2019 INSC 844

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 5998 of 2019
(@SLP(C) No. 23604/2014)

M/s. Balwant Singh & Sons **Appellant(s)**

Versus

National Insurance Company Ltd & Anr. **Respondent(s)**

JUDGMENT

Dr Dhananjaya Y Chandrachud

Leave granted.

This appeal arises from a judgment of the National Consumer Disputes Redressal Commission[1] dated 11 March 2014 dismissing a revision petition filed by the appellant. The NCDRC upheld the view of the District Consumer Disputes Redressal Forum, Jalandhar[2] and of the State Consumer Disputes Redressal Commission, Chandigarh[3] that the insurer was not liable on a claim preferred under a policy of insurance for the loss of a vehicle occasioned by theft.

1 "NCDRC"
2 "District Forum"
3 "SCDRC"

The third respondent entered into a Hire Purchase Agreement with ICICI Bank[4], the second respondent through its Branch at Jalandhar in respect of a vehicle. Pursuant to the agreement, the third respondent paid a few instalments but then committed a default upon which possession of the vehicle was taken by the Bank. The vehicle was put up for auction on 31 March 2006 and was purchased by the appellant for a consideration of Rs 2,42,000. Besides the payment of an amount of Rs 5,000 as earnest money, the appellant paid the balance by a cheque dated 31 March 2006 drawn on the State Bank of Bikaner & Jaipur. Possession of the vehicle was handed over to the appellant on 7 April 2006 after the cheque was encashed together with a certificate of possession of the vehicle. The Bank issued a letter dated 19 April 2006 to the first respondent, which had insured the vehicle, for the cancellation of the entry of hypothecation from the registration certificate of the vehicle. On 22 May 2006, the appellant got the vehicle insured by the first respondent in the amount of Rs 3,28,100 against payment of a premium in the amount of Rs 6,999. An insurance policy was issued by the first respondent. The name of the insured was reflected as the third respondent but significantly the address section in the policy document contained the name of the appellant together with its business address.

According to the appellant, insurance premium was collected by the insurer from it but since the registration certificate was still to be transferred, the insurance policy continued to reflect the name of the third respondent as the insured.

The appellant applied for and obtained a certificate of exemption from the Regional Transport Authority so as to facilitate the transfer of the registration

4 “Bank”

certificate to its name. The certificate of exemption was on the ground that the vehicle was exempted from obtaining a route permit.

The vehicle was stolen on the intervening night between 13 and 14 June 2006. The appellant lodged a First Information Report about the incident on 14 June 2006 and the first respondent was informed on 4 July 2006.

On 12 October 2006, the police issued a certificate to the effect that the vehicle was untraced. On 19 October 2006, the appellant lodged a claim for the loss of the vehicle with the first respondent and enclosed the registration certificate, FIR and the certificate of the police stating that the vehicle was untraced.

On 16 November 2006, the first respondent rejected the claim on the ground that the ownership of the vehicle and the insurance policy stood in the name of the third respondent and on the ground that the bank had a financial interest. The first respondent stated that the vehicle must have been insured by the Bank as well. The claim was also rejected on the ground that the appellant did not have an insurable interest. The appellant addressed a letter dated 28 November 2006 to the first respondent. However, the claim was repudiated on 21 March 2007 by the insurer on the ground that the appellant had no insurable interest since the registration certificate was not transferred to it. The rejection of the claim led to the filing of a consumer complaint before the District Forum at Jalandhar. The claim was dismissed on 30 April 2008. The order of the District Forum was upheld by the State Commission on 22 March 2013 in appeal and, in revision, by the NCDRC on 11 March 2014.

Assailing the view which has prevailed with the consumer fora, Mr Rohit Sharma, learned counsel appearing on behalf of the appellant submitted that it is

undisputed that the appellant purchased the vehicle in an auction sale conducted by Bank following a default committed by the original owner in the payment of instalments under a Hire-Purchase Agreement. The Bank handed over to the appellant a certificate of possession upon receiving the full bid consideration at the auction sale. The Bank also informed the insurer of its ceasing to have a claim on the vehicle based on the deed of hypothecation entered into by it with the erstwhile owner. Following this, premium for the insurance cover was accepted by the insurer from the appellant. The insurance policy though issued in the name of the third respondent, reflected the name of the appellant and this was on the clear understanding of the insurer that the appellant had paid the premium and obtained the cover of insurance as the owner of the vehicle. In the circumstances, it was submitted that the insurer, having accepted the premium from the appellant, has absolutely no ground to repudiate the policy. It was urged in support of the above submission that the decisions of this Court in the context of third party liability, in view of the provisions of Chapter XI of the Motor Vehicles Act, 1988[5], more particularly Section 157, stand on a distinct footing. In that context, it has been held that the erstwhile owner of a vehicle would continue to be jointly liable with the insurer even after the transfer of the vehicle, unless the transfer is reflected in the registration certificate of the vehicle. Learned counsel submitted that this can have no application to a claim by the transferee against the insurer in a case such as the present where the loss or damage is sustained on account of a theft of the vehicle.

On the other hand, affirming the correctness of the view which has been taken by the consumer fora, Ms. Nanita Sharma, learned counsel appearing on

5 Act of 1988

behalf of the Respondents submitted that there is no privity of contract between the appellant and the insurer. Learned counsel relied upon the decisions of this Court in **Life Insurance Corporation of India vs Raja Vasireddy Komalavalli Kamba**[6]; (ii) **Complete Insulations (P) Ltd vs New India Assurance Co Ltd**[7] ; (iii) **Prakash Chand Daga vs Saveta Sharma**[8] and (iv) **Naveen Kumar vs Vijay Kumar**[9] **i**n support of the submission that until the name of the transferee is reflected in the registration certificate, the insurance company would not be liable. It was urged that in the present case, the appellant had no insurable interest since the vehicle was not transferred in its name and consequently the insurer was within its rights in repudiating the claim under the policy.

The basic facts are not in dispute. What is not in dispute is that:

(i) The appellant purchased the vehicle at an auction conducted by the Bank to whom the vehicle was hypothecated in pursuance of a Hire-Purchase agreement;

(ii) The appellant paid full consideration for the sale which was conducted in an auction to the Bank;

(iii) A certificate of possession was furnished to the appellant by the Bank;

(iv) The Bank intimated the insurer that it ceased to have a lien on the vehicle consequent to the auction sale;

(v) The proposal for insurance was submitted by the appellant to the insurer;

(vi) Premium in respect of the insurance cover was paid by the appellant; and

(vii) The policy of insurance was issued by the insurer in the name of the third respondent but clearly reflecting the name of the appellant as well. Evidently, in

6 1984 ACJ 345 (1)
7 (1996) 1 SCC 221
8 (2019) 1 SCALE 2
9 (2018) 3 SCC 1

this background, the reference of the appellant was not just for the purposes of a postal address.

Now it is in this background that it becomes necessary to determine the correctness of the basis for the repudiation of the insurance claim by the insurer. Essentially, the contention of the insurer is that unless the transfer is reflected in the registration certificate issued by the Regional Transport Authority, the insurer would not be liable and the ownership would continue to stand in the name of the erstwhile owner. In this context, it becomes necessary to analyse the provisions of the Motor Vehicles Act, 1988 and the basis on which the decisions which were relied upon by the insurer have been rendered. Section 2(30) defines the expression “owner” in the following terms:

> “Section 2(30) - “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, any in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;”

Section 50 provides that where the ownership of any motor vehicle registered under Chapter IV is transferred, certain formalities have to be fulfilled. The formalities require the transferor to report the transfer to the registering authority within whose jurisdiction the transfer has to be effected and to send a copy of the report to the transferee. The transferee also has to report the transfer to the registering authority within whose jurisdiction he resides or maintains a place of business where the vehicle is normally kept.

The transferee has to forward the certificate of registration to the registering authority together with the prescribed fee and a copy of the report received from

the transferor so that particulars of the transfer of ownership may be entered in the certificate of registration. Sub-section (1) of Section 50 provides as follows:

> "Section 50 Transfer of ownership – (1) Where the ownership of any motor vehicle registered under this Chapter is transferred, -
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> (a) the transferor shall, -
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> (i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government 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
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> (ii) in the case of a vehicle registered outside the State, within forty five days of the transfer, forward to the registering authority referred to in sub-clause (i) -
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> (A) the no objection certificate obtained under section 48; or
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> (B) in a case where no such certificate has obtained, -
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> (I) the receipt obtained under sub-section (2) of section 48; or
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> (II) the postal acknowledgment received by the transferee if he has sent an application in this behalf by registered post acknowledgment due to the registering authority referred to in section 48,
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> together with a declaration that he ha snot received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;
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> (b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration."

Sub-section (3) of Section 50 provides the consequence of a failure to fulfil the obligation under sub-Section (1) in the following terms:

> "(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the

> case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5):
>
> Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount."

Chapter XI provides for the insurance of motor vehicles against third party risks. Section 146 prohibits the use of a motor vehicle in a public place unless there is in force in relation to its use, a policy of insurance complying with the requirements of the Chapter. Section 147 specifies the requirements of such a policy and the limits of liability. Section 149 imposes a duty on the insurer to satisfy judgments and awards against persons insured against third party risks. Section 157 deals with the transfer of the certificate of insurance:

> "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.
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> 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.
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> (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."

As a result of the above provision, where a person in whose favour the certificate of insurance has been issued in terms of the provisions of Chapter XI transfers the ownership of the vehicle to another person, the certificate of insurance and the policy described in the certificate are deemed to have been transferred in favour of the new owner to whom the motor vehicle is transferred, with effect from the date of its transfer.

The above provisions have been the subject matter of several decisions of this Court. In **Complete Insulations (P) Ltd** (supra), a request was made to the insurer for the transfer of the certificate of insurance prior to the enforcement of the Motor Vehicles Act, 1988 on 1 July 1989. The vehicle met with an accident but the insurer repudiated the claim on the ground that the appellant had no insurable interest. The claim was, allowed by the District Forum but the decision was set aside by the NCDRC.

In that context, a three judge Bench of this Court held thus:

> "10. There can be no doubt that the said chapter provides for compulsory insurance of vehicles to cover third-party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third penal action. In the case of property, the coverage extends to property of a third party i.e. a person other than the insured. This is clear from Section 147(1)(b)(i) which clearly refers to "damage to any property of a third party" is Rupees six thousand only as pointed out earlier. That is why even the Claims Tribunal constituted under Section 165 is invested with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Here also it is restricted to damage to third-party property and not the

> property of the insured. Thus, the entire Chapter XI of the new Act concerns third-party risks only. It is, therefore, obvious that **insurance is compulsory only in respect of third-party risks since Section 146 prohibits the use of a motor vehicle in a public place unless there is in relation thereto a policy of insurance complying with the requirements of Chapter XI. Thus, the requirements of that chapter are in relation to third-party risks only and hence the fiction of Section 157 of the new Act must be limited thereto.** The certificate of insurance to be issued in the prescribed form (See Form 51 prescribed under Rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaiah case because **the transferee insured could not be said to be a third party qua the vehicle in question.** It is only in respect of third party risks that Section 157 of the New Act provides that the certificate of insurance together with the policy of insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred". **If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the New Act and in the realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. 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.** The view taken by the National Commission is therefore correct."
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> (emphasis supplied)

This Court dealt with the provisions of Chapter XI and explained that it concerns only third party risks and as a result, the fiction contained in Section 157 must be limited for that purpose. The above extract emphasises that if the policy covers other risks, that would be a matter which falls outside Chapter XI and would rest in the domain of contract for which there has to be an agreement between the insurer and the transferee. In that case the Court held that there was no such agreement since the insurer had not transferred the policy of insurance in relation

thereto to the transferee and was held therefore not to be liable to make good the damage.

Another line of judgments specifically deals with the obligation to satisfy third party claims with reference to the provisions contained in Chapter XI. A three judge Bench of this Court in **Naveen Kumar (supra)** adverted to the judgments of this Court in **T V Jose vs Chacko PM**[10] , **P P Mohammed vs K. Rajappan**[11] and **Pushpa vs Shakuntala**[12] and held thus:

> "13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression "owner" in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the "owner". However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of liability. **Parliament has consciously introduced the definition of the expression "owner" in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier 1939 Act. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the Registering Authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the first respondent was the "owner" of the vehicle involved in the accident within the meaning of Section 2(30).** The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi"

This position of law was subsequently followed by a two judge Bench in **Prakash Chand Daga** (supra).

10 (2001) 8 SCC 748
11 (2008) 17 SCC 624
12 (2011) 2 SCC 240

The principle that emerges from the precedents of this Court is that even though in law there would be a transfer of ownership of the vehicle, that by itself would not absolve the person in whose name the vehicle stands in the registration certificate, from liability to a third party. So long as the name of the registered owner continues in the certificate of registration in the records of the RTO, that person as an owner would continue to be liable to a third party under Chapter XI of the Motor Vehicles Act, 1986. The above decisions, therefore, deal with the obligation of the registered owner to meet third party claims.

The principles which have been elucidated by this Court in the context of the liability of the registered owner of the vehicle in satisfying third party claims consequently has no application to the present case. For this reason, the three judge Bench of this Court in **Complete Insulations (P) Ltd** (supra) carefully noted that third party claims with reference to insurance policies issued under Chapter XI stand on a different footing. Hence, it was held that if the policy of insurance covers other risks, that would be a matter of the contract of insurance between the insurer and the transferee in whose favour the risk is assumed.

In **Raja Vasireddy** (supra), a two judge Bench of this Court has observed that the mere receipt and retention of premium until after the death of the applicant for insurance or the mere preparation of a policy document does not constitute acceptance and that acceptance must be signified by by some act or acts agreed on by the parties or from which the law may raise a presumption. It has been further held:

> “15. Though in certain human relationships silence to a proposal might convey acceptance but in the case of insurance proposal silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as an

> acceptance, as, prima facie, acceptance must be communicated to the offeror. The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer…..
>
> ***** ***** *****
>
> 17. Having regard to the clear position in law about acceptance of insurance proposal and the evidence on record in this case, we are, therefore, of the opinion that the High Court was in error in coming to the conclusion that there was a concluded contract of insurance between the deceased and the Life Insurance Corporation and on that basis reversing the judgment and the decision of the learned Subordinate Judge."

In the present case, not only was there an acceptance of premium but the issuance of a policy document. The insurer had knowledge of the transfer when the Bank informed it of the lifting of the lien.

In the present case, the Court is dealing with a situation where following the transfer of the vehicle, the insurer was specifically informed by the Bank which held a lien on the insurance policy, of the lifting of its lien following the termination of the agreement of hypothecation. Following this, a policy of insurance was issued by the insurer. Admittedly the payment of premium was made by the appellant. The third respondent did not set up any claim in respect of the loss of the vehicle since the vehicle had already been repossessed and sold by the bank on account of its default in the payment of dues. The insurer cannot repudiate the claim of the appellant holding that its liability is to the third respondent who has no subsisting interest in the ownership in the vehicle. The appellant has undertaken to furnish an indemnity to the insurer against any claim at the behest of the third respondent.

The transfer of the vehicle is not in dispute.

The insurer adopted a basis which was unsustainable to repudiate the insurance claim. The loss of the vehicle took place in close proximity to the date of auction purchase. We allow the claim in the amount of Rs 2,42,000 on which the appellant shall be entitled to interest at the rate of 9% per annum from the date on which the claim was lodged until payment.

The appeal is allowed in the above terms. There shall be no order as to costs.

…….....J.
(Dr Dhananjaya Y Chandrachud)

…….....J.
(Indira Banerjee)

New Delhi
July 31 2019

ITEM NO.13 COURT NO.9 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 23604/2014

(Arising out of impugned final judgment and order dated 11-03-2014 in RP No. 2809/2013 passed by the National Consumers Disputes Redressal Commission, New Delhi)

M/S BALWANT SINGH & SONS Petitioner(s)

VERSUS

NATIONAL INSURANCE COMPANY LTD & ANR. Respondent(s)

Date : 31-07-2019 This petition was called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s)
Mr. Rohit Sharma, Adv.
Mr. Raunak Nayak, Adv.
Mr. Atul Agarwal, Adv.
Mr. Anshul Chowdhary, Adv.
Mr. Kumar Dushyant Singh, AOR

For Respondent(s)
Mrs. Nanita Sharma, AOR
Mr. Vivek Sharma, Adv.
Mr. Amardeep Sharma, Adv.
Mr. Bajrang Lal Jat, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI) (SAROJ KUMARI GAUR)
COURT MASTER (SH) BRANCH OFFICER
(Signed reportable judgment is placed on the file)