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Court : Karnataka

Decided On : Nov-16-1992

Reported in : AIR1993Kant103; 1992(4)KarLJ652

Judge : K.A. Swami, Actg. C.J.,; S.A. Hakeem and ;P.K. Shyamsundar, JJ.

Acts : Motor Vehicles Act, 1939 - Sections 3, 4, 31, 94, 95, 96, 110-B and 113A; Sale of Goods Act, 1930

Appeal No. : Civil Petition No. 527/1990

Appellant : Paragounda

Respondent : Bhimappa and Others

Advocate for Def. : Ashok Kalyanshetty, ;Ananth Mandagi and ;S.K.V. Chalapathy, Advs.

Advocate for Pet/Ap. : S. Vijayashankar Sr. Adv. and ;P.G. Mangoli, Adv.

Judgement :
ORDER

Hakeem, J.

1. In this reference under Section 7 of the Karnataka High Court Act, the following questions are referred for the opinion of the Full Bench :--

'(1) Whether the Full Bench decision of this Court reported in : ILR 1990 KAR1 (FB) applies to a case only where the transfer of ownership of a vehicle is entered in the Certificate of Registration as required under Section 31 of the Motor Vehicles Act, 1939, and has no application whereat is not so entered?

(2) If the answer to the above question is in the negative, whether the decision reported in 1990 (2) Kar LJ 281 is good law?'

2. Since the reference has arisen in a review petition, the brief facts of the case leading to the reference are stated as under :--

On 24-2-1987, the car bearing Registration No. MRZ 5694 driven by respondent-5, while proceeding on Saundatti-Munawalli Road in Belgaum District, dashed against P.W. 1 Gujjawwa and Tulasawwa, causing injuries to the former and instant death of the latter person. The accident and the resultant death ofTulasawwa and injuries sustained by P.W. 1 are not disputed. It is also established that the accident was due to the negligence of the driver of the vehicle.

3. The Insurance Company (respondent-4 herein) resisted the claim on the ground that since the original owner i.e. respondent-2, had sold and delivered possession of the vehicle to respondent-1 prior to the accident on 12-2-1987, the insurance policy issued to the original owner lapsed immediately on the event of a sale. As such, the car was not at all covered by insurance on 24-2-1987, the date of the accident and consequently it is not liable to meet the claim.

4. Upon applying the ratio of the decision in ILR 1990(1) Kar 1 : (AIR 1990 Kant 116) while absolving the Insurance Company and the transferor of their liability, the Accident Claims Tribunal held respondent-1 the transferee who was the owner of the car on the date of the accident as well as respondent-3, the driver, liable to pay the compensation to the claimants. The correctness and legality of the award being challenged by the petitioner (the transferee of the vehicle) in M.F.A. No. 2027 of 1990, in so far as he is made liable to pay the compensation, the Division Bench has by its judgment dated 5-11-1990 dismissed the appeal and thereby affirmed the award. The petitioner has sought for review of the said judgment on the ground that there is an error apparent in the order since the Court has failed to

appreciate that the Full Bench has not disagreed with the view taken by the Andhra Pradesh High Court in AIR 1986 AP 62 (FB) to the effect that so long as the obligations under the statute are not fulfilled by the transferor as contemplated under Section 31 read with Section 94 of the Motor Vehicles Act, the public liability will not cease and keeps the policy alive in respect of third party risk. Consequently, the insurer is liable to indemnify the party.

5. Certain particulars relating to the transfer of ownership of the vehicle may be relevant to appreciate the point in issue. Admittedly, on 12-2-1987 the vehicle was transferred by respondent-2 the original owner to the petitioner. 24-2-1987 is the dateof the accident. However, there was no assignment of the original policy of insurance to the transferee, but a fresh policy was taken by the transferee on 1-4-1987. Thereafter, the transfer of the vehicle came to be registered under Section 31 of the Motor Vehicles Act.

6. In the circumstances, the only question that arose for consideration in the appeal was whether the policy taken by the transferor of the vehicle was subsisting on the date of the accident so as to enure to the benefit of the purchaser of the vehicle and saddle the Insurance Company with the liability for payment of compensation. Relying upon the ruling of the Full Bench in National Insurance Company Ltd. v. Mallikarjun, : ILR 1990 KAR1 to the effect that if the insured had transferred the vehicle, he has no longer any insurable interest under the policy which lapses, the Division Bench has dismissed the appeal. The petitioner has now sought for review of the said judgment.

7. The learned Counsel for the petitioner seeks to rely upon the decision of the Andhra Pradesh High Court in AIR 1986 AP 62 (FB) to contend that so long as the statutory obligation of the transferor as contemplated under Section 31 read with Section 94 of the Act was not fulfilled by the transferor, the public liability of the Insurance Company in so far as the third party risk will not cease. It is further urged that the Full Bench of this Court in : ILR 1990 KAR1 did not disagree with the view taken by the Andhra Pradesh High Court (supra). As such the Insurance Company is liable to indemnify the third party in the instant case. The petitioner further relies upon the decision of a Division Bench of this Court in 1990 (2) Kar L

281, rendered subsequent to the Full Bench ruling (supra). It is, therefore, urged that since the transfer of ownership of vehicle in question had not been effected in the registration certificate and other records as required by Section 31 of the Act, the ratio of the decision in : ILR 1990 KAR1 (FB)) has no application to the facts of the instant case. Hence, the public liability under the policy held by the transferor in respect of third party risk would continue till he discharges his statutory obligations under Section 31 read with Section 94 of the Act. As such, it is contended that the Full Bench decision of this Court would be applicable only to a case where the transfer of the vehicle has already been recognised under Section 31 of the Act, This view, according to the petitioner, finds support from the ruling of the Division Bench in 1990 (2) Kar LJ 281 (supra).

8. On a consideration of the decisions referred above, we are of the firm opinion that the view taken by the Full Bench in : ILR 1990 KAR1 is correct and unexceptionable. It is further clear that the reference to the decision of the Full Bench of the Andhra Pradesh High Court in AIR 1986 AP 62 (Madineni Kondaiah v. Yaseen Fatima) by the Full Bench of this Court cannot, in any way, be construed as having accepted the view of one of the Judges in the said case to the effect that even after the transfer of the vehicle, the public liability of the Insurance Company to third party continues. The facts and circumstances of the said case are also clearly distinguishable. In that case, there was an agreement of sale of the vehicle. The relevant clauses of the agreement are referred in the minority judgment of Kondandaramayya, J. at page 81 of the report. As a fact, it is found by him in view of clause 4 of the said agreement, that the vendor continued to be the ostensible owner for all purposes until the vehicle was transferred in the name of the purchaser, and the seller was obliged to appear before the authorities in the capacity of an owner since the alleged change of ownership of the vehicle was not intimated by the transferor. In the circumstances, it is observed at paras 26 and 27 thus :--

'26..... To express an opinion when as afact there was no transfer in our view is obiter. We have already indicated, we are not deciding the question of sale, therefore, are not deciding the issue whether an insurance policy lapsed as a result of sale as held in Kanakalakshmi v. R. V. Subba Rao, (1972) 1 APLJ 249.

27. To sum : It is not necessary to decide the question on facts whether there was a saleunder Ex.B. 1 of the vehicle ADT 263 in favour of N. Kondaiah. We hold vehicle ADT 263 was insured on July 30, 1973 for Rupees 50,000/- for third party risks. Therefore, an amount of Rs. 32,000/- awarded to the dependants of Naseeruddin is payable by the insurance company.....'

9. Obviously, having regard to the peculiar facts of that case, the Full Bench in National Insurance Co. Ltd. v. Mallikarjun, : ILR 1990 KAR1 has observed that whatever observations have been made in the decision of the Andhra Pradesh High Court are in the context of there being no transfer of registration in the name of the purchaser of the vehicle and hence can have no application to a situation with which the Bench was concerned. Even otherwise, by implication, the minority view of the Andhra Pradesh High Court having been considered was dissented by this Court.

10. In National Insurance Co. Ltd. v. Mallikarjun, : ILR 1990 KAR1 , the question referred for consideration of the Full Bench is as follows :--

'When a registered owner of a motor vehicle covered by an insurance policy transfers the vehicle to another, but does not secure certificate of transfer of the insurance policy covering the vehicle to the transferee of the vehicle, whether the insurance company is liable to answer the liability arising out of an accident met with by the vehicle after transfer of ownership of vehicle but during the period for which the insurance policy had been issued?'

The Court has explained the scope and ambit of the Insurance Company's liability regarding third party risk vis-a-vis the provisions of Sections 95 and 96 of the Motor Vehicles Act. The proposal and declaration stipulated in the policy form the basis of the contract and are deemed to be incorporated therein. The indemnity under such policy would cover the liability for all sums including the expenses of the third party which the insured is obliged to pay. Certain general exceptions to that liability under the policy and conditions, some of which are intended tocomply with the provisions of the Act, are also incorporated as terms of the policy. Chapter VIII of the Act deals with compulsory motor insurance against third party risk when the motor vehicle is used in a public place. The Chapter makes it clear that the

policy should be in express terms and it insures the person referred to in it and in respect of the vehicle of which it relates. The Full Bench has further explained the scope of the motor vehicles insurance contract as follows :--

'A contract of insurance is between the insurer and the insured, the subject matter of the vehicle specified in it and it is the risk arising out of its use that the insurer undertakes to compensate against. Where such a contract provides for indemnity to the assured against third party risks, the third party who is a stranger to the contract, cannot enforce it against the insurer. Neither the general principles of law relating to contracts nor the common law gives a third party a cause of action against the insurer. If a third party risk arises under the policy it is entirely a matter between the insurer and the insured governed by the terms of the policy. Section 96(1) of the Act makes it obligatory on the pan of the insurer to meet or satisfy an award made by the Accidents Claims Tribunal against the person insured in respect of such third party risks. Thus, for the purposes of Section 96(1) the insurer could be deemed to be a judgment-debtor. Under Section 96(2) of the Act the insurer can be made a party, so that he may defend the action by the third party against the insured which also enumerates the grounds, the insurer may take up for defending himself. The scheme of the provision is that no insurer who had notice under Section 96(2) is entitled to avoid liability to the party otherwise than in the manner provided for in sub-section (2) thereof. Thus, after the insured has parted with his vehicle, he has no longer any insurable interest to which the policy in his favour can relate and continue to have force. When an insured has parted with his vehicle to which the policy can relate and continue to have force affecting thereby the basis of contract ofinsurance as also the specified vehicle to which the indemnity relates as is clear from the details required to be set out in the policy. It is with reference to those details and the history of vehicle and its owner including claims or no claims in the past that premium payable on the insurance is determined and the contract is formed. Thus, in the absence of express stipulation in the policy to the contrary, the moment the insured parts with his vehicle the policy relating to it lapses inasmuch as the vehicle is the subject matter of the very foundation of contract of insurance. Neither Section 96(1) or (2) of the Act results in a policy of motor insurance being continued to operate and not lapse, notwithstanding the fact that the insured during the currency of the policy has

parted with the ownership of the vehicle to which the insurance relates. Section 96(1) itself proceeds on the basis that there is a subsisting policy and the words to the effect 'being a liability covered by the terms of policy' are of particular significance. It is no doubt true that where insurer has been given notice of action, the grounds of his defence in the action are limited to those stated in Section 96(2) and it is not open to the insurer to avoid liability under the policy but the continued ownership of vehicle with the insured is basic to the subsistence of policy and once the subject matter of policy is gone, as when parted by the insured, the policy automatically lapsed and there is nothing for the insured to avoid it. In this context, I may refer to what is stated by Raoul Colinvaux in his classic text 'The Law of Insurance', 5th Edition, at page 430 (para 20-17) :

'Sale of car ends policy. The main cover will usually be by reference to a specified car, owned by the policy holder. The whole policy will then only remain effective while he retains an interest in that car. Even if it contains an extension in respect of the use by the policy holder of any car being used at the time of accident 'instead of the insured car' this extension will cease to be effective once he has parted with the car insured.' We are in full agreement with the aforesaidview.

11. The answer to the first question thusbeing in the negative, the further question that arises for consideration is regarding the validity of the view taken by a Division Bench of this Court in Ramaiah Setty v. Meena, 1990 (2) Kar LJ 281. The only question involved therein was regarding the transferor's personal liability to the third party in the absence of a subsisting insurance cover on the date of the accident which took place two years after such transfer, and the transferor's omission to intimate the transfer of the vehicle as required under Section 31 of the Act. Thus, the question of Insurance Company's liability did not arise at all in that case. The continuing liability of the transferor in respect of third party risk has been traced to the provisions of Section 31(1) of the Act requiring the owner to report transfer of the vehicle to the registering authority within the specified period, whereupon the transfer of ownership had to be entered in the certificate of registration. It is held that the expression 'owner' referred to in Section 31 should be given the same meaning throughout the Act. Reference is made in this connection to Section 113A of the Act which reads as under :--

'Whoever, being the owner or person in charge of a motor vehicle, causes or permits, any person who does not satisfy the provisions of Section 3 or Section 4, to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.'

On a perusal of the above, it is seen that the penal liability for allowing unauthorised persons to drive vehicles is cast not only upon the owner, but also upon the person in charge of a motor vehicle who causes or permits any ineligible person to drive the vehicle.

12. Section 31 of the Act provides the procedure as to how the transfer of ownership of a motor vehicle is to be reported by the transferor and the transferee. The obligation is cast both upon the transferor and the transferee to report the transfer to the registering authority. It is incumbent upon the transferor to report the fact of transfer to theregistering authority within whose jurisdiction the transfer is to be effected, within fourteen days of the transfer, and he shall simultaneously send a copy of the said report to the transferee. The transferee has also similar obligation and to forward the certificate of registration to that registering authority together with the prescribed fee and-copy of the report received by him from the transferor in order that the particulars of transfer of ownership may be entered in the certificate of registration. These provisions have nothing to do with the ownership of the vehicle as it is well settled that the transfer of ownership of a vehicle, being a moveable property, is governed by the Sale of Goods Act. The said provisions only provide for the regulation of the use of motor vehicles in public places and to impose penalty if the requirements of the Act are not fulfilled. Failure to notify the transfer visits the transferor or and the transferee with certain penal consequence; that does not, however, make the transfer invalid. The endorsement of transfer in the record of registering authority is also not a condition precedent to the transfer to take effect, nor does it deal with the legality or otherwise of the transfer which must be determined under the general law and also the Sale of Goods Act. The requirement under Section 31 of the Act is that the change of ownership should be recorded also in the certificate of registration requiring the name of the transferee to be substituted in the certificate of registration in the

place of the registered owner. The object of Section 31 appears to be that the registering authority must have the name of the proper person who is liable to pay taxes, and perhaps, in the case of an accident, to trace the proper person upon whom liability can be fixed for damages or compensation resulting from the accident. In that view of the matter, it seems to us that the meaning given to the expression 'owner' in the context of his liability to third parties in the event of the involvement of the vehicle in an accident giving rise to a claim for compensation or damages is too broadly stated by the Division Bench in 'Ramaiah Setty v. Meena, 1990 (2) Kar LJ 281. The proper view appears to be that unless it is proved that the'registered owner' has ceased to be the owner of the vehicle, he continues to be liable in the event of an accident for the claims of the third parties. In other words, the onus to establish cessation of his title in the vehicle by virtue of a bona fide transfer thereof lies upon the registered owner and, unless and until that burden is discharged, he would continue to be liable to meet the liability arising out of an accident involving the vehicle. In that view of the matter, the view taken by the Division Bench in the case of Ramaiah Setty v. Meena, 1990 (2) Kar L 281 to the extent indicated above is not correct and it is overruled. Consequently, the answer to the second question is in the negative.

13. Thus both the questions are answered in the negative.

14. The matter will now go back to the Division Bench for disposal of the Civil Petition in accordance with law and in the light of the opinion recorded on the questions referred to the Full Bench.

15. Order accordingly.