

Ashraf Vs. Fathima

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Court : Kerala

Decided On : Feb-26-2004

Reported in : III(2004)ACC953; 2005ACJ275; 2004(2)KLT598

Judge : J.B. Koshy and; K. Thankappan, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 50, 149(1) and 149(2)

Appeal No. : M.F.A. No. 932 of 2002

Appellant : Ashraf

Respondent : Fathima

Advocate for Def. : Rajan P. Kaliyath, Adv.

Advocate for Pet/Ap. : M. Chathukutty Nambiar and; T.V. Jayakumar Namboodiri, Advs.

Disposition : Appeal dismissed

Judgement :

J.B. Koshy, J.

1. This appeal is filed by the second respondent in O.P.(MV) No. 259 of 1995. He was the registered owner of the motor cycle, bearing No. KRC 8054, ridden by the first respondent (seventh respondent in the appeal). The claim was filed by the

widow and children of the motor accident victim. According to the claimants, the accident was caused due to the negligence of the driver of the motor cycle, KRC 8054. The Tribunal found that the accident occurred as alleged. It was also found that the driver of the motor cycle had no driving licence at that time. A contention was taken up by the insurance company that since driver of the motor cycle had no driving licence, they are not liable to pay compensation, notwithstanding the fact that the vehicle was covered by policy of insurance. The appellant, registered owner was the second respondent in the claim petition. He entered appearance through one O.G. Premarajan, Advocate. According to the appellant, even though he entrusted the matter to him and he went several times, nothing was stated about the case. In any event, the record shows that no written statement was filed by him before the Tribunal and no evidence was adduced on his behalf. The witness examined on the side of the claimants were not cross examined by him on behalf of the appellant and award was passed directing the insurance company to pay the amount with the right of recovering the amount from the insured, that is the appellant herein.

2. The Supreme Court after following its earlier decisions, in *United India Insurance Co. Ltd. v. Lehu and Ors.*, 2003 (2) KLT 97 (SC) = AIR 2003 SC 1292, held that even if there is no driving licence or driving licence is bogus, liability towards third party still continues with the insurance company and insurance company has to pay the amount and can recover the amount paid from the insured.

3. It is the contention of the appellant that he transferred the vehicle to a person called Suresh Kumar and that Suresh Kumar sold the vehicle to one Nazar and Nazar sold the vehicle to one Muneer who is the first respondent in the claim petition. He also produced copy of the agreement with Sri. Suresh Kumar. Learned counsel for the insurance company questions the correctness of that agreement itself as the agreement was not produced before the Tribunal though a copy is produced before this Court. How he got this agreement is not known. Appellant's case is that he sold the vehicle to one Suresh Kumar and that sale agreement was not produced. According to the appellant, first respondent who was riding the vehicle was the owner himself (seventh respondent in this appeal). Notice issued

to him was not actually served on him and it was returned with the endorsement 'addressee out of station, present address not known'. Even though notice was served as affixture on the address given by the appellant no appearance was made on his behalf before this Court. It is true that various decisions show that the de facto owner cannot escape from the liability, but registered owner's liability will continue as far as third party is concerned. Appellant also produced a copy of the kychit which shows that from the police station first respondent who was driving the vehicle got the vehicle on kychit. That will not show that he was the real owner of the vehicle. Even if the vehicle was transferred at the time of accident, the insurance company's liability cannot be wiped off in view of the decisions of the Supreme Court in G.Govindan v. New India Assurance Co. Ltd. and Ors. (AIR 1999 SC 1398). In that decision the Apex Court held that despite transfer of the vehicle without information to the insurance company, the insurance company continues to be liable to the third party. That benefit is only applicable to third parties. The Supreme Court has made it clear that:

'... We are clearly of the opinion such statutory liability makes him to retain the insurable interest as the liability subsists till he discharges the statutory obligations.....'.

Thereafter, the Apex Court held as follows:

'... When the policy of insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property (vehicle) and the third party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is novation. So far the third party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under Section 29-A and 31 read with Section 94 of the Act. Till he complies with the requirement of Section 31 of the Act the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risks are concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of Section 31, the liability of the

transferor subsists and the policy is in operation so far it relates to the third party risks....'

Therefore, despite transfer, the insurance company is liable to pay compensation to the third party and that benefit can be made available by the third parties and not by the registered owner of the vehicle. Transferor's liability to third parties and public also continues till obligation is transferred. Section 50 of the Motor Vehicles Act casts mandatory obligation to the owner to change the registration on transfer of vehicle. Registered owner holds out to the public that he is the owner of the vehicle. Third parties may be unaware of transfer unless it is entered in the registration book. Otherwise plea of bogus transfer will be made to escape from liability to third parties. Here, alleged transfer is not proved before the Tribunal. Since the person driving the vehicle was not having driving licence, as held by the Supreme Court the insurance company is liable to pay the amount and then recover it from the insured. Here the insured is still the registered owner as admittedly, the appellant, registered owner, did not inform the matter of transfer to the insurance company and insurance is not transferred. The insurance company cannot recover it from the de facto owner because there is no contractual agreement between the de facto owner and the insurance company. The Insurance Company can recover it only from the insured. We also refer to the decision of the Supreme Court in Jose v. Chacko, 2001(3) KLT 633 (SC), wherein the Supreme Court observed that liability of the registered owner cannot be wiped off notwithstanding transfer. In that case, evidence on record proved that ownership of the vehicle was transferred. Despite that the Supreme Court held that registered owner cannot escape from the liability. In this case, since the driver has no driving licence, insurance company has to pay the compensation and can recover the same from the insured. Since insurance is not transferred, the liability of the appellant, registered owner, cannot be taken away.

In the above circumstances, we dismiss the appeal.