirements, without any penal consequences. The purpose for which the application has to be made is spelt out from the provisions itself, i.e., to make necessary changes in the certificate and the policy of insurance. It is

highlighted that unlike Section 50 where penal consequences are attached, there is no such prescription in Sub-section (2) of Section 157.

7. We shall first deal with the provisions of Sub-section (1) of Section 157. The said provision involves two transfers, i.e., (i) the transfer of ownership of the vehicle in respect of which insurance is taken; and (ii) the policy of insurance relating thereto. Once both the transfers take place the deeming provision operates in respect of certificate of insurance and policy described therein.

8. A deeming provision is a legal fiction. Such fictions are created only for some definite purpose and those are limited to that purpose alone and are not to be extended beyond their legitimate field. The phrase "shall be deemed" is frequently used in statutes when the legislature wants to confer a status or an attribute to a person or thing on whom this conferment is made. The true synonym for the word "deemed" is "judged" and the other shades of meaning came later. Even today the Judges in the Isles of Man and Jersey are called "Deemsters". Whenever the word "deemed" is used in statute in relation to a person or thing, it implies that the legislature after due consideration exercised its judgment in conferring that status or attribute to a person or thing. In *De Beauvoir v. Welch* (1827) 108 ER 722, Littledala, J. observed : "The word "deemed" imports also that a judgment is to be exercised". In the *Law Lexicon of British India* by P. Ramanatha Aiyar, (1940) under the words "deemed to be", the following extract appears :

"In *Leonard v. Grant*, 5 Fed 11 at p. 16 it is said ; Whatever an Act requires to be "deemed" or "taken" as true of any person or thing, must in law be considered as having been duly adjudged or established concerning such person or thing and have force and effect accordingly."

"Deemed" is used in a great deal in modern legislation. Sometimes it is used to impose for the purpose of a statute an artificial construction on a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in ordinary sense impossible. (See *St. Aubyn (L.M.) v. A.G.* (No. 2) (1952) AC 15 per Lord Radcliffe, J.). The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of the state of affairs. (See *East and Dwellings Co. v. Finsbury* AC (1952) AC 109 per Lord Asquith, J.). A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision. If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine, as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or

accompanied it. When a person or act is deemed to be something, the only meaning possible is that whereas he or it is not in reality that something, the Act requires him or it to be treated as if he or it was. When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per Cave, J. in *R. v. Norfolk County Court* (1891) 60 LJQB 372). It has been observed by the apex Court in *Commr. of Income Tax, Delhi v. Teja Singh* AIR 1959 SC 352 that the word "deemed" is used in great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. Legal fictions are controlled by the maxims "*Fictio legis non operatur damnum vel injuria*" and "*in factis juris somper acquitas existit*". These maxims have no application to statutory fictions. The legal fictions are a legal assumption that a thing is true which is either not true or which is probably false as true; as assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never taken place; an allegation in legal proceedings that does not accord with the actual facts of the case and which may be contradicted for every purpose except to defeat the beneficial and for which the fiction is invented and allowed.

"Deemed" as used in statutory definitions "to extend the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage of an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something"; and the words "deem" and "deemed" when used in a statute thus simply state the effect or meaning which some matter or thing has --the way in which it is to be adjudged, this need not import artificiality or fiction; it may simply be the statement of an undisputable conclusion. (Per Windener, J. in *Hunter Douglas Australia Pty. v. Perma Blinds* (1970) 44 ALJR 25). According to Viscount Simonds in *Barclays Bank v. L.R.C.*, (1961) AC 509, primary function of a deeming provision to bring in something which would otherwise be excluded.

9. By operation of the deeming provision, transfer of certificate of insurance and the policy described in the certificate is automatic in terms of Sub-section (1) of Section 157 of the Motor Act. What then is the effect of transferee's failure to comply with the requirement of Sub-section (2) of Section 157 ? Is it intended to be an inoperative provision ? It is seen that no penal consequences are attached to Sub-section (2), as is done in the case of failure to do certain acts as provided in Subsection (1) of Section 50 relating to transfer of ownership of the vehicle. It is the cardinal rule of construction that every statute has to be construed as a whole and the construction given should be a harmonious one. One provision in a statute is to be so interpreted as not to nullify effect of another provision. As observed by the apex Court in *Sanjeevayya v. Election Tribunal, Andhra Pradesh* AIR 1967 SC 1211, harmonious construction of the provisions is to be adopted and the provisions of one section cannot be used to defeat those of another, unless reconciliation is impossible. Where the Court in dealing with two sub-

sections of a section, it is necessary that the two sub-sections must be construed as a whole "each portion throwing light, if need be, on the rest". The two sub-sections must be read as part of an integral whole, and as being inter-dependent, an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided. To ascertain the meaning of a section, it is not permissible to omit any part of it; the whole section should be read together and an attempt should be made to reconcile both the parts.

Sub-section (1) deals with transfer of ownership of vehicle, which must be a valid and legal transfer. Sub-section (2) deals with the intimation part of it, i.e., for the report about transfer and consequential act to be undertaken by the insurer. It is to be noticed that unlike the old Motor Act, there is no right conferred on the insurer to refuse a transfer. Under the old Motor Act, the insurer had the option to reopen the policy. A vehicle is the subject-matter of insurance and the person seeking insurance is the insured. Under the new Act, however, the certificate of insurance and policy described therein are transferred along with the vehicle. The terms and conditions of the policy between the transferor and the insurer cover the transferee. What then is the effect and consequence of failure to apply ? A reference to Section 103-A of the old Motor Act is necessary at this juncture. Under the said provision, it was necessary for the transferee to have the policy renewed. A policy stands released as soon as the vehicle is transferred in accordance with the terms of the policy itself. In the absence of a fresh agreement with the insurer, the liability to indemnify comes to an end, notwithstanding the fact that the vehicle remains recorded in the name of original owner by the time of accident. Under the new Motor Act (sub-section (1) of Section 157) the insured is entitled to transfer the policy of insurance along with transfer of the vehicle which is the subject-matter of insurance.

In our considered opinion, in case of such failure, the insurer cannot make changes in the certificate of insurance and policy of insurance, in regard to the transfer of insurance. The purpose of enactment of Sub-section (2) appears to be that in case of an application being made by the transferee, consequential changes are to be made in the certificate and the policy of insurance. The rigours of the requirements prescribed in Section 103-A of the old Motor Act have been done away with, The right to refuse conferred with the insurer has been denied. The procedure has been liberalised. All that the insurer is required under the new provisions is to make necessary changes in the certificate of insurance and the policy. But is it helpless in case no application is made ? The answer is an emphatic "no". The insurer can take a defence while contesting the claim seeking indemnification that there was no transfer of ownership of the motor vehicle and/or the certificate of insurance and the policy described in the certificate. In such an event, the onus would be on the transferor or the transferee, as the case may be, to prove that there was transfer of the ownership of the vehicle in respect of

which the insurance was taken, together with the policy of insurance relating thereto. If there is failure to establish both transfers, the insurer cannot be asked to indemnify in respect of such vehicle if it is involved in an accident.

10. It is clear that the purpose of enacting Sub-section (2) of Section 157 is to make the insurer aware of the transfer so that it can make changes in its records, and necessary changes can be made in the certificate of insurance and policy. It cannot be said that in the absence of application, the effect of the deemed transfer in terms of Section 157(1) is wiped out. It is seen that fourteen days" time has been granted for applying to the insurer. In a given case, an accident may occur between the date of transfer and the last date for making the application. In that case, insurer"s liability to indemnify the transferee exists, even though in the records of the insurer, transferor is the insured. In another case, for reasons beyond the control of the parties, intimation may be given after the prescribed period. According to us, that does not clothe the insurer with the power of refusal to take notice of the transfer, keeping in view the indicated object of making necessary changes by the insurer. This construction would effectuate the purpose and intendment of the statute, and at the same time would not nullify the other provision.

11. A question may arise what would happen when the transferee or transferor does not participate in the proceeding before the Commissioner. In that case, the claimant is to establish that in fact there was transfer of the motor vehicle together with the certificate of insurance and policy described therein. If the claimant also fails to establish these aspects, he cannot claim any relief against the insurer.

12. Having set out the legal provisions in their proper perspective, it is necessary to deal with the factual position.

Undisputedly the certificate of insurance was issued in favour of one Guru Charan Pradhan, who was not a party to the proceeding before the Commissioner. The claim was lodged against Jiten Kumar Mohapatra (in short, "Jiten"). The Commissioner referred to Section 157(1) of the Motor Act in coming to a conclusion that the insurer was liable to indemnify the awards against Jiten. From the copy of certificate of registration and certificate of fitness relating to vehicle, we find that the vehicle was transferred in favour of Jiten with effect from 10-4-1990. From the said documents we find that the original transferor was Guru Charan Pradhan. The accident took place on 5-5-1990. At this juncture, written statements filed by Jiten in both the cases need a detailed reference. A fair amount of corrections and overwritings appear therein. The date originally put below the signature of the Advocate appearing for Jiten is 16-10-1990, which has been subsequently corrected to 26th September, 1990- The same is the position in the Vekalatnama filed in the two cases. Interestingly, the verification made by the verificant (Jiten) does not bear any date. Copy of the written statement also does not appear to have been served on the insurer. In the written statement there is no reference to the transfer of vehicle by Guru

Charan to Jiten. There is no mention that the vehicle was transferred together with the policy of insurance. We find that the period of insurance so far as Jiten is concerned was from 9-5-1990 to 7-1-1991, as evident from the copy of the certificate of insurance filed. The transfer of insurance was effected in favour of Jiten on 9-5-1990 to run till 7-1-1991. It is not forthcoming from the records as to when the application for transfer was in fact made. The stand of the insurer is that when the transfer was effected from 9-5-1990, it is to be presumed that the transfer was made after the date of accident (5-5-1990), i.e., 9-5-1990. This submission is made with reference to the provisions of Sub-section (1) of Section 157, which provides that the transfer is to take effect from the date of transfer. Unfortunately no material was brought on record before the Commissioner as to when the application was made to make the changes. Registration of the vehicle in favour of Jiten was on 10-4-1990. Had Jiten brought any material to show that the vehicle was transferred accompanied by any transfer of policy of insurance, the matter would have been different. But no material was placed in that regard. Neither in the claim petition nor in the written statement filed by Jiten, the details relating to the policy were given. Obviously, therefore, the insurer could not have known who was the insured. For the first time the copy of certificate of insurance (transfer of interest) issued in favour of Jiten was filed on 24-11-1990. The document reveals many interesting aspects. It is not very clear when the said document was issued, because the date of signature of the proposer is indicated to be 9-5-1990, but it is indicated that the same was signed at Bhubaneswar on 5-9-1990 (relating to receipt No. 1883 dated 9-5-1990). The document was brought on record by Jiten during his examination on 24-11-1990. Though statement of Jiten on 24-11-1990 is on record, the order-sheet does not show anything about his examination. There is only reference to the examination of the claimants.

That is not the end of the matter. The order-sheet maintained by the Commissioner does not show when insurer (opposite party No. 2 before him) appeared and filed the written statement. But the records of the case contain the written statement filed by the insurer, a copy of which had been served on the claimants' advocate. Various documents filed are kept on record. The order-sheet records that they are exhibited, but there is no endorsement by the Commissioner on the documents, they are not numbered as exhibits, and the date on which they were filed is not mentioned. This shows the casual manner in which the proceeding was conducted by the Commissioner. The written statement of the insurer does not contain the date of verification by the verificant. This was not noticed by the Commissioner.

13, There was no material before the Commissioner, and the same is the case before us, to show whether the transfer of ownership of the vehicle was together with transfer of policy of insurance. Section 157(1) can have application only where there is transfer of ownership together with the policy of insurance. In the absence of material in that regard, the Commissioner was not justified in holding that the insurer was liable. In view of the absolutely confused and chaotic

manner in which the proceeding was conducted before the Commissioner, we feel that interest of justice would be best served if the matter is remitted back to the Commissioner to give definite finding about existence of ingredients necessary to bring in application of Section 157(1).

14. Coming to the quantum awarded by the Commissioner in each case, we find that the Commissioner relied on the evidence of Dr. Bira Kishore Das to come to hold that loss of earning capacity was 40%. The evidence of this witness is absolutely hazy. He had neither examined the claimants nor treated them nor did he know them prior to 23-11-1990. The only document in each case so far as this witness is concerned is an outdoor patient ticket dated 23-11-1990 which refers to six and half months' old injury. He was examined on 3-12-1990. The percentage of permanent disability was assessed by him to the extent of 40% in each case. He claimed to have seen the original injury report in each case. There is no reference in the concerned out-door patient ticket about his having seen the reports. Dr. Bira Kishore Das specifically stated that in each case, he had calculated the disability at 40% by seeing the out-door patient ticket dated 23-11-1990. No basis was indicated by him for such conclusion. This is not the solitary instance where we have found his evidence to be deficient. Sanctity is attached to the report given by "qualified medical practitioner", as defined in Clause (i) of Sub-section (1) of Section 2. The corresponding obligation to make proper assessment of the loss of earning capacity rests on the concerned medical practitioner. The assessment should be un-biased, fair and backed by basis and reasons. It cannot be outcome of any arbitrary guess-work unsupported by basis and/ or reason. Sanctity attached to the assessment is on account of expertise which the qualified medical practitioner is supposed to possess. These salutary requirements are unfortunately not kept in view while assessments are made. The doctor is required to make assessment of loss of earning capacity, which is the foundation for working out entitlements of the claimant. Even otherwise, disability of certain percentage is not same as percentage of loss of earning capacity. There is a distinction between the two. A bare look at Clause (c)(ii) of Sub-section (1) of Section 4 of the Act and the Explanation appended thereto makes the position clear. Unfortunately the Commissioner has lost sight of this clear statutory prescription. This is not the solitary instance. Large number of such cases have come before us. This is an additional feature which reinforces our conclusion about irresponsible manner in which the Commissioner has acted, and passed the award.

15. Another interesting feature is that the accident allegedly took place on 5-5-1990 at about mid-night. The claimants Dinabandhu and Bharat appear to have been medically examined for the first time on 11-5-1990 and 12-5-1990 respectively on police requisition. It is not known whether any medical assistance was rendered earlier. No material has been adduced by the claimants. The doctor who examined each of the claimants opined that the injuries were sustained within 12 hours and 72 hours respectively of the examination. The effect of this conclusion of the doctor had not been considered by the Commissioner, The

quantum of compensation awarded by the Commissioner, therefore, is indefensible. He has proceeded to assess the quantum on the percentage of disability. A fresh assessment is, therefore, necessary. Accordingly, we set aside the award of the Commissioner and judgment of the learned single Judge in each case and remit the matter back to the Commissioner for fresh adjudication. To avoid unnecessary delay, the parties are directed to appear before the Commissioner on 18th January, 1994, when a date shall be fixed by the Commissioner for fresh adjudication. Since the accident took place about four years back, the Commissioner would do well to dispose of the matter early.

Both the appeals are accordingly disposed of.

B.N. Dash, J.

16. I agree.