G. Govindan vs New India Assurance Co. Ltd. And Ors on 8 April, 1999

Equivalent citations: 1999 (2) LRI 461, AIR 1999 SUPREME COURT 1398, 1999 (3) SCC 754, 1999 AIR SCW 1077, (1999) 2 KER LT 37, 1999 (3) ADSC 473, (1999) 2 PUN LR 274, 1999 (2) SCALE 491, 1999 SCC(CRI) 483, 1999 (2) ALL CJ 1171, 1999 (122) PUN LR 274, 1999 (5) SRJ 186, 1999 (2) UJ (SC) 1121, (1999) 2 JT 622 (SC), (1999) 2 ANDHWR 136, (1999) 2 SCJ 323, (1999) 2 MAD LW 528, (1999) 2 TAC 244, (1999) 3 SUPREME 506, (1999) 2 RECCIVR 489, (1999) 2 SCALE 491, (1999) 1 ACC 483, (1999) 1 ACJ 781, (1999) 2 ALL WC 1539, (1999) 97 COMCAS 443, (1999) 2 ICC 322, (1999) 3 CALLT 34, (1999) 3 RAJ LW 385

Author: K. Venkataswami

Bench: K. Venkataswami

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           CASE NO.:
Appeal (civil)  1816 of 1982

PETITIONER:
G. GOVINDAN

RESPONDENT:
NEW INDIA ASSURANCE CO. LTD. AND ORS.

DATE OF JUDGMENT: 08/04/1999

BENCH:
K. VENKATASWAMI & A.P. MISHRA

JUDGMENT:
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JUDGMENT 1999 (2) SCR 476 The Judgment of the Court was delivered by K. VENKATASWAMI, J. An important question of law under the Motor Vehicles Act, 1939 (hereinafter called `the Act') has arisen for our consideration in this appeal.

The question is whether the Insurance Policy lapses and consequently the liability of the insurer ceases when the insured vehicle was transferred and no application/intimation as prescribed under section 103A of the Act was made/given.

We find from the case law cited before us at the bar that there are conflicting views among the High Courts on this issue. Three different High Courts' Full Bench judgments were brought to our notice. The High Courts of Delhi and Karnataka had answered the issue in the affirmative while the High

Court of Andhra Pradesh (all Full Bench judgments) had answered the issue in the negative. Brief facts are the following :-

> The appellant herein had purchased the motor vehicle (bus) from the fourth respondent on 15.8.74. However, neither the appellant (transferee) nor the fourth respondent (transferor) intimated the sale transaction to the first respondent-insurer as required under Section 103-A of the Act. Nevertheless, the finding of the Motor Accident Claims Tribunal (for short `Claims Tribunal') was to the effect that the insurer knew about the transfer. The accident, which gave rise to the claim for compensation by the respondents 2 and 3, took place on 18.5.75. It is the finding of the Claims Tribunal that even after the date of the accident and knowing that the fourth respondent had sold the bus to the appellant, the insurer received the premium for subsequent periods, namely, 18.11.75 to 17.11.76,30.11.76 to 29.11.77 and from 30.11.77 to 29.11.78. This finding of the claims Tribunal was not disturbed by the High Court while deciding the appeal against the order of the Claims Tribunal.

The Claims Tribunal, after finding that the insurer had knowledge of the transfer held, that having received the premium it cannot repudiate its liability to pay the compensation. We are not concerned here with the quantum of compensation. We are concerned only with the liability of the insurer to pay the compensation. The Claims Tribunal found that the insurer as well as the appellant are liable to pay the compensation to the claimants.

Aggrieved by the decision of the Claims Tribunal, the insurer (first respondent herein) preferred an appeal to the High Court. The Division Bench of the Madras High Court, reversing the view taken by the Claims Tribunal, held as follows :- "Knowledge by itself is of no use. There ought to have been an application for transfer in the prescribed form or atleast a request therefore..... We are unable to sustain the finding of the Tribunal in the instant case that merely because the Insurance Company, the appellant herein, had knowledge of the transfer of the ownership of the vehicle, its liability under the Policy, which never got transferred in favour of the transferee, viz., the fourth respondent herein, must be deemed to have continued, so as to bear the liability of compensation."

Accordingly, the High Court allowed the appeal and discharged the liability of the insurer from payment of compensation.

The appellant-transferee, aggrieved by the order of he High Court, has preferred this appeal by special leave.

In Madineni Kondaiah & Ors. etc. v. Yaseen Fatima & Ors. etc., AIR (1986) A.P. 62 a Full Bench of the Andhra Pradesh High Court had occasion to consider an identical question. The leading judgment was by Raghuvir. J. Kodandaramayya, J., in his separate concurring judgment, had also analysed the relevant provisions of the Act, compared the provisions of the Act with the provisions in English Act and after noticing the judgments of the Courts in India and England, held as follows :-

> "A perusal of S. 94 clearly discloses that the statute intended to give protection to a third party in respect of death or bodily injury or damages to their property while using the vehicle in a public place. Hence the insurance of the vehicle under S.94 read with S.95 is made compulsory. Those two provisions do not extend the compulsory insurance to the vehicle or to the owner. In fact, these two provisions made exception to protect the life or limb of the driver of the vehicle or the passenger in the vehicle except public service vehicle. Thus, it is seen the compulsory insurance is for the benefit of third parties. Hence, it is clear that the insurance policy covering three kinds of risks i.e. person (owner), property (vehicles) and third parties is clearly in the nature of composite one. The public liability (third party liability) alone is compulsory. While considering whether the transfer of the vehicle would put an end to the policy, we must see whether such a composite policy will lapse putting an end to all the three kinds of risks undertaken by the insurance company. For this purpose S. 95(5) must be looked into :
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> "Notwithstanding anything elsewhere contained in any law, to person issuing a policy of insuranace under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

This section is clearly based upon provision of English statute. This section is analogous to the provision in England where the third party's rights against Insurers Act 1930 was enacted to confer on third parties rights against the insurer of the third party risks. The present Act made a specific provision in case where the insurer becomes insolvent or dies (vide Ss. 101 and 102 of the Act) to obviate any doubt or dispute in respect of such events. Section 95(5) intended to cover two legal objections, firstly that no one who was not a party to a contract could bring an action on a contract, secondly that a person who has no interest in the subject-matter of an insurance can claim the benefit of insurance. Thus this provision puts beyond doubt removing these two objections and making an exception to the general law of contract. Now the question is whether such rights secured to the third party by insuring the vehicle can be defeated by transferring the vehicle during the period when the policy is in force. It is significant to note that S.95 requires the insurance of the vehicle. Once the vehicle is'covered by the insurance not only the owner but any person can use the vehicle with his permission. S.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 he 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 transferee the statutory obligation under 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 put an end to this liability. For this purpose we must examine two more provisions of the Act. Under S. 31 the transferor shall within 14 days of the transfer report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee and within forty five days of the transfer forward tc the registering authority no objection certificate obtained by him under S.29-A. Sec. 29-A contemplates issuing of no objection certificate both on the occasion of assignment of a new registration mark and also while transferring the motor vehicle. The registering authority is enjoined to issue a certificate within a period of thirty days and if no orders are passed the registering authority shall be deemed to have granted the no objection certificate. The failure to comply with Section 31 is made punishable under S.112. However, as an alternative measure it also provided under S 31(1-A) that if the transferor or transferee fails to comply with the requirements of S. 31 they have to pay a fine of Rs.100 or the prescribed amount considering the period of delay on their part by way of penalty. It is pertinent to note that S. 31 was amended by Act 100 of 1956. Under S. 31 as it stood prior to this amendment in 1956 only the transferee was required to report the transfer of the ownership and was expected to forward a certificate of registration to the registering authority within thirty days of the transfer prior to this amendment their was no statutory obligation on the transferor as is now provided in sub-clause (a) of sub-sec.(l) of S. 31 to notify the transfer to the registering authority within whose jurisdiction the transfer is effected. Thus we see till the transferor fulfils the statutory obligation under S. 31 his liability continues. Further he is the ostensible owner of the vehicle so long the registration is not changed. The liability to pay tax continues irrespective of his rights against the transferee for reimbursement. In fact it was ruled in Northern India General Insurance Company Ltd. v. Kanwarjit Singh, (1973) ACC CJ 119 : AIR (1973) All 357 that a registered owner would have sufficient interest to effect insurance because he is the ostensible owner. The question raised in that case was whether the registration in favour of benamidar is valid when the registered owner of the vehicle is only benamider when the real owner never obtained the insurance. It was held that the registered owner has sufficient interest to effect insurance because he is the ostensible owner and there is nothing in S. 94 which could be interpreted to mean that it is only the real owner who could effect the insurance. Any person who uses the vehicle or allows any other person to use the vehicle could also get the insurance effected. Thus, it is seen the public liability to notify the transfer and secures no objection certificate under S. 31 read with S. 94. would make the original owner retain the insurable interest. The insurable interest in this case is not the proprietary interest but the public liability, not to run the vehicle or cause or allow any person to run the vehicle without insurance and also to notify the transfer of such vehicle to the registering authority. So long such obligation continues notwithstanding the cession of proprietary interest the insurable interest which is the foundation for the continuance of the operation of the policy stands.

Thus, we are clearly fortified in our view that the insurable interest in the property is not necessary in the case of public liability insurance. The test is whether the liability under the statute ceased or

not notwithstanding the passing of title and hence we respectfully dissent with the view expressed by various High Courts that on the sale of the vehicle the insurable interest ceases and the policy lapses. We agree that any claim of the transferee in respect of his property and his person cannot be enforced against the insurance company. He being a stranger he cannot have any claim against the insurance company. But the third partly risk is concerned so long the obligations under the statute are not fulfilled, as contemplated under sec. 31 read with sec. 94, he continues to have the insurable interest till such obligations are fulfilled. Any prudent purchaser should take steps to get the policy transferred to him under S.103. The insurer is bound to accept the transfer and can only refuse to consent on specified grounds. It is clearly an impracticable view to take that on passing of property in the vehicle, the policy lapses and the obligation under 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 trnasferor to make the necessary arrrangement to notify the transfer under S.31 and secure the certificate under S.29-A within the time mentioned in those provisions. If this is not allowed, the moment the vendor receives the money and puts the vehicle in possession of the transferee, the latter is not in a position to uses the vehicle in view of S. 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 under S.31 and also liable to be prosecuted under 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 obligation. We disagree with the view expressed in (1972) IAPLJ

249. The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the vehicle makes the transaction complete and the title will pass to the purchaser. When the policy of insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property (vehicle) and the third party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is a novation. So far the third party risk is concerned the proprietary interest in the vehicle is not necessary and the pubic liability continues till the transferor discharges the statutory obligation under Ss. 29-A and 31 read with S.94 of the Act. Till he complies with the requirement of S.31 of the Act, the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risks are concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of S.3I. the liability of the transferor susbsists and the policy is in operation so far it relates to the third party risks. We answer the second question accordingly.

(Emphasis supplied) In Complete Insulations (P) Ltd. v. New India Insurance Co. Ltd., [1996] 1 SCC 221 a three Judge Bench of this court had considered the scope of section 103-A and Sections 94 and 95 of the 1939 Act and compared the same with section 157 & 146, 147 and 156 of the Motor vehicles Act, 1988. In that case the transferee of the vehicle contended inter alia that he was entitled to get the compensation for the damage caused to the vehicle in an accident that took place after the transfer notwithstanding the fact that the insurance policy was not transferred in his name. The Consumer Disputes Redressal Commission, Chandigarh directed the insurer to pay a sum of Rs. 83,000 i.e. the insured value of the vehicle. The insurer preferred an appeal to the National

Consumer Disputes Redressal Commission which set aside the order of the Commission at Chandigarh and dismissed the claim of the transferee. The National Commission after referring to the full bench judgment in particular the separate concurring judgment of Kodandaramayya J. of Andhra Pradesh High Court applied the ratio in that judgment in support of its decision. The transferee preferred an appeal to this Court by Special Leave. This Court after referring to the separate judgment of Kodandaramayya J. approved the principle laid down therein, applied the same and upheld the decision of the National Commission.

This Court in the said judgment held that the provisions under the new Act and the old Act are substantially the same in relation to liability in regard to third party. This Court also recognised the view taken in the separate judgment in Kondaiah's case that the transferee-insured could not be said to be a third party qua the vehicle in question. In other words, a victim or the legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee.

This Court further held as follows :-

> "Now, under the old Act although the insurer could refuse to tansfer 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 24 and 95 of the old Act.
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> (Emphasis supplied.) The same view was taken in New India Assurance Co. Ltd. v. Sheela Rani (Smt.) & Ors., [1998] 6 SCC 599.
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> The heading of Chapter VIII of the old Act reads as "Insurance of Motor Vehicles against Third Party Risks". A perusal of the provisions under Chapter VIII makes it clear that the Legislature made insurance of motor vehicles compulsory against third-party (victims) risks. This Court in New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani & Ors., AIR (1964) SC 1736 after noticing the compulsory nature of insurance against third- party observed that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy.
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> In our opinion that 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 was implicit in the provisions 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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> Undoubtedly the full bench decision of the Delhi High Court in Anand Samp Sharma v. P.P. Khurana & Ors., (1989) ACJ 577 and also the full bench decision of Karnataka High Court in National Insurance Co. Ltd. v. Mallikarjun & Ors., AIR (1990) Karnataka 166 differed from the view taken by the Andhra Pradesh High Court in

Konadaiah's case and held that the third party liability of the insurer comes to an end on transfer of vehicle by the insured to someone else unless the procedure prescribed for transfer of policy was fulfilled. As noticed earlier, learned counsel on both sides brought to our notice a number of judgments of different High Court taking divergent views. We do not feel it necessary to refer to all those decisions in view of the full bench judgments of three High Courts noticed earlier.

As between the two conflicting views of the full bench judgments noticed above, we prefer to approve the ratio laid down by the Andhra Pradesh High Court in Kondaiah's case as it advances the object of the Legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy. In other words in accord with the well- settled rule of interpretation of statutes we are inclined to hold that the view taken by the Andhra Pradesh High Court in Kondaiah's case is preferable to the contrary views taken by the Karnataka and Delhi High Courts (supra) even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the Legislature in protecting the third party (victim) interest. The ratio laid down in the judgment of Karnataka & Delhi High Courts (supra) differing from Andhra Pradesh High Court is not the correct one.

For the reasons stated above, we allow the appeal and set aside the impugned judgment of the High Court and restore that of the Motor Accident Claims Tribunal. Cuddalore. There is no order as to costs.