
(2015) 08 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : FAOs Nos. 132 and 144 of 2009

United India Insurance Company Ltd.	APPELLANT
Vs	
Tripta Rana and Others	RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Citation : (2015) 08 SHI CK 0023

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Ashwani K. Sharma, Senior Advocate and Monika Shukla, for the Appellant; Neel Kamal Sood and Vasu Sood, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J—Both these appeals are outcome of one motor vehicular accident, thus, I deem it proper to determine both these appeals by this common judgment.

2. The claimants-injured filed two claim petitions before the Motor Accident Claims Tribunal (I), Kangra at Dharamshala, (H.P.) (for short "the Tribunal") for grant of compensation, as per the break-ups given in the respective claim petitions, on the ground that they became the victims of the traffic accident, which was caused by the driver, namely Shri Narinder Chand, while driving the offending vehicle, i.e. bus, bearing registration No. HP-55-4390, rashly and negligently, on 02.07.2004, at about 4.45 P.M., at place Jhanepari.

3. The respondents in the claim petitions contested the claim petitions on the grounds taken in the respective memo of objections.

4. Similar set of issues came to be framed in both the claim petitions. Thus, I deem it proper to reproduce the issues framed in one of the claim petitions herein:

"1. Whether the petitioner suffered injuries due to the rash and negligent driving

of Bus No. HP-55-4390 by respondent No. 3? OPP

2. If issue No. 1 is proved in affirmative, to what amount of compensation the petitioner is entitled to and from whom? OP Parties

3. Whether respondent No. 4, if held liable, is not liable to indemnify respondent No. 2, as alleged? OPR-4

4. Whether the petition is bad for non-joinder of necessary parties? OPRs

5. Whether respondent No. 3 was not holding valid and effective driving license to drive the Bus in question at the time of accident, as alleged? OPR-4

6. Whether the bus in question was being driven in contravention of the terms and conditions of Insurance Policy? OPR-4

7. Relief."

5. The Tribunal, after examining the record and the evidence, oral as well as documentary, held, in terms of the judgments and awards, dated 07.01.2009, that the driver of the offending vehicle was having a valid and effective driving licence, the owner-insured has not committed any willful breach and awarded compensation to the tune of Rs. 1,38,000/- in favour of the claimant-injured in the claim petition, subject matter of FAO No. 132 of 2009 and Rs. 17,000/- in favour of the claimant-injured in the claim petition, subject matter of FAO No. 144 of 2009 (for short "the impugned awards").

6. The claimants-injured, the owner-insured and the driver of the offending vehicle have not questioned the impugned awards on any count, thus, have attained finality so far these relate to them.

7. The insurer has questioned the impugned awards on the grounds that the driver of the offending vehicle was not having a valid and effective driving licence and the vehicle in question was transferred at the relevant point of time.

8. Both the grounds are not tenable for the following reasons:

9. The driving licence is on the file as Ext. RW-2/A, was renewed from time to time. The owner-insured has examined the driving licence before engaging the driver. He was not supposed to make inquiries. Thus, it cannot be said and held that the owner-insured has committed any willful breach.

10. My this view is fortified by the judgment rendered by the Apex Court in the case titled as National Insurance Co. Ltd. Vs. Swaran Singh and Others, (2004) 1 ACC 1 : (2004) ACJ 1 : AIR 2004 SC 1531 : (2004) 118 CompCas 396 : (2004) 1 JT 109 : (2004) 136 PLR 510 : (2004) 1 SCALE 180 : (2004) 3 SCC 297 : (2004) 1 SCR 180 : (2004) AIRSCW 663 : (2004) 1 Supreme 243 . It is apt to reproduce relevant portion of para 105 of the judgment herein:

"105.....

(i).....

(ii).....

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."

11. The Apex Court in another case titled as Pepsu Road Transport Corporation Vs. National Insurance Company, (2014) 2 ACC 18 : (2013) 3 ACC 871 : (2013) ACJ 2440 : AIR 2014 SC 305 : (2013) 4 CPJ 84 : (2013) 4 PLR 750 : (2013) 4 RCR(Civil) 273 : (2013) 10 SCALE 663 : (2013) 10 SCC 217 : (2014) 1 SCC(L&S) 750 , held that the owner-insured is not supposed to go beyond verification to the effect that the driver was having a valid driving licence and the competence of the driver. It is profitable to reproduce para 10 of the judgment herein:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy

himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

12. Now coming to the second ground; the respondents have not proved the transfer of the vehicle. However, at all, had it been proved, mere transfer of the vehicle is not enough to absolve the insurer from its liability. The insurer is liable till the expiry of the insurance contract.

13. This Court while dealing with the issue of the same and similar nature in FAO No. 7 of 2007 titled Ashok Kumar & another versus Smt. Kamla Devi & others, decided on 5.9.2014, in terms of the Apex Court judgments, have held that transfer of a vehicle cannot absolve the insurer. It is apt to reproduce paras 15 to 19 of the said judgment herein:

"15. Section 157 of the Act reads as under:

"Transfer of certificate of insurance.

(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

Explanation.--For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the

certificate and the policy of insurance in regard to the transfer of insurance."

While going through the aforesaid provision, one comes to an inescapable conclusion that transfer of a vehicle cannot absolve insurer from third party liability and the insurer has to satisfy the award.

16. Admittedly, on the date of accident, i.e. 05.06.2000, the offending vehicle was not transferred in the name of appellant-Ashok Kumar. It was transferred in his name w.e.f. 17.06.2000. Thereafter, the appellant-respondent No. 1 Ashok Kumar was supposed to give information regarding transfer of the vehicle to the insurer-Insurance Company. The vehicle was not transferred on the date of accident, thus the question of informing the insurer about the transfer of the vehicle does not arise, at all. If the offending vehicle would have been transferred on the date of accident, i.e. 5th June, 2000, that can not be a ground to defeat the rights of the third party. As per the mandate of the Section (supra), the insurance policy shall be deemed to have been issued in favour of the transferee.

17. My this view is fortified by the Apex Court Judgment in case titled as G. Govindan Vs. New India Assurance Co. Ltd. and Others, (1999) 1 ACC 483 : (1999) ACJ 781 : AIR 1999 SC 1398 : (1999) 97 CompCas 443 : (1999) 2 CTC 473 : (1999) 2 JT 622 : (1999) 122 PLR 274 : (1999) 2 SCALE 491 : (1999) 3 SCC 754 : (1999) 2 SCR 476 : (1999) 2 UJ 1121 : (1999) AIRSCW 1077 : (1999) 3 Supreme 506 . It is apt to reproduce paras-10, 13 & 15 of the aforesaid judgment herein:

"10. 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 Kondaiah's case 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.

11.

12.

13. In our opinion that both under the old Act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts.

14.

15. As between the two conflicting views of the Full Bench judgments noticed above, we prefer to approve the ratio laid down by the Andhra Pradesh High Court in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, (1986) 1

ACC 501 : (1986) ACJ 1 : AIR 1986 AP 62 : (1985) 3 APLJ 150 as it advances the object of the Legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy. In other words in accord with the well-settled rule of interpretation of statutes we are inclined to hold that the view taken by the Andhra Pradesh High Court in Kondaiah's case is preferable to the contrary views taken by the Karnataka and Delhi High Courts (supra) even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the Legislature in protecting the third party (victim) interest. The ratio laid down in the judgment of Karnataka and Delhi High Courts (National Insurance Co. Ltd. Vs. Mallikarjun and others, (1990) ACJ 688 : AIR 1990 Kar 166 : (1990) 3 KarLJ 154 and AIR 1989 Delhi 88) (FB) (supra) differing from Andhra Pradesh High Court is not the correct one."

18. The Apex Court in case titled as Rikhi Ram and Another Vs. Smt. Sukhrania and Others, (2003) 1 ACC 36 : (2003) ACJ 534 : AIR 2003 SC 1446 : (2003) 1 SCALE 732 : (2003) 3 SCC 97 : (2003) 1 SCR 872 : (2003) 1 UJ 526 : (2003) AIRSCW 780 : (2003) 1 Supreme 1000 held that in absence of intimation of transfer to Insurance Company, the liability of Insurance Company does not cease. It is apt to reproduce paras 5, 6 & 7 of the judgment, supra, herein:--

"5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. On an analysis of Ss. 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not ceases so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act."

19. The Apex Court in latest judgment titled as United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, (2006) 2 ACC 1 : (2006) ACJ 1441 : AIR 2006 SC 1576 : (2006) 131 CompCas 163 : (2006) 2 CTC 661 : (2006) 4 JT 280 : (2006) 143 PLR 297 : (2006) 4 SCALE 67 : (2006) 4 SCC 404 : (2006)

AIRSCW 1822 : (2006) 3 Supreme 332 has held the same principle. It is apt to reproduce paras- 12 & 13 of the said judgment herein:

"12. In Rikhi Ram and Another Vs. Smt. Sukhrania and Others, (2003) 1 ACC 36 : (2003) ACJ 534 : AIR 2003 SC 1446 : (2003) 1 SCALE 732 : (2003) 3 SCC 97 : (2003) 1 SCR 872 : (2003) 1 UJ 526 : (2003) AIRSCW 780 : (2003) 1 Supreme 1000 a Bench of three learned Judges of this Court had occasion to consider Section 103-A of the 1939 Act. This Court reaffirmed the decision in G. Govindan case and added that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the Insurance Company, as the purpose of the legislation was to protect the rights and interests of the third party.

13. Thus, in our view, the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the 1939 Act or under Section 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts before us, or the new Act applies, as far as the deceased third party was concerned, the result would not be different. Hence, the contention of the appellant on the second issue must fail, either way, making a decision on the first contention unnecessary, for deciding the second issue. However, it may be necessary to decide which Act applies for deciding the third contention. In our view, it is not the transfer of the vehicle but the accident which furnishes the cause of action for the application before the Tribunal. Undoubtedly, the accident took place after the 1988 Act had come into force. Hence it is the 1988 Act which would govern the situation."

14. The same principle has been laid down by this Court in FAO No. 164 of 2007, titled as Sh. Vipin Kumar versus Naushad Ahmed and another, decided on 28.11.2014, and FAO No. 207 of 2007, titled as National Insurance Company Ltd. versus Smt. Santoshi Devi & others, decided on 13.03.2015.

15. Having said so, the Tribunal has rightly saddled the insurer with liability in terms of the impugned awards, need no interference.

16. Viewed thus, the impugned awards are upheld and both the appeals are dismissed.

17. Registry is directed to release the awarded amount in favour of the claimants-injured strictly as per the terms and conditions contained in the respective impugned awards after proper identification.

18. Send down the record after placing copy of the judgment on each of the Tribunal's files.