

Nagindas And Anr. vs Nasir Ali And Ors. on 10 January, 1996

Equivalent citations: 1997ACJ1093

Author: S.B. Sakrikar

Bench: S.B. Sakrikar

JUDGMENT

S.B. Sakrikar, J.

1. The appellants/ claimants have preferred the aforesaid Letters Patent Appeals under Clause 10 of the Letters Patent, against the common order dated 31.7.1990 passed by the learned single Judge of this Court in Misc. Appeal No. 198 of 1988, thereby dismissing the Misc. Appeal Nos. 198 and 203 of 1988 and holding the respondent No. 3, National Insurance Co. Ltd. and the original registered owner of the auto-rickshaw, respondent No. 4 not liable to pay the compensation.

2. The facts lie in a narrow compass that both the appellants filed separate claim petitions before the V Additional M.A.C.T. at Indore with regard to the injuries caused to them in the accident occurred on 20.5.1979 due to rash and negligent driving of the autorickshaw bearing registration No. MPF 8835. In the claim petitions, it was alleged that on the date of the accident, respondent No. 1, Nasir Ali was the owner of the autorickshaw and respondent No. 4, Jagdeesh Kumar was the registered owner. Respondent No. 2, Vijay Kumar was the driver of the autorickshaw at the relevant time on behalf of respondent No. 1, Nasir Ali. The autorickshaw was insured with respondent No. 3, insurance company. The claim petitions were resisted by all the respondents. The contention of respondent No. 4 is that the autorickshaw was transferred by him to the respondent No. 1 much prior to the alleged accident. Therefore, he is not liable to pay any compensation. The respondent No. 3 in its written statement, alleged that the insurance policy was issued in the name of Jagdeesh Kumar but as the autorickshaw was transferred to Nasir Ali, respondent No. 1 without any intimation to the insurance company, the insurance company is not liable to indemnify the respondent No. 1. The other respondents also resisted the claim petition on various grounds.

3. The Tribunal on appreciation of the evidence adduced by the parties allowed the claim applications filed on behalf of the appellants and passed the award of Rs. 7,720/- in favour of the appellant Meerabai and award of Rs. 8,556/- in favour of the appellant Nagindas with interest at the rate of 12 per cent per annum from the date of filing of claim petition till realisation of the amount. The Tribunal also held that only respondent Nos. 1 and 2 are liable to pay the compensation whereas the respondent Nos. 3 and 4 are exonerated from the liability of payment of compensation. Aggrieved by the award of the Tribunal, both the appellants preferred the appeal before this Court.

4. Both the appeals were heard by the learned single Judge of this Court who dismissed the appeals by a common order passed in Misc. Appeal No. 203 of 1988 as stated above. Aggrieved, the appellants have filed these Letters Patent Appeals.

5. We have heard Mr. Rajpal, learned Counsel for the appellants and Mr. A.H. Khan, learned Counsel for the respondent No. 3 in both the appeals. None appeared for other respondents.

6. The only contention urged by the counsel appearing for the appellants is that on the date of alleged accident, the auto-rickshaw was insured with respondent No. 3, National Insurance Co. Ltd. under a policy of third party risk. Therefore, respondent No. 3 is liable to pay the compensation jointly and severally with respondent Nos. 1 and 2, owner and driver of the vehicle. Learned counsel relied on the decision of this Court in *Harcharan Singh v. Turza Bai* 1995 ACJ 423 (MP) and *Nani Bai v. Ishaque Khan* 1995 ACJ 292 (MP).

7. In opposition, learned Counsel appearing for respondent No. 3, insurance company, contended that it is not disputed that respondent No. 4, Jagdeesh Kumar transferred ownership of the autorickshaw in question to respondent No. 1, Nasir Ali much prior to the alleged accident under an agreement of transfer. The alleged transfer of the autorickshaw was not even intimated to the insurance company either by the transferor or the transferee of the vehicle. In such a situation, as the insurance policy was not transferred in the name of the transferee, respondent No. 1, Nasir Ali, the insurance company is not liable to indemnify the respondent No. 1, Nasir Ali for the compensation awarded against him. He argued that the view taken by the Tribunal as well as by the learned single Judge exonerating the respondent No. 3, insurance company from the payment of compensation, is well-founded and requires no interference in these appeals. Learned counsel relied on the decisions of this Court in *National Insurance Co. Ltd. v. Purshotamdas Maheshwari* 1987 ACJ 209 (MP) and *British India General Insurance Co. v. Seth Ramnath* AIR 1962 MP 368.

8. Having gone through the contentions urged by both the counsel, we find that the only question for consideration in these appeals is whether in the facts and circumstances of the case, respondent No. 3, insurance company is liable to pay the compensation awarded in favour of the appellants?

9. On perusal of the record, it is found that it is undisputed fact that the ownership of the autorickshaw was transferred to respondent No. 1, Nasir Ali much prior to the alleged accident by registered owner Jagdeesh Kumar, respondent No. 4, but the registration of the vehicle and the insurance policy continued in the name of respondent No. 4. It is also not disputed that after transfer of the ownership, the respondent No. 1 continued to renew the insurance policy in the name of respondent No. 4, Jagdeesh Kumar, former owner of the autorickshaw. In *Purshotamdas* case 1987 ACJ 209 (MP), learned Judge has held that:

My conclusion, therefore, is that this transfer of insurance policy without notice of that transfer to the appellant was clearly in contravention of the terms of the policy (Exh. R-6) and thus, brought the contract of insurance to an end. On 4.8.1978 when the accident took place, the respondent No. 2 was the owner of the vehicle. There was no contract of insurance between him and the appellant and, therefore, the appellant

cannot be held liable for any compensation to which the respondent No. 1 may be held entitled on account of the death of his son.

In British India General Insurance Co. case, AIR 1962 MP 368, similar view was taken by the Division Bench of this Court and held that:

Motor Vehicles Act, 1939, Sections 95 (5) and 96 (2) and (6)-Insurance against third party risk-Extent of liability of insurance company-Suit for damages against insured, driver of vehicle and insurer-Insured exonerated of all liability-Insurer if can be held liable-Insured failing to disclose transfer of possession of motor vehicle-In pursuance of agreement with driver to sell-Effect of non-disclosure of material fact-Company held entitled to disown its liability.

10. In Harcharan Singh's case, 1995 ACJ 423 (MP), learned single Judge of this Court considering the scope of Section 96 (2) and Section 103-A of the Motor Vehicles Act has held that:

The defence that on the sale of vehicle, during the period of cover, the policy had lapsed, is not available to the insurer under Section 96 (2); registered owner has not discharged his statutory responsibility under Section 31 and his liability for the accident continues till the transferee is registered as an owner; transfer of vehicle has been made without following the provisions of Section 103-A; the insurance company may proceed separately against the registered owner for reimbursement of the compensation amount.

Similar view was taken by the Division Bench of this Court in Nani Bai's case 1995 ACJ 292 (MP). Learned Division Bench considering the scope of Sections 95 and 96 of the Motor Vehicles Act, 1939 has held that the insured died many years before the accident and his legal heirs had been paying the premium. The insurance company had accepted the premium for the year of the accident in the name of the deceased insured. Held that the insurance company liable to pay the compensation to the third party, aggrieved claimants. It was also held that if the insurance company is aggrieved by the concealment of fact or misrepresentation or fraud, it may make a grievance before the appropriate forum separately.

11. In the present case, it is not disputed that the alleged autorickshaw was transferred by respondent No. 4, Jagdeesh Kumar to respondent No. 1, Nasir Ali in the year 1972 and the respondent No. 4 had received the whole amount of price by November, 1973. After purchase of the vehicle, the respondent No. 1, Nasir Ali continued to renew the insurance policy in the name of Jagdeesh Kumar, former owner of the autorickshaw and the same remained continued on the date of the accident, i.e., 20.5.1979.

12. While considering the liability of the insurance company in the cases of transfer of ownership, the Division Bench of this Court in Nani Bai's case, 1995 ACJ 292 (MP), also considered the scope of Section 94 of the Motor Vehicles Act and held that from plain reading of Section 94 of the Act it is

apparent that third party insurance in all cases of use of the vehicle is necessary. In the instant case, admittedly, registered owner Kartar Singh died in the year 1975 and after that insurance company had all along been accepting the premium for the insurance of the bus and it had also accepted the premium for the year of the accident. It was the duty of the insurance company to check and verify the vehicle and the owner of the vehicle. The insurance company cannot be allowed to say that it is not liable to compensate the person who is insured or died in the accident. There is nothing in the policy issued in the name of Kartar Singh stating that it is purely personal to him. On the other hand, on plain reading of the condition of the policy, it is clear that coverage is that of the motor bus and not the insured. Provisions of Section 94 also go to show that it is the vehicle that required to be insured and not the person or the owner of the vehicle and in such a situation, the insurance company cannot escape its liability.

13. Relying on 1901 AC 495 and 1898 AC 1, this Court held in *Kishandas v. Shravan Kumar* 1976 JLLJ 554, that each case has to be decided on its own facts and it is authority for what it actually decides. No party, much less an insurance company keeping the insurance policy alive, can be permitted to slip under the umbrella of undependable and unprotective technicality and to attempt to escape the legal liability. Lord Mansfield observed in *Rex v. Wilkes* that "fiat justitia, mat coelum" let justice be done, though the heavens fall. Lord Denning in *Seaform Estate v. Asher* (1949) 2 All ER 155, held that "A Judge must not alter the material of which the Act is woven but he can and should iron out the creases" (Emphasis supplied). In the cases on hand, regulated by the benevolent Act intended to supply succour, the undernoted facts and factors clearly emerge:

- (i) The insurance policy covering the third party risk was alive on the date of incident.
- (ii) Transferor took no steps to intimate the insurance company for change of name but insurance company without demur pocketed the premium from the purchaser and renewed the policy. This impliedly established 'privity of contract' between the insurance company and purchaser and rendered the policy operative in favour of the purchaser.
- (iii) Law casts the liability of using the vehicle under a policy covering third party risk.
- (iv) Insurance company is not permitted to contest liability on the ground of absence of mutation vis-a-vis purchaser on these facts and circumstances.
- (v) Insurance company in the face of factual matrix and legal position is erroneously exonerated and is required to be saddled with the liability to pay and granted liberty to proceed against seller/purchaser if permitted under the law.

14. Considering the facts of the case, we are of the opinion that the law laid down by the Division Bench of this Court in *Nani Bai's case*, 1995 ACJ 292 (MP), appears to be reasonable and correct. In *Nani Bai's case* (supra) the Division Bench considered the scope of Sections 94, 95 and 96 of the Motor Vehicles Act and held the insurance company liable to compensate the claim of third party

even if the policy stands in the name of the previous owner. In our view, in the case of British India General Insurance Co. Ltd., AIR 1962 MP 368, the Division Bench of this Court has not taken into consideration the mandatory provisions of Section 94 of the Motor Vehicles Act, 1939. On facts also there was only an agreement to transfer the vehicle on payment of price of the vehicle within a period of four to six months and after that the registration certificate would be transferred in the name of transferee. After an agreement of the aforesaid sale, the registered owner continued the insurance policy in his name. In the circumstances, the Division Bench has held that the insurance company is not entitled to disown its liability. In the present case, the sale of the autorickshaw was completed in the year 1973 after payment of agreed price to the respondent No. 4, Jagdeesh Kumar. After the alleged sale, from 1973 till the year of alleged accident, the respondent No. 1 was paying the premium and the insurance policy was in force even on the date of the accident in the name of Jagdeesh Kumar.

15. In view of the aforesaid facts, the principles as laid down in Nani Bai's case, 1995 ACJ 292 (MP), are applicable to the present case. In view of the facts and circumstances of the present case, we hold that in the cases on hand, the respondent No. 3, insurance company is also jointly and severally liable to pay the compensation to the claimant-appellants along with respondent Nos. 1 and 2 as awarded by the Tribunal. The contrary view taken by the learned single Judge is not on firm foundation and, therefore, the conclusion recorded by the learned single Judge on the point of liability of insurance company deserves to be set aside. The decisions pressed into service by respondent No. 3 are distinguishable on facts and features.

16. In the result, both the appeals are, accordingly, allowed and the finding of the learned single Judge as also the finding of the Tribunal on the point of exonerating the respondent No. 3, National Insurance Co. Ltd. from the liability to pay the compensation, is hereby set aside. It is ordered that the respondent No. 3, insurance company shall also pay the compensation to the claimant-appellants as awarded by the Tribunal.

17. There shall be no orders as to costs. Counsel's fee is fixed at Rs. 500/- on each side, if certified.

18. Copy of this order shall be kept in the connected L.P.A. No. 11 of 1990 Meerabai v. Nasir Ali.