New India Assurance Co. Ltd. Vs Sita Sharma and Others

F.A.F.O. No. 353 of 1991

Court: Allahabad High Court

Date of Decision: Dec. 3, 1998

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 103, 104, 105, 106, 157

Citation: (1999) 1 ACC 185 : (1999) ACJ 912

Hon'ble Judges: Palok Basu, J; P.K. Jain, J

Bench: Division Bench

Advocate: A.K. Saxena, for the Appellant; N.A. Moonis, for the Respondent

Final Decision: Dismissed

Judgement

Palok Basu, J.
A question of some importance has arisen in this case, i.e., whether an insurance policy covering a motor vehicle would

continue to fasten liability under that policy even if the policy-holder has transferred the said vehicle during the term of the policy.

2. It is not in dispute that a truck bearing registration No. URU 4605 crushed one Ved Prakash Sharma at about 7 p.m. on 6.1.1990 in village

Dhamaura, District Rampur. Ved Prakash Sharma lost his life instantaneously, but the truck driver tried to run away. Some police personnel and

also relatives of Ved Prakash Sharma (deceased) chased the truck, stopped it at some distance and arrested the driver whereafter first information

report was lodged and the driver was also taken into custody. The said truck was insured with New India Assurance Co. Ltd. After due interval a

claim petition was filed by Sita Sharma, widow of the deceased; Javitri, mother of the deceased; Santosh Kumar Sharma and Anil Kumar Sharma,

minor and major sons of the deceased respectively. The insurance company took up the plea that original owner of the aforesaid vehicle No. URU

4605 had transferred the said vehicle in the name of another person, namely, Jameel Ahmad and, therefore, no liability could be fastened on the

insurance company. Other pleas were also raised.

3. After discussing the entire evidence on record the Tribunal concerned allowed the said claim in part and directed that:

(i) A sum of Rs. 1,44,000 was payable as lump sum compensation with interest with effect from the date of application at the rate of 12 per cent

per annum;

(ii) From out of the said compensation amount Rs. 59,000 shall be paid to the widow of the deceased, Rs. 35,000 shall be paid to the minor son

and Rs. 25,000 each will be paid to major son and the mother of the deceased. The further rider was that the amount allocated for . Santosh

Kumar, minor son, shall be kept in a nationalised bank in the shape of F.D.R. till he attains the majority.

4. Aggrieved by the said order of the Tribunal dated 30.1.1991 the assurance company has filed the instant appeal.

5. Mr. A.K. Saxena, learned Counsel for the appellant has been heard at sufficient length, who has taken the court through the entire record. Ms.

N.A. Moonis, Advocate, appeared for the respondents-claimants and she has also been heard sufficiently.

6. Insofar as the taking place of the accident, manner of collision, chasing of the vehicle and catching hold of the driver are concerned, the matter is

concluded by dead findings of fact and even though Mr. A.K. Saxena wanted to argue the matter on these points also, but the evidence on the

record does not permit any deviation from the findings already recorded by the Tribunal. It is, therefore, in the fitness of the evidence to uphold the

findings of the Tribunal that the aforesaid accident took place in the manner alleged by the claimants and further that the vehicle was insured under

the policy issued by the appellant, New India Assurance Co. Ltd. Mr. Saxena, however, insisted that the Tribunal has wrongly relied upon some

decisions in order to make award against the appellant and has wrongly ignored the fact that the erstwhile owner who was the policyholder did not

send any intimation to the insurance company regarding the aforesaid transfer by erstwhile owner to Jameel Ahmad, who has been impleaded as

respondent in this appeal and, therefore, this Court should allow the appeal and set aside the award of compensation. Reliance was placed on the

provisions contained in Sub-section (2) of Section 157 of the Motor Vehicles Act.

7. Ms. N.A. Moonis, Advocate, on the other hand, argued with equal vehemence that the Tribunal was perfectly justified in awarding

compensation inasmuch as the validity of the policy could not cease only because of the transfer of the policy during the period of its continuance to

Jameel Ahmad arrayed as respondent in this appeal. She also placed reliance on some decisions of the High Court and that of the Supreme Court.

8. Before discussing this point it may be relevant to note what the provisions u/s 157 are and, therefore, it is quoted here:

157. 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.

The aforesaid Section 157 has its own legislative history. It appears that transfer of certificate of insurance was causing considerable litigative

agony inasmuch as the genuine claimants were being denied the legitimate compensation on technical ground of vehicle"s transfer and the claims

being successfully resisted by the insurance companies on the ground that the contract of insurance survived only with the insurer and the

policyholder and nothing beyond. In the Motor Vehicles Act, 1939, certificate of insurance matters were dealt with in Chapter VIII and the

relevant sections were 103 to 106 thereof. Those sections were not taking note of the liability under the policy even if the vehicle was transferred

by the policyholder during the continuance of the insurance policy whereafter the State through Parliament intervened. Section 103-A was,

therefore, enacted by Parliament by Act No. 56 of 1969 which became effective from 1.10.70. The aforesaid newly added Section 103-A,

however, provided that where a person in whose favour the certificate of insurance has been issued proposes to transfer 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, he may 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 is proposed to be transferred and if within fifteen days of the receipt of such application by the insurer, the insurer has not

intimated the insured and such other person, his 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 is transferred

with effect from the date of its transfer. Sub-sections (2) and (3) of Section 103-A extend the choice to the insurer to refuse to transfer the

certificate of insurance to transferee of the vehicle. It appears that these provisions again left enough lacuna and litigation, as appeared from the

decided cases took a turn and again the claimants were at the receiving end.

9. Consequently, when the new Motor Vehicles Act was enacted in the year 1988, the aforesaid Section 157 was incorporated. Sub-section (1)

of Section 157 carries the intention of Parliament, i.e., the certificate of insurance and the policy described in the certificate shall be deemed to have

been transferred in favour of the person to Ã¯Â¿Â½ whom the motor vehicle is transferred with effect from the date of its transfer. The language is in

positive terms, nothing further is required to be done with regard to transfer of policy. The responsibility of the transferee to make an application

within fourteen days from the date of transfer to insurer for making necessary changes in the certificate of insurance relating to the said transfer can

at the best be taken to be a clerical job so as to make the insurance company aware of the subsequent transferee for any future exigencies, such as

renewal of the insurance of the vehicle, etc. Surviving period of the policy fixes and continues liability in that policy, as it was with previous owner in

spite of transfer of the vehicle to new owner. There cannot be any other meaning attached to Sub-section (2) of Section 157 and, therefore, the

argument of the appellant''s counsel that in the instant case because there is absence of the evidence of any such step as intimation of transfer by the

transferee to the insurer shall enable the insurer to deny the liability, is hereby rejected.

10. Enough support can be had from the decision of the Hon''ble Supreme Court in the case Complete Insulations (P) Ltd. v. New India

Assurance Co. Ltd. 1996 ACJ 65 (SC). In para 10 the provisions of new Section 157 have been noted and it has been held that the aforesaid

section provides that the certificate of insurance together with the policy of insurance described therein shall be deemed to have been transferred in

favour of the person to whom the motor vehicle is transferred. If the policy of insurance covers other risks as well, e.g., damage caused to the

vehicle or the insured himself, that would be a matter falling outside Chapter XI of the new Act and in the realm of contract for which there must be

an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the cited case since

there was no such agreement and since insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not

liable to make good the damage to the vehicle. In other words by implication it stands delineated by Hon''ble Supreme Court that in other case,

such as the instant one, transfer of vehicle along with the transfer of the certificate of insurance will retain the liability of the insurer.

11. In view of the aforesaid decision of Hon''ble Supreme Court reference of Mr. Saxena to Bhanwarlal v. Hariram 1994 ACJ 368 (MP) ; United

India Insurance Co. Ltd. Vs. Smt. Bimla and Others, ; New India Assurance Co. Ltd. Vs. Peelari Edathil Kunhiraman Nambiar and Others, ;

Rikhi and Another Vs. Smt. Sukhrania and Others, is unjustified.

12. During the course of arguments Ms. N.A. Moonis, learned Counsel for the respondents, drew attention of the court to application and affidavit

filed by her on behalf of the respondents-claimants alleging that even when the respondents have initiated execution proceedings the assurance

company did not pay the entire liability under compensation award. Therefore, their argument that a time bound direction to make the payment, or

for that matter the payments, should be made. The request is genuine.

13. In view of the aforesaid discussions, the appeal fails and is hereby dismissed with costs, which are assessed at Rs. 1,150 (Rupees one

thousand one hundred fifty only). The assurance company is hereby directed to deposit entire compensation amount within three months from

today, if not already done, whereafter the executing court may proceed with the execution application, which apparently has already been filed by

the respondents-claimants. If the amount of compensation has been deposited or in the event of deposit within the period allowed or after

realisation in execution case, it shall be disbursed in terms of the award.