
National Insurance Corporation Vs State of West Bengal

Civil Order No. 12917 (W) of 1992

Court: Calcutta High Court

Date of Decision: Aug. 14, 1992

Acts Referred:

Motor Vehicles Act, 1988 " Section 50, 51(5)

Citation: (1994) 1 ILR (Cal) 156

Hon'ble Judges: Haridas Das, J

Bench: Single Bench

Advocate: Talier Ali and D.K. Ghosh, for the Appellant; Goutam Som, for State and N.I. Khan, for Private Respondent No. 3, for the Respondent

Judgement

Haridas Das, J.

In this writ application the Petitioners have prayed for issue of a writ in the nature of mandamus directing the Respondents

specially the Respondent No. 3 to register a vehicle, namely an Ambassador car bearing No. WNF 48 in the name of the Petitioner No. 1

National Insurance Co. Ltd. (hereinafter referred to as the Company) within a specified time.

2. The Company is a subsidiary of General Insurance Corporation of India which is a Government Company. The company for the benefit of its

employees lets out motor vehicles to its employees for their official use and the employees in turn hypothecate the vehicles in favour of the

Company. One Ghanashyam Das Ladia was an Administrative Officer under the Company. The aforesaid motor car was purchased by the

Company at a cost of Rs. 80, 474-65 P, in the name of Ghanashyam Das Ladia and the payment of purchase price was made by the Company by

cheque, Ghanashyam Das Ladia in his turn hypothecated the car in favour of the Company. The fact that the vehicle was hypothecated to the

Company was mentioned in the purchase vouchers and delivery challans being Annex. "A" to the writ petition. The aforesaid G. D. Ladia died on

January 7, 1986. During his life-time he repaid a sum of Rs. 6,224-65 P. and a sum of Rs. 74,250 is said to be still due and outstanding in the

name of the said G. D. Ladia. After the death of G. D. Ladia his son, Respondent No. 5, being one of the heirs of the deceased Ladia made over

possession of the vehicle in favour of the Company along with the blue book on April 2, 1986. Thereafter, the Company wrote a letter to the

Respondent No. 3 to register the vehicle in the name of the Company. Various other letters were also written thereafter, but the Respondents did

not register and/or refused to register the vehicle in the name of the Company on the ground that unless all the heirs of the deceased registered

owner G. D. Ladia gave a consent letter, the vehicle could not be transferred and registered in the name of the company (Vide Annex. "G" to the

writ petition), in view of the provisions of Section 50 of the Motor Vehicles Act, 1988 (for short the "Act").

3. It is contended by the Petitioners that u/s 51(5) the Company, which purchased the vehicle in the name of the deceased Ladia and with which he

hypothecated the vehicle, being in possession of the vehicle is entitled to apply for registration of the vehicle in its name and that Section 50 of the

Act has no application in the present case.

4. Mr Khan, the learned Advocate appearing for the Respondent No. 3, has submitted that unless the legal heirs of the deceased registered owner

of the vehicle give a consent letter, the vehicle cannot be registered in the name of the Company.

5. I have gone through the materials on record and have also considered carefully the submissions made by the learned Advocate appearing for the

parties. On a perusal of Annex. "A", it will appear that the vehicle which was purchased in the name of G. D. Ladia was in fact hypothecated with

the Company. The Petitioners have filed affidavit-of-service to show that notice and copies of the writ application have been served upon the

Respondents Nos. 4 to 10. But they have not entered appearance to dispute. The averments made in the writ application that the Company paid

the price for purchase of the vehicle and that G. D. Ladia hypothecated the vehicle with the Company. The Company is now in possession of the

vehicle along with the blue book. The blue book was submitted by the Company before the registering authority along with the application for

registering vehicle in its name. In the blue book in which the vehicle was registered in the name of G. D. Ladia, there is also an entry, as required

under the provisions of the Act, to the effect that the vehicle was hypothecated with the Company.

6. There is, therefore, nothing to disbelieve the case of the Company that it came to have possession of the vehicle on being surrendered by one of

the heirs of the deceased G. D. Ladia. Section 51(5) of the Act may be quoted below for convenience:

Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into

the said agreement, satisfies the registering authority that he has taken possession of the vehicle owing to the default of the registered owner under

the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority

may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by

registered post with acknowledgement due at his address entered in the certificate of registration) and notwithstanding that the certificate of

registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the

registered owner has entered into the said agreement:

Provided that fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the

remaining period for which the certificate cancelled under this Sub-section would have been in force.

7. Section 51(5) clearly provides that if the person with whom the registered owner hypothecated the vehicle can satisfy the registering authority

that he has taken possession of the vehicle owing to the default of the registered owner under the provisions of the agreement, he can make

application for registering the vehicle in his name. Therefore, in view of the provisions of Section 51(5) the Company is entitled to get the vehicle

registered in its name subject of course to the conditions that the Company makes an application in the prescribed form and pays all the requisite

fees.

8. For the aforesaid reasons, I dispose of this writ application by making the following directions.

(1) The Petitioner No. 1 shall make necessary application in the prescribed form, if not already made, before the Respondent No. 3 for registering

the vehicle in question in its name and shall pay all requisite fees and charges payable under the law.

(2) If any such application is made, the Respondent No. 3 shall within a period of four weeks from the date of communication of this order register

the vehicle in the name of the Company in accordance with law in place of G. D. Ladia.

(3) The Petitioners, both jointly and severally, shall be bound to identify if in future any claim is made by and is found due to the heirs of the

deceased G. D. Ladia by reason of the registration of the vehicle in the name of the Petitioner No. 1. The Petitioners are directed to give an

undertaking before this Court to this effect. There will be no order as to costs.

9. Let a xerox copy of this order be given to the learned Advocate appearing on behalf of the Petitioner and on undertaking to pray for and obtain

certified copy of the order on payment of usual charges.