

(2014) 10 BOM CK 0084
In the Bombay High Court
Case No : First Appeal No. 499 of 2013

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Pushpa

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 157, 166, 2(30)

Citation : (2015) 1 ACC 671 : (2016) ACJ 194 : (2015) 2 AnWR 158 : (2015) 2 BomCR 637

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : A.R. Godbole, Advocate for the Appellant; S.C. Bhalerao, Advocate for the Respondent

Judgement

R.K. Deshpande, J.—In Motor Accident Claim Petition No. 138 of 2006, the Motor Accident Claims Tribunal, Yavatmal, has passed an award under Section 166 of the Motor Vehicles Act, 1988 on 30-3-2011 holding the driver and the registered owner of the vehicle Maruti Van No. MH-28/C-1464, along with the appellant-The Oriental Insurance Co. Ltd., jointly and severally liable to pay the compensation of Rs. 16,32,408/- inclusive of no-fault liability and interest at the rate of 9% per annum from the date of filing of the petition, i.e. 5-6-2006, till its realization. It is the Insurance Company, which is before this Court challenging the award passed by the Tribunal.

2. The incident in question occurred on 17-3-2006 near Mangrul Shiwar on Pandharkawada-Wani Road at 12.15 p.m. The vehicle in question, i.e. Maruti Van No. MH-28/C-1464, dashed a horse, which was crossing the road; as a result of which, the vehicle turned turtle. The deceased Nanaji Punaji Uike was the occupant in the vehicle and died on the spot as a result of severe injuries. The Tribunal has recorded the finding that the accident occurred due to rash and negligent driving of the respondent No. 1. The defences raised by the Insurance Company that the risk of the deceased, who was the occupant of the vehicle, was

not covered by the insurance policy; that the driver of the vehicle was not holding a valid and effective licence at the time of accident; that the vehicle was being driven by illegally carrying the fare-paying passengers in breach of the terms and conditions of the insurance policy, are rejected. Another defence raised was that the respondent No. 8 Murlidhar Madhaorao Kolhe was the registered owner of the vehicle and the contract of insurance was with him. He had sold the vehicle on 30-1-2006, i.e. prior to the accident to the respondent No. 7 Amin Mehandibhai Lakhani, and hence he cannot be held liable to pay the compensation and consequently, the appellant-Insurance Company is not liable to reimburse the compensation. This defence is also rejected.

3. The only points urged by Shri Godbole, the learned counsel appearing for the appellant-Insurance Company, are that the insurance policy in question did not cover the risk of the passengers in the vehicle. The vehicle in question was purchased by the respondent No. 7 Amin Mehandibhai Lakhani on 30-1-2006, though the registration of the vehicle and the insurance were in the name of the original owner, the respondent No. 8 Murlidhar Madhaorao Kolhe. On the date of the accident, i.e. on 17-3-2006, the respondent No. 7 Amin Lakhani was the owner of the vehicle. He further submits that unless the policy was assigned or transferred in the name of the respondent No. 7 Amin Lakhani, the appellant-Insurance Company was not liable to indemnify the owner. Hence, the points for determination in this appeal is as under :

(i) Whether the risk of the occupant of the vehicle in question was covered by the insurance policy?, and

(ii) Whether the respondent No. 8 Murlidhar Madhaorao Kolhe, who was the registered owner of the vehicle in question, was vicariously liable to pay the compensation and consequently the appellant-Insurance Company was liable to indemnify the risk?

4. The Tribunal has recorded the finding that the vehicle in question was insured with the appellant-Insurance Company and the risk of the passenger in the vehicle was also covered by the policy. I have gone through the insurance policy, which was valid for the period from 10-10-2005 to 9-10-2006, covering the date of the accident, i.e. 17-3-2006. It is a package policy in respect of a private car. The sitting capacity of the vehicle is shown to be eight. The schedule of premium in the policy is reproduced below :

It covers the risk of own damage and also the liability of the driver and the passengers. It is thus a comprehensive policy. The Insurance Company has not adduced any evidence to show that the risk of passengers is not covered or that the premium is not paid for such a risk. The Insurance Company has neither examined any witness nor produced any document on record to show that the vehicle in question was being used as a public vehicle, wherein the fare-paying passengers were travelling. The Insurance Company has thus failed to establish that the passengers were not covered by the policy and that there was breach of

the mandatory terms and conditions of the insurance policy. The point No. (i) is answered accordingly. Hence, the finding recorded by the Tribunal does not call for any interference.

5. It is the finding recorded by the Tribunal that the respondent No. 8 Murlidhar Kolhe was the registered owner of the vehicle in question on the date of the accident, and though the document is produced on record to show that the vehicle in question was put in control and possession of the respondent No. 7 Amin Lakhani as a purchaser of the vehicle, neither the registration nor the insurance was transferred in his name. In this background of the findings of fact, the learned counsel for the appellant-Insurance Company has relied upon the two decisions of the Apex Court in the cases of (i) Godavari Finance Co. Vs. Degala Satyanarayanamma and Others, ; and (ii) Purnya Kala Devi Vs. State of Assam and Another, , and has urged that the possession and control of the vehicle plays a vital role in determination of liability. He has further relied upon Section 2(30) of the Motor Vehicles Act, 1988 regarding the definition of "owner" and has urged that a person in control and possession of the vehicle becomes liable to pay the compensation. He submits that in the present case, it was the respondent No. 7 Amin Lakhani, who was in control and possession of the vehicle, and there was no contract of insurance with him and hence the appellant-Insurance Company was not liable to indemnify him for the risk in question.

6. In the decision of the Apex Court in the case of G. Govindan Vs. New India Assurance Co. Ltd. and Others, , the question involved was whether the insurance policy lapses and consequently the liability of the insurer ceases when the insured vehicle was transferred and no application/intimation, as prescribed under Section 103A of the Motor Vehicles Act, 1939, was made/given. The motor vehicle involved was a bus, which was purchased by the appellant on 15-8-1974. However, neither the appellant(transferee) nor the respondent(transferor) intimated the sale transaction to the insurance company, as required under Section 103A of the said Act. The accident occurred subsequently on 18-5-1975 and even after this date, the insurance company received the premium for subsequent periods up to 29-11-1978. The Claims Tribunal held that it was the liability of the insurance company to pay the compensation. The High Court reversed this decision and discharged the liability of the insurance company. The Apex Court allowed the appeal by setting aside the decision of the High Court and restoring the decision of the Tribunal.

7. In the aforesaid decision, the Apex Court confirmed and approved the Full Bench decision of the Andhra Pradesh High Court in the case of Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, . The Full Bench was concerned with the provisions of the Motor Vehicles Act, 1939. It was held that Section 94 of the said Act is intended to give protection to a third-party in respect of death or bodily injury or damages to their property while using the vehicle at public place. Section 94 of the said Act does not require that every person that uses the vehicle was insured in respect of their separate use. Section

95(5) of the said Act intended to cover two legal obligations. Firstly, that no one who was not a party to a contract could bring an action on a contract; secondly, that a person who has no interest in the subject-matter of the insurance can claim the benefit of the insurance. Thus the provision makes an exception to the general law of contract by removing these two objections. Sections 94 and 95 make the insurance compulsory for the benefit of third-parties . These two provisions do not extend the compulsory insurance to the vehicle or to the owner and make an exception to protect the life or limb of the driver of the vehicle or the passenger in the vehicle, except public service vehicle. It is incorrect to assume that the moment the title of the vehicle passes to the transferee, the statutory obligation under Section 94 ceases and the original owner is no longer guilty of causing or allowing the purchaser to use the vehicle. Mere passing of title in the vehicle to the transferee will not but an end to this liability.

8. In the aforesaid decision, the Court further proceeded to consider the provisions of Sections 29A, 31, 31(1A) and 112 of the Act of 1939 on the aspect of transfer of vehicle. Section 29A contemplated issuing of no-objection certificate both on the occasion of assignment of a new registration mark and also while transferring the motor vehicle. Section 31 contemplated that the transferor shall within 14 days of the transfer report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee and within forty five days of the transfer forward to the registering authority no-objection certificate obtained by him under Section 29A. Failure to comply with the provisions of Section 31 is made punishable under Section 112 and as an alternative measure, Section 31(1A) provided the payment of fine of Rs. 100/-. The Court held that till the transferor fulfills the statutory obligations under Section 31, his liability continues and he remains the ostensible owner of the vehicle so long as the registration is not changed.

9. The Apex Court considered the decision of the Allahabad High Court in the case of Northern India General Insurance Co. Ltd., Bombay Vs. Kanwarjit Singh Sobti and Others, , wherein it was held that there is nothing in Section 94, which could be interpreted to mean that it is only the real owner, who could effect the insurance till the statutory obligations under Section 31 are complied with. It was held therein that any person, who uses the vehicle or allows any other person to use the vehicle, could also get the insurance effected. It was held that the insurable interest is not the proprietary interest, but the public liability, not to run the vehicle or cause or allow any person to run the vehicle without insurance and also to notify the transfer of such vehicle to the registering authority. So long such obligation continues notwithstanding the cession of proprietary interest, the insurable interest, which is the foundation for the continuance of the operation of the policy, stands. It was held that so far as the third-party risk is concerned, so long the obligations under the statute are not fulfilled, as contemplated under Section 31 read with Section 94, he continues to have the insurable interest till such obligations are fulfilled. The Court held that it is clearly an impracticable

view to take that on passing of property in the vehicle, the policy lapses and the obligation under Section 94 of the Act ceases.

10. In the aforesaid decision, the Court also considered the question of third-party and it is made clear that there are two-third parties when such transfer takes place. One is a transferee, who is a third-party to the contract and the other for whose risk the vehicle is insured. The Court held that we have no hesitation to hold that the transferee, who is a third-party to the contract, cannot secure any personal benefit under the policy unless there is a novation, i.e. the insurance company, the transferor of the vehicle and the transferee must agree that the policy must be assigned to the transferee so that the benefit derivable or derived under the policy by the original owner of the vehicle, the policy holder can be secured by the transferee. Thus, it is clear under a composite policy, covering the risk of property, person, third-party risks, the transferee cannot enforce the policy without the assignment in his favour so far the policy covers the risk of the person and property. He has no remedy against the insurance company.

11. In the aforesaid decision, the Court further holds that when the policy of the insurance obtained, the original owner of the vehicle is composite one covering the risk 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 novation. So far as the third-party risk is concerned, the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under Sections 29A and 31 read with Section 94 of the said 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 risk.

12. The Apex Court thereafter proceeded to consider its earlier decision in the case of M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd., , where the scope of Section 103A and Sections 94 and 95 of the Motor Vehicles Act, 1939 was compared with Sections 157 and 146, 147 and 157 of the Motor Vehicles Act, 1988. In the said decision, it was held that the provisions are substantially the same in relation to the liability regarding third-party. The Court held that the third-party interest is protected under the old Act and the new Act. What was implicit under the old Act is made explicit under the new Act. This view taken by the Apex Court has been followed in the subsequent decision of the Apex Court in the case of Pushpa @ Leela and Others Vs. Shakuntala and Others, , wherein it has been categorically held that having regard to the provisions of Section 2(30) and 50 of the Motor Vehicles Act, 1988, the ratio of the decisions of the Apex Court on the point in question under the provisions of

the Motor Vehicles Act, 1939 shall apply with equal force to the cases arising under the Motor Vehicles Act, 1988.

13. In the decision of the Apex Court in the case of Godavari Finance Company v. Degala Satyanarayanamma and others, cited by the learned counsel for the appellant-Insurance Company, the name of Godavari Finance Company was incorporated in the registration book of the vehicle as a financier. Considering the definition of "owner" under Section 2(30) of the Motor Vehicles Act, 1988, the Court has held that the person in possession of the vehicle under the agreement with the financier, shall be the owner. Hence, the financier in the registration certificate would not be decisive for determination as to who was the owner of the vehicle. The Court has further held that the financier cannot ordinarily be treated as the owner, and the person who is in possession of the vehicle would be liable to pay the damages for the motor accident being the owner.

14. In the aforesaid decision, the Apex Court referred to its earlier decision in Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., , wherein the owner of the vehicle rented the bus to Rajasthan State Road Transport Corporation and it met with an accident. Despite the fact that the driver of the bus was an employee of the registered owner of the vehicle, it was held that at the relevant time, he was performing his duties under the order and command of the conductor of Rajasthan State Road Transport Corporation for operation of the bus. So far as the passengers of the ill-fated bus were concerned, their privity of contract was only with Rajasthan State Road Transport Corporation to whom they had paid the fare for travelling in that bus and they had no privity of contract with the owner of the bus. In this context, the Apex Court has held that if the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the concerned employee in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner.

15. In the another decision of the Apex Court in the case of Purnya Kala Devi v. State of Assam and another, cited by the learned counsel for the appellant - Insurance Company, it was a case where the offending vehicle was owned by one Mohammad Abdul Salam, which was not insured and which was under the requisition of the State Government at the relevant time. The Apex Court has held that at the relevant time, the offending vehicle was with the State of Assam under the Assam Requisition and Control of Vehicles Act, 1968, and hence the State of Assam was squarely covered by the definition of "owner", as contained in Section 2(30) of the Motor Vehicles Act, 1988. The Apex Court has held that the High Court failed to appreciate the underlying legislative intention in including the definition of "owner" a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-

purchase agreement to the effect that a person in the control and possession of the vehicle should be construed as the "owner" and not alone the registered owner.

16. From the aforesaid decisions of the Apex Court, the principles of law, which emerge, are summarized as under :

(1) Once the registration of the vehicle is transferred in favour of a transferee in accordance with Sections 29A and 31 of the Motor Vehicles Act, 1939, the statutory obligations of the transferor-owner under Sections 94 and 95 of the said Act in respect of death or bodily injury or damage to a third-party caused by the use of the vehicle in public place, cease and he cannot be held guilty of causing loss or damage or allowing the purchaser to use the vehicle.

(2) Merely because the title of the vehicle passes to the transferee, the statutory obligations of the owner or the transferor under Sections 94 and 95 of the Motor Vehicles Act, 1939 do not cease to operate and he continues to be responsible for death or bodily injury or damage to the third-party caused by the use of the vehicle and he remains the ostensible owner unless it is shown that the registration of the vehicle was transferred to the purchaser in accordance with Sections 29A and 31 of the said Act before the date and time of the accident. It is an impracticable view to take that on passing of property in the vehicle, the policy lapses and the obligations under Sections 94 and 95 of the said Act cease.

(3) Sections 94 and 95 of the said Act are intended to protect the interest of third-party only, i.e. the person who is a third-party to the contract of insurance and the other for whose risk the vehicle is insured, in respect of death, bodily injury or damage to their property while using the vehicle in public place. In a case of composite policy concerning the risks of person, property and third-party claim, the transferee cannot enforce the policy so far as it concerns the risk of his person and property without assignment of policy in his favour or novation. He has no remedy against the Insurance Company.

(4) The principle behind the aforesaid law is that the insurable interest is not the proprietary interest, but the public liability not to run the vehicle without insurance and also to notify the transfer of vehicle to the registering authority. The statutory liability under Sections 94 and 95 of the Motor Vehicles Act, 1939 continues in respect of insurable interest and the policy remains alive and operates notwithstanding cessation or transfer of proprietary interest.

(5) The principles of law laid down on the question of liability of the registered owner under the Motor Vehicles Act, 1939 extend to the cases under the provisions of the Motor Vehicles Act, 1988. The provisions of both the Acts in relation to the liability of the third-party are similar. It cannot, therefore, be held that different principles would apply in case of third-party liability arising under the Motor Vehicles Act, 1988.

(6) The cases where the persons are in control and possession of the vehicle

under an agreement of hire purchase or an agreement of lease or an agreement of hypothecation or under a requisition, stands on different footing in respect of the liability of the registered owner of the vehicle. In such cases, the person in control and possession of the vehicle becomes the owner of the vehicle becomes constructively or vicariously liable for the act of rash and negligent driving of the person in charge of the vehicle.

17. In view of the aforesaid principles of law laid down by the Apex Court, the decisions of the Apex Court in the cases of Godavari Finance Company v. Degala Satyanarayanamma and others, and Purnya Kala Devi v. State of Assam and another, cited supra, do not apply to the facts of the present case and the principles of law laid down by the Apex Court in the case of G. Govindan v. New India Assurance Co. Ltd. and others, cited supra, would apply and squarely governs the controversy involved in this case.

18. In view of above position of law, it has to be held in the present case that the respondent No. 8 Murlidhar Madhaorao Kolhe, who was the registered owner of the vehicle in question, was liable to pay the compensation and consequently the appellant-Insurance Company was liable to indemnify the risk. The finding recorded by the Tribunal that the respondent No. 7 Amin Mehandibhai Lakhani cannot be held liable to pay the compensation, cannot be faulted with. However, the respondent No. 8 Murlidhar Kolhe shall be at liberty to institute appropriate proceedings for recovery of such amount against the respondent No. 7 Amin Lakhani, if permissible in law.

19. The first appeal is, therefore, dismissed. No order as to costs.