Bombay High Court
Oriental Fire And General ... vs Ratnabai Balu Kadam And Ors. on 31 July, 1984
Equivalent citations: 2 (1985) ACC 422
Author: Sawant
Bench: Sawant, Tated
JUDGMENT Sawant, J.

1. These two appeals have been heard and disposed of together by a common judgment as they arise out of the same accident and the same judgment and order dated the 7th February 1980 of the Motor Accidents claims Tribunal, Sangli. The short facts of the case are as follows:

2. On the 8th June 1978 a motor truck bearing No. MHL 4258 was crossing an unmanned gate which was in between Salgare and Belanki Railway Stations. One passenger train was coming from Salgare towards Belanki Railway Station on its way to Miraj. The truck crossing the unmanned gate and the said passenger train collided on the rallway tracks and a considerable damage was caused to the body of the truck Balu Kadam, who was the cleaner on the said truck was seriously injured in the said accident and he breathed his last on his way to Miraj where he was taken for treatment. His widow and minor son therefore filed the present claims for compensation before the Motor Accidents claims Tribunal, Sangli. To the application for claims they joined Chetram Rampratap Choudhari, the driver of the truck; Shankarrao Adrappa Honrao, who was in possession of the said truck at the relevant time as the purchaser of the same from one Hiraji Hansraj Patel; the Oriental Fire and General Insurance Company Ltd.; and Hiraji Hansraj Patel, the original owner of the truck as party Opponents Nos. 1, 2, 3 and 4 respectively. In addition, it appears that Aunbai Raghu Kadam, the mother of the deceased Balu the other heir was joined as Opponent No. 5. The said Opponents in this appeal will be referred to as such hereafter. Opponent No. 2 defended the claims by contending that he was not the owner of the truck, the truck having not been registered in his name on the date of the accident. Opponent No. 4 Hiraji Hansraj Patel took the stand that by an agreement of sale dated the 18th November 1977 he had agreed to sell the said truck to Shankarrao Adrappa Honrao Opponent No. 2 for a total Price of Rs. 70,151/-. On that day he had received a sum of Rs. 25,001/- as a part price and given possession of the truck to Honrao. On the 19th January 1978 he had received the balance of the consideration and had also passed a receipt called "sale chitti" which is Ex. 70 on record. It is also his case that he had signed all the documents of transfer of the vehicle which were necessary to be signed in favour of Honrao. He had therefore no longer remained the owner of the truck, and hence, he was not liable to pay any compensation. The Insurer Company Opponent No. 3 took the stand that their contract was with the original owner Hiraji Patel. Hiraji Patel had not given any intimation of the transfer of the vehicle as required Under Section 103-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the said Act). On the transfer of the vehicle, the insurance policy had lapsed, and hence, the Company was not liable to pay the compensation. Opponent No. 1 the truck driver took the stand that on the day of the accident he was not driving the truck. It was the deceased who was driving the truck although he was the cleaner of the truck. The Tribunal on the basis of the evidence before it came to the conclusion that it was Opponent No. 1 who was driving the truck, that the truck was at the relevant time in the possession of Opponent No. 2 and Opponent No. 1 was the driver employed by Opponent No. 2. The Tribunal also came to the conclusion that the accident was caused on account of the rash

and negligent driving of Opponent No. 1 and the deceased had met his death on account of such rash and negligent driving The Tribunal had therefore held that the Applicants were entitled to compensation of Rs. 21,600/-. As regards the liability of the Opponents to pay the said compensation, the Tribunal held that all the Opponents, namely, the driver, the original owner Opponent No. 4, the new owner Opponent No. 2 as well as the Insurance Company were jointly and severally liable to pay the said amount. In view of this conclusion, the Tribunal passed the necessary incidental orders as well. It is against this decision dated the 7th February 1980 of the Tribunal that the Insurance Company has prefened its Appeal No. 597 of 1980 and the original owner Hiraji Patel has filed his appeal being First Appeal No. 758 of 1980.

3. Taking first the appeal of the Insurance Company, on the admitted facts on record, it shows that the original owner Patel had not given the Company intimation of sale or transfer of the vehicle to Opponent No. 2. It will therefore have to be held that the stand taken by the Insurance Company that it is not liable to pay compensation in the present case is legally justified.lt is not disputed that the view on the point taken by this Court in three successive judgments, namely those reported in 77 Bombay Law Reporter at page 38 (Smt Gulabbai Damodar Tapse v. Peter K. Sunder); 1977 Maharashtra Law Journal at page 656 Kishan Pandutrang Kagde v. Baldev Singh Gian Singh and Anr) and 1983 Accidents claims Journal at page 369 Mohd. Abdul Waheed Mohd Nakim Khan v. Shy am Behari Rameshwar Kalvar and Ors.) still stands as good law-in view of the said decisions. It is more than clear that although the insurance is in respect of the vehicle, the insurance policy does not run with the vehicle. It is a contract between the insured and the insurer and the moment the vehicle is transferred the insurance policy lapses. The only exception to this proposition of law is Section 103 A(1) of the Act which states that if at the time of the transfer, the transferee applies 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 transferee 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 fails to intimate the insurer's refusal to transfer the certificate and the policy, the certificate of insurance and the policy is deemed to have been transferred in favour of the transferee with effect from the date of its transfer. As stated earlier, admittedly, there was no such application made by Opponent No. 4 to the Insurance Company. Hence, the Insurance Company cannot be held liable to pay the compensation to the applicants. To that extent, therefore, the decision of the Tribunal will have to be set aside and it is hereby set aside. The appeal of the Insurance Company, therefore, stands allowed and it is held that the original Opponent No. 3 is not liable to pay any part of the compensation awarded by the Tribunal. However, in the circumstances of the case the Appellant Insurance Company will be entitled to costs of the appeal only from Respondents Nos. 4 and 5, i.e. original Opponents Nos. 2 and 4.

4. Coming to the First Appeal 758 of 1980 filed by the original Opponent No. 4 Hiraji Patel who was admittedly the previous owner of the truck, the contention advanced by Shri Karlekar on behalf of the Appellant is that he had parted with possession of the truck as early as on the 18th November 1977 under an agreement of sale. He had also received the total consideration of Rs. 70,151/- by 19th January 1978 when he had passed the sale chitti or receipt in favour of Opponent No. 2. He had signed all the necessary documents in favour of Opponent No. 2. All that remained was to register the vehicle in the name of Opponent No. 2. He therefore submitted that under the sale of Goods Act

the property in the vehicle was already transferred in favour of Opponent No. 2, and hence, he could not have been an held responsible for the payment of compensation. For this proposition he relied upon a decision of the Division Bench of this Court reported in 1983 Accidents claims Journal at page 369.

5. We are unable to accept this contention. Although it is the contention of the Appellant that he had handed over all the documents relating to the truck to original Opponent No. 2, the evidence on record shows that he had done no such thing. On the other hand, the admitted position is that even after the accident it was he who had lodged a claims for the damage to the truck with the Insurance Company without disclosing to the Insurance Company that he had sold the truck to Opponent No. 2. He had also received from the Insurance Company a sum of Rs. 12,000/- for the damage to the truck. Although this amount was thereafter paid by him to Opponent No. 2, that is a transaction between him and Opponent No. 2, and to the insurance Company he continued to represent that the truck still belonged to him. In the case before the Division Bench referred to above, the facts were that the original owner had executed all the relevant documents by signing necessary forms and after the sale he had no connection with the truck whatsoever. He thus ceased to be the owner for all practical purposes on the date of the transfer itself. It is in these circumstances that this Court took the view that the original owner could not be held liable to pay compensation to the legal representatives of the deceased in that case. On the facts of the present case, as stated above, it will not be possible to take the same view in the matter and the award passed by the Tribunal making both Opponent No. 2 as well as Opponent No. 4 liable to pay the compensation jointly and severally will have to be upheld.

6. In the circumstances, we dismiss the present appeal and hold that the original Opponent Nos. 4 and 2, i.e. the present Appellant and Respondent No. 4 would be jointly and severally liable to pay the entire amount of compensation awarded by the Tribunal. The appeal is dismissed with costs in favour of Respondents Nos. 1 and 2.