

(1972) 09 OHC CK 0012

In the Orissa High Court

Case No : Miscellaneous Appeal No. 149 of 1970

The South India Insurance Co. Ltd.

APPELLANT

Vs

Purna Chandra Misra and Others

RESPONDENT

Date of Decision : 22-09-1972

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 95(5), 96(1)

Citation : AIR 1973 Ori 166 : (1972) 38 CLT 1196

Hon'ble Judges : B.K. Patra, J

Bench : Single Bench

Advocate : P. Roy, for the Appellant;

Final Decision : Allowed

Judgement

B.K. Patra, J.—A taxi bearing registration No. ORS 5336 belonging to one Golam Bari and being driven by the latter's driver met with an accident at about 4.15 a. m. on 16-3-1968 while it was proceeding from Jharsuguda to Sambalpur. At the time of the accident, there were two passengers in the car --one Kanakalata Misra a lady aged about 52 years and her son Puma Chandra Misra. As a result of the accident, both the passengers were injured the lady having sustained very severe injuries. They were admitted in the Burla Medical College Hospital where the lady died at about 12 noon. It was alleged that the driver was driving the vehicle in a rash and negligent manner and dashed it against an electric Post. Respondents 1" and 2 the legal heirs of the deceased. Kanakalata thereafter filed an application u/s 110 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) claiming compensation of Rupees 42,200/- on account of the death of their mother Kankalata. Gulam Bari respondent No. 3 who was the owner of the motor vehicle was impleaded as opposite party No. 1. The South India Insurance company. Limited (hereinafter referred to as the Company) with which the taxi in question was insured was impleaded as opposite party No. 2. Gulam Bari did not contest the claim and remained ex parte. The Company entered appearance and filed written statement disclaiming liability on the ground that the Motor Vehicle

had been insured with it in the name of Messrs. M.L. Choudhury and Sons of No. 74-A Padmapukur Road. Calcutta who was the registered owner of the vehicle when the insurance was effected, that M/s. M. L. Choudhury & Sons transferred the vehicle to opposite party No. 1 without any intimation being given to the company and that with the transfer of the vehicle the policy lapsed thereby exonerating the company of all liability. At the time the insurance was effected in respect of the car a policy was issued to be valid for the period from 22-6-67 to 21-6-68. The correctness of the quantum of damages claimed in the petition was questioned.

2. The learned District Judge found that the vehicle in question originally belonged to M/s. M. L. Choudhury & Sons who got the same insured with the Company on 22-6-67 and obtained a policy valid for a year from that date that the vehicle was subsequently transferred by Ms. M.L. Choudhhury to Gulam Bari in whose name the vehicle was registered by the Regional Transport Authority on 9-2-1968 and consequently Gulam Bari was the owner of the vehicle at the time the accident took place. But relying on a decision of the Calcutta High Court in *Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others*, , the learned Judge held; that it should be presumed that the Regional Transport Authority was satisfied when it registered the vehicle in the name of Gulam Bari that there was a subsisting policy in respect of the vehicle and that therefore the company must be held to be liable to cover the third party risk. The learned Judge thereafter discussed the evidence regarding the quantum of damages claimed and reduced it to Rs. 10,800/- and directed that this amount be paid by opposite party No. 1 Gulam Bari to the petitioners. As In view of the finding of the learned District Judge obviously having regard to the provisions of Sub-section (1) of Section 96 of the Act that the company is liable to satisfy the claim, it is the company which has filed this appeal impleading as respondents the two claimants and Gulam Bari the owner of the vehicle. The claimants have not filed any appeal questioning the correctness of the amount of compensation granted by the District Judge.

3. The substantial point urged in support of the appeal is that in view of the admitted Position that sometime before the accident took place the car had been sold by the insured M/s. M.L. Choudhury & Sons to a third party the policy of insurance had lapsed thereby absolving the company of all liability. A copy of the policy is on record. The terms and conditions under which the policy had been issued are enclosed to the policy and under General Exceptions I find that-

"The company shall not be liable under this Policy in respect of -

(1) xx xx x (2) xx xx x (3) xx xx x (4) any accident loss damage and/or liability caused, sustained or incurred after any variation in or termination of the insured's interest in the Motor Car.

XX X XX

4. It is well settled that a contract of insurance is nothing but a contract of

indemnity. The policy issued is with reference to a specified car, owned by the policy-holder and consequently the policy will remain effective while he retains an interest in that car. An insurance policy being a contract of personal indemnity, the insurers cannot be compelled to accept responsibility in respect of a third party who may be quite unknown to them. Therefore, the motor car specified in the policy being the subject matter of the insurance, on the insured parting with it by way of a sale or transfer of ownership he can no longer have any insurable interest to which the policy in his favour can relate and continue to have force. The basis of the contract of insurance is not merely the person in whose favour an insurance is effected but also the specified car to which the indemnity relates, as will be clear from the details required of the car which are not in the schedule to the policy. It is with reference to those details and the history of the vehicle and its owner that the premiums payable on the insurance is determined and the contract is formed. It, therefore follows that in the absence of any express stipulation to the contrary in the policy, the moment the insured parts with the car the policy relating to it lapses. There is nothing in *Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others*, to warrant the view that in the case of a policy issued to a particular person containing indemnity clause in his favour alone and not providing specifically for transfer with the assent of the insurer, the policy will not lapse by transfer of ownership of the car of the assured. In that case, despite the transfer of the vehicle by the assured, the insurance company was made liable not on the ground that the policy does not lapse by reasons of transfer but because the insurance company failed to prove that there was a clause in the policy requiring the insured to obtain assent of the insurer to the change of ownership of the vehicle and also on the ground that the insurance company failed to prove by producing necessary documents that the transfer was notified and recorded by it. The actual decision in that case proceeds on the basis that the insurer kept back the register of policies and that it should therefore be presumed that the transfer of ownership had been notified to the insurer and it had admitted the same.

5. In support of his contention Mr. P. Roy learned Advocate appearing for the appellant relied on the Bench decisions of the Madras High Court in *M. Bhoopathy v. M.S. Vijavalakshmi*, AIR 1966 Mad 244 and *Queensland Insurance Co. Ltd. v. Rajalakshmi Ammal*, 1970 ACJ 104 (Mad). In the first of the two cases, overruling a single judge decision of that court reported in AIR 1961 Mad 208 (*Madras Motor Insurance Co., Ltd. v. Md. Mustafa Badsha*), the learned Judges held that Section 96 (1) of the Act itself pre-supposes and proceeds on the basis that there is a subsisting policy.

In the absence of an express stipulation to the contrary in the policy the continued ownership of the car with the insured was basic to the subsistence of the policy. Once the subject matter of the policy was gone as when parted with by the insured by sale or transfer, the policy automatically lapsed with the result that the insurer will not be liable to pay any claim arising out of an accident after such sale or transfer. Relying on this decision, the learned Judges of the Madras

High Court who decided 1970 ACJ 104 (Mad) reiterated the view that the change of ownership of a vehicle puts an end to the policy. In *South India Insurance Co., Ltd. v. Lakshmi* 1971 ACJ 122 AIR 1971 Mad 347 a motor vehicle which was insured with the South India Insurance Company was sold prior to the accident Registration however continued to remain in the name of the assured. The question arose whether under such circumstances the insurance company was liable to pay compensation to the third Party. A learned Single Judge of the Madras High Court held following the two earlier Madras decisions AIR 1966 Mad 244 and 1970 ACJ 104 (Mad) that the policy lapses as soon as the vehicle is physically transferred irrespective of whether the transfer has been registered with the registry or not. In *Manu Mal v. Inder Singh*, 1971 ACJ 88 (Delhi) a truck stood registered in the name of "A" though he had sold it to "B". "B" had made an application for transfer of the vehicle before the accident but the insurance company had not, been informed of the transfer. The Delhi High Court held that neither "A" nor the insurance company was liable to Pay any compensation. The Division Bench of the Jammu & Kashmir High Court in *Roshan Lal Bhalla v. Sudesh Kumar*. 1968 ACJ 63 AIR 1968 J & K 2 had taken the view that when there is a change or transfer of ownership of the vehicle and the same is not conveyed to the insurer and accepted by him. the liability of the insurer under the policy is extinguished. I am in entire agreement with the view expressed in the Madras decisions cited above and if there is anything in *Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others*, which can be construed to have expressed a different view, I must with respect dissent from it.

6. In the present case, there is no dispute that before the car ORS 5336 met with the accident on 16-3-1968, the ownership of the car had been transferred by the insured to Gulam Bari respondent No. 3. No information about the transfer had been given to the Company and in fact under the terms of the agreement it was stipulated that the Company would not be liable under the policy after the termination of the insured's interests in the car. The learned District Judge was therefore, wrong in coming to the conclusion that the Company is liable to pay compensation.

7. In view of my finding above, it is unnecessary to discuss the further point raised by the appellant regarding the quantum of compensation.

8. For the reasons stated above I would allow this appeal, set aside the judgment in so far as it makes the appellant Company liable to satisfy the claim which the Court below has decree-ed in favour of respondents 1 and 2 against respondent No. 3. As there has been no appearance on behalf of the respondents, there would be no order as to costs.