

(9) The Judicial Commissioner of Goa, Daman and Diu has held in *British Indian Genl. Ins. Co. Ltd. Margao v. Chanbi Shaikh Abdul Kadar*, (7):—

“The Claims Tribunal cannot be regarded as a civil Court for the purposes of interference in revision under section 115(c) of the Civil Procedure Code and section 8(2) (b) (i) of the Goa Daman and Diu (Judicial Commissioner’s Court) Regulation, 1963. It can, however, be regarded as a Tribunal for the purposes of supervisory jurisdiction vested in the High Court under Article 227 of the Constitution of India.”

(10) For the foregoing reasons, we hold that the Claims Tribunal while deciding claims applications filed under the Act is not a Civil Court subordinate to the High Court for the purpose of section 115 of the Code of Civil Procedure and the orders passed by the Claims Tribunal are not amenable to the revisional jurisdiction of the High Court. Both the questions are answered in the negative. There shall be no order as to costs.

(PREM CHAND JAIN)

Acting Chief Justice.—I agree

H. S. B.

Before S. S. Sodhi, J.

NEW INDIA ASSURANCE CO. LTD.—Appellant.

versus

M/S JOLLY ENGINEERS & CONTRACTORS (P) LTD.

AMRITSAR AND OTHERS,—Respondents.

First Appeal from Order No. 520 of 1980.

November 20, 1984.

*Motor Vehicles Act (IV of 1939)—Sections 95, 96, 110-B and 110-D—Motor Vehicle sold and possession delivered to the purchaser—Transferor, however, continuing to be shown as owner in the records of the registering authority—Vehicle meets with an accident—Claim for compensation—Liability for compensation—Whether of the purchases—Insurance company with which the vehicle stood insured before sale—Whether liable.*

(7) 1968 A.C.J. 322.

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*Held*, that transfer of ownership of a motor vehicle puts an end to the liability of the insurance company with which it was insured, even though the insured continues to be shown as the registered owner of the vehicle in the records of the registering authority. In other words, the liability for the accident, besides that of the person actually causing it, is of the real owner whether or not he also happens to be the registered owner thereof. This being so, there can be no escape from the conclusion that no liability for the compensation awarded could be fastened upon the transferor or upon the insurance company with which the vehicle was insured before its transfer. The liability is only that of the driver of the offending vehicle and the owner thereof i.e. the transferee and it is open to the claimants to cover the amount of compensation awarded from both or either of them.

(Para 13).

*First Appeal From Order of the Court of Shri Balwant Singh Teji, Motor Accident Claims Tribunal, Jullundur dated 20th February, 1980 ordering that claimants are entitled to Rs. 65,000 and the liability of the Insurance Company would be to the extent of Rs. 50,000 while the remaining amount of Rs. 15,000 will be paid by M/s Jolly Engineering and Contractors Pvt. Ltd., Jullundur and Chanan Singh respondent No. 4. These respondents are allowed a period of four month to make payment of the amount failing—which it will carry an interest at the rate of 6 per cent P.A. till the entire payment is made. The compensation awarded to the widow of the deceased will be paid to her in lump-sum while the compensation amount of the minors will be deposited by her in some nationalised Bank at Jullundur and that will be drawn by the minor petitioners on their becoming major and till then, their mother Paramjit Kaur would be entitled to the interest due there-upon.*

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

Satva Parkash Jain Advocate with Subhash Jain, Advocate and Sarita Gupta Advocate for respondents No. 5 to 9.

#### JUDGMENT

S. S. Sodhi, J.

(1) Does transfer of ownership of the vehicle by the insured prior to the accident absolve the Insurance Company from liability for the compensation awarded? Herein lies the controversy raised in appeal.

(2) A sum of Rs. 65,000 was awarded as compensation to the widow and children of Naranjan Singh deceased, who was knocked down and killed by the Bus PUE—5895. This happened on March 6, 1977 near a Petrol Pump on the G.T. Road, at Jullundur Cantt. The finding being that the accident had been caused by the rash and negligent driving of the bus-driver.

(3) The offending bus stood insured with the New India Assurance Company at the time of the accident with the insured being its registered owners M/s Jolly Engineers and Contractors (Private) Limited. The Tribunal consequently held them and the bus driver liable for payment of the amount awarded.

(4) The plea put-forth by M/s Jolly Engineers and Contractors (Private) Limited, as also the Insurance Company, however, was that the bus was in fact owned and possessed by M/s Navrang Bus Service, Amritsar and no liability could thus be fastened upon them. What was stated by M/s Jolly Engineers and Contractors (Private) Limited, in their return, was that they had sold their buses along with Route-Permit to M/s Navrang Bus Service Amritsar, but this transfer could not be entered in the records of the Transport Authorities on account of some administrative reasons and they consequently continued to be the registered owners although the vehicles had been sold and possession and control over them had been given to the purchasers M/s Navrang Bus Service, Amritsar. At the time of the accident, the bus PUE—5895 was under the control and possession of M/s Navrang Bus Service, Amritsar.

(5) The Insurance Company on its part took the preliminary objection that as the vehicle involved in the accident had been transferred by M/s Jolly Engineers and Contractors (Private) Limited to M/s Navrang Bus Service, Amritsar, the Insurance Company could not be held liable. It deserves mention that M/s Navrang Bus Service had been named as one of the owners of the offending bus in the claim application too and were, therefore, impleaded as respondents. M/s Navrang Bus Service did not, however, choose to contest the claim application as no appearance was put-in on their behalf despite notice and they were consequently proceeded against *ex parte*.

(6) The only evidence on record relevant to this aspect of the case is the testimony of R.W.—1 Vinod Kumar Puri, the

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General Manager of M/s Jolly Engineers and Contractors (Private) Limited, who deposed that the real owners of the bus PUE—5895 were M/s Navrang Bus Service, Amritsar as they had purchased it in May, 1976. This bus, it was stated, was however, registered in the name of M/s Jolly Engineers as the permit was then in their name. In 1979, however, when the permit was transferred to the name of M/s Navrang Bus Service, this bus too was transferred to their name. It was stated that possession and control of the bus was always with M/s Navrang Bus Service. As regards insurance, the witness deposed that until early 1979, this bus continued to be in the name of M/s Jolly Engineers and Contractors (Private) Limited in the records of the Insurance Company and that the Insurance Company had never been asked to transfer the policy in favour of M/s Navrang Bus Service, even though possession and control of the bus had been delivered to them.

(7) This being the state of the record, Mr. L. M. Suri, counsel for the Insurance Company contended that as the insured—M/s Jolly Engineers and Contractors (Private) Limited were not the owners of the offending bus, when the accident occurred, they had no insurable interest therein in respect of which the Insurance Company could be held liable.

(8) The point canvassed by Mr. S. P. Jain, counsel for the claimants, on the other hand, was that it was not open to the Insurance Company to seek to avoid liability on the ground of transfer of ownership of the offending vehicle as the only defences open to it were those set out in Section 96(2) of the Motor Vehicle Act, 1939 and this was not one of them. Reference was here made to the judgment of the Supreme Court in *British India General Insurance Co. Ltd. v. Itbar Singh* (1), where it was held that the insurer could defend an action only on the grounds enumerated in Section 96(2) of the Motor Vehicles Act, 1939 and further that these grounds could not be added to. It was argued, therefore that despite transfer of ownership, the Insurance Company continued to be liable until the policy of insurance was cancelled or discharged. Support for this proposition is indeed to be found in the authority cited, namely; *Padma Devi and others v. Gurbaksh Singh and others*, (2) where a Division Bench of the High Court of Rajasthan held that the only defences available to the Insurance

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(1) A.I.R. 1959 S.C. 1331.

(2) 1973 A.C.J. 460.

Company were those specified in Section 96(2) of the Motor Vehicle Act, 1939, and it was therefore, not open to it to raise the plea that the policy had lapsed on transfer of the vehicle to a third party. In holding so, the court relied upon the judgment of the Single Bench of the High Court of Madras as also Delhi; these being, *Madras Motors Insurance Co. Ltd, Madras v. Mohamed Mustafa Badsha*, (3) and *Vimal Rai v. Gurcharan Singh*, (4). The judgment in *Padma Devi and others'* case (supra) was also mentioned with approval by Vijayvargiya, J. of the High Court of Madhya Pradesh in *Mohammad Ramzan v. Sharifanbai and others*, (5), though in a somewhat different context. The point for consideration there being with regard to the liability of the registered owner and the insurer upon transfer of the vehicle with a view to circumvent the provisions of the Scooter (Distribution and Sale) Control Order, 1960. It was held that if a vehicle is transferred by the owner thereof to circumvent any provision of law and the owner continues to remain the registered owner thereof, and if the vehicle is also insured in the name of the registered owner, the registered owner or the ostensible owner must be held liable for the negligence of his transferee or his servant or agent in the course of his employment or within the scope of his authority, because in transferring possession of the vehicle in contravention of the provisions of law, the ostensible owner must be deemed to have knowledge that the vehicle will be used by the transferee or his agent or servant and that they might use it negligently or rashly causing injuries to a third-party.

(9) The over whelming weight of judicial precedent, however, points to the contrary view, namely; that the change of ownership of a vehicle puts an end to the policy of insurance even if the original policy holder continues to be shown as the registered owner of the vehicle concerned. The rationale behind this being that a policy of insurance is a contract of personal indemnity and the insurer cannot, therefore, be compelled to accept responsibility in respect of a third-party, who may be quite unknown to him. Mr. L. M. Suri, counsel for the Insurance Company cited a string of authorities in support. It would apt to begin with the judgment of the Division Bench of the High Court of Rajasthan

(3) A.I.R. 1961 Madras 208.

(4) 1967 A.C.J. 115.

(5) 1982 A.C.J. 445.

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in *M/s Automobile Transport (Rajasthan) Private Ltd. and another v. Dewalal and others*, (6), where the earlier view of that court in *Padma Devi and others' case* (supra), was expressly dissented from. It was pointed out in this behalf that in *Padma Devi and others' case* (supra), the court followed the judgment of the Single Bench of the High Court of Delhi in *Vimal Rai, v. Gurcharan Singh*, (7) which was, however, later overruled by a Division Bench of that Court in *Oriental Fire and General Insurance Company Ltd. v. Vimal Rai*, (8) where it was held that the endorsement of the transfer of a vehicle in the records of the registering authority was not a condition precedent to its transfer nor did it deal with the legality or authority of the transfer which fell to be determined by other provisions of law. It was accordingly held that it was the real owner who was liable whether or not he was the registered owner of the vehicle too. This view was followed and approved in this case too.

(10) As regards the *Madras Motor Insurance Co. Ltd., Madras case* (supra), what was stated there too was expressly dissented from by the Division Bench of the High Court of Madras in *Hema Ramaswami v. K. M. Valarence Panjani and others*, (9), where, it was held that it did not lay down correct law. The view expressed being that if there is a transfer of a vehicle, the Insurance Policy taken by the transferer cannot be taken to subsist unless the benefits of the policy are also transferred to the transferee. It was further observed that Section 96 of the Motor Vehicles Act, 1939 did not warrant the view that a sale or transfer of an insured car by the insured during the currency of the policy did not terminate the policy. The earlier view of that court in *The South India Insurance Co. Ltd versus Lakshmi*, (10) was reiterated where it had been laid down that if there has been a transfer of ownership of the vehicle before the date of the accident, the liability for the accident cannot be fastened on the transferer even though the transfer had not been recognized by the regional transferring authority and the registration has continued in the name of the transferer.

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(6) 1977 A.C.J. 150.

(7) 1967 A.C.J. 115.

(8) 1972 A.C.J. 514.

(9) 1981 A.C.J. 288.

(10) 1971 A.C.J. 122.

(11) A similar view was expressed by the High Court of Madhya Pradesh in *Balwant Singh versus Jhannubai and Ors*, (11) where it was held, “—It is also well settled law that a contract of insurance is nothing but a contract of indemnity. The policy is with reference to a specified vehicle owned by the policy holder and consequently the policy remains effective while the policy holder retains an interest in the vehicle. In the absence of any express stipulation to the contrary in the policy the moment the insured parts with the car, the policy relating to it lapses. The insurance policy being a contract of personal indemnity, the insurers cannot be compelled to accept responsibility in respect of third party who may be quite unknown to them.”

(12) Finally, as regards the contention that in view of the enumeration of defences available to an insurance company under section 96(2) of the Motor Vehicles Act, 1939, it was not open to it to seek to take up any other defence, namely; that it was absolved from liability on account of the transfer of the vehicle by the insured, reference must be made to the judgment of the High Court of Andhra Pradesh in *Indian Mutual Insurance Company now merged in the United India Fire and General Insurance Co. Ltd versus Vijaya Ramulu and others*, (12) where this argument was specifically raised and repelled. Regarding Section 96(2) of the Motor Vehicles Act, 1939, it was observed, “This provision deals with the liability of the insurer to satisfy judgments against persons insured in respect of third-party risks. One of the essential requirements to be fulfilled before the insurer is held liable to satisfy the judgment against the insured is that before or after the judgment against the insured, the insurer should have been given notice. That pre-supposes that the insured himself would be liable for compensating the third party for the damage caused by the accident. If one of the terms of the insurance stipulates that upon transfer of the ownership of the vehicle by the insured to the third party the insurer would be absolved from liability, the provisions of section 96(2) obviously cannot apply. It is only, where the liability of the insurer subsists the question of the insurer satisfying the claims of indemnifying the insured arises. It is in cases where the liability of the insured is established, on what grounds the insurer may defend himself is laid down in sub-section (2) of Section 96. In a case

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(11) 1980 A.C.J. 126.

(12) 1978 A.C.J. 366.

where the plea is that the insured himself was not liable for the reason that he had transferred the vehicle by the date of the accident, the restrictions contained in sub-section (2) of section 96 as regards the defence open to an insurer cannot apply. That sub-section only deals with the grounds on which the insurer may avoid his liability even though the person insured is liable for the accident."

(13) It must be taken, therefore, that the position in law is now well-settled that transfer of ownership of a motor vehicle puts an end to the liability of the insurance company with which it was insured, even though the insured continues to be shown as the registered owner of the vehicle in the records of the registering authority. In other words, the liability for the accident, besides that of the person actually causing it, is of the real owner whether or not he also happens to be the registered owner thereof. This being so, there can be no escape from the conclusion that no liability for the compensation awarded could be fastened upon M/s Jolly Engineers & Contractors Private Limited or upon the New India Assurance Company Limited. The liability was thus only that of the driver of the offending vehicle and the owner thereof M/s Navrang Bus Service, Amritsar. It shall be open therefore, to the claimants to recover the amount awarded from both or either of these respondents.

(14) This appeal is accordingly accepted. In the circumstances, however, there will be no order as to costs.

N. K. S.

*Before J. M. Tandon, J.*

MADAN MOHAN,—*Petitioner.*

*versus*

STATE OF HARYANA,—*Respondent.*

*Criminal Misc. No. 4224-M of 1984.*

November 21, 1984.

*Prevention of Corruption Act (II of 1947)—Sections 5(3) and 8—Indian Penal Code (XLV of 1860)—Sections 161, 165 and 165-A—Prosecution of a witness under section 5(3) (ii)—Such prosecution—Whether barred in view of the provisions of Section 3—Section 5(3) (ii)—Whether constitutes an offence independent of Section 165-A.*