

Firdaus vs Oriental Insurance Co. Ltd. . on 14 July, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3572, 2017 (15) SCC 674, 2017 AAC 2149 (SC), 2017 (4) AJR 549, AIR 2017 SC (CIVIL) 2526, (2018) 1 MAD LW 153, (2017) 155 FACLR 246, (2017) 4 TAC 698, (2017) 8 SCALE 301, (2017) 3 JLJR 401, (2017) 4 ACJ 2608, (2017) 3 PAT LJR 433, (2017) 3 JCR 207 (SC), (2017) 3 CURLR 3, (2017) 3 ACC 728, (2017) 4 CIVLJ 274, (2018) 1 PUN LR 1, (2017) 4 SCT 264, 2018 (2) SCC (CRI) 83

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Bench: Ashok Bhushan, A.K. Sikri

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).9310/2017
(Arising from Special Leave Petition(s)No.24702/2015)

FIRDAUS

Petitioner(s)

VERSUS

ORIENTAL INSURANCE CO. LTD. & ORS.

Respondent(s)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. This appeal has been filed against the judgment of the High Court of Judicature at Allahabad, dated 12.12.2014 in First Appeal from Order No.2337 of 2005 filed by the respondent - Oriental Insurance Co. Ltd., challenging the award passed by the Workmen Compensation Commissioner, awarding a sum of Rs.4,27,148/- (Rupees Four Lakhs Twenty Seven Thousand One Hundred and Forty Eight Only) along with interest of 12% per annum to claimants. The brief facts of the case are:

3. On 01st September, 2003, Parvez Khan, the husband of appellant was driving the vehicle No.HR-2 G 1875 while going to Rampur from Hapur. The vehicle was hit by a truck bearing No.UP 22 C-9714 coming from the opposite side and due to the accident, Parvez Khan died on the spot. Abdul Khalid, the father of deceased filed a claim for compensation before the Commissioner, Workmen Compensation, claiming an amount of Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand Only) with 12% interest and also demanded 50% of that as penalty. Respondent nos.2 and 3 to the appeal were impleaded as defendant nos.1 and 2. The Oriental Insurance Co. Ltd. was impleaded as third defendant whereas Mohd. Anis was impleaded as fourth respondent-defendant. It was pleaded in the claim that Parvez Khan was an employee under the employment of defendant no.1, 2 and 4, who was getting Rs.4,000/- (Rupees Four Thousand Only) as salary per month. All the defendants filed their counter affidavits. The case of defendant no.1 was that the vehicle No.HR-2 G 1875 was owned by defendant no.1 which he had sold out to defendant no.4.

4. It was accepted that the vehicle was insured with Oriental Insurance Co. Ltd. for the period from 06.11.2002 to 05.11.2003; thus at the time of accident the vehicle was insured with the Oriental Insurance Co. Ltd.

5. The Workmen Compensation Commissioner allowed the claim, awarding a sum of Rs.4,27,148/- (Rupees Four Lakhs Twenty Seven Thousand One Hundred and Forty Eight Only) as compensation along with 12% interest per annum, aggrieved against which, the Oriental Insurance Co. Ltd. filed the first appeal in the High court.

6. The High court vide its judgment dated 12.12.2014 has set aside the award of the Workmen Compensation Commissioner and remanded the matter for fresh decision. The reason for remand has been mentioned by the High court in paragraph 6 of the judgment which is to the following effect:

“Since the claimant himself admitted that his son was employee of Mohd. Anis, therefore, it is proved that he was not the employee of defendant no.1 M/s Santosh Dental Hospital. In these circumstances, whether the Insurance Company, who has insured vehicle with the ownership of defendant no.1, was liable for payment of compensation, on this aspect nothing has been considered and the entire case has been considered only on the aspect that vehicle has been registered in the name of defendant no.1 and, therefore, Insurance Company is liable to pay compensation. The inter se relationship of employer and employee with defendant no.1 and deceased has not been considered and there is no discussion on this issue and whether in these circumstances the Insurance Company was liable to pay compensation, is another issue which has not been considered.”

7. The wife of the claimant, who was one of the respondent in the High court, has come up in appeal against the judgment of the High court.

8. We have heard the counsel for the parties and perused the record.

9. Learned counsel for the appellant contends that there being no dispute that vehicle was insured with the Oriental Insurance Co. Ltd. on the date of accident, the Workmen Compensation Commissioner has rightly awarded the compensation against the Oriental Insurance Co. Ltd. It is submitted that no proof was filed by defendant no.1- M/s Santosh Dental Hospital (respondent No.2 herein) who had got the vehicle insured that he has transferred the vehicle to defendant no.4, but even if it is assumed that vehicle was transferred to defendant no.4, there shall be no effect on the liability of Oriental Insurance Co. Ltd. to pay the compensation. The learned counsel for the appellant has also placed reliance on the judgment of this Court in Rikhi Ram And Another vs. Sukhrania (Smt) And Others 2003 (3) SCC 97.

10. Learned counsel for the Oriental Insurance Co. Ltd. On the other hand, has refuted the submission of the appellant and contended that the High court has rightly remanded the matter for determining the liability of Oriental Insurance Co. Ltd., since it is not proved that Mohd. Anis was an employee of defendant no.1, who got the vehicle insured. From the facts on the record, the following are admitted:

(a) The vehicle was insured by Oriental Insurance Co. Ltd.

for the period from 06.11.2002 to 05.11.2003 i.e. on the date of accident on 01.09.2003, the vehicle was insured.

(b) The defendant no.1 was registered owner of the vehicle who claimed that vehicle has been transferred by him to defendant no.4.

(c) Parvez Khan died on 01.09.2003 as result of injuries inflicted from the accident. Parvez Khan was 26 years of age and was receiving a salary of Rs.4,000/- (Rupees Four Thousand Only) per month.

11. The High court in its judgment has relied on the submission of claimant-Abdul Khalid where he has stated that his son was an employee of Mohd. Anis, as driver of truck owned by defendant no.4. The High court referring to the above statement held that it is not proved that Parvez Khan was an employee of defendant no.1 i.e. M/s Santosh Dental Hospital. Hence, what is the liability of Oriental Insurance Co. Ltd., who insured the vehicle in the ownership of M/s Santosh Dental Hospital, needs to be examined by the Workmen Compensation Commissioner. Hence, the case was remanded.

12. The Workmen Compensation Commissioner in its judgment has noted that case of defendant no.1 as disclosed in the counter affidavit that he has sold out his vehicle to defendant no.4. There is no dispute that defendant no.1 was the owner of the vehicle who got it insured with the Oriental Insurance Co. Ltd. The Workmen Compensation Commissioner has also observed that defendant no.1 failed to produce the Registration Certificate of the vehicle and since the name of defendant no.1 is in the insurance policy as owner of the vehicle, which points out that the vehicle is in the name of defendant no.1 till date. Before the High Court also, no material has been placed on the record which proved that vehicle stood in the name of defendant no.4. The Workmen Compensation Commissioner had come to the conclusion that defendant no.1 still continues to be the owner of the

vehicle and defendant No.4 has only been looking after the vehicle. The High court having not returned any finding that vehicle was transferred to defendant no.4, ought not to have set aside the award of the Workmen Compensation Commissioner. The reliance on the mere submission of the claimant that his son was an employee of Mohd. Anis - defendant no.4 has no significance. Abdul Khalid the claimant was not the person who has knowledge of ownership of the truck except what he was told by his deceased son. When the Registration Certificate of the vehicle was not produced by defendant no.1 the High court ought to have drawn the adverse inference which was drawn by Workmen Compensation Commissioner against defendant no.1 regarding the ownership of the vehicle.

13. Even if it is assumed for the sake of arguments that vehicle was transferred from defendant no.1 to defendant no.4, there will be no consequence with regard to liability of Oriental Insurance Co. Ltd. to pay compensation. The issue has been answered in Rikhi Ram Case (Supra) also. The vehicle involved in the accident in the aforesaid case was insured by another owner, namely M/s Bhagwan Rai Amrit Lal, which was purchased by two other persons subsequently. No intimation of transfer was given to Oriental Insurance Co. Ltd. The question arose in the above case, as to whether in absence of intimation of transfer to the Insurer the liability to pay the compensation to the third party shall cease. This Court held that even if vehicle stand transferred to the name of another person, the liability of insurer to pay compensation to third party shall not cease. The relevant discussion on the issue is contained in paragraphs 3 to 7 of the judgment, which is quoted as below:

(3) This Court in G. Govindan v. New India Assurance Co.

Ltd. and Ors. has settled the controversy as regards liability of insurer to pay compensation to third party in the absence of any intimation of transfer of the vehicle to the transferee. It was held therein that since insurance against third party is compulsory, and once the insurance company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of the Act or by any condition in the policy. We are of the view that said decision concludes the controversy in the present appeal. However, we would like to give further reasons that the liability of an insurer does not come to an end even if the owner of the vehicle does not give any intimation of transfer to the insurance company. Chapter VIII of the Act has been enacted following several English statutes. In England, Prior to 1930, there was no law of compulsory insurance in respect of third party rights. Whenever an accident took place the victim or the injured used to take legal proceedings against an erring motorist for recovery of damages. But many a times, it was found that the owner of an offending vehicle was not always in a position to pay compensation or damages to the injured or to the dependants of the deceased and in that event the claimants could not get the damages. To meet such a situation, various legislations were enacted in England. For the first time, Third Parties (Rights Against Insurers) Act, 1930 was enacted, the provisions of which find place in Section 97 of the Act which gave to third party right to sue directly against the insurer. Subsequently, the Road Traffic Act, 1930 was enacted which provided for compulsory insurance of motor vehicles. The provisions of the said Act was engrafted in Section 95 of the Act. Under Section 38 of English Act, 1930, certain conditions of insurance policy were made ineffective so far as the third parties were concerned. The object behind the aforesaid legislation was that third party right should not suffer on account of

failure to comply with those terms of the insurance policy. Section 94 of the Act gives protection to third party in respect of death or bodily injury or damage to the property while using the vehicle in public place and, therefore, the insurance of vehicle had been made compulsory under Section 94 read with Section 95 of the Act.

4. A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risk, i.e. owner of the vehicle; property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:

“95. (5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person 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 person.”

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 matter 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.

6. On an analysis of Section 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.

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.

14. In Rikhi Ram Case (Supra), although this Court considered the provisions of Motor Vehicles Act, 1939, but the Motor Vehicles Act, 1988 also contains the similar provisions under Section 146, 147 and 157 of the Act. Hence, the ratio of judgment in Rikhi Ram case is fully applicable in the facts of the present case also.

15. Section 157 of the Motor Vehicles Act, 1988 clinches the issue. Section 157 sub-section(1) contains the deeming provision that “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 this transfer.” Sub-section(1), Section 157 which is relevant is quoted as below:

“ 157. Transfer of certificate of insurance – (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the 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. [Explanation.- For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance].”

16. In view of the above, it is not necessary for us to give any concluded finding regarding ownership of the vehicle No.HR 2 G 1875 on the date of accident for the purpose of this case. In either of the eventuality, i.e. whether defendant no.1 was the owner of the vehicle on the date of the accident, or defendant no.4 was the owner of the vehicle, the liability of Oriental Insurance Co. Ltd. continues and Workmen compensation Commissioner has rightly fastened the liability on the Insurance Company. The remand made by the High court to find out as to whether Parvez Khan was an employee of the defendant no.1 or not, was unnecessary.

17. We are thus of the opinion that the High court committed an error in setting aside the order of Workmen Compensation Commissioner. In the result, the appeal is allowed, the judgment and order of the High court dated 12.12.2014 is set aside, and that of Workmen Compensation Commissioner awarding compensation of sum of Rs.4,27,148/- (Rupees Four Lakhs Twenty Seven Thousand One Hundred and Forty Eight Only) with interest @ 12 % per annum from the date of accident is restored.

18. The Workmen Compensation Commissioner shall take steps for ensuring payment of the compensation to the claimants.

.....J. [A.K. SIKRI]J. [ASHOK BHUSHAN] NEW DELHI;

JULY 14,2017.

ITEM NO.12	R E V I S E D COURT NO.7	SECTION XI
	S U P R E M E C O U R T O F RECORD OF PROCEEDINGS	I N D I A
Petition(s) for Special Leave to Appeal (C)	No(s).	24702/2015

(Arising out of impugned final judgment and order dated 12-12-2014 in FAFO No. 2337/2005 passed by the High Court of Judicature at Allahabad) FIRDAUS Petitioner(s) VERSUS ORIENTAL INSURANCE CO. LTD. & ORS. Respondent(s) Date : 14-07-2017 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI HON'BLE MR. JUSTICE ASHOK BHUSHAN
For Petitioner(s) Mr. Syed Mehdi Imam,Adv.

Mr. Uzmi Jamil Husain,Adv.

Mr. Mohd. Parvez Dabas,Adv.

Mr. Shakil Ahmed Syed, AOR For Respondent(s) Mr. Ajay Singh,Adv.

Dr. Nafis A. Siddiqui, AOR Mr. Amit Anand Tiwari, AOR Ms. Vishakha,Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

Pending application(s), if any, shall stand disposed of.

(SAPNA BISHT)
SENIOR PERSONAL ASSISTANT

(MALA KUMARI SHARMA)
COURT MASTER

(Signed reportable judgment is placed on the file) ITEM NO.12 COURT NO.7
SECTION XI S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS
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Mr. Shakil Ahmed Syed, AOR For Respondent(s) Mr. Ajay Singh,Adv.

Dr. Nafis A. Siddiqui, AOR Mr. Amit Anand Tiwari, AOR Ms. Vishakha,Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

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SENIOR PERSONAL ASSISTANT

(MALA KUMARI SHARMA)
COURT MASTER

(Signed reportable judgment is placed on the file)