

Smt. Vimla Devi and ors. Vs. Dayaram and ors.

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Court : Madhya Pradesh

Decided On : Oct-14-1999

Reported in : 2000(3)MPHT197

Judge : D.M. Dharmadhikari, ;Dipak Misra and ;S.K. Kulshreshtha, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 29A, 31, 31(1), 31(1A), 94, 95, 95(5), 101, 102, 103A, 103A(1) and 112; [Motor Vehicles \(Amendment\) Act, 1988](#) - Sections 157; Insurers Act, 1930; Motor Vehicles (Amendment) Act, 1956 - Sections 31

Appeal No. : Misc. Appeal Nos. 192/96, 462 to 467/97 and 1552/98

Appellant : Smt. Vimla Devi and ors.

Respondent : Dayaram and ors.

Advocate for Def. : Prashant Mishra, Adv. for Respondent No. 1, ;H.B. Agrawal, Adv. for Respondent No. 3 and ;N.S. Ruprah and ;Amrit Ruprah, Adv. for Respondent No. 3 in M.A. No. 192/96

Advocate for Pet/Ap. : N.S. Ruprah and ;Sanjay Agrawal, Adv.

Judgement :

ORDER

Dipak Misra, J.

1. Considering different factual matrix in relation to effect and impact of non-intimation by the owner-insured to the insurer at the time of transfer of a motor vehicle as required under Section 103A of the [Motor Vehicles Act, 1939](#) (hereinafter referred to as 'the Act') and the resultant liability of the insurance company in such a factual foundation and noticing cleavage of opinion in *Nana Bai and Ors. v. Ishaque Khan and Ors.*, 1995 ACJ 292, *Nagindas and Anr. v. Nasir Ali and Ors.*, 1997 ACJ 1093 and *United India Insurance Company Ltd. v. Shamsuddin and 11 Ors.* (M.A. No. 378 of 1989) on one hand and *Sabir Hussain v. Maya Bai and Ors.*, 1997 ACJ 1258 on the other, a Division Bench of this Court in M.A. No. 446 of 1997 and other connected matters thought it appropriate that the matter required to be decided by a larger Bench. In M.A. No. 192 of 1996 another Division Bench noticing the decision of this Court rendered in the case of *Balwant Singh v. Jhunnubai and Ors.*, 1980 ACJ 127 and further taking note of the fact that there has been a Full Bench judgment of the High Court of Andhra Pradesh rendered in the case of *Madineni Kondaiah v. Yaseen Fatima*, AIR 1986 A.P. 62, which has, according to the said Division Bench, received approval of the Apex Court in the case of *Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd.*, (1996) 1 SCC 221, thought it apposite that the decision rendered in the case of *Balwant Singh* (supra) required reconsideration. We may hasten to state here that in the case of *Madineni Kondaiah* (supra) the Full Bench of Andhra Pradesh High Court expressed the view that notwithstanding non-transfer of certificate of insurance the liability qua third party subsists in view of the provisions engrafted under Sections 94 and 95 of the Act. In this factual backdrop two sets of references have been placed before us.

2. The core question that requires to be answered is-- 'whether in absence of any intimation to the insurance company and the consequent non-transfer of policy, as envisaged under Section 103-A of the Act, the policy relating to the vehicle lapses and as a logical corollary the insurer gets absolved from indemnifying the owner in respect of a third party.'

3. We may state at the very beginning that what was quite a debatable and interesting question of law at one point of time because of cleavage of opinion of various High Courts, lost some of its importance and labyrinthine mask after the

decision in the case of Complete Insulations (P) Ltd. (supra) was delivered by the Supreme Court. However, as the point was not directly in issue it was thought appropriate, the controversy should be decided by a larger Bench and, therefore, reference was made in M.A. No. 192 of 1996. It is to be noted here that the Division Bench, which delivered the judgment in the case of Umed Chand Golcha (M.A. No. 192 of 1996) was of the view that in the case of Complete Insulations (P.) Ltd. (supra) the ratio laid down in Kondaiah's case, which clearly stated that non-intimation by transferor to the insurer does not extinguish the rights of the victim of a road accident, a third party, to get compensation from the insurer, was approved.

4. In this context we may profitably refer to Section 103-A of the Act. It reads as under :

'Section 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 15 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 person :

(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.'

On a bare reading of the aforesaid provision it is clear as noon day that in case, an owner of a motor vehicle proposes to transfer the ownership of the vehicle in question in respect of which insurance has been taken together with the policy of insurance relating thereto, he has to submit an application in a prescribed proforma. The insurer has the authority to refuse transfer of the certificate and such refusal is required to be communicated to the owner within 15 days, failing which there would be deemed transfer in favour of the person to whom the vehicle has been transferred.

5. The aforesaid provision has undergone certain changes in the Motor Vehicles Act, 1988. Section 157 of the 1988 Act reads as under :

'Section 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.

Explanation : For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(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 the 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.'

6. In Madineni Kondaiah 's case it has been held as follows :

'40. A perusal of Section 94 clearly discloses that the statute intended to give protection to a third party in respect of death or bodily injury or damages to their property while using the vehicle in a public place. Hence the insurance of the vehicle under Section 94 read with Section 95 is made compulsory. Those two provisions do not extend the compulsory insurance to the vehicle or to the owner. In fact these two provisions made exception to protect the life or limb of the driver of the vehicle or passenger in the vehicle except public service vehicle. Thus, it is seen the compulsory insurance is for the benefit of third parties. Hence, it is clear that the insurance policy covering three kinds of risks i.e., person (owner), property (vehicles) and third parties is clearly in the nature of composite one. The public liability (third party liability) alone is compulsory. While considering whether the transfer of the vehicle would put an end to the policy, we must see whether such a composite policy will lapse putting an end to all the three kinds of risks undertaken by the insurance company. For this purpose Section 95 (5) must be looked into:

'Notwithstanding anything elsewhere contained in any law, to person issuing a policy of insurance under this Section shall be liable to indemnify the person or classes of persons 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 persons.'

This section is clearly based upon provision of English statute. This section analogous to the provisions in England where the third party's rights against Insurers Act, 1930 was enacted to confer on third parties rights against the insurer of the third party risks. The present Act made a specific provision in case where the insurer becomes insolvent or dies (vide Sections 101 and 102 of the Act) to obviate any doubt or dispute in respect of such events. Section 95 (5) intended to cover two legal objections, firstly that no one who was not a party to a contract, secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of insurance. Thus, this provision puts beyond doubt removing these two objections and making an exception to the general law of contract. Now the question is whether such rights secured to the third party by insuring the vehicle can be defeated by transferring the vehicle during the period when the policy is in force. It is significant to note that Section 95 requires the insurance of the vehicle. Once the vehicle is covered by the insurance not only the owner but any person can use the vehicle with his permission. Section 94 does not require that every person that uses the vehicle shall insure in respect of their separate use. The decided cases now held that on transfer the policy will lapse and a third party cannot enforce the policy against the insurance company. We must make it clear that there are two third parties when such transfer took place. One is a transferee who is a third party to the contract and the other for whose risk the vehicle is insured. We have no hesitation to hold that the transferee who is a third party to the contract cannot secure any personal benefit under the policy unless there is a novation i.e., the insurance company, the transfer of vehicle, and the transferee must agree that the policy must be assigned to the transferee so that the benefit derivable, or derived under the policy by the original owner of the vehicle, the policy holder can be secured by the transferee. Thus, it is clear under a composite policy, covering the risk of property, person, third party risks, the transferee cannot enforce the policy without the assignment in his favour so far the policy covers the risk of the person and property. He has no remedy against the Insurance Company.'

After making distinction between the two categories of third parties the Court proceeded to lay down as under :

'43. It is incorrect to assume that the moment the title of the vehicle passes to the transferee the statutory obligation under Section 94 ceases and the original owner is no longer guilty of causing or allowing the purchaser to use the vehicle. The question is when does the statutory liability cease? The mere passing of title in the vehicle to the transferee will not put an end to this liability. For this purpose we must examine two more provisions of the Act. Under Section 31 the transferor shall within 14 days of the transfer report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee and within forty-five days of the transfer forward to the registering authority no objection certificate obtained by him under Section 29-A. Section 29-A contemplates issuing of no objection certificate both on the occasion of assignment of a new registration mark and also while transferring the motor vehicle. The registering authority is enjoined to issue a certificate within a period of thirty days and if no orders are passed the registering authority shall be deemed to have granted the no objection certificate. The failure to comply with Section 31 is made punishable under Section 112. However, as an alternative measure it also provided under Section 31(1-A) that if the transferor or transferee fails to comply with the requirements of Section 31 they have to pay a fine of Rs. 100 or the prescribed amount considering the period of delay on their part by way of penalty. It is pertinent to note that Section 31 was amended by Act 100 of 1956. Under Section 31 as it stood prior to this amendment in 1956 only the transferee was required to report the transfer of the ownership and was expected to forward a certificate of registration to the registering authorities within thirty days of the transfer. Prior to this amendment there was no statutory obligation on the transferor as is now provided in Sub-clause (a) of Sub-section (1) of Section 31 to notify the transfer to the registering authority within whose jurisdiction the transfer is effected. Thus we see till the transferor fulfils the statutory obligation under Section 31 his liability continues. Further he is the ostensible owner of the vehicle so long the registration is not changed. The liability to pay tax continues irrespective of his rights against the transferee for reimbursement. In fact it was ruled in Northern Indian General Insurance Company Ltd. v. Kanwarjit Singh, AIR 1973 All 357 that a registered owner would have sufficient interest to effect insurance because he is the

ostensible owner. The question raised in that case was whether the registration in favour of benamidar is valid when the registered owner of the vehicle is only benamidar when the real owner never obtained the insurance. It was held that the registered owner has sufficient interest to effect insurance because he is the ostensible owner and there is nothing in Section 94 which could be interpreted to mean that it is only the real owner who could effect the insurance. Any person who uses the vehicle or allows any other person to use the vehicle could also get the insurance effected. Thus, it is seen the public liability to notify the transfer and secures no objection certificate under Section 31 read with Section 94, would make the original owner retain the insurable interest. The insurable interest in this case is not the proprietary interest but the public liability, not to run the vehicle or cause or allow any person to run the vehicle without insurance and also to notify the transfer of such vehicle to the registering authority. So long such obligation continues notwithstanding the cession of proprietary interest, the insurable interest which is the foundation for the continuance of the operation of the policy stands.'

The Court further proceeded to rule as under:

'... Thus, we are clearly fortified in our view that the insurable interest in the property is not necessary in the case of public liability insurance. The test is whether the liability under the statute ceased or not notwithstanding the passing of title and hence we respectfully dissent with the view expressed by various High Courts that on the sale of the vehicle the insurable interest ceases and the policy lapses. We agree that any claim of the transferee in respect of his property and his person can not be enforced against the insurance company. He being a stranger he cannot have any claim against the insurance company. But the third party risk is concerned so long the obligations under the statute are not fulfilled, as contemplated under Section 31 read with Section 94, he continues to have the insurable interest till such obligations are fulfilled.'

7. The aforesaid view was approved in the case of Complete Insulations (P) Ltd. (supra). With the passage of time, if we may say so, the controversy has melted into insignificance and the Gordian knot has already been opened. Not for nothing it has been said that the time which flows ceaselessly becomes a magnificent

catalyst in evolution of law that renders great service to the human society. To proceed with the narration, in the case of *New India Assurance Co. Ltd. v. Belarani (Smt.) and Ors.*, (1998) 6 SCC 599, the Apex Court took note of the decision rendered in the case of *Complete Insulations (P) Ltd.* (*supra*) and observed as follows :

'As a matter of fact, in the said judgment, this Court has approved the ratio laid down in the decision of the Full Bench of Andhra Pradesh High Court in *Kondaiah's case*.'

8. If any further doubt remained to be dispelled, the same was done in the case of *G. Govindan v. New India Assurance Co. Ltd.*, (1999) 3 SCC 754, wherein their Lordships referred to the decision rendered in the case of *Complete Insulations (P) Ltd.* (*supra*) and held as under :

'10. This Court in the said judgment held that the provisions under the new Act and the old Act are substantially the same in relation to liability in regard to a third party. This Court also recognised the view taken in the separate judgment in *Kondaiah case* that the transferee-insured could not be said to be a third party qua the vehicle in question. In other words, a victim or the legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee. This Court further held as follows : (SCC p. 225, para 6)

'6. 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 old law protection to third parties, that is victims of the accident. The protection was available by virtue of Sections 94 and 95 of the old Act.'

In Paragraphs 13 and 15 their Lordships further ruled thus :

'13. In our opinion, both under the old Act and under the new Act the legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of

the conflicting decisions on this aspect among the various High Courts.

15. As between the two conflicting views of the Full Bench judgments noticed above, we prefer to approve the ratio laid down by the Andhra Pradesh High Court in Kondaiah case as it advances the object of the legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed the procedure for transfer of policy. In other words in accord with the well-settled rule of interpretation of statutes we are inclined to hold that the view taken by the Andhra Pradesh High Court in Kondaiah case is preferable to the contrary views taken by the Karnataka and Delhi High Courts even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the legislature in protecting the third party (victim) interest. The ratio laid down in the judgment of the Karnataka & Delhi High Courts differing from the Andhra Pradesh High Court is not the correct one.'

9. In view of the aforesaid decision of the Apex Court the controversy has been put to rest. 'The wild inextricable maze' has been cleared by the sublime interpretation. Accordingly we answer the reference holding that the insurance policy remains effective in respect of third party risks but not in respect of the transferee's risks even if there has been absence of application/intimation as stipulated under Section 103-A of the Act. Resultantly, the law laid down in the case of Balwant Singh (supra) and Sabir Hussain (supra), is no more good law and all other decisions of this Court, taking the same view, follow the same path.

10. The appeals may be placed before the appropriate Bench.