Oriental Fire and General Insurance Company Ltd. Vs Thakur Dass and Others

First Appeal from Order No. 91 of 1980

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 14, 1982

Acts Referred:
Motor Vehicles Act, 1939 â€" Section 103(A)

Citation: (1983) 2 ILR (P&H) 251

Hon'ble Judges: S.S. Sodhi, J

Bench: Single Bench

Advocate: Munishwar Puri and Hemant Kumar, for the Appellant; R.K. Mittal, for Respondent No. 2., L.M. Suri and P.S. Arora, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Sodhi, J.
This order will dispose of the appeal referred to above as also F.A.O. No. 132 of 1980 Oriental Fire and General

Insurance Company, Ltd. v. Smt. Bhagwanti Devi and Ors. as also the cross-objections filed in both these appeals. These appeals arose out of the

same accident and were consequently heard together.

2. The main question which arises for determination in these appeals is with regard to the liability of the Oriental Fire and General Insurance

Company Limited (hereinafter referred to as "the Insurance Company") to pay the amount awarded to the claimants as compensation in pursuance

of the provisions of Section 103-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). The facts relevant to this matter are that

at about midnight, on the night intervening January 16/17, 1978, there was an accident on the road dividing Sectors 22 and 35 between a car No.

DHC-785 and a scooter No. CHD-7915. Both Gopal Dass who was driving the scooter and Raj Kumar, who was sitting on the pillion seat

thereof suffered injuries as a result of which they later died in the hospital.

3. Claims for compensation u/s 110 of the Act were put in by the legal representatives of both the deceased for the financial loss suffered by them

on account of this accident. The Tribunal found that the accident had taken place due to the negligence of car driver Shiv Ram (Respondent No.

5). A sum of Rs. 54,000 was awarded as compensation to the claimants in the case relating to Gopal Dass, deceased, while to the legal

representatives of Raj Kumar the award was to the extent of Rs. 24,000.

4. No controversy has been raised here with regard to the finding of negligence recorded by the Tribunal. The matter which arises for

consideration in these appeals is with regard to the liability of the Insurance Company for the amount awarded as compensation. It may be

mentioned here that the Insurance Company has been held liable by virtue of the provisions of 103-A of the Act. The contentions raised with

regard to the applicability of Section 103-A of the Act have to be considered in the background of the factual position as emerges from the

evidence on record. The car DHC-785 was purchased by the Life Insurance Corporation of India (hereinafter referred to as "the Corporation")

for use by Shri K.L. Nagpal (Respondent No. 3), who was employed as Development Officer with them. This car was insured with the Insurance

Company in the name of the Corporation and the possession thereof was with Shri K.L. Nagpal. The terms and conditions of its purchase were

those as contained in the agreement exhibit R-l. It was provided therein that Shri Nagpal would pay the price of this car by instalments and upon

the entire sale consideration being paid, the car shall be transferred to Shri K.L. Nagpal. The relevant terms in this behalf were as contained in

Clause 7 of this agreement which is reproduced hereunder:

When the balance to the credit of the said car account shall equal the purchase of the said vehicle, this hiring shall come to an end and said vehicle

shall become the property of the agent and the Corporation shall transfer the said vehicle to the agent

5. The evidence further shows that the entire amount due to the Corporation in respect of this car had been paid by Shri Nagpal by December,

1977. The Corporation then sent a registered letter exhibit R-3 on December 16, 1977 to the Motor Licensing Officer and Registration Authority,

New Delhi to intimate that they had sold the car DHC-785 to Shri K.L. Nagpal and it was requested that the ownership thereof be accordingly

transferred to him. A copy of this letter was sent to Shri K.L. Nagpal, who was asked to contact the Registration Authority for getting the vehicle

transferred in his name. At the same time, another copy of this letter was sent to the Insurance Company with the request to transfer the insurance

of the vehicle in the name of Shri K.L. Nagpal.

6. It is in the evidence that the policy of insurance relating to the car DHC-785 stood in the name of the Corporation on the date of the accident

and the registered owner thereof on that date was also the Corporation. It was only in November, 1978 that the car came to be registered in the

name of Shri K.L. Nagpal.

7. It was the contention of Mr. Munishwar Puri counsel for the Insurance Company that as the car had been transferred to Shri K.L. Nagpal

before the accident without the policy of insurance thereof, having been transferred to him, no liability could be fastened upon the Insurance

Company for this accident. Counsel sought to rely upon the Oriental Fire & Genl. Ins. Company Ltd. v. Vimal Roy, 1972 A.C.J.314., where it

was held that in the absence of a stipulation to the contrary, an insurance policy which is a personal contract for indemnity, lapses upon the transfer

of the motor vehicle and the benefit of the policy is not available to the transferee without an express agreement with the Insurance Company. A

similar view was expressed in the other authorities cited by Mr. Munishwar Puri in this behalf. These authorities being, M. Bhoopathy and Ors. v.

M S. Vijayalakhshmi and Anr., 1966 A.C.J.1., Roshan Lai Bhalla and Anr. v. Sudesh Kumar and Ors. 1968 A.C.J.63., Queensland Ins.

Company Ltd. v. Rajlakshmi Ammal and Ors. 1970 A.C.J.104. The South India Ins. Company Ltd. v. Lakshmi and Ors. 1971 A.C.J.122., and

Sunil Kumar v. Roshan Lal and Ors. 1973 A.C.J.41.

8. In dealing with the authorities cited above, it is to be noted that they all relate to the period prior to the enactment of Section 103-A of the Act

and are, therefore, of no relevance to the controversy raised in the present appeals.

9. Turning to the provisions of 103-A of the Act, Shri Munishwar Puri sought to argue that they were not applicable in the present case for the

reason that it was required thereby that the request for the transfer of certificate of the insurance relating to the motor vehicle concerned should be

in prescribed form and should also be accompanied by the policy of insurance. These provisions were mandatory and they had not been complied

with in the present case by the Corporation which was the transferor and thus Section 103-A of the Act could not be invoked to render the

Insurance Company liable. The other limb of his argument was that the provisions of this Section were available only before the actual transfer of

the motor vehicle concerned as the words used in this Section were ""the motor vehicle is proposed to be transferred"". Counsel contended that the

provisions of this Section are rendered inapplicable if the request for the transfer of the certificate of insurance is made after the vehicle has already

been transferred. He adverted in this behalf to the fact that in the present case intimation regarding the transfer of car DHC-785 to Shri K.L.

Nagpal and to the Insurance Company was given on the same day by the same letter and, therefore, it could not be said that the request to the

Insurance Company had been made before the transfer of the vehicle to Shri K.L. Nagpal and for this reason too, therefore, Section 103-A of the

Act was not available to either Shri K.L. Nagpal or the Corporation to hold the Insurance Company liable for the amount awarded.

10. The contentions raised by the counsel for the Insurance Company are patently devoid of merit. A somewhat similar question arose for

consideration in Sewa Singh v. Col. Gurcharan Singh and Ors. 1978 P.L.R. 705. In dealing with the provisions of Section 103-A of the Act, it

was observed by Bains, J:

From the plain reading of this Section it is evident that where a person in whose favour the certificate of insurance has been issued in accordance

with the provisions of Chapter VIII of the Act proposes to transfer to another person the ownership of the Motor Vehicle of which such insurance

was taken together with the policy of insurance thereto,. he may apply 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 is proposed to be transferred and, if no action is taken within fifteen

days of the receipt of such application by the insurer or the insured does not receive any intimation from the insurer about the refusal to transfer the

certificate and the policy to the other person, 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 has been transferred.

11. In this case, the accident had taken place on August 23, 1970. The truck involved in the accident had been sold by the previous owner to the

present owner on March 31, 1970 and it came to be registered in the name of the present owner on April 3, 1970. Intimation of the transfer of

ownership was sent to the Insurance Company on the date of the transfer of the truck, that is, March 31, 1970. It was held that in the

circumstances it was the Insurance Company that was liable for the compensation awarded to the claimants and not the owner of the truck.

12. The judgment of the Single Bench in the authority referred to above was upheld by the Division Bench in The New India Assurance Company

Ltd., New Delhi v. Col. Gurcharan Singh and Ors.) L.P.A. 323/1978 decided on-29-7-1982. The point raised here was that the intimation sent to

the Insurance Company regarding the transfer of the ownership of the truck had not been sent in prescribed form nor had the transfer of certificate

of insurance been asked for in terms of Section 103-A of the Act. Both these pleas were specifically negatived. In dealing with the provisions of

Section 103-A of the Act it was observed that ""The whole object of Section 103-A of the Act, as I see it, is to provide an opportunity to the

Insurance Company with whom the vehicle is insured, to state if there is any objection to accept the purchaser of the vehicle as the insured person

as a result of the transfer, of the motor vehicle. The rigour of the Section that in case there is no intimation of the insurer''s refusal to transfer the

certificate and the policy in favour of the purchaser of the vehicle then the said certificate and the insurance policy shall be deemed to have been

transferred to the purchaser is indeed a salutory provision which appears to have been introduced with a view to prevent the insurer from seeking

to avoid liability unless they have affirmatively declined to agree to the novation of the contract of idemnity.

13. The above observations are also relevant for dealing with the other contention raised in the present case, that Section 103-A of the Act is not

available if the transfer of certificate of insurance is sought after the transfer of the ownership of the vehicle concerned. The provisions contained in

Section 103-A of the Act are by their very nature beneficial and thus call for a liberal construction so as to advance the underlying object for their

enactment. So construed, there is no escape from the conclusion that the provisions thereof are applicable to the transfer of a motor vehicle

whether the request for the transfer of the policy of insurance is made before or after the transfer of the vehicle concerned. This cannot result in any

prejudice to the Insurance Company as the Section provides it a period of fifteen days to refuse the transfer of the certificate of insurance.

Intimation having been sent to the Insurance Company regarding the transfer of ownership of the vehicle and the policy of insurance and no refusal

to its transfer having been sent by it to the Corporation the Tribunal rightly held the Insurance Company liable for the amount awarded in terms of

the provisions of Section 103-A of the Act.

14. The next question which arises for consideration is with regard to enhancement of compensation as sought by the claimants,-vide their cross-

objections. In the case relating to Raj Kumar, deceased, the only claim pressed by the counsel for the claimants was with regard to the interest

held by the Tribunal to be payable on the amount awarded. It was his contention that whereas the interest awarded was at the rate of 6 per cent

per annum it was settled law now that the interest to be awarded should be at the rate of 10 per cent per annum. This contention must obviously

prevail and the calimants are thus ordered to be paid interest at the rate of 10 per cent per annum on the amount awarded, that is Rs. 24,000 from

the date of the application to the date of the payment of the amount awarded.

15. Turning to the case relating to compensation payable to the legal representatives of Gopal Dass, deceased, it was the finding of the Tribunal

that Gopal Dass was 35 years of age at the time of his death. His monthly income was held to be Rs. 550. Rs. 375 per month was taken to be the

financial loss suffered by his dependants on account of his death. The Tribunal took 12 to be the multiplier in this case and on this basis held the

claimants entitled to Rs. 54,000 as compensation. Mr. R.K. Mittal, counsel for the claimants rightly contended that keeping in view the principles

laid down by the Full Bench in Lachhman Singh v. Gurmit Kaur 1979 P.L.R.1., and by the Division Bench in Asha Rani and Ors. v. Union of India

1982 P.L.R.486., the appropriate multiplier in the present case must be taken to be 16. He thus claimed compensation on this basis. This claim

must clearly be acceded to and the claimants are accordingly hereby awarded a sum of Rs. 72,000 as compensation for the loss suffered by them

on account of the death of the deceased. The claimants shall in addition be entitled to interest at the rate of 10 per cent per annum from the date of

the application to the date of the payment of the amount awarded. Out of the amount awarded a sum of Rs. 25,000 shall be payable to the widow

of the deceased; while the balance shall be payable to his five, children in equal shares. The shares of the minors shall be paid through their mother.

As has been mentioned above the amount awarded shall be payable by the Insurance Company and also Respondents Nos. 3 and 5.

16. The Tribunal, in its Award had also held the Life Insurance Corporation of India liable for the amount awarded. There was clearly no warrant

for imputing any liability to the Corporation in view of the facts as set out above, in particular that the Corporation had ceased to be the owner of

the vehicle at the time of the accident. The award against it must thus be set aside.

17. In the result, both the appeals filed by the Insurance Company are hereby dismissed and cross-objections filed by the claimants are accepted

to the extent indicated above. As regards the cross-objections filed by the Life Insurance Corporation of India, they are accepted with the finding

that the Corporation is not liable for payment of any amount awarded. The claimants shall be entitled to the costs. Counsel fee Rs. 500.