Supreme Court of India
The New India Assurance Co. Ltd vs Smt. Sheela Rani & Ors on 15 September, 1998
Author: Venkataswami.
Bench: K. Venkataswami, A.P. Misra.

PETITIONER:
THE NEW INDIA ASSURANCE CO. LTD.,

Vs.

RESPONDENT:
SMT. SHEELA RANI & ORS.

DATE OF JUDGMENT: 15/09/1998

BENCH:
K. VENKATASWAMI, & A.P. MISRA.

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT Venkataswami. J.

This appeal arises out of a judgment dated 8.4.87 of the Division Bench of the Rajasthan High Court in D.B. Civil Special Appeal No.29 of 1987.

Brief facts respondent herein was the owner of a fiat Car bearing Registration No. RSM-9701. The said Car was insured with the appellant-Insurance Company for the period 16.6.76 to 5.6.77. It appears that the sixth respondent sold the car to the fourth respondent on 18.6.76. This transfer was accepted on 24.6.76 by the Regional Transport Authority, Jaipur. The said Car met with an accident on 10.5.77 in which one Moti Lal Jain, husband of the first respondent, died.

A Claim Petition was filed before the Motor Accident Claims Tribunal, Jaipur, in M.A.C. No. 291/77 by the first and second respondents, widow and minor son of the deceased, respectively. The third respondent, mother of the deceased, was shown as respondent later on transposed as claimant in the Claim Petition. We are not concerned with the quantum of compensation in this appeal as the sole issue raised by the appellant Insurance Company was with reference to its liability. In other words, according to the appellant, the transfer of the car by the sixth respondent to fourth respondent was not informed to it by the sixth respondent (transfer or) as required under Section

103-A of the Motor Vehicles Act, 1939 (hereinafter called the 'Act') and, therefore, the accident having taken place subsequent to the transfer, the appellant-Insurance Company cannot be held liable. All the Courts below, namely, the Tribunal, a learned Single Judge as also the Division Bench of the High Court have rejected such a contention holding that the appellant-Insurance Company was liable to pay the compensation.

It is not in dispute that the fourth respondent (transferee) vide letters dated 23.6.76 and 30.6.76 had informed the appellant about the transfer of the Car, to which there was no reply from the appellant. the contention raised on behalf of the appellant before the Tribunal and the High Court as well as in this Court was to the effect that the intimation about the transfer by the transferee was not in accordance with the prescribed form and, therefore, it was not taken note of by the appellant-Insurance Company. Though, it was contended before the Tribunal and the High Court that no such letters said to have been sent under Certificate of Posting, were received by the High Court, we cannot allow such contention to be raised in this Court. In coming to the conclusion that in the absence of proper intimation about the transfer by the transferor in the prescribed form, the Policy will not lapse, the learned Single Judge of the High Court placed reliance on a judgment of the Full Bench of the Andhra Pradesh High Court in Madineni Kondaiah & Ors. Vs. Yaseen Fatima & Ors. reported in AIR 1986 A.P. 62.

Applying the principles laid down in the said judgment, the learned Single Judge rejected the contention of the Insurance Company that it was not liable on the facts of this case. The Division Bench also rejected a similar contention and affirmed the view taken by the learned Single Judge after referring to some more cases.

Learned counsel appearing for the appellant-Insurance Company reiterating the same contention, namely, that the appellant was not liable to pay the compensation in the absence of valid transfer of the Policy in favour of the transferee, invited our attention to a recent judgment of this Court in Complete Insulations (p) Ltd. Vs. New India Assurance Co. Ltd. [(1996) 1 SCC 221]. After carefully going through the facts and the ratio of the said judgment this Court has approved the ratio laid down in thee decision of the Full Bench of the Andhra Pradesh High Court in Kondaiah's case.

The fact in Complete Insulations's case are more or less identical to the case on hand. In that case, a transfer took place on 15.6.89. It was the transferee, who informed on 26.6.89 about the transfer of registration and asked for transfer of the Insurance Policy. A reminder was also sent on 24.7.89. The Insurance Company in that case did not respond to the said letters. The transferee preferred a complaint before the Consumer Disputes Redressal Commission, Chandigarh, claiming compensation for the damage caused to the Car. The commission, overruling the objection of the Insurance Company, awarded a sum of Rs. 83,000/- On appeal by the Insurance Company, the National Consumer Disputes Redressal Commission set aside the order of the Commission at Chandigarh and dismissed the complaint. The transferee preferred an appeal to this Court. While affirming the decision of the National Commission, this Court elaborately considered the nature of a claim by a third party. It was held that the defence available to the Insurance Company against the claim of the transferee in the absence of proper transfer of policy regarding the damage to own vehicle or injury to self will not be available to a claim by a third party. This Court also compared the

relevant provisions of the old Act Section 103-A with Section 157 of the 1988 Act. After comparing the relevant provisions, as noticed above, this Court held as follows:- "In Kondaiah case 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 non-transfer of the insurance policy, the liability qua third party subsists in view of sections 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 1.7.1989. 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 103-A 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 if 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 103-A 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 expression 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 caused to any passenger of a public service 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 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 from. The next important provision which we may notice 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 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 comes Section 157 which we have extracted earlier. This provision lays down that when the owner of the vehicle in relation whereto 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 "orce in relation to the use of the 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 Kondaiah 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 there 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."

We are conscious that in the above judgment of this Court, the claim by the transferee was one relating to damage to the vehicle and not one relating to third party. 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. As in the case of Complete Insulations (supra) in the present case also the transferee had intimated to the appellant-Insurance Company about the transfer of the vehicle in his favour though not in the absence of such reply the Certificate shall be deemed to have been transferred in favour of the transferee as per Section 103-A of the Act.

In view of the above discussion, we do not find any merit in this appeal and the same is accordingly dismissed with no order as to costs.