United India Insurance Co. Ltd., Shimla vs Tilak Singh And Ors on 4 April, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1576, 2006 AIR SCW 1822, 2006 (3) AIR KANT HCR 371, (2006) 41 ALLINDCAS 65 (SC), (2006) 3 ALLMR 188 (SC), 2006 (2) SCC (CRI) 344, 2006 (2) ALL CJ 1279, 2006 (5) SRJ 513, (2006) 3 JCR 9 (SC), 2006 (3) ALL MR 188, 2006 (4) SCALE 67, 2006 (4) SCC 404, 2006 ALL CJ 2 1279, (2006) 2 ACC 1, (2006) 3 ANDHLD 635, (2006) 44 ALLINDCAS 326 (AP), (2006) 2 KER LT 884, (2006) 3 GUJ LR 2379, (2006) 2 PUN LR 297, (2006) 3 RAJ LW 1781, (2006) 4 SCJ 596, (2006) 3 ANDHLD 75, (2006) 3 SUPREME 332, (2006) 3 RECCIVR 168, (2006) 4 SCALE 67, (2006) 1 WLC(SC)CVL 766, (2006) 3 ACJ 1441, (2006) 63 ALL LR 462, (2006) 4 ANDH LT 23, (2006) 2 ALL WC 2015, (2006) 4 CIVLJ 548, (2006) 2 CURCC 152, (2006) 2 TAC 312, (2006) 2 CAL LJ 115, (2006) 131 COMCAS 163, (2006) 34 OCR 179

Bench: B.N. Srikrishna, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (civil)  2291 of 2000

PETITIONER:
United India Insurance Co. Ltd., Shimla

RESPONDENT:
Tilak Singh and Ors.

DATE OF JUDGMENT: 04/04/2006

BENCH:
B.N. Srikrishna & Lokeshwar Singh Panta

JUDGMENT:
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JUDGMENT Srikrishna, J.

The core issue involved in this appeal is: Whether a statutory insurance policy under the Motor Vehicles Act, 1998, intended to cover the risk to life or damage to properties of third parties, would cover the risk of death or injury to a gratuitous passenger carried in a private vehicle.

Respondent No. 5 Bal Krishan had insured his scooter with the appellant- insurance company for the period 7.3.1989 to 6.3.1990. For covering liability to pillion passengers endorsement of I.M.T. 70 pertaining to accident to unnamed hirer/driver/pillion passenger, is required on the insurance policy, which may be obtained by payment of additional premium. The insurance policy covering the

scooter of respondent no.5. did not contain an endorsement of IMT 70.

On 23rd March 1989 the scooter was admittedly sold by respondent no.5 to respondent no.1, Tilak Raj. It is also an admitted position that the registration certificate of the scooter was transferred in the name of Tilak Raj but no notice thereto was given by the transferor respondent no. 5 to the appellant-insurance company for transfer of the insurance policy and the insurance certificate in the name of the transferee i.e. respondent no. 1. With effect from 1.7.1989 the Motor Vehicle Act, 1939 (hereinafter referred to as the `1939 Act') was repealed and the Motor Vehicle Act, 1988 (hereinafter referred to as the `1988 Act') came into force. On 31.10.1989 one Rajinder Singh, who was riding as a pillion rider while the scooter was being driven by respondent no. 1, died as a result of an accident. Respondents 2 to 4 being the legal heirs (wife and minor daughters) of the deceased Rajinder Singh moved an application under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for the death of the deceased Rajinder Singh. This petition was opposed by the insurance company on two grounds (a) that the deceased was a pillion rider and the insurance policy did not cover the liability towards a pillion rider and, (b) that, although, the original insurer respondent no. 5. had sold the scooter to respondent no.1 before the accident neither was any intimation of such sale was given, nor was the insurance policy got transferred in favour of respondent no.1. Respondent no.5 denied his liability on the ground that he had ceased to be the owner of the scooter prior to the accident. The Motor Accidents Claims Tribunal (hereinafter referred to as `the tribunal') made an award dated 8.12.1992 and came to the conclusion that the accident had taken place due to rash and negligent driving on the part of respondent no.1. It also held that the claimants (respondents 2 to 4) were entitled to a total compensation of Rs. 3,89,000/- The tribunal absolved the appellant-insurance company from liability on the ground that no notice of the transfer of the insured vehicle had been given to the appellant-insurance company in the manner prescribed by the 1939 Act. Only respondent no.1 was held liable for payment of the compensation determined by the tribunal together with interest and costs.

Respondent no.1 appealed against the award by FAO No. 9/93 before the High Court and assailed the findings of the tribunal on all the issues, particularly its absolution of the insurance company from liability. Respondents 2 to 4 also filed cross-objections and sought increase in the compensation awarded. The High Court by the impugned judgment upheld the finding, as to the quantum of compensation at Rs. 3,89,000/- but set aside the finding of the tribunal that the insurance company was not liable under the policy and held that the insurance company was jointly and severally liable along with the appellant for the payment of the amount of compensation determined and awarded. Being aggrieved thereby, the appellant-insurance company is before this Court.

The learned counsel for the appellant-insurance company has urged three contentions in support of the appeal: (a) The law applicable in determining the liability of the insurance company would be the 1939 Act and not the 1988 Act; (b) under Section 103-A of the 1939 Act if a transferor of an insured vehicle does not apply to the insurance company for transfer of certificate of insurance and the policy in favour of the transferee in the manner prescribed, the insurer was absolved from the liability; and (c) since the deceased was a pillion rider the risk of death or disability of pillion rider was not covered under the policy.

The first question that arises is, whether the 1939 Act or the 1988 Act would govern the situation. Undoubtedly, under section 103-A of the 1939 Act, if there was in existence an insurance policy covering the vehicle and the vehicle was transferred, then there was no automotive transfer of policy of insurance but it was open to the transferor to apply in the prescribed form to the insurer for transfer of certificate of insurance before the transfer and, if within 15 days of receipt of such application by the insurer such application had not been refused, the certificate of insurance and the insurance policy, were deemed to have been transferred in favour of the transferee. The 1988 Act however, brought about a drastic change in the situtation. Section 157 of the 1988 Act, which corresponds to the earlier section 103-A of the 1939 Act, provides that upon the transfer of 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". The explanation to the section makes it clear that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

Learned counsel for the appellant insurance company contended that vide sub-section (1) of section 217 of 1988 Act, the 1939 Act stood repealed but sub-section (4) provides: "The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1987) with regard to the effect of repeals." There was no intention evidenced in the 1988 Act to make a clean departure from the previous position in law. Section 217 (4) evidences an intention to the contrary. Thus, the situation would be governed by Section 6(c) of the General Clauses Act, which provides that the repeal of an Act would not affect any right, privilege obligation or liability acquired, accrued or incurred under any enactment so repealed. The learned counsel relied on the judgment of this Court in Ramesh Singh and Anr. v. Cinta Devi and Ors., [1996] 3 SCC 142 in support of his contention.

Section 6(c) of the General Clauses Act would hardly have any application to a cause of action in favour of a person who was neither a transferor, nor the transferee of the insured vehicle. At the most, the failure to give an intimation under Section 103-A of the 1939 Act would create a liability on the part of the transferor vis-a-vis the insurance company, but would hardly affect a third party's claim for compensation. This position of law is well established by judgments of High Courts and this Court.

Citing with approval the judgment of the Full Bench of the Andhra Pradesh High Court in Madineni Kondaiah and Ors. v. Yaseen Fatima and Ors., AIR (1986) AP 62 and contrasting the provision of section 103-A of the 1939 Act with Section 157 of the 1988 Act, this Court said in Complete Insulations Ltd. v. New India Assurance Co. Ltd., [1996] 1 SCC 221 (vide para 6).

> "Now, under the old Act although the insurer could refuse to transfer the certificate of insurance in certain circumstances and the transfer was not automatic as under the new Act, there was under the old law protection to third parties, that is victim of the accident. The protection was available by virtue of Sections 94 and 95 of the old Act."

The judgment of the Andhra Pradesh High Court in Kondaiah (supra) was specifically referred to and affirmed in the subsequent judgment of this Court in New India Assurance Co. Ltd. v. Sheela Rani (Smt.) and Ors., [1998] 6 SCC 599, where this Court observed after referring to the judgment in Complete Insulations (supra) as follows (vide para 10)"

> "A careful reading of the judgment of this Court, extracted as above, will clearly show that on the transfer of the vehicle about which intimation was given though not strictly as required under Section 103-A of the Act and in the absence of refusal from the insurer the Policy already given by the Insurance Company to the transferor will not lapse."

In G. Govindan v. New India Assurance Co. Ltd. and Ors., [1999] 3 SCC 754, this Court had occasion to refer to the decisions of the Full Bench of the Andhra Pradesh High Court in Kondaiah's case (supra), Complete Insulations Ltd. (supra) and New India Assurance Co. Ltd. v. Sheela Rani (Smt.) and Ors., in the context of the 1988 Act and, after contrasting it with the provisions of 1939 Act, held (vide para 13):

> `In our opinion, both under the old act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what implicit in the provision of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts."
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> In Rikhi Ram and Anr. v. Sukharnia (Smt.) and Ors., [2003] 3 SCC 97, a Bench of three learned judges of this Court had occasion to consider section 103-A of the 1939 Act. This court re-affirmed the decision in G. Govindan's case (supra) and added that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the insurance company, as the purpose of the legislation was to protect the rights and interests of the third party.
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> 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 under section 103-A of the 1939 Act or under section 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 facts 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 come into force. Hence it is the 1988 Act which would govern the situation.

Turning to the third contention of the appellant, the question as to whether a gratuitous passenger would be covered by a statutory insurance policy, has been the subject matter of a number of decisions of this Court.

A. The 1939 Act:-

In Pushpabai Purshottam Udesh and Ors. v. M/s. Ranjit Ginning and Pressing Co. (P) Ltd. and Anr., [1977] 2 SCC 745 the insurance company had raised the contention that the scope of statutory insurance under section 95(1)(a) read with 95(1)(b)(i) of the Motor Vehicles Act, 1939 does not cover the injury suffered by a passenger and, since there was a limited liability under the insurance policy, the risk of the insurance company would be limited to the extent it was specifically covered. After referring to the English Road Traffic Act, 1960, and Halsbury's Laws of England (Third Edition) this Court came to the conclusion that section 95 of the 1930 Act required that the policy of insurance must be policy insuring the insured against any liability incurred by him in respect of death or bodily injury to a third party and rejected the contention that the words "third party" were wide enough to cover all persons except the insured and the insurer. This Court held as under : (vide para 20) "Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

In Amrit Lal Sood and Anr. v. Kaushalya Devi Thapar and Ors., [1998] 3 SCC 744 it was held that in that particular case that the terms of the policy were wide enough to cover a gratuitous passenger and, therefore, there was liability towards the gratuitous person.

In Dr. T.V. Jose v. Chacko P.M. alias Thankachan and Ors., [2001] 8 SCC 748 Variava, J. had an occasion to survey the law with regard to the liability of insurance companies in respect of gratuitous passengers. After referring to a number of decisions of this Court the learned Judge observed (vide para 20) "the law on this subject is clear, a third-party policy does not cover liability to gratuitous passengers who are not carried for hire or reward." The insurer company was held not liable to reimburse the appellant.

Thus even under the 1939 Act the established legal position was that unless there was a specific coverage of the risk pertaining to a gratutious passengers in the policy, the insurer was not liable. We find that clause

(ii) of the proviso to Section 95(1) has been eliminated while drafting section 147 of the 1988 Act. Under sub-section (1)(b) under the 1988 Act, compulsory policy of insurance required under the statute must now provide against any liability which may be incurred by the owner of the vehicle "in respect of the death of or bodily injury to any person including owner of the goods or authorised

representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicles in a public place."

B. The 1988 Act :

> The argument that the risk pertaining to a third party would extend to a person other than the parties to the insurance contract was raised in New India Assurance Company v. Satpal Singh and Ors., [2000] 1 SCC 237 where after contrasting the language of section 95 (1) of the 1939 Act with the provisions of section 147 (1) of the 1988 Act this Court held:
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> "The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratutious passengers in a vehicles, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

The view expressed in Satpal Singh's case (supra) however, has been specifically overruled in the subsequent judgment of a Bench of three judges in New India Assurance Company v. Asha Rani and Ors., [2003] 2 SCC

223. In that case the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of section 147 of the 1988 Act, as contrasted with section 95 of the 1939 Act, held that the judgment in Satpal Singh's case (supra) had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed (vide paras 25 and

27):

> "25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a `good carriage'.
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> 27. Furthermore, sub-clauses (i) of Clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third caused by or arising out of the use of the vehicle in a public place. Whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service caused by or arising out of the use of

the vehicle in a public place."

In our view, although the observation made in Asha Rani's case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that it owed no liability toward the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger.

For the aforesaid reasons, we allow the appeal and set aside the impugned judgment holding that the appellant-insurance company is not liable to pay the compensation awarded to the claimants.

The appeal is accordingly allowed. No orders as to costs.