

(1988) 07 KL CK 0048

In the High Court Of Kerala

Case No : M. F. A. No's. 316 and 395 of 1988

United India Insurance Co., Ltd

APPELLANT

Vs

Aisabai and Others

RESPONDENT

Date of Decision : 19-07-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 103A

Citation : (1988) 2 KLJ 195

Hon'ble Judges : K.S. Paripoornan, J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : N. Nandakumara Menon, for the Appellant;

Final Decision : Dismissed

Judgement

Paripoornan J.

1. The Motor Accidents Claims Tribunal" Tellicherry passed a common order in M. A. C. Nos. 277 and 279 of 1984 dated 17-11-1987. The third respondent-Insurer has filed M. F. A. Nos. 316 and 395 of 1988 from the aforesaid common order passed in the two claims. The question that arises for consideration in these two appeals is common. On 16-3-1984, one Jamaluddin was riding on a cycle with a pillion rider from Mavungal to Kanhangad at about 9.30 P. M. One Shaik Ismail was riding on another cycle with a pillion rider. They were going back after the cinema. They were riding on the cycle along the side of the road. When they reached Kizhakkumkara, Jeep KLF 9845, driven by the first respondent, came from the opposite direction in a rash and negligent manner and in an over speed and it knocked down both the cyclists. Both Jamaluddin and Sheik Ismail sustained fatal injuries. Finally, they succumbed to those injuries. The accident occurred solely due to the negligence of the first respondent, Jeep driver. The second respondent is the owner of the jeep and the third respondent is the insurer. The legal heirs of Jamaluddin and Sheik Ismail filed the claim petitions before the Tribunal claiming a compensation of Rs. 1 lakh each. The Motor Accidents Claims Tribunal held that the accident occurred solely due to the

negligence of the first respondent, jeep driver. The second respondent (owner of the jeep) was ex parte. It was further held that the third respondent Insurer is liable to pay the compensation. A sum of Rs. 49,000/- was awarded to the legal heirs of Jamaluddin and a sum of Rs. 65,800/-, was awarded to the legal heirs of Sheik Ismail as compensation and the third respondent Insurer was directed to pay the compensation awarded to the claimants with interest at 12% per annum from the date of the petition with costs. The Insurer (3rd respondent) has come up in appeals. Before the Tribunal, supplemental 4th respondent was impleaded which was necessitated in view of the plea by the third respondent-Insurer that the jeep KLF 9745 was insured by K.K. Kunhiraman (4th respondent) who was the owner, and the second respondent purchased the vehicle from the said Kunhiraman on 1-3-1984. The third respondent-Insurer further stated that on 20-3-1984, on an application by the second respondent, the transfer of the insurance was effected in his name with effect from 20-3-1984. It was stated that the accident occurred on 16-3-1984, on that day there was no valid insurance, and so the third respondent is not liable to pay any compensation. The Tribunal found that the vehicle belonged to the supplemental 4th respondent, that he insured it with the third respondent, that the 4th respondent transferred the vehicle to the second respondent on 1-3-1984 and the transfer of insurance was effected on 20-3-1984. Ext. B1 certificate issued by the Registration Authority showed that the vehicle was transferred to the second respondent with effect from 1-3-1984. Ext. B3 endorsement, transferring the policy in favour of the second respondent, showed that the transfer of insurance policy was made with effect from 20-3-1984. RW2, an officer of the Insurance Company, admitted that on the date of the accident the original insurance policy was a valid one. The 4th respondent deposed that even on the date of the transfer of the vehicle, the papers were entrusted to the second respondent for transfer of the insurance policy. The Tribunal stated that these papers must have been taken to the Insurance Company and only on the basis of those papers the transfer of the insurance should have been effected in the name of the second respondent. The, said papers, which are in the custody of the Insurance Company, were not produced and no explanation was forthcoming for the non-production of those papers. Though it was stated that the transfer of the insurance will be effective only from 20-3-1984 it should be deemed that the transfer of the insurance would take effect from the date on which the vehicle was transferred and this is also in accord with the admission of RW2, the Insurance Officer, that the insurance was valid on the date of the accident.

2. We heard counsel for the appellant, Mr. N. Nandakumara Menon. It was submitted that admittedly the supplemental 4th respondent transferred the vehicle to the second respondent on 1-3-1984 and the endorsement of transfer of insurance policy in favour of the second respondent was made as per Ext. P3 only with effect from 20-3-1984. The accident in this case having taken place on 16-3-1984, the third respondent-Insurer is not liable. It was argued that when the vehicle was transferred to the second respondent on 1-3-1984, the insurance

policy lapsed. It became effective only as per Ext. B3 endorsement with effect from 20-3-1984, long after the date of accident, and hence there was no liability on the insurer to pay the compensation.

3 It is conceded that the original policy issued by the third, respondent in favour of the 4th respondent (Ext. B2) is valid and effective from 20-10-1983 to 19-10-1984. The accident occurred on 16-3-1984. It is true that the 4th respondent transferred the vehicle to the second respondent on 1-3-1984. The second respondent got transfer of the insurance as per Ext. B3. It is stated that it is effective only from 20-3-1984. The Tribunal adverted to the evidence of RW1 (4th respondent) who stated that when he transferred the vehicle to the second respondent on 1-3-1984 as per Ext. B1, he entrusted all the papers to the second respondent for the purpose of transferring the insurance policy also. The Tribunal inferred, that in view of the fact that the endorsement regarding the transfer was made in favour of the second respondent, as per Ext. B3, it should have been only on the basis of the papers entrusted by the 4th respondent to the second respondent. Such papers must have been taken to the Insurance Company without delay and only on the basis of such papers, the transfer of the policy could take place in favour of the second respondent. RW1 (4th respondent) categorically stated that these papers were entrusted for transfer of the insurance, policy immediately on transfer of the vehicle to the second respondent on 1-3-1984. It should have been transmitted to the concerned authorities without delay. The insurance company (3rd respondent) had not produced the papers which were filed before it for effecting the transfer of the insurance policy in favour of the second respondent and no explanation is given for non-production of such papers. So, the irresistible inference flowing from the above facts would be that the transfer of the insurance in favour of the second respondent having been conceded and effected as per Ext. B3, it should be deemed that the transfer of the insurance policy took place on the date on which the vehicle was transferred. This also flows from the admission by RW2 that on the date of the accident the original insurance policy was a valid one, We are of the view, that in the light of the evidence of RW1 (4th respondent), the endorsement (Ext. B3), granting the transfer of insurance in favour of the second respondent, the admission of RW2 (Officer of the Insurance Company), that on the date of the accident the original policy was valid, the conclusion is inevitable that by the endorsement, (Ext. B3) the insurer has accepted the transfer of the insurance from the date of transfer of the vehicle (1-3-1984). On this basis, it follows that on the date of the accident (16-3-1984) there was a valid insurance and that the insurer has recognised the transfer of insurance in favour of the second respondent.

4. Counsel for the appellant, Mr. Nandakumara Menon, placed reliance on two Bench decisions of this Court in *M/s. New India Assurance Co. v. E.K. Muhammed* (1984) K. L. N. 645 and *Swaminathan v. Jayalakshmi Amma* (1987) (2) KLT 292, to contend that there was no valid insurance policy in favour of the second respondent on the date of the accident (16-3-1984). Both these decisions are

distinguishable. It should at once be stated that in both these cases factually no transfer of insurance was endorsed or made by the insurer at any time, whereas in this case, the transfer was endorsed on 20-3-1984 by the insurer. In the first case, the transfer of the vehicle was made on 30-9-1974 and the accident took place on 10-10-1974. There was no notice of the transfer to the insurer before the date of the accident. The court held that the onus of proving that the intimation to the insurer regarding the proposal to transfer the vehicle had been given is on the person who claims the benefit arising out of the transfer of the certificate of insurance and the policy described therein. It was found in the said case, that the insured and the transferee of the vehicle failed to establish that the insured had applied in the prescribed form to the insurer for the transfer of the policy; or that after receipt of such an application had either transferred the certificate of insurance and the policy relating to that to the name of the transferee; or that within fifteen days from the date of receipt of such application for transfer, the insurer had failed to intimate the insured and the transferee his refusal to transfer the certificate of insurance and the policy. In such circumstances, the plea based on the provisions of Sec. 103A of the Motor Vehicles Act was negatived. Similarly, in the second decision, the vehicle was transferred on 3-1-1977 and the accident occurred on 22-3-1977, about 21/2 months after the transfer. It was contended by the insurer that the policy lapsed upon the transfer of the motor vehicle and the transferee had not applied for transfer of the policy in his name and so the insurer is not liable. No step was taken to get the policy transferred in the name of the transferee. This court held that the transferee had no case that he had intimated the sale of the vehicle to the insurance company. He did not take any step to transfer the insurance policy in his name and he had no case that the title of the vehicle did not pass to him. It was in these circumstances, the Court held that the policy lapsed upon the transfer of the motor vehicle and in such cases the benefit of the policy is not available to the transferee and so the insurance company was not liable to pay the compensation amount. The above decisions are distinguishable.

5 In this case, the evidence of RW1 and RW2 and Ext. B3 are crucial. The relevant papers were dispatched to the insurer for effecting endorsement in favour of the second respondent; the evidence of RW2 showed that on the date of the accident the original policy was valid; the insurance company itself admitted that the endorsement was made in favour of the second respondent as per Ext. B3 on 20-3-1984. The only contention was that the endorsement will be effective only from 20-3-1984. This rider was ignored by holding that once steps were taken for transfer of the insurance policy in the name of the transferee, and endorsement was made on that basis and transfer was in fact effected, it will take effect from the date of transfer. Once consent is given for the transfer by the insurer, it will relate back to the date of transfer of the vehicle. In the two Bench decisions of this Court, there was no application either for a transfer much less was the transfer recognised or endorsed by the Insurer at any time. In such circumstances, the two Bench decisions of this Court are distinguishable.

6. We hold that notwithstanding the fact that the endorsement of transfer of insurance in favour of the second respondent, as per Ext. B3 was stated to be effective only from 20-3-1984, it will be effective from the date of transfer of the vehicle (1-3-1984) and on the date of accident (16-3-1984) there was a valid insurance policy which will enure to the benefit of the second respondent. We are fortified in this view by the two Bench decisions of the Karnataka High Court. In an unreported decision of the said High Court (M. F. A. No. 437 of 1981), the accident occurred on 8-1-1979. The policy was effective from 7-7-1978 to 6-7-1979. The policy was transferred to the first respondent on 9-1-1979: The Tribunal held that though the vehicle was transferred on 5-1-1979, the actual transfer of the policy took place on 9-1-1979, So, the insurance company was not liable to indemnify the transferee-owner, as it gave consent to the transfer only on 9-1-1979. In appeal, the Karnataka High Court reversed the said decision. The court referred to Sec. 103A of the Motor Vehicles Act Delivering the judgment of the Division Bench, Sabhahit, J observed as follows:--

...the section is clear that if there is already a policy current and subsisting on the date of the transfer and if the insurance company agrees for the transfer, the policy and the certificate regarding the vehicle shall be transferred from the date of transfer of the vehicle. Since the policy is already there, there is no question of proposal and acceptance of the policy. Policy is with regard to the vehicle. Normally, therefore, when the vehicle is transferred the policy also should be transferred. But since the contract of insurance is a contract of indemnity, when the ownership is transferred, it would be necessary that the consent of the company is necessary for transferring the policy in the name of the purchaser of the vehicle. It is for that reason that a statutory presumption is provided u/s 103-A of the Motor Vehicles Act, that if on intimation of the request to transfer the policy on transfer of the vehicle, the insurance company does not refuse for such transfer of policy within fifteen days of the receipt of the application, it shall be presumed that the policy is transferred with effect from the date of the transfer of the vehicle. When the vehicle is transferred the policy either remains in force or it lapses. There is no intervening period either for the lapsing of the policy or continuing of the policy. The event happens on transfer of the vehicle taking place. If, therefore, the insurance company does not intimate its refusal to transfer the policy within fifteen days, the policy is deemed to have been transferred from the date of transfer of the vehicle in question. If it intimates that the transfer is refused then sub-section (3) of Section 103-A of the Motor Vehicles Act, comes into force. The remaining premium with regard to the policy shall have to be refunded by the company to the transferee and the transferee has to insure the vehicle again. If that is not done by the company, law provides that automatically the policy is continued in favour of the transferee of the vehicle.

Later, the learned Judge observed thus:

...in other words, the insurance company has no business to say that the policy shall stand transferred in the name of the transferee only from a particular date,

say, from date of intimation of the transfer. When once the consent is given, it necessarily follows that the policy stands transferred in the name of the transferee from the date of transfer... When once the consent is given, the policy is continued as before in the name of the transferee from the date of transfer, and not from the date of intimation or from the date of consent. That is because the policy already exists. Consent, has to be given by the insurer for the transfer since a contract of insurance partakes the nature of indemnity and Section 103-A of the Motor Vehicles Act even provides for a legal presumption."

The Court concluded thus:

".....we have no hesitation to hold that when once consent was given for the transfer of the vehicle, the policy stood transferred in the name of the transferee from the date of transfer of vehicle i.e., in this case is on 5-1-1979. The accident has taken place on 8-1-1979. Therefore, it is obvious, that the insurance company should indemnify the transferee owner."

This decision was followed in a later decision by the same Court in Harishchandra Hegde and Another Vs. T.P. Krishnamurthy and Others, . Delivering the judgment of the Bench, Sabhahit J. observed as follows:

8. The last point urged for our consideration is whether the insurance company could be saddled with liability. The only ground made out by the learned counsel for the insurance company is that the motor cycle was transferred by the original insurer in favour of the present second appellant on 30-10-1979. Hence he submitted that the policy stood lapsed on that day since the permission or consent of the insurance company was not obtained for the transfer. This submission was met by the learned counsel for the claimant and for the owner by inviting our attention to the fact that the insurance company endorsed the transfer on 10-7-1980. That being so, it is obvious that the insurance company agreed to the transfer and has to be made liable for the transfer. In fact, this Court, discussing this aspect at some length in M.F.A. No. 437 of 1981, the judgment of which was delivered on 9-12-1981, observed that in such circumstance, it should be deemed that consent of the insurance company was taken for the transfer, of the vehicle as on and from the date of transfer. That being so, it is obvious that the insurance company is liable to pay the compensation by indemnifying the owner of his legal liability.

7. We concur with the above two decisions of the Karnataka High Court. In the light of the aforesaid decisions, we hold that by effecting Ext. B3 endorsement in favour of the second respondent, it should be deemed that the transfer of the insurance also took effect from the date on which the vehicle was transferred, i.e. on 1-3-1984, long before the date of accident. In this view of the matter, we concur with the award made by the Motor Accidents Claims Tribunal, Tellicherry dated 17-11-1987. No other point was urged in support of the appeals. These two appeals are without merit and they are dismissed, in limine.