

M/S. Complete Insulations (P) Ltd vs New India Assurance Company Ltd on 21 November, 1995

Equivalent citations: 1996 AIR 586, 1996 SCC (1) 221, AIR 1996 SUPREME COURT 586, 1995 AIR SCW 4520, (1995) 3 CPR 374, 1996 () ALL CJ 554, 1996 (1) SCC 221, 1996 () CCJ 56, 1996 (112) PUN LR 202, (1996) 1 PUN LR 202, (1996) ILR (KANT) 799, (1996) 1 CIVLJ 849, (1996) 1 MAD LW 539, (1997) 88 COMCAS 366, (1996) ACJ 65, (1996) 1 CIVILCOURTC 516, (1996) 2 ACC 536, (1996) 2 SCJ 144, (1995) 4 CURCC 167, (1996) 1 TAC 340, (1996) 1 ANDH LT 18, (1996) 1 CPJ 1

Author: A.M Ahmadi

Bench: A.M Ahmadi, S.C. Agrawal

PETITIONER:

M/S. COMPLETE INSULATIONS (P) LTD.

Vs.

RESPONDENT:

NEW INDIA ASSURANCE COMPANY LTD.

DATE OF JUDGMENT 21/11/1995

BENCH:

AHMADI A.M. (CJ)

BENCH:

AHMADI A.M. (CJ)

AGRAWAL, S.C. (J)

MANOHAR SUJATA V. (J)

CITATION:

1996 AIR 586

1996 SCC (1) 221

1995 SCALE (6) 629

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Ahmadi, CJI A Maruti Car with registration No. CHK-9253 was purchased in the name of Mrs. Archana Wadhwa for which the respondent, M/s. New India Assurance Company Ltd., had issued a comprehensive insurance policy. The premium for the insurance was paid by the appellant company in whose favour the car was transferred. The registration of the car was transferred to the appellant on 15.6.1989. On 26.6.1989, the appellant intimated the transfer of registration and asked for transfer of the insurance policy. A reminder was sent on 24.7.1989. The respondent did not reply to the two letters. On 17.9.1989 the car met with a serious accident in which the Managing Director of the appellant suffered serious injuries and his sister died. On 11.10.1989 the appellant asked for the assessment of the damage as the car was a total loss. The respondent did not respond. A reminder dated 26.12.1989 met the same fate. The appellant got a notice issued to which the respondent replied that the appellant had no insurable interest in the car. The appellant filed the complaint before Consumer Disputes Redressal Commission, Chandigarh, which directed the respondent to pay Rs. 83,000/- i.e. the insured value of the vehicle, as the vehicle was a total loss, along with costs and interest. The National Consumer Disputes Redressal Commission set aside the order of the Commission at Chandigarh, dismissed the complaint and granted cost of the appeal. Hence the appeal.

The moot question involved in the case is whether on the above facts, without the insurance policy being transferred in the name of the appellant, it was entitled to be indemnified by the insurer. The National Consumer Disputes Redressal Commission held that under Section 157 of the Motor Vehicle Act, 1988, (hereinafter called 'the New Act') a certificate of insurance is deemed to have been transferred in favour of the person to whom the vehicle is transferred but that the said provision applied only in relation to third party risk and did not apply to a policy covering risk of damage to the vehicle or person of the insured. The National Commission placed reliance on a judgment of the High Court of Andhra Pradesh in Madinani Kondaiah & Ors. etc. v. Yaseen Fatima & Ors. etc. [AIR 1986 Andhra Pradesh 62].

Before proceeding further it is necessary to examine the provisions of Section 103-A of the Motor Vehicle Act, 1939, hereinafter called the 'Old Act' and Section 157 of the New Act, in juxtaposition:

Old Act 103-A : 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 proposes to transfer 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, he may apply in the prescribed form to the insurer for the transfer of the certificate of insurance and the policy described in the certificate in favour of the person to whom the motor vehicle is proposed to be transferred, and if within fifteen days of the receipt of such application by the insurer, the insurer has not intimated the insured and such other person his refusal to transfer the certificate and the policy to the other person, 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.

(2) The insurer to whom any application has been made under sub-section (1) may refuse to transfer to the other person the certificate of insurance and the policy described in that certificate, if he considers it necessary so to do, having regard to -

a) the previous conduct of the other persons, -

(i) as a driver of motor vehicles; or

(ii) as a holder of the policy of insurance in respect of any motor vehicle; or

b) any conditions which may have been imposed in relation to any such policy held by the applicant; or

c) the rejection of any proposal made by such other person for the issue of a policy of insurance in respect of any motor vehicle owned or possessed by him.

(3) Where the insurer has refused to transfer, in favour of the person to whom the motor vehicle has been transferred, the certificate of insurance and the policy described in that certificate, he shall refund to such transferee the amount, if any, which, under the terms of the policy, he would have had to refund to the insured for the unexpired term of such policy."

New Act "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.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance."

On a plain reading of Section 103-A it is obvious that the insurer could in a given case refuse to transfer the certificate of insurance and the policy described therein. It is only if the insurer fails to convey the refusal within fifteen days that the deeming clause comes into operation. However, Section 157 of the New Act makes the transfer of the Certificate of Insurance along with the insurance policy described therein automatic along with the transfer of the motor vehicle together with the policy of insurance to the purchaser. This is clearly an improvement over the previous provision on the subject.

Thus under the Old Act the insured was required to apply in the prescribed form to the insurer for transfer of the certificate of insurance and the policy described therein. Once such an application was made the insurer had to communicate its refusal within fifteen days of the receipt of the application for transfer failing which the certificate of insurance and the policy described therein "shall be deemed to have been transferred" in favour of the transferee. This shows that the insurer had the right to refuse transfer of the certificate of insurance and the policy described therein provided the right was exercised within the stipulated time of fifteen days. Section 157 of the New Act introduces a deeming provision whereby the transfer of the certificate of insurance and the policy of insurance are deemed to have been made where the vehicle along with the insurance policy is transferred by the owner to another person. This provision has withdrawn the insurer's right of refusal which was granted under the Old Act.

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 victims of the accident. The protection was available by virtue of Section 94 and 95 of the Old Act. The relevant part of these two provisions was as under :-

"Section 94 - Necessity for insurance against third-party risk - (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this chapter."

The other subsections permitted the appropriate government to grant exemption from the operation of the aforesaid section to vehicles owned by the Central or State Government or any local authority or State Transport Authority under certain circumstances.

"95. Requirements of policies and limits of liability - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer [or by a co-operative society allowed under Section 108 to transact the business of an insurer], and [(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:] (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."

In Kondaiah's case (*supra*) the vehicle in question was transferred but not the insurance policy. The policy or the certificate was not transferred to the vendee. The victims of the accident filed a claim before the Motor Accident Claims Tribunal. Broadly four contentions were considered, namely, (i) whether the transfer of the vehicle to the purchaser is not complete till the vehicle is registered in the name of the transferee (ii) whether on transfer in the absence of the transfer of the insurance policy, the policy lapses (iii) whether it lapses even against the third party

(iv) whether the Insurance Company can validly contend that the insurance policy had lapsed. The Full Bench held that under the Sale of Goods Act the sale is complete on payment of the consideration and delivery of the vehicle, regardless of transfer of registration in the name of the transferee. On the second and third contentions it was held that notwithstanding the nontransfer of the insurance policy, the liability qua third party subsists in view of Section 94 and 95 of the Old Act. The last point regarding right of insurance company to raise the plea of the policy having lapsed is not of any relevance to us. In the separate judgment of Kodandaramayya, J. relied upon by the National Commission, it was pointed out that the 'third party' referred to in Section 95 did not include a transferee who was not a party to the original contract of insurance and, therefore, the transferee or vendee could not claim any benefit from the insurance company for damage to his person or the vehicle.

The New Act came into force with effect from 1st July, 1989. Since the vehicle in question was sold on 15.6.1989 and the letter of intimation of transfer and request to transfer the Certificate of insurance and the policy described therein was sent on 26.6.1989 the Old Act applied. Admittedly the request was not refused under Section 103A of the Old Act till the New Act came into force. Thereafter on 24.7.1989 the Insurance Company was once again requested to effect the transfer of the Certificate of Insurance as well as the policy but to no avail. By that day the New Act had come into force. Actually the application dated 26.6.1989 was pending when the New Act had come into force. That application had to be processed under Section 157 of the New Act and hence the Certificate as well as the policy must be deemed to have been transferred in the name of the transferee. Even it is assumed that the Old Act applied to pending cases, the certificate and policy must be deemed to have been transferred since no refusal was communicated by the Insurance Company to the transferor or the transferee. Therefore, in either case the transfer of the Certificate of Insurance and policy described therein must be taken as complete in view of the language of Section 103A of the Old Act and Section 157 of the New Act.

Section 157 appears in Chapter XI entitled 'Insurance of Motor Vehicles against Third Party Risks' and comprises sections 145 to 164. Section 145 defines certain expressions used in the various provisions of that chapter. The expression 'Certificate of Insurance' means a certificate issued by the authorised insurer under section 147(3). 'Policy of Insurance' includes a certificate of insurance. Section 146(1) posits that 'no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the

vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this chapter'. Of course this provision does not apply to vehicles owned by the Central or State Government and used for Government purposes not connected with any commercial enterprise. This provision corresponds to section 94 of the Old Act. Section 147 provides that the policy of insurance to be issued by the authorised insurer must insure the specified person or classes of persons against any liability incurred in respect of death of or bodily injury to any person or damage to any property of a third party as well as against the death of or bodily injury caused to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. This provision is akin to section 95 of the Old Act. It will be seen that the liability extends to damage to any property of a third party and not damage to the property of the owner of the vehicle, i.e. the insured. Sub-section (2) stipulates the extent of liability and in the case of property of a third party the limit of liability is rupees six thousand only. The proviso to that sub-section continues the liability fixed under the policy for four months or till the date of its actual expiry, whichever is earlier. Sub-section (3) next provides that the policy of insurance shall be of no effect unless and until the insurer has issued a certificate of insurance in the prescribed form. The next important provision which we may notice of is Section 156 which sets out the effect of the certificate of insurance. It says that when the insurer issues the certificate of insurance, then even if the policy of insurance has not as yet been issued, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured a policy of insurance conforming in all respects with the description and particulars stated in the certificate. It is obvious on a plain reading of this provision that the legislature was anxious to protect third party interest. Then comes Section 157 which we have extracted earlier. This provision lays down that when the owner of the vehicle in relation where to a certificate of insurance is issued transfers to another person the ownership of the motor vehicle, the certificate of insurance together with the policy described therein shall be deemed to have been transferred in favour of the new owner of the vehicle with effect from the date of transfer. Sub-section (2) requires the transferee to apply within fourteen days from the date of transfer to the insurer for making necessary changes in the certificate of insurance and the policy described therein in his favour. These are the relevant provisions of Chapter XI which have a bearing on the question of insurer's liability in the present case.

There can be no doubt that the said chapter provides for compulsory insurance of vehicles to cover third party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party i.e. a person other than the insured. This is clear from Section 147(1)(b)

(i) which clearly refers to 'damage to any property of a third party' and not damage to the property of the 'insured' himself. And the limit of liability fixed for damage to property of a third party is rupees six thousand only as pointed out earlier. That is why even the claims Tribunal constituted under Section 165 is invested with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Here also it is restricted to damage to third party property and not the property of the insured. Thus, the entire chapter XI of the New Act

concerns third party risks only. It is, therefore, obvious that insurance is compulsory only in respect of third party risks since Section 146 prohibits the use of a motor vehicle in a public place unless there is in relation thereto a policy of insurance complying with the requirements of Chapter XI. Thus, the requirements of that chapter are in relation to third party risks only and hence the fiction of Section 157 of the New Act must be limited thereto. The certificate of insurance to be issued in the prescribed form (See Form 51 prescribed under Rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaih's case because the transferee-insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that Section 157 of the New Act provides that the certificate of insurance together with the policy of insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred". If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the New Act and in the realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. The view taken by the National Commission is therefore correct.

For the above reasons, we see no merit in this appeal and dismiss the same but with no order as to costs.