Oriental Fire and General Insurance Company Vs Smt. Savitri Devi Dixit and Others

Court: Allahabad High Court

Date of Decision: Aug. 13, 2007

Acts Referred: Motor Vehicles Act, 1939 â€" Section 110D

Citation: (2009) ACJ 901 : (2008) 1 AWC 188

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prakash Krishna, J.
All the three appeals were heard together and are being disposed of by a common judgement as common questions of

law and facts are involved. These appeals arc u/s 110-D of Motor Vehicles Act 1939.

On 15th of March, 1984 in a collision in between Bus No. USI 9813 and Bus No. DLP 1231, one Ajay Sharma and his sister Smt. Madhu

Shukla lost their lives and husband of Madhu Shukla i.e. brother in law of Ajay Sharma received injuries. Parents of Ajay Sharma filed claim

petition No. 23 of 1984 giving rise to the First Appeal From Order No. 336 of 1998. These persons were travelling in Bus No. USI 9813. The

claim petition was filed by the parents of Ajay Sharma on the pleas inter alia that the driver of the Bus No. USI 9813 in which Ajay Sharma was

travelling from Moradabad to Rampur side was driving it rashly and negligently. When the Bus reached near village Kunda about 6 Kilometres

away from Rampur towards Moradabad, the Bus No. DLP 1231 came from Rampur side and there look place headed on collusion between the

aforesaid two Buses. The driver of Bus No. USI 9813 lost control over the speed and it fell into a ditch (Khad). Ajay Sharma and his sister

Madhu received fatal injuries. The Bus No. USI 9813 was insured with the appellant, Oriental Fire and General Insurance Company, was being

plied under the control of U.P. State Road Transport Corporation. The Claims Tribunal decreed the claim petition No. 23 of 1984 for recovery of

Rs. 34,000/- against the defendant No.3 therein namely Oriental Fire and General Insurance Company. The Oriental Fire and general Insurance

Company has approached this Court by way of above First Appeal From Order No. 336 of 1988. On similar allegations the Claim Petition No.

12 of 1984 was filed by Shri Shreekant Shukla, husband of Smt. Madhu Shukla claiming compensation of the death of his wife, before the Claims

Tribunal and he has been awarded a sum of Rs. 28,600/- against the Insurance Company, the appellant herein by the award dated 30th of

January, 1988. Shri Shreekant Shukla who was also a co-passenger had received injuries, filed the Claim Petition No. 11 of 1984 for

compensation of injuries received by in the aforestated accident before the Claims Tribunal and it has awarded a sum of Rs. 24,000/- by the

award dated 3rd of January, 1988 against which the First Appeal From Order No. 428 of 1988 has been filed.

2. It was jointly agreed by the learned Counsel for the parties that in all these three appeals, a common question whether award can be passed on

the facts of the present case against the Insurance Company, is involved. These appeals were heard together and arc being disposed off by a

common judgement. Issue No. 5 was framed in Claim Petition No. 23 of 1984 to the following effect:

Who is liable to pay compensation"", is the point involved in these appeals.

3. It is not in dispute that the ill fated Bus No. USI 9813 was insured with the present appellant at the relevant point of time when the accident took

place. It is also not in dispute that the said Bus was being plied under the control of U.P. State Road Transport Corporation. Shri K.S. Amist, the

learned Counsel for the appellant in all these appeals submits that in view of the fact as the Bus in question was under the control of U.P. State

Road Transport Corporation, the registered owner ceases to be owner of the vehicle and as such the insurer is not liable to indemnify the insured

person. Shri Sameer Sharma, the learned Counsel for U.P. Stale Road Transport Corporation, on the other hand, submits that in view of Section

95 and various other provisions of Motor Vehicles Act, 1939, the insurer is liable to pay the compensation amount to the claimant. It has come on

the record that the Bus in question was being driven by the driver of the insured person. But the tickets to the passengers were issued by the U.P.

State Road Transport Corporation. It has also been admitted that in the fare, passenger''s tax and insurance charges were included therein. The

Tribunal under Issue No.4 reached to the conclusion that in view of Section 95 (1) (b) of the Motor Vehicles Act, the insurer is liable to indemnify

the insured person. The Bus being driven by the driver of the insured person, the master (owner) is vicariously liable for the act of his servant.

4. Strong reliance was placed by the learned Counsel for the appellant on a decision of the Apex Court in Rajasthan State Road Transport

Corporation Vs. Kailash Nath Kothari and other etc., This decision is the anchor-sheet of the appellant. In the case cited above, the ill-fated Bus

was under the control of Rajasthan State Road Transport Corporation and was being driven by its driver on the ill- fated day. The said Bus met

with an accident and a question arose as to who will bear the liability to compensate the claimants and victims. The Insurance Company was held

liable to pay the compensation amount to the extent of its limited statutory liability, a total amount of Rs.75,000/- only. The Rajasthan State Road

Transport Corporation was also held liable for the remaining balance amount, a compensation over and above the statutory liability of the insurer.

The contention of the Rajasthan State Road Transport Corporation that since it was only hirer and not owner of the Bus. it could not be fastened

with any liability of payment of compensation, was examined and rejected by the Apex Court. Therefore, the learned Counsel for the appellant

submits that it is for the State Road Transport Corporation to bear the burden of compensation in its entirety. However, it is difficult to agree with

his submission.

5. At a first flash, the argument is attractive but on a deeper probing it has got no merit. In the decision cited above the controversy involved therein

was totally different. Issue was with regard to the liability of Rajasthan State Road Transport Corporation with regard to the payment of

compensation over and above the liability of the insurer. A close reading of the aforesaid citation shows that in no uncertain terms the insurer

therein accepted its liability up to the statutory limit. The Rajasthan State Road Transport Corporation was disowning its liability to pay

compensation over and above the statutory liability of the insurer. The ratio laid down in the said decision should be read keeping in mind these

essential facts. It was not a case of total denial of liability by the insurer. In the case on hand, the insurer is completely disowning its liability which is

otherwise on it under the insurance policy to pay the compensation amount to the claimants.

6. At this juncture Shri Sameer Sharma, the learned Counsel for the U.P. State Road Transport Corporation has rightly placed reliance on

Sections 94, 95, 97 and 103 - A and Motor Vehicles Act, 1939 as also on G. Govindan Vs. New India Assurance Co. Ltd. and Others, . In this

case the controversy was whether the insurance policy lapses and consequently the liability of insurer ceases when the insured vehicle was

transferred and no application/intimation as prescribed u/s 103-A of the Act was given. The Apex Court after noticing the conflicting views of

different High Courts has affirmed the judgement of Andhra Pradesh High Court in Sri K. Vijaya Bhaskar Reddy Vs. Government of Andhra

Pradesh and others,

7. It was held that Section 95 requires insurance of vehicle. When the vehicle is covered by insurance not only the owner but any person can use

the vehicle with his permission. It has been held that ""....Section 94 does not require that every person that uses the vehicle shall insure in respect of

their separate use. The decided cases now held that on transfer the policy will lapse and a third party cannot enforce the policy against the

insurance company. We must make it clear that there are two third parties when such transfer took place. One is a transferee who is a third party

to the contract and the other for whose risk the vehicle is insured. We have no hesitation to hold that the transferee who is a third party to the

contract cannot secure any personal benefit under the policy unless there is a novation i.e. the insurance company, the transferor of the vehicle and

the transferee must agree that the policy must be assigned to the transferee so that the benefit derivable, or derived under the policy by the original

owner of the vehicle, the policy holder can be secured by the transferee. Thus, it is clear under a composite policy, covering the risk of property,

person, third party risks, the transferee cannot enforce the policy without the assignment in his favour so far the policy covers the risk of the person

and property. He has no remedy against the Insurance Company.

...

It is incorrect to assume that the moment the title of the vehicle passes to the transfree the statutory obligation u/s 94 ceases and the original owner

is no longer guilty of causing or allowing the purchaser to use the vehicle. The question is when does the statutory liability cease? The mere passing

of title in the vehicle to the transferee will not but an end to this liability.

It has been further held that ""....It is clearly an impracticable view to take that on passing of property in the vehicle, the policy lapses and the

obligation u/s 94 of the Act ceases. In fact as observed by Supreme Court the policy is to the vehicle and hence normally it should run with the

vehicle. It is just to expect a reasonable time for the transferor to make the necessary arrangement to notify the transfer u/s 31 and secure the

certificate u/s 29-A within the time mentioned in those provisions. If this is not allowed, the moment the vendor the money and puts the vehicle in

possession of the transferee, the latter is not in a position to use the vehicle in view of Section 94 till a fresh policy is obtained. He cannot take the

vehicle to his house passing through any public place. When the transferor is liable to pay penalty u/s 31 and also liable to be prosecuted u/s 112

for not notifying the transfer. We are clearly of the opinion such statutory liability makes him to retain the insurable interest as the liability subsists till

he discharges the statutory obligations. We disagree with the view expressed in N. Kanakalukshimi v. R.V. Subba Rao (1972) 1 APLJ 249.

8. The aforesaid decision has been followed in Rikhi Ram and Another Vs. Smt. Sukhrania and Others, and has held that compulsory insurance is

for the benefit of third party. Section 95 (5) shows that it was intended to cover local objectives. The relevant portion from the said judgement is

reproduced below:

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-mailer 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.

(Emphasis supplied)

6. On an analysis of Sections 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.

Very recently the same view has been reaffirmed by the Apex Court in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, . The

relevant passage is reproduced below:

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 u/s 103-A of the 1939 Act or u/s 157 of the 1988 Act in so far as the liability towards a third party is

concerned. Thus, whether the old Act applies to the fails 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.

9. No doubt in these decisions question of transfer of insured vehicle to a purchaser by registered owner vis-a-vis the liability of insurer to the

purchaser was involved. But I see no reason not to apply the above principle of law in the case of an insured vehicle where the registered owner

permits another person to use it. It will make no difference as to whether the insured vehicle has been sold or is permitted to be used by a third

person.

10. Use of vehicle by a third person other than the registered owner with the permission of the registered owner will not absolve the liability of the

insurer as the insurance is of the vehicle and not of the owner. A vehicle which is insured continues to be insured so long it is being driven by an

authorized person competent to drive the vehicle with the permission of the registered owner. The word ""owner"" is defined u/s 2(19) of the Motor

Vehicles Act of 1939 and it is corresponding to Section 2(3) of the Motor Vehicles Act, 1988. It has been held above by the Apex Court that

there is no substantial difference in the definition of word ""owner"" as contained in the Old Act and the New Act.

11. Deoki Devi Tiwari and Ors. v. Raghunath Sahai Chatrath and Ors. 1978 ACJ 169 (DB), a decision of this Court was heavily relied upon by

the appellant. In this case the owner of the Jeep gave the vehicle to U.P. Congress Committee for election purposes. The said Jeep collided with a

Petrol Tanker resulting in death of a passenger on the Jeep. In the said case it was found that the owner had given the Jeep but the said Jeep was

not under the control of the owner and the driver was not agent of the owner. In this fact situation it was held that the Jeep was not being driven for

the purposes of the owner and was not under the control of the owner, consequently the insurer of the Jeep was not liable to pay compensation

amount. On facts, the said decision is distinguishable as the Jeep in question was not being driven for the purposes of the owner and the driver was

not agent of the owner. In that fact situation this Court absolved the insurer from its liability. Apart from the fact that the said judgement was

rendered in a different factual setting, there is hardly any discussion on the relevant sections of the Motor Vehicles Act. Only a brief reference in

one sentence in para 24 of the report has been made that a reading of Sections 94 to 96 also leads to the same conclusion. There is no threadbare

analysis of the scheme of the Motor Vehicles Act or of Sections 94 to 96. The ratio laid down therein should be read and understood in the light of

subsequent judgements of the Apex Court referred to herein above.

12. Having considered the respective submissions of the learned Counsel for the parties as also the decisions relied upon by them, I am of the

opinion that on the facts of the present case, the insurer cannot be absolved from its liability to pay the compensation amount to the claimants on

the ground that ill-fated Bus at the relevant point of time was under the control of U.P. State Road Transport Corporation. The bus in question was

being plied, under a contract by the U.P. State Road Transport Corporation and a presumption would necessarily arise that it was being plied with

the permission of its registered owner and for his benefit. Neither the scheme of the Motor Vehicles Act nor the terms and conditions of the

insurance policy do lend support to the appellants'' contention. It is not a case of breach of any condition of the insurance policy.

13. Viewed as above, I find no merit in the argument of the appellants and it is held that the Tribunal has rightly fixed the liability to pay the

compensation on the insurer - appellants. There is no infirmity in the award under the appeal, on this score.

So far as the question of limited liability of the insurer is concerned, suffice it to say that the said plea is no longer open as the insurance policy is not

on the record of the case.

14. The Apex Court in the case of National Insurance v. Jugal Kishore (supra) has held that;

In all cases where the Insurance Company concerned wishes to take a defence in a claim petition that its liability is not in excess of statutory

liability, it should file a copy of the Insurance Policy along with its defence.

Further it has been observed that filing of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice

between the panics. Obligation on the part of the State or its instrumentalities to act fairly can never be over emphasized.

15. Very recently, the Apex Court in Tejinder Singh Gujral v. Inderjit Singh and Anr. 2007 ACJ 37 has approved the decision of High Court

where a presumption was drawn in absence of insurance policy that liability of insurer was unlimited. The relevant paragraph is reproduced below:

13. The learned Tribunal, however, committed an error in opining that the insurance policy was not required to be proved. Learned Single Judge of

the High Court, in our opinion, rightly held that the insurance policy having not brought on record, a presumption would arise that the liability of the

insurer was unlimited. The learned single Judge adopted a rather liberal approach. He took into consideration the entire evidence on record

including the extent of disability allegedly suffered by appellant.

Thus, it follows that in absence of insurance policy the plea of limited liability cannot be pressed into service by the appellant.

16. Lastly, a feeble attempt was made that the accident was the result of contributory negligence of both the vehicles, the compensation amount

should be appropriated between the appellant and the U.P. State Road Transport Corporation. Indisputably, no permission was granted by the

tribunal or by Court as required u/s 110C (2-A) of the Motor Vehicles Act, 1939 to take such defences as were available to insured person. The

said plea, therefore. also fails.

In the result, there is no merit in the appeal, All the appeals arc hereby dismissed with no order as to costs.