
(1994) 04 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : F.A.O. No. 73 of 1985 (Cross Objection No's. 105 and 154 of 1985)

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Bimla and Others

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 96

Citation : (1994) ACJ 878 : AIR 1995 HP 1 : (1994) 2 ShimLC 268

Hon'ble Judges : Bhawani Singh, Acting C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant; Preet Pal Grewal and Praneet Gupta, for the Respondent

Judgement

Bhawani Singh, Actg. C.J.

1. This appeal is directed against the award of Motor Accident Claims Tribunal (II), Kangra in M.A.C.T. Case No. 1 of 1982, dated December 28, 1984.
2. The claimants moved a petition u/s 110 of the Motor Vehicles Act for the grant of compensation for the death of Karam Chand, being father, mother, sister and brothers of the deceased. Compensation to the extent of Rs. 75,000/- has been claimed by them. The facts of the case may, briefly, be summarised here-now.
3. Deceased Karam Chand was engaged as a labourer for loading states in Truck No. HPK 5894 in the evening of June 12, 1982 in Slate Godown, Yol. After loading the truck, the deceased and other labourers boarded it. After covering a distance of half furlong, the truck rolled down towards one side of the road through a steep gradient. The allegation is that the accident was on account of the rash and negligent driving by its driver Parveen Kumar. The deceased was crushed under the weight of the states and died instantaneously. The other labourers also received injuries. The deceased was unmarried, aged 26 year and earning Rs. 500/- per month.
4. All the opponents resisted the case of the claimants. Parveen Kumar and

Ashok Kumar took the defence that claimants Smt. Bimla Devi, Prem Chand and Ran Singh had no locus standi to apply for compensation, therefore, the petition was bad for mis-joinder of parties and that the material facts had been suppressed from the Court. It has been denied that the deceased was travelling in the truck at the relevant time and was engaged as a labourer for loading the slates in the vehicle. As a matter of fact, he got into the vehicle from the back side of it at Ghaniyara without the knowledge and permission of the driver and Conductor and was, therefore, travelling at his own risk and responsibility. They have also disputed that the deceased was earning Rs. 500/- per month and that the claimants are the legal heirs of the deceased. The vehicle was moving through a down gradient at slow speed under the control of the driver. All of a sudden, it fell towards one side of the road on account of failure of brakes and it was thereafter noticed that a person was lying, underneath the slates. No negligence is attributable against the driver of the vehicle since he was driving the same at slow speed and it was under his complete control till the occurrence took place on account of sudden failure of brakes.

5. Yudhishter Lal has taken the defence that he had sold the vehicle to Ashok Kumar prior to the occurrence. The United India Insurance Company has denied its liability to pay the compensation. It has been stated that the policy of insurance described Yudhishter Lal as the owner and not Ashok Kumar. The Company is not liable to pay compensation to a labourer engaged by the owner of the vehicle for loading and unloading the states. The allegation of rash and negligent driving by the driver has also been denied.

6. On the pleadings of the parties, the following issues were settled for trial :

"1. Whether the deceased, Karam Chand, expired in an accident due to the rash and negligent driving of respondent No. 1 Parveen Kumar, as alleged? OPA.

2. Whether the petitioners Nos. 3 to 5 have no locus standi to file the petition, as alleged? OPR.

3. Whether the petition is bad for mis-joinder of the respondents? OPR.

4. Whether the petitioners are guilty of suppressing the material facts from the court, if so, its effect? OPR.

5. Whether the respondent No. 4 is not liable to pay any compensation, as alleged? OPR

6. Whether the petitioners are entitled for compensation, if so, to what amount? OPA.

7. Whether Karam Chand deceased is an employee of respondent No. 3, as alleged? OPA.

8. Relief."

7. The Motor Accident Claims Tribunal decided issues Nos. 1, 3 to 8 in favour of

the claimants. Issue No. 2 was decided against them.

8. We need not discuss all the issues afresh since the learned counsel for the parties confined their submissions to the question of liability to pay the compensation and the extent thereof.

9. Shri A.K. Goel, learned counsel for the appellant forcefully contended that the Insurance Company is not liable to pay the compensation since the vehicle had been sold by Yudhishter Lal to Ashok Kumar before the date of the accident so there had been transfer of ownership under the law. In order to buttress this submission, reliance was placed on 1958 ACJ 250 (Punjab) (S. Mehtab Singh v. National Fire and General Insurance Co. Ltd.), 1958 ACJ 542 (Punjab) (M/s. Alwar Motor Association (P) Ltd., Alwar v. Hazari Lal Panna Lal Vs. Shri Chand Mal and Others, , National Insurance Co. Ltd. Vs. Thekkeyil Rajan and Others, 1983 Acc 369 (Bombay) (Mohd. Abdul Waheed Mohd. Nakim Khan v. Shyam Behari Rameshwar Kalvar) 1985 Acc CJ 505 : (AIR 1985 Guj 164) (FB) (Shantilal Mohanlal v. Aher Bawanji Malde), 1988 Acc 170 : (AIR 1988 Punj & Har 149), (Labh Singh v. Sunehri Devi), : Anand Sarup Sharma Vs. P.P. Khurana and others,

10. In opposition to this contention, the learned counsel for the opposite side sought assistance from National Insurance Co. Vs. Magikhaia Das (After him) Mst. Laxmi Dibya and Others, (after him) Mst. Laxmi Dibya) Reddipilli Chinna Rao and Vs. Reddi Lorudu and Others, Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, : Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, .

11. It is not necessary to discuss all these decisions. Suffice it to refer to some of them where the question under consideration has been prominently considered and decided.

12. In Shantilal Mohanlal and Another Vs. Aher Bawanji Malde and Others, , it has been held that after the sale of the vehicle, there is no subsisting contract between the Insurance Company and the transferee, therefore, the Insurance Company is not liable to indemnify the transferee and the claimants are not entitled to recover any compensation from the Insurance Company. Thus, rejecting the contention that the Insurance policy is with respect to a particular vehicle and its ownership during the subsistence of the policy is a matter of no relevance or consequence. Unless there is stipulation to the contrary, the policy lapses on the realisation of the price and handing over of the vehicle to the transferee by the original owner. Sections 42, 94, 123 and 125 of the Act do not create any liability for payment of compensation by the Insurance Company. On the question whether this kind of defence is available to the Insurance Company u/s 96(2), it has been held that such a defence can be taken up since the apex Court decision did not give such a broad interpretation, to the provision and, more particularly, when there is no contract of insurance between the Insurance Company and the transferee of the vehicle.

13. In Anand Sarup Sharma Vs. P.P. Khurana and others, the High Court of Delhi

held that Insurance Company cannot be compelled to indemnify a person with whom it had no contract. After the sale, the insured was left with no insurable interest in the vehicle and under the terms of contract of insurance, the Company was not liable to indemnify the transferee. Registration of the vehicle in the name of the transferee was not necessary for the purpose of completing the sale since sale takes place in accordance with the provisions of Sale of Goods Act. As to whether the Insurance Company could take up this defence in view of Section 96 (2), the Court held that the Company could take this kind of defence. The single Judge of this Court has followed this view in 1991 Acc 336 (Kanta Devi v. Dayal Singh). In paras 13 and 14 of this decision, it has been held that:

"13. A contract of insurance is between the insurer and the insured, the subject-matter is the vehicle specified in it and it is the risk arising out of its use that the insurer undertakes to compensate against. Where such a contract provides for indemnity to the assured against third party risks, the third party who is a stranger to the contract, cannot enforce it against the insurer. Neither the general principles of law relating to contracts, nor the common law gives third party a cause of action against the insurer. If a third party risk arises under the policy it is entirely a matter between the insurer and the insured governed by the terms of the policy. Section 96(1) of the Act makes it obligatory on the part of the insurer to meet or satisfy an award made by the Accident Claims Tribunal against the person insured in respect of such third party risks. Thus, for the purpose of Section 96(1) the insurer could be deemed to be a judgment-debtor. u/s 96(2) of the Act the insurer can be made a party, so that he may defend the action by the third party against the insured which also enumerates the grounds, the insurer may take up for defending himself. The scheme of the provision is that no insurer who had notice u/s 96(2) is entitled to avoid liability to the party otherwise than in the manner provided for in Sub-section (2) thereof. Thus, after the insured has parted with his vehicle, he has no longer any insurable interest to which the policy in his favour can relate and continue to have force affecting thereby the basis of contract of insurance as also the specified vehicle to which the indemnity relates, as is clear from the details required to be set out in the policy. It is with reference to those details and the history of vehicle and its owner, including claims or no claims in the past that premium payable on the insurance is determined and the contract is formed. Thus, in the absence of express stipulation in the policy to the contrary, the moment the insured parts with his vehicle, the policy relating to it lapses, inasmuch as the vehicle is the subject-matter of the very foundation of contract of insurance. Neither Section 96(1) nor Section 96(2) of the Act results in a policy of motor insurance being continued to operate and not lapse, notwithstanding the fact that the insured during the currency of the policy has parted with the ownership of the vehicle to which the insurance relates. Section 96(1) itself proceeds on the basis that there is a subsisting policy and the words to the effect being a liability covered by the terms of policy are of particular significance. It is no doubt true that where insurer has been given notice of action, the grounds of his defence in the action

are limited to those stated in Section 96(2) and it is not open to the insurer to avoid liability under the policy but the continued ownership of vehicle with the insured is basic to the subsistence of policy and once the subject-matter of policy is gone, as when parted by the insured, the policy automatically lapses and there is nothing for the insurer to avoid it. The policy of insurance is with respect to the insured person and not the vehicle and the liability of insurer ceases on transfer of ownership of vehicle."

"14. The third party liability of an insurance company ends on the transfer of vehicle by the insured. This view has been followed by various High Courts in *The South India Insurance Co. Ltd. Vs. Purna Chandra Misra and Others*, , 1975 AC 100; *Indian Mutual Insurance Co. now merged in the United India Fire and General Insurance Co. Ltd. v. Vijaya Ramulu*, 1978 AC 366; *Labh Singh v. Sunehri Devi*, 1988 AC 170 : (AIR 1988 P&H 129) and *National Insurance Co. Ltd. v. Mallikarjun* 1990 ACJ 688 (Kant)."

14. In *Madineni Kondaiah and Others Vs. Yaseen Fatima and Others*, it has been held that public liability of transferor to third party risk continues till he discharges statutory obligations under Sections 29-A, 31 and 94 of the Act, meaning thereby insurance policy does not lapse on transfer so far as third party risk is concerned. This decision also holds that the policy is to the vehicle, therefore, it should normally run with it. Till the transferor discharges his liability as to transfer under the Motor Vehicles Act, 1939, his liability continues, so remains the insurable interest. As to defence available to the Insurance Co., the opinion of the Court is that since Insurance Co. can raise only those defences which are available to it u/s 96(2) of the Act, so it cannot raise the defence of lapse of insurance policy and its non-liability on that account.

15. The question involved in this case, therefore, should not detain us any longer, particularly, when we have already a single Bench decision of this Court dealing with this question. We have not been persuaded by the learned counsel for the respondents to adopt the view of Andhra Pradesh High Court and other decisions falling in line with it. In our considered opinion, the view of Gujarat High Court is quite in tune with the existing legal position though it may pose serious consequences to the claimants in many cases. But, we cannot do anything in face of the existing state of law which does not envisage the continuance of the liability of Insurance Company to third party even after the transfer of the vehicle nor any stipulation to the contrary was brought to our notice by the learned counsel for the parties during the course of their submissions before us.

16. Accordingly, we hold that the Insurance Company can take such a defence and its liability has ceased in the facts and circumstances of this case. The view of the Motor Accident Claims Tribunal is wrong and is therefore, set aside. It is in evidence that Shri Yudhishter Lal had sold the vehicle to Ashok Kumar. Ashok Kumar has admitted having purchased the vehicle. He has also admitted that at the time of accident, the vehicle was in this possession. Hence, it is the liability of Ashok Kumar to pay the compensation to the claimants as per the award.

17. The matter is disposed of in the aforesaid terms with no order as to costs.

18. No other point was argued before us by the learned counsel for the parties.

19. We have considered the Cross Objections in this case. Quantum of compensation, in the facts and circumstances of this case, is unassailable since we do not notice any kind of infirmity on this aspect of the matter. The Cross-Objections are, therefore, rejected accordingly.