(2016) 07 NCDRC CK 0053

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: 2832 of 2015

ORIENTAL INSURANCE CO.LTD		APPELLANT
	Vs	
SHAMSHER SINGH & ANR		RESPONDENT

Date of Decision: July 26, 2016

Acts Referred:

- Motor Vehicles Act, 1988, Section 157(2), Section 157(2) - Transfer of certificate of insurance
- Sale of Goods Act, 1930, Section 19 - Property pass

Citation: 2016 3 CPR 449

Hon'ble Judges: V.K. Jain

Advocate: Abhishek Kumar, Jitender Dewan, G.K. Sharma

Judgement

1. The complainant/respondent owned a vehicle Tata 408 Trailer bearing registration no. PB-04-K 9045, which he got insured with the petitioner company for the period from 12.08.2010 to 11.08.2011. The vehicle met with an accident on 26.01.2011, during subsistence of the aforesaid policy and was allegedly got repaired by the complainant from Dada Motors Pvt. Ltd. at the cost of Rs.4,34,469/-.

2. On intimation being given to the insurer, a surveyor was appointed to assess the loss and said surveyor assessed the loss to the complainant @ Rs.3,05,000/-. However, the claim came to be repudiated by the insurer by way of repudiation letter dated 01.11.2011, which to the extent relevant, reads as under:- "On receipt of the claim, the surveyor Shri R.P. Bhasin & Co., was deputed for the assessment of loss. On the basis of report and documents submitted by you in support of your claim, the matter has been investigated and it has come to the knowledge of the company that vide general power of attorney dated 27.12.2010, you have sold out the said vehicle to Mr. Rakesh Kumar S/o Shri Daat Raj R/o Mandi Guruharasahai. It has been made clear in the said general power of attorney that you have received the full and final consideration of the above vehicle along with right of route permit etc. and therefore, you have executed the said general power of attorney which is irrevocable and shall not be challenged in any court of law. That all your rights in respect of the above said vehicle have been transferred by way of execution of general power of attorney in favour of Mr. Rakesh Kumar S/o Shri Daat Raj but no information in this regard was given to the insurance company nor any application for transfer of the said insurance policy of the vehicle in the name of said Mr. Rakesh Kumar S/o Shri Daat Raj has ever received in the office of the company. That in the light of the said power of attorney, you were no more the owner of the above said vehicle and as such, you were not having any insurable interest in the said vehicle."

3. Being aggrieved from the repudiation of the claim, the complainant approached the concerned District Forum by way of a consumer complaint. The District Forum, vide order dated 27.08.2012, allowed the complaint and directed the insurer to settle the claim and to pay the same to the complainant. Being aggrieved by from the order of the District Forum, the insurance company approached the concerned State Commission by way of an appeal. The State Commission vide impugned order dated 11.07.2015 dismissed the appeal filed by the insurer. Being still dissatisfied, the company is before us by way of this revision petition.

4. The only question involved in this revision petition is as to whether the complainant had insurable interest in the vehicle at the time when it got damaged in the accident or not. The case of the insurer in this regard is that in fact, the complainant had sold this vehicle to one Shri Rakesh Kumar, and had executed a Power of Attorney in his favour but had camouflaged the sale transaction as a Power of Attorney in favour of Shri Rakesh Kumar.

5. The Power of Attorney executed by complainant in favour of Shri Rakesh Kumar, to the extent relied upon by the petitioner company, authorizes the attorney to do the following acts and deeds:-

"11. To transfer the vehicle and the permit, to settle the consideration and to receive the same to issue receipts there of an to sign and execute all documents required to be executed for such transfer, to appear before any court, tribunal authority in connection there with.

12. xxxxx

13. The General attorney can get the vehicle and permit transferred in his own name or in the name of any other person under this general power of attorney.

14. To apply for curtailment/diversion/extension in respect of the above said route permit and do the needful under his signatures.

15. xxxxx

16. xxxxx

17. xxxxx

18. This general power of attorney is for consideration , therefore, this is IRREVOCABLE as I have received the full and final consideration of the above vehicle along with rights of routes permit and thereof I have executed this general power of attorney. This General Power of Attorney shall not be challenged in any court of law, however, the general attorney shall be responsible for all acts of commission and commission arising out of the vehicle and route permits .

6. Section 19 of the Sale of Goods Act to the extent it is relevant provides that where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears, the rules contained in section 20 to 24 are the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 20 of the Act provides that where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Section 157(2) of the Motor Vehicle Act, requires transferee of the vehicle to apply within 14 days from the date of the transfer to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described therein, in his favour.

7. Dealing with this issue, this Commission in Revision Petition No.1347 of 2008, New India Assurance Co. Ltd. Vs. Smt. Bimlesh decided on 03-09-2014 inter alia held as under:

"13. In our view, when the owner of a vehicle sells the said vehicle to another person, and executes a sale letter, without in any manner postponing the passing of title/property in the vehicle, the ownership in the vehicle passes to the purchaser on execution of the sale letter itself. The delivery of the vehicle only reinforces the title which the purchaser gets to the vehicle on execution of the sale letter in his favour. As far as transfer of the vehicle in the name of the purchaser in the record of the RTO is concerned, that is a requirement for the purpose of the Motor Vehicle Act but that does not postpone the transfer of the ownership in the vehicle to the purchaser till the time the vehicle is transferred in his name in the purchaser in the record of the concerned RTO."

Section 50 of The Motor Vehicles Act casts an obligation upon the transferor and the transferee to report the factum of transfer to the Registering Authority. But this obligation arises only after the transfer of the vehicle has already taken place. The aforesaid provision does not envisage any kind of reporting to or permission of the registering authority even before the ownership of the vehicle is transferred from one person to other. Thus, the above referred provision in my view, only reinforces the view that the ownership of a vehicle is transferred on the sale and delivery of the vehicle and the requirement of informing the transfer to the registering authority is only a post transfer statutory requirement.

Once it is proved that the ownership of the vehicle had transferred by the insured to another person before the theft or accident of the vehicle, as the case may be, the transferee of the vehicle, having no insurable interest in the vehicle at the time of the theft / accident, will not be entitled to any reimbursement from the insurer. He having already sold the ownership of the vehicle if the insurer is made to pay to him, it will not be a reimbursement but will become a bounty for the person who has already sold the vehicle. The insurance policy entitles the insured only to reimburse for the loss suffered by him. If no loss has been suffered by him, there can be no question of any reimbursement from the insurer.

8. The learned counsel for the complainant has relied upon the decision of the Hon''ble Supreme Court in Pushpa alias Leela & Ors. Vs. Shakuntala & Ors. AIR 2011 SC 682 where in a case of payment of compensation to a third party, it was found that despite transfer of membership of the vehicle prior to the accident neither the transferor nor the transferee had taken steps for change of the name of the owner in the certificate of registration. It was held that in view of the omission on his part, the transferor must be deemed to continue as owner of the vehicle for the purpose of Motor Vehicles Act even though under civil law he would ceased to be the owner after the sale of the vehicle and therefore, transferor would be liable to pay compensation to the family of the deceased victims of the accident. The above referred decision has no application to a case involving liability of the insurer in a case where the ownership of the vehicle is transferred but the transferee does not take steps within the prescribed period, for transfer of the certificate of insurance in his name. In fact, this judgment rather supports the view being taken by me, that in civil law, the ownership of the vehicle is transferred on the sale of the vehicle and not on the change of name of the owner in the certificate of registration. While deciding the question as to whether the insured had an insurable claim in the vehicle on the date the accident took place or not, this Commission has to see under the civil law was the owner of the vehicle on that date. The definition of owner given in Section 2(30) of the Motor Vehicles Act, for the purpose of the said Act, will not be relevant while deciding such an issue. In view of the definition given in Section 2 (30) of the Motor Vehicles Act, a person in whose name the vehicle is registered is deemed to be the owner for the purpose of the said Act, despite transferring the ownership of the vehicle to another person but it cannot be said that for the purpose of seeking reimbursement in terms of insurance policy he continues to have an insurable interest in the vehicle, despite having transferred the ownership to another person by sale of the vehicle. The learned counsel for the complainant has also referred to the decisions of this Commission in Banowarilal Agrawalla Vs. National Insurance Co. Ltd. IV (2005) CPJ 110 NC, National Insurance Company Ltd. Vs. Jai Pal Singh Revision Petition No.2262 of 2007 decided on 11.07.2011 and Prem Devi Vs. M/s. Cholamandalam MS General Insurance Co. Ltd., Revision Petition No.2728 of 2014 decided on 03.3.2015. In Banowarilal Agrawalla (supra), the complainants purchased a vehicle which the previous owner had got insured with Respondent No.1, National Insurance Company Ltd. The vehicle having met with an accident, a claim was preferred by the complainant, which the insurer repudiated on the ground that the policy had not been transferred in the name of the complainant. Being aggrieved, the complainant approached the concerned District Forum by way of a complaint. The complaint having been dismissed by the District Forum, he approached the concerned State Commission by way of an appeal. The appeal also having been dismissed, he approached this Commission by way of a revision petition. Noticing that though the vehicle had been transferred in the name of the complainant, he had not approached the insurer for transfer of the policy in his name, it was held that the petitioner had no locus-standi to file the complaint. However, this Commission did not stop at dismissing the revision petition on the aforesaid finding and directed that the claim could be filed by the insured as per the policy and the insurer would consider the case as per law, and settle the same as per the terms of the policy. Since the insured was not a party to the petition, and this Commission had taken the view that the petitioner / complainant had no locus standi to file the complaint, the direction to the insured i.e. the previous owner of the vehicle to submit the claim before the insurer, coupled with a direction to the insurer to consider the claim sympathetically and settle the same as per the terms of the policy was in the nature of an obiter and therefore, does not constitute a binding legal precedent. The decision of this Commission in Jai Pal Singh (supra) was also based upon the decision in Banowarilal Agrawalla (supra) without noticing the fact that this Commission in Banowarilal Agrawalla had ruled against the petitioner / complainant and therefore, the said decision also does not constitute a binding legal precedent. The decision in Prem Devi (supra) was based upon the decisions in Jai Pal Singh and

Banowarilal and therefore, the said decision also does not constitute a binding legal precedent. Moreover, in M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd. 1996 SCC (1) 221, the Hon''ble Supreme Court clearly held that Section 157 of the Motor Vehicles Act, dealing with deemed transfer of the insurance in favour of the person to whom the vehicle is sold applies only in respect of third party risks and if the policy of the insurance covers other risks as well, e.g. damage caused to the vehicle of the insured himself, that would be matter falling outside Chapter XI of the Motor Vehicles Act and in the realm of the contract for which there must be an agreement between the insurer and the transferee, the former undertaking covering the risk or damage to the vehicle. Therefore, any direction paying the claim to the insured, despite his having sold the vehicle before the date of the theft / accident of the vehicle would be contrary to the decision of the Hon''ble Supreme Court in M/s. Complete Insulations (P) Ltd. (supra) and therefore per-incuriam.

9. It is evident from a perusal of clause 18 of the Power of Attorney that the transaction between the complainant and Mr. Rakesh Kumar, was in fact a transaction of sale of the vehicle, which was camouflaged as a Power of Attorney in favour of the purchaser.

10. The Power of Attorney in favour of Shri Rakesh Kumar having been executed on 27.12.2010 and the said document being a camouflage to cover the true nature of the transaction of sale of the vehicle, the purchaser Shri Rakesh Kumar became owner of the vehicle on that date. As far as recording the change of ownership of the vehicle in the records of the concerned RTO is concerned, that being the statutory requirement under Motor Vehicle''s Act, it was for Shri Rakesh Kumar to get the records changed accordingly, but as far as ownership of vehicle is concerned, it stood transferred to him on the date the Power of Attorney was executed.

11. Since the complainant Shri Shamsher Singh did not own the vehicle on the date it met with an accident, he did not have insurable interest in the subject matter of the insurance and consequently is not entitled to any reimbursement. As far as Shri Rakesh Kumar is concerned, since there was no privity of contract between him and the petitioner company, he having neither got the insurance transferred in his name nor having applied for such transfer, despite purchasing the vehicle from Shri Shamsher Singh, and the statutory period of 14 days from the date of transfer for applying to the insurer for transferring the certificate of insurance in his favour having already expired before the accident happened on 26.01.2011, he also is not entitled to any reimbursement from the petitioner company.

12. For the reasons stated hereinabove, the impugned orders are set aside and complaint is consequently dismissed with no order as to costs.