

(2002) 09 BOM CK 0014
In the Bombay High Court
Case No : First Appeal No. 171 of 1989

United India Insurance Co. Ltd.	Vs	APPELLANT
Bhagvati Mohandas Somayya and Others		RESPONDENT

Date of Decision : 27-09-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 156, 157

Citation : (2003) ACJ 921

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Saumen S. Vidyarthi, instructed by S.M. Vidyarthi, for the Appellant;
N.N. Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned advocates for the appellant and the respondent Nos. 1 and 2. None present for the respondent Nos. 3 and 4, though served. Perused the records.

2. The appellants are challenging the award dated 10.12.1987, passed by the Additional Motor Accidents Claims Tribunal, Greater Bombay in Application No. 1153 of 1984. By the impugned award, respondent No. 4 and the appellant are directed to pay compensation of Rs. 53,000 to the respondent No. 1 in addition to the amount of Rs. 15,000 already awarded u/s 92-A of the Motor Vehicles Act, 1939 (hereinafter called "the said Act") with interest at the rate of 12 per cent per annum from the date of the application, i.e., 21.6.1984 till the date of the payment, and the costs of the application. The award is sought to be challenged on the ground that there was no transfer of insurance policy, as contemplated u/s 103-A of the said Act on the date of the accident in favour of the transferee of the vehicle and that, therefore, the insurance company cannot be held to be liable for the amount of compensation awarded in favour of the claimant on account of the vehicle having been involved in an accident.

3. Brief facts relevant for the decision are that the scooter bearing registration No. MXJ 4341, belonging to respondent No. 3, was insured with the appellant and the insurance policy was for the period from 21.4.1983 to 20.4.1984. The said vehicle was sold by respondent No. 3 to respondent No. 4 on 1.12.1983. The vehicle was involved in an accident on 11.2.1984. It is the case of respondent Nos. 3 and 4 that intimation regarding the transfer of ownership of the vehicle from the respondent No. 3 to the respondent No. 4 was conveyed to the appellant/insurance company under a letter dated 2.12.1983, and that the insurance company had not intimated its refusal within 15 days for transfer of the insurance policy in favour of respondent No. 4 and, therefore the insurance policy shall be deemed to have been transferred in favour of the respondent No. 4 with effect from 1.12.1983. The Tribunal upheld the contention of the said respondents and held that the insurance company is liable for payment of compensation to the claimant.

4. While assailing the impugned order, the learned advocate for the appellants submitted that in terms of the provisions of law contained in Section 103-A of the said Act, it is not a mere intimation of the transfer of ownership but a specific request in that regard prior to the actual transfer which is contemplated under the said provision and undisputedly in the case in hand no such request was made prior to the transfer. He further submitted that such request has necessarily to be in the prescribed form giving all the necessary details therein and not by way of a mere letter of intent to transfer of ownership. It was contended on behalf of the appellants that even assuming that there is presumption arising of proper posting of the letter on account of the same having been stated to have been posted under the certificate of posting, the evidence produced by the appellant sufficiently rebuts the presumption about the communication of the said letter to the appellant and, therefore, there is no evidence on record to prove that there was proper and lawful intimation of transfer of ownership by the respondent No. 3 to the appellant. Reliance was sought to be placed in the decisions in the matter of National Insurance Co. Ltd. Vs. Purshotamdas Maheshwari and Others, ; Precto Pipe Company and Another Vs. National Insurance Company Ltd. and Others, ; New India Assurance Co. Ltd. Vs. Peelari Edathil Kunhiraman Nambiar and Others, and New India Assurance Co. Ltd. Vs. N. Ganapathy and Others, On the other hand, the learned advocate appearing for the respondent Nos. 1 and 2 submitted that it is not the mere form which is relevant but the fact of intimation of transfer of ownership is required to be duly communicated to the insurance company as has been held in the matter of The New India Assurance Co. Ltd. Vs. Smt. Sheela Rani and Others, . He also submitted that technical defects in the course of compliance of procedural matters cannot come in aid of the insurance company to defeat the rights of the third party and in that connection placed reliance upon the Supreme Court's decision in the matter of G. Govindan Vs. New India Assurance Co. Ltd. and Others, . The learned advocate for the appellant, in reply, however, submitted that considering the decision of the Apex Court in the matter of Rajamani and

Others Vs. Oriental Insurance Co. Ltd., Coimbatore and Others, , the policy behind the provisions of law in relation to the liability of the insurance company under the said Act was different from that under the Motor Vehicles Act, 1988 (hereinafter called as "the new Act"). The scheme of the said Act and more particularly Section 103-A clearly requires the insured to obtain necessary consent of the insurance company for continuation of the policy in favour of the transferee prior to such transfer and, therefore, the same having not been complied with, no liability can be imposed upon the insurance company in the case in hand. Reliance was also placed in the matter of United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others, .

5. Upon hearing the learned advocates and on perusal of the records, the points which arise for consideration are that considering the provisions of the said Act and in the facts and circumstances of the case in hand whether there was compliance of the provisions of Section 103-A of the said Act in relation to transfer of insurance policy of the vehicle and whether the insurance company could be held to be responsible for payment of the compensation to the claimants.

6. In terms of Section 103-A of the said Act where a person in whose favour the certificate of insurance had been issued in accordance with the provisions of the said Act desired to transfer to another person the ownership of the motor vehicle in respect of which such insurance had been taken together with the policy of insurance relating thereto, he was required to 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 was proposed to be transferred, and if within 15 days of the receipt of such application by the insurer, the insurer had not intimated the insured and such other person of its refusal to transfer the certificate and the policy to such other person, the certificate of insurance and the policy described in the certificate was deemed to have been transferred in favour of the person to whom the motor vehicle was transferred with effect from the date of its transfer. It was further provided that the insurer to whom any application had been made, could refuse to transfer to such other person the certificate of insurance and the policy described in that certificate, if it considered it necessary so to do, having regard to the previous conduct of such other person as a driver of motor vehicles; or as a holder of the policy of insurance in respect of any motor vehicle; or any conditions which had been imposed in relation to any such policy which was held by the applicant; or the rejection of the 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. In case of such refusal for transfer by the insurer, it was required to refund to such transferee the amount, if any, which under the terms of the policy it would have had to refund to the insured for the unexpired term of such policy.

7. As per the provisions of the said Act, therefore, the intimation regarding the transfer of vehicle by its owner in favour of any other person was required to be

given to the insurance company prior to such transfer in a prescribed form and on such intimation being made, in case of failure on the part of the insurance company to intimate its decision on such application within 15 days from the receipt of such application, the company was deemed to have agreed for transfer of the policy in favour of the purchaser of the vehicle. Undoubtedly, Sub-section (2) of Section 103-A of the said Act empowered the insurance company to refuse to transfer the policy in favour of the purchaser of vehicle, having regard to certain considerations specified thereunder. Besides, in case of such refusal, the insurance company was bound to refund to the proposed transferee the amount which under the terms of the policy, the insurance company would have had to refund to the owner for the un-expired term of such policy.

8. In *National Insurance Co. Ltd. Vs. Purshotamdas Maheshwari and Others*, the learned single Judge of the Madhya Pradesh High Court, relying upon the decision of the Full Bench of the Gujarat High Court in the matter of *Shantilal Mohanlal and Another Vs. Aher Bawanji Malde and Others*, and the decision of Punjab and Haryana High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Sant Ram and Others*, held that the contract of insurance between the insured and the insurance company comes to an end when the vehicle is transferred without the consent or prior permission of the insurance company and, therefore, any liability arising on account of the vehicle being involved in any accident subsequent to such transfer, cannot be asked to be indemnified by the insurance company. In that case, the court had come to a clear finding that the truck involved in the accident was transferred in favour of the purchaser without proper permission or even information of sale by the owner thereof to the insurance company.

9. In *N. Ganapathy's case* 1982 ACJ (Supp) 282 the Division Bench of the Madras High Court while referring to Section 103-A of the said Act held that it could not be stated that mere knowledge on the part of the insurance company of the change of ownership of the vehicle would not tantamount to 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. Mere intimation of the transfer does not satisfy the requirements of the said provision, so that if there is failure to respond on the part of the insurance company by intimating the refusal to transfer, the policy could be deemed to have been transferred in favour of the transferee and that knowledge by itself is of no use and there ought to be an application for transfer in the prescribed form or at least a request therefor. In that case, the vehicle was transferred on 15.8.1974. The vehicle met with the accident on 18.3.1975. However, even after the transfer of the vehicle, the insurance policies were taken in the name of the original owner and not in the name of the transferee.

10. The decision of the Apex Court in *G. Govindan Vs. New India Assurance Co. Ltd. and Others*, , arose from the decision of the Madras High Court wherein the ruling of the said High Court was similar to that one in *N. Ganapathy's case* 1982

ACJ (Supp) 282 While dealing with Section 103-A of the said Act, considering the scheme of the said Act as well as the new Act, held that under both the Acts the legislature was anxious to protect the third party (victim) interest and what was implicit in the provisions of the said Act has been now made explicit presumably with a view of the conflicting decisions on the relevant aspect amongst various High Courts. Dealing with the Full Bench decision of the Delhi High Court in Anand Sarup Sharma Vs. P.P. Khurana and Others, and the Full Bench decision of the Karnataka High Court in National Insurance Co. Ltd. Vs. Mallikarjun and others, , taking view different from the one taken by the Full Bench of the Andhra Pradesh High Court on the same aspect of the matter, held that as between the conflicting views of the Full Benches, the ratio laid down by the decision which advances the object of the legislature to protect the third party interest has to be approved and accordingly approved the view taken by the Andhra Pradesh High Court in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, with a caution that the third party will not include a transferee whose transferor has not followed the procedure for transfer of the policy. The decision of the Andhra Pradesh High Court, which was approved by the Apex Court, was to the effect that mere passing of the title in the vehicle to the transferee will not put an end to the statutory obligations of the transferor u/s 94 read with Section 31 of the said Act. It was further 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 cessation of proprietary interest, the insurable interest which is the foundation for the continuance of the operation of the policy stands. As far as the third party risk is concerned, so long the obligation under the statute are not fulfilled, as contemplated u/s 31 read with Section 94 of the said Act, the transferor continues to have the insurable interest till such obligations are fulfilled.

11. On the aspect of compliance of procedural formalities for the purpose of fastening the liability upon the insurance company consequent to transfer of the ownership of the vehicle to the, owner in favour of other person, referring to its earlier decision of a three Judges Bench in the matter of M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd., , it was clarified in G. Govindan Vs. New India Assurance Co. Ltd. and Others, , that in the said judgment it was held that the provisions under the new Act and the said Act are substantially the same in relation to liability in regard to third party and that the transferee could not be said to be a third party qua the vehicle in question and further that the victim or the legal representative of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee. In fact, that was the decision in Complete Insulations" case (supra), while upholding the view taken in that regard by the National Commission.

12. The very fact that there is a deeming provision in Section 103-A in relation to

transfer of insurance policy in favour of the proposed transferee of the vehicle in case of failure on the part of the insurance company to intimate refusal for transfer of the policy in favour of the transferee within the period of fifteen days from the date of receipt of the application requesting for such transfer, discloses that the provision regarding the application to be in a prescribed form is not a mandatory requirement but only a directory one. Undoubtedly, the intimation regarding the proposed transfer has to disclose the necessary details in relation to the vehicle and the policy. The said particulars would be required for the insurance company to identify the vehicle and the contract of insurance in relation to which the policy is sought to be transferred. Being so, whether the said required information is furnished in a prescribed form or otherwise, that cannot result in defeating the third party's right. The Apex Court in *The New India Assurance Co. Ltd. Vs. Smt. Sheela Rani and Others*, , has clearly held that once it is found that the intimation regarding the transfer of the vehicle was given to the insurance company and no reply was given by the insurance company, it should be deemed to have been transferred. Besides, as already observed, the Apex Court has clearly held that failure on the part of the owner of the vehicle to comply with the procedural formalities regarding the transfer of the policy in favour of the transferee of the vehicle, cannot defeat third party's right arising out of the vehicle being involved in accident. Added to this, in the case in hand it is not the case of the insurance company that pursuant to intimation of the claim application in July, 1984, while contending that the policy had lapsed on transfer of vehicle, the company had offered the refund of the amount in relation to the period from 1.12.1983 to 20.4.1984. It is also not the case of the insurance company that the company could have refused the transfer by taking into consideration any of the circumstances specified in Sub-section (2) of Section 103-A of the said Act. Being so, mere procedural lapse in relation to the intimation in the prescribed form cannot be a justification to defeat the third party's right.

13. It was also sought to be argued that since Section 103-A refers to intimation regarding the transfer of insurance policy in favour of the person to whom the motor vehicle is "proposed to be transferred", it discloses the requirement of intimation prior to the actual transfer of the vehicle. This argument is no more available to the insurance company in view of the decision of the Apex Court in *G. Govindan Vs. New India Assurance Co. Ltd. and Others*, , reiterating its decision in the matter of *M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd.*, . The Apex Court therein has held that:

In *M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd.*, , a three-Judge Bench of this court had considered the scope of Section 103-A and Sections 94 and 95 of the 1939 Act and compared the same with Sections 157 and 146, 147 and 156 of the Motor Vehicles Act, 1988. In that case the transferee of the vehicle contended, inter alia, that he was entitled to get the compensation for the damage caused to the vehicle in an accident that took place after the transfer notwithstanding the fact that the insurance policy was

not transferred in his name. The Consumer Disputes Redressal Commission, Chandigarh directed the insurer to pay a total sum of Rs. 83,000, i.e., the insured value of the vehicle. The insurer preferred an appeal to the National Consumer Disputes Redressal Commission which set aside the order of the Commission at Chandigarh and dismissed the claim of the transferee. The National Commission after referring to the Full Bench judgment in particular the separate concurring judgment of Kodandaramayya, J. of Andhra Pradesh High Court applied the ratio in that judgment in support of its decision. The transferee then preferred an appeal to this court by special leave. This court after referring to the separate judgment of Kodandaramayya, J. approved the principle laid down therein, applied the same and upheld the decision of the National Commission.

This court in the said judgment held that the provisions under the new Act and the old Act are substantially the same in relation to liability in regard to third party. This court also recognised the view taken in the separate judgment in *Madineni Kondaiah and Others Vs. Yaseen Fatima and Others*, that the transferee-insured could not be said to be a third party qua the vehicle in question. In other words, a victim or the legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee.

14. As regards the contention about failure on the part of the owner to establish the intimation of transfer, undoubtedly, the owner of the vehicle in his testimony had clearly stated that he had sent the letter intimating the transfer of the ownership of the vehicle under certificate of posting and the same was produced and marked as Exh. 24. The certificate regarding the posting was also produced and marked as Exh. 25. Undisputedly, the certificate of posting discloses the date of 2.12.1983 to be date on which the letter was posted. No doubt, the officer of the insurance company who was examined before the Tribunal has stated that the company did not receive any intimation regarding the sale during the subsistence of the policy. However, the statement about the absence of receipt of the letter sent under certificate of posting on 2.12.1983 is not supported by any evidence on record and much to the contrary the testimony of the officer itself creates sufficient doubt regarding the claim of the insurance company about non-receipt of the said letter. The officer in the cross-examination has stated that the company did not affix any inward number on the letter received by the company nor did they affix any stamp of the date thereof. It is a normal practice in any public institution to maintain the inward register in relation to the articles received by them, either through the post or otherwise. Nothing prevented the insurance company to produce the certified extract from the inward register for the relevant days after 2.12.1983 to establish non-receipt of the said letter from the owner. It is also pertinent to note that the officer who was examined on behalf of the insurance company has nowhere deposed that in his office he was the sole person concerned with the receipt of the articles from post addressed to the company. Admittedly, there were other persons working in the said office.

The officer has also not identified the person who was entrusted with the work of controlling the inward register in the matter, as also the person who used to deal with the letters which were received by post. Failure on the part of the insurance company to lead evidence on these aspects and the presumption arising from the posting of the letter under the certificate of posting sufficiently establish that the owner had clearly proved that on 2.12.1983 he had actually posted the letter to the insurance company intimating the transfer of ownership of the vehicle.

15. The decision of the Kerala High Court in *New India Assurance Co. Ltd. Vs. Peelari Edathil Kunhiraman Nambiar and Others*, , is of no help to the appellant as the records before the Tribunal in the said case did not disclose any evidence regarding the intimation of transfer by the owner to the insurance company, apart from a mere statement in that regard by the owner. Besides, there was a specific statement in the course of recording of evidence on behalf of the insurance company to the effect that the officer of the insurance company had examined the records in the office of the insurance company but could not find any application having been filed by the owner of the vehicle for transfer of the policy. In those circumstances, it was held that there was no evidence regarding intimation of transfer of the vehicle in favour of the purchaser.

16. As regards the decision of the Supreme Court in *Rajamani and Others Vs. Oriental Insurance Co. Ltd., Coimbatore and Others*, , it was a case where no intimation of transfer of the vehicle by the owner in favour of the other person was given to the insurance company. In the background of those facts, while considering the *M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd.*, , it was observed that the provisions of Section 103-A of the Motor Vehicles Act, 1939 and those of Section 157 of the 1988 Act deal with the transfer of certificate of insurance and are different from each other. Further, it was observed that under the provisions in the said Act when an application for transfer of certificate and the policy of insurance to the intending purchaser had been made and no refusal to do so had been received within 15 days, the certificate and the policy were deemed to have been transferred in favour of the transferee of the motor vehicle from the date of its transfer and as the two provisions are different and there was no application for transfer filed by the party in the case before the Apex Court to the insurance company, it was not possible to hold that there was deemed transfer in favour of the purchaser with effect from the date on which the vehicle was stated to have been sold. Apparently, the observations were in the peculiar facts and circumstances in one case which disclosed that there was absolutely no intimation of transfer by the owner to the insurance company. Being so, the same cannot be of any help to the appellant to contend that the impugned award to be bad in law.

17. In the result, while answering the points for determination in affirmative, it is to be ruled that no fault can be found with the impugned award on the grounds on which it is sought to be assailed by the appellant and hence the appeal fails and is hereby dismissed with no order as to costs.

18. It has been brought to the notice of the court that at the time of admission of the appeal, the execution of the impugned award was stayed in relation to the principal amount which stands deposited by the insurance company in the Tribunal. The learned advocate for the respondent No. 1 prays for permission to withdraw the same. Permission is granted. However, the same shall be effective only after eight weeks from today. Needless to say that in case of withdrawal, the same shall be along with whatever interest accrued thereon.

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