

**Saroja and 3 Others Vs. Gopal and 3 Others**

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**Court :** Chennai

**Decided On :** Mar-09-1999

**Reported in :** 1999ACJ1103; [2001]106CompCas666(Mad); 1999(2)CTC37; (1999)IIMLJ436

**Judge :** N.K. Jain A.C.J.,; S.S. Subramani and; S. Jagadeesan, JJ.

**Acts :** [Motor Vehicles Act 1988](#) -- Sections 103-A, 157

**Appeal No. :** C.M.A. No. 94 of 1984

**Appellant :** Saroja and 3 Others

**Respondent :** Gopal and 3 Others

**Advocate for Def. :** Mr. R.T. Doraisami, ;Mr. M.B. Gopalan, ;Mr. G. Rajan and A. Shanmugam, Advs.

**Advocate for Pet/Ap. :** Mr. V. Radhakrishnan, Adv.

**Judgement :**

ORDER

Judgement pronounced by N.K. Jain A.C.J.

1. This matter was referred to by a Division Bench of this court on the following question of law:

'Whether on the transfer/sale of the vehicle, the policy of insurance issued already in favour of the transferor/seller, in the absence of intimation about such transfer, lapses and the Insurance Company cannot be fastened with liability.'

2. Necessary facts for the disposal of the said reference are:

On 3.3.1981, while travelling in a van bearing Registration No. TMQ 257, four persons met with an accident, as the said van dashed against the stationery lorry. The Tribunal awarded compensation fastending liability on the first respondent owner. The tribunal came to the conclusion following the decision of a Division Bench in Hema Ramaswami v. K.M. Valarance Panjani, : (1981)1MLJ0182 . The matter, on appeal, heard in extenso. The Bench considered various aspects made by Mr.V. Radhakrishnan, learned counsel appearing for the appellants. In Dharman and another v. N.C. Srinivasan and others, : AIR1990 Mad14 a Division Bench of this Court had taken the view that 'on the transfer/sale of the vehicle during the period of cover, the policy had lapsed will not be available by way of defence to the Insurance Company. In the decision of the Division Bench in the Oriental Insurance Company Ltd. Coimbatore v. Rajamani and others, 1991 (1) LW 635 a view had been taken to the effect that 'on the transfer/sale, the cover under the policy lapses and the transferee cannot take advantage of the policy in favour of the transferor/vendor. On these conflicting decisions, the matter had been referred to the Full Bench, as stated above.

3. We have heard the learned counsel appearing on either side and perused the materials on record and the case law.

4. It is seen that in Section 157 of the Motor Vehicles Act, 1988, in sub-section (1) the Explanation was inserted on 11.11.1994, which says that, Section 157(1) involves two transfers, (i) the transfer of ownership of the vehicle in respect of which insurance is taken and (ii) the policy of insurance relating thereto. It is also stated that once both the transfers take place the deeming provisions operates in respect of insurance and policy described thereon.

5. We are of the view that it is not necessary to deal with the case laws, cited before us, as our attention had been drawn to the latest decisions of the Supreme

Court rendered in Complete Insulations (P) Ltd. v. New India Assurance Co, Ltd., : AIR 1996 SC586 and in Rajamani and others v. Oriental Insurance Co. Ltd. Coimbatore and others, : (1998)8SCC641 . In both the abovementioned decisions, the effect of transfer of certificate of insurance and the liability of insurance company had been considered. In Complete Insulations (P) Ltd's case, : AIR 1996 SC586 , when the policy was not transferred and the vehicle was damaged in accident, whether the transferee was entitled to be indemnified by the insurer for the damage to vehicle was considered and it had been held thus:

'.. In the present case, since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle.'

In Oriental Insurance Co. Ltd's case : (1998)8SCC641 the abovemention decision Complete Insulations (P) Ltd. v. New India Assurance Co, Ltd., : AIR 1996 SC586 was relied upon. Considering the same, the Apex Court held as follows:

'..It was contended that, in any event, the first respondent was liable and reliance was placed upon the judgment of this Court in Complete Insulation (P) Ltd. v. New India Assurance Co. Ltd.. : AIR 1996 SC586 . In that judgment, this Court considered the provisions of Section 103-A of the Motor Vehicles Act, 1939 and Section 157 of the Motor Vehicles Act, 1988 both of which deal with the transfer of certificates of insurance. The provisions of the 1988 Act in this regard are different from those of 1939 Act. By reason of the provisions of the latter Act, the certificate and policy of insurance are deemed to be transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of such transfer. The provisions in the earlier Act were that where an application for transfer of the certificate and policy of insurance to the intending purchaser has been made and no refusal to do so has been received within 15 days, the certificate and policy are deemed to be transferred in favour of the transferee of the motor vehicle from the date of its transfer. The two provisions being different and there having been no application for transfer by the second respondent to the third respondent of the certificate and policy of the insurance of the truck, it is not possible to hold that they were deemed to be transferred in favour of the third respondent with effect

from 5.10.1979, the date of transfer .....

The controversy, which was arisen in this reference, has been set at rest in view of the decision of the Supreme Court, mentioned above. Under these circumstances and the facts of the case, in the absence of such intimation of transfer/sale of the vehicle, the insurance company is not liable to be fastened with liability. We answer this reference accordingly.

Post the C.M.A. before a Division Bench for appropriate orders.

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