Before D. V. Sehgal, J.

SHANTI PARSHAD SHARMA,—*Appellant.*

versus

NATIONAL INSURANCE COMPANY LTD. AND OTHERS,—*Respondents.*

First Appeal From Order No. 178 *of* 1983

August 29, 1986.

Motor Vehicles Act (IV of 1939)—Sections 103 A—Vehicle involved in fatal accident transferred prior to the date of accident—No intimation of such transfer given by the original owner to the insurance company as required by Section 103 A of the Act—Transferee applying for transfer of insurance policy to his name after the accident without disclosing the factum of accident—Said policy duly transferred—Insurance Company—Whether could be made liable for payment of compensation.

Held, that no intimation as contemplated by Section 103 A of the Motor Vehicles Act, 1939 was given by the original owner of the vehicle to the insurance company either before or on the date of transfer of the vehicle. Had such an intimation been given and the insurance company had not responded to such intimation within 15 days, the transfer of the insurance certificate in favour of the transferee would have been effective from the date of transfer of the vehicle in his favour by virtue of Section 103-A of the Act. The principle underlying the aforesaid provision is that the insurer cannot be allowed to ward off his liability by simply delaying the transfer of the certificate of insurance in favour of the purchaser of the vehicle if an accident takes place and liability is incurred by the purchaser during the period intervening between the date of the transfer of the vehicle and the date of actual transfer of the certificate of the insurance by the insurer. Since the new owner of the vehicle secured transfer of the insurance cover in his favour after the date of the accident without disclosing the factum of the accident to the insurance company it has to be held that the insurance company cannot be made liable for payment of compensation.

(Paras 6, 7 and 8)

First Appeal from the order of the Court of Shri Surinder Sarup, Motor Accident Claims Tribunal, Faridabad dated 25th November, 1982 awarding compensation Rs. 50,000 against the respondents No. 1 *and* 2 *alongwith six percent future interest per annum from the date of the award till the date of its satisfaction and ordering that respondents No.* 1 *and* 2 *shall also bear the costs of the claim petition.*

L. M. Suri, Advocate with Ravinder Arora Advocate, *for the Appellant.*

Pardeep Bedi, Advocate (P. S. Rana, Advocate with him), *for the Respondent No.* 1.

N. K. Khosla, Advocate, *for Respondent No.* 3 *and* 4.

JUDGMENT

D. V. Sehgal J.

(1) This is an appeal by the owner of truck bearing registration No. HRR 8839 from an award dated 25th November, 1982 of the Motor Accident Claims Tribunal, Faridabad.

(2) The facts in brief are that a claim application under section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) was filed by the claimant-respondents Nos. 3 and 4 alleging that their son Amrit Lal aged about 21 years was going on a scooter bearing registration No. DEN 4665. He was sitting on the pillion while the scooter was being driven by Dhanmesh Malik. They were coming from the side of old Faridabad and were going towards Neelam Chowk, N.I.T. Faridabad. The scooter met with an accident which was caused due to rash and negligent driving of truck No. HRR 8839 by Nanda, respondent No. 2. As a result of the accident, Amrit Lal received extensive injuries and was crushed to death on the spot. The deceased was working as a Sub-contractor and was earning Rs. 1,000 per month. The claim was opposed by the appellant and respondent No. 2 i.e. the owner and the driver of the truck. They denied in the written statement that the accident took place due to rash and negligent driving of the truck. Instead they pleaded that it was due to the negligence of the scooter driver that the acciden had taken place. It was further contended that the truck was insured with the National Insurance Company Limited (respondent No. 1) and as such they were not liable to pay any compensation.

(3) The National Insurance Company Limited (respondent No. 1) filed a separate written statement wherein besides raising some preliminary objections it was denied that the accident had taken place because of the rash and negligent driving of the truck by respondent No. 2. It was further pleaded that the truck in question was sold by the original insured owner to the appellant prior to the date of

accident but the policy was not transferred in his name. The appellant, in fact got the policy transferred in his name only on 10th March, 1981 while the accident took place on 14th March, 1981. It was thus pleaded that respondent No. 1 was not liable to pay any compensation as there was no policy in operation on the date of the accident.

(4) On the pleadings of the parties the learned Tribunal framed the following issues:—

1. Whether Amrit Lal died as a result of rash or negligent driving of truck HRR 8837 by respondent No. 1?
2. Whether the accident was caused due to rash or negligent driving of scooter DEN 4665 by Dhanmesh Malik and/or Amrit Lal?
3. To what amount of compensation are the petitioners entitled and against whom?
4. Whether the scooter driver held a valid licence? If not its effect on the liability of the Insurance Company/other respondents?
5. Whether the petition is bad for non-joinder of necessary parties?
6. Whether the present petition has been filed in collusion with respondents No. 1 and 2?
7. Whether the Insurance policy No. 193/6303718 was not valid and in force at the time of the accident? If so its effect?
8. Whether Nanda driver of the truck, respondent No. 1 was holding a valid driving licence? If not, its effect on the liability of the Insurance Company?

Issue Nos 1 and 2 were decided together and the learned Tribunal held that Amrit Lal died as a result of rash and negligent driving of truck No. HRR 8839 by its driver, respondent No. 2 and not by rash and negligent driving of the scooter. After taking into consideration the income of the deceased and the dependency of the claimant-respondent Nos. 3 and 4 on him, the learned Tribunal concluded that their dependency on the deceased worked out to Rs. 500

per month i.e. Rs. 6,000 per annum and the compensation payable to them was assessed at Rs. 50,000. Under issue No. 7, the learned Tribunal held that the Insurance Company (respondent No. 1) was not liable because no insurance policy was operative on the date of the accident. Issue Nos. 4, 5, 6 and 8 were not pressed before the learned Tribunal and as such no finding on them was returned. As a result an award of Rs. 50,000 alongwith 6 per cent future interest was made in favour of the claimant-respondents No. 3 and 4, making the appellant and respondent No. 2, the owner and driver of the truck, liable for the same.

(5) I have heard the learned counsel for the parties. Though the learned counsel for the appellant attempted to find fault with the findings of the learned Tribunal on issues Nos. 1, 2 and 3, he has not been successful in dislodging the findings returned on these issues. The learned Tribunal has discussed the entire evidence theradbare. No cogent ground has been made out which could persuade me to differ with the conclusions of the learned Tribunal on these issues. I, therefore, affirm the findings of the learned Tribunal with regard to these issues.

(6) The crucial contention raised by the learned counsel for the appellant is that the Insurance Company (respondent No. 1), having transferred the policy in favour of the appellant on 16th March, 1981, in view of the principles adumberated in section 103-A of the Act it becomes liable and the insurance policy becomes operative from the date of the transfer of the vehicle by its original owner to the appellant. To canvass this proposition, reliance has been placed on a D. B. judgment of this Court in *New India Assurance Co. Limited* v. *Col. Gurcharan Singh and others,* (1) and another judgment *Oriental Fire and General Insurance Company Limited* v. *Bhagwanti and others* (2) and last of all on a D. B. judgment *National Insurance Company Limited* v. *Pritam Singh and others* (3). The learned counsel for respondent No. 1, on the other hand, tried to distinguish the aforesaid judgments and brought out that the facts of the present case are entirely different and the ratio of the aforesaid judgment cannot be applied to this case.

(1) 1983 A.C.J. 309.

(2) 1983 A.C.J. 349.

(3) F.A.O. No. 596 of 1982, decided on 7th January, 1983.

(7) Having given my thoughtful consideration to the rival contentions of the parties, I am of the considered view that the liability cannot be fastened on the Insurance Company (respondent No. 1). The truck in question was no doubt insured by its original owner with respondent No. 1. It was, however, transferred to the appellant before the date of the accident i.e. 14th March, 1981. There is no evidence on the record that any intimation was sent either by the original owner or by the appellant to respondent No. 1 to the effect that the truck had been purchased from the original owner by the appellant with a request that the insurance policy of the truck should be transferred in the name of the appellant. It was, in fact, two days after the accident that the appellant applied to respondent No. 1,—*vide* letter dated 16th March, 1981 (Annexure R. 3/3) for transfer of the policy in his name by informing it that he had purchased the said truck from its original owner. Photostat copy of the affidavit of the original owner, Exhibit R. 3/2, was also furnished to respondent No. 1. As a result of this intimation, as insurances cover was issued in favour of the appellant on 16th March, 1981 effective from that date. Thus no intimation as contemplated by section 103-A of the Act was given by the original owner of the vehicle to the Insurance Company either before or on the date of the transfer of the truck. Had such an intimation been given and no response thereto would have been there from the Insurance Company within 15 days, the transfer of the insurance certificate in favour of the appellant would have been effective from the date of the transfer of the vehicle in his favour by virtue of section 103-A of the Act. The principle underlying the aforesaid provision is that the insurer cannot be allowed to ward off his liability by simply delaying the transfer of the certificate of insurance in favour of the purchaser of the vehicle if an accident takes place and liability is incurred by the purchaser during the period intervening between the date of the transfer of the vehicle and the date of actual transfer of the certificate of insurance by the insurer.

(8) The above position of law is quite clear when reference is made to *Col. Gurcharan Singh's case* (supra). In that case the vehicle was sold by the original owner and a communication in writing was sent to the Insurance Company by him on 31st March, 1970. The Insurance Company failed to take any action on this intimation. An accident took place on 23rd August, 1970. It was held that the Insurance Company could not escape its liability to pay compensation on the ground that the intimation of transfer of the vehicle did

not satisfy the requirements of Section 103-A of the Act. It was further observed that the sole purpose of informing the insurance company about the transfer of the insured vehicle was to seek its reaction to the transfer of insurance certificate and policy in favour of the transferee. The insurer cannot avoid its liability unless it has affirmatively declined to agree to the novation of the contract of indemnity. In *Bhagwanti's case* (supra) again the facts were similar. The vehicle was transferred by the original owner to the transferee in December, 1977. A letter dated 16th December, 1977 was sent by the original owner to the Motor Licensing Officer-cum-Registration Authority with a copy thereof to the Insurance Company. There was no response from the Insurance Company. The accident took place on the night intervening January 16-17, 1978. On the principles enunciated in *Col. Gurcharan Singh's case* (supra), it was held that the Insurance Company could not ward off its liability simply because it failed to respond to the intimation given to it by the original owner regarding factum of transfer of the vehicle. Again in *Pritam Singh's case* (supra) the same principle has been propounded. No precedent has been cited before me where without any intimation having been given to the Insurance Company regarding the transfer of the vehicle by the original owner, the Insurance Company has been made liable for compensation payable to the victim of an accident in which the vehicle in question was involved by extending to such a case the principles underlying section 103-A of the Act. In the present case, in fact, the appellant secured transfer of the insurance cover in his favour after the date of the accident without disclosing the factum of the accident to the Insurance Company. I am of the firm view that in the given facts and circumstances of this case, the Insurance company cannot be made liable for payment of the compensation awarded by the learned Tribunal through the award under appeal.

(9) As a result, finding no merit in this appeal, the same is dismissed with costs which are assessed at Rs. 500.

R.N.R.

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