2020 INSC 434

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2632 OF 2020

(Arising Out of Special Leave Petition (C) No. 20569 of 2016)

Surendra Kumar Bhilawe ... Appellant

versus

The New India Assurance Company Limited ... Respondent

J U D G M E N T

Indira Banerjee, J.

Leave granted.

2. This appeal is against a judgment and order dated 23.2.2015 passed by the National Consumers Disputes Redressal Commission, New Delhi, hereinafter referred to as 'National Commission', allowing Revision Petition No.4126/2014 filed by the Respondent, hereinafter referred to as 'the Insurer', setting aside an order dated 09.1.2014

passed by the District Consumer Disputes Redressal Forum, Raipur, hereinafter referred to as 'the District Forum' allowing the Complaint Case No.404 of 2012; and an order dated 22.7.2014 passed by the Chhattisgarh State Consumer Disputes Redressal Commission Pandri, Raipur (C.G), hereinafter referred to as the State Commission, dismissing an appeal being Appeal No.FA/14/85 of the Insurer against the said order of the District Forum; and dismissing the said complaint filed by the Appellant.

3. The Appellant was the owner of Ashok Leyland 2214 Truck bearing Registration Number C.G.04/JA 3835, which was covered by a Policy of Insurance issued by the Insurer being Policy Number was 450300311101000016 93, effective for the period from 2.6.2011 to 1.6.2012.

4. On 11.11.2011, the said lorry, which was loaded with Ammonia Nitrate at Raipur, commenced its journey for Dhanbad, where the Ammonia Nitrate was to be unloaded. The lorry was driven by Driver, Rajendra Singh.

5. On 13.11.2011, at about 1.45 p.m., while the said truck was on its journey from Raipur to Dhanbad, it met with an accident near Bhakuwa Toil Police Station, Gumla in

Jharkhand. It is stated that while negotiating the said truck, near a culvert, to save a cow, which had come on its way, the Driver lost control, as a result of which the said truck turned turtle and fell into a river by the side of the road and was extensively damaged. The Ammonia Nitrate, carried in the truck was also washed away.

6. The accident was reported to the Gumla Police Station, District Gumla, Jharkhand on 16.11.2011 and on 25.11.2011 the Appellant lodged a claim with the Insurer, through one Mohammad Iliyas Ansari.

7. On receipt of information regarding the accident, and the claim, the Insurer appointed an independent Surveyor and Loss Assessor to conduct a spot survey. The independent Surveyor and Loss Assessor appointed by the Insurer, namely, Shri Birendra Kumar Gupta, conducted a spot survey and submitted his report on 29.11.2011.

8. The Insurer, thereafter, appointed one Shri Gyan Chandra, Valuer, Surveyor, Loss Assessor and Investigator to conduct the final survey. The said Shri Gyan Chandra submitted a report dated 25.1.2012 assessing the loss recoverable from the insurer at Rs.4,93,500/- after deduction

of salvage value.

9. However, instead of reimbursing the loss, the Insurer issued a show cause Letter dated 22.3.2012 to the Appellant requiring the Appellant to show cause why the claim of the Appellant should not be repudiated, on the allegation that, he had already sold the said truck to the said Mohammad Iliyas Ansari on 11.4.2008. It is, however, not in dispute that the Appellant continued to be the registered owner of the said truck, on the date of the accident.

10. It is the case of the Appellant, that the said truck which had been purchased with finance from ICICI Bank, stood hypothecated to ICICI Bank, and the same could not be transferred without the consent of ICICI Bank. ICICI Bank had not issued 'No Objection' to the Appellant for transfer of the said truck, as the dues of ICICI Bank had not been repaid in full till the date of the accident. Admittedly, however, the Appellant had entered into a sale agreement with the said Mohammed Iliyas Ansari.

11. The Appellant claims that he duly replied to the show cause letter and that he also sent a legal notice on 2.6.2012 to the Insurer, to which there was no reply. The Insurer was disputing the claim, as it had been submitted by Mohammad Iliyas Ansari, and also on the ground of delay in filing the police complaint and in reporting the accident to the Insurer.

12. The Appellant himself submitted a motor claim again on 22.8.2012, but the Insurer refused to accept the same. Under cover of a letter dated 22.8.2012, the Appellant sent the claim form, along with the requisite documents, to the Insurer by Registered Post.

13. Aggrieved by the action of the Insurer company in not releasing the claim of the Appellant, towards reimbursement of losses on account of the accident, the Appellant approached the District Forum with the complaint numbered Case No. 404 of 2012, referred to above.

14. By a judgment and order dated 9.1.2014, the District Forum allowed the complaint filed by the Appellant and

directed the Insurer to pay Rs.4,93,500/- to the Appellant within a month along with interest @ 6% per annum from the date of filing of the complaint, that is, 6.10.2012 till the date of payment and further directed the Insurer to pay the Appellant a sum of Rs.5,000/- towards compensation for mental agony and Rs.2,000/- towards cost of litigation.

15. The Insurer appealed to the State Commission. The said appeal, being Appeal No.FA/14/85, was dismissed by the State Commission by an order dated 22.7.2014, which was challenged by the Insurer before the National Commission by filing the Revision Petition No. 4126 of 2014.

16. By the Judgment and order impugned before us, the National Commission has allowed the Revision Petition, set aside the orders of the District Forum and the State Commission respectively, and dismissed the complaint of the Appellant.

17. From the judgment and order dated 9.1.2014 of the District Forum, it is patently clear that the complaint had

been resisted by the Insurer on the purported ground that the Appellant had sold the said truck to Mohammad Iliyas Ansari for a consideration of Rs.1,40,000/- and also on the ground of delay in filing a police complaint and in lodging the claim for reimbursement of losses.

18. Before the district Forum, the Insurer contended that the claim of the Appellant had been rejected by the Insurer by a letter dated 22.3.2012, which had duly been received by the Appellant on 22.3.2012. There was no reply to the said letter. On the other hand, the Appellant contended that even though he had entered into a sale agreement with Mohammad Iliyas Ansari, he had not actually transferred ownership of the vehicle to him. Even after the sale agreement, the Appellant had himself been paying instalments, to ICICI Bank, towards repayment of the loan obtained by him for purchase of the said truck.

19. The Appellant contended that he had not been paid the full consideration for the said truck, even as late as on 13.11.2011, when the accident occurred. That is why the

Appellant had himself paid insurance premium and taken out the Policy No. 45030031110100001693. The Appellant strenously contended that the Insurer had not produced a scrap of document before the District Forum to show that the premium for the said Insurance Policy No. 45030031110100001693 had been paid by Mohammad Iliyas Ansari. No proceedings had also been initiated for change of registration of the vehicle, which was in the name of the Appellant, to Mohammad Iliyas Ansari. The permit for operating the said truck also stood in the name of the Appellant.

20. The District Forum accepted the contention of the Appellant that the ownership of the said truck did not stand transferred to Mohammad Iliyas Ansari, and allowed the complaint, by its order dated 9.1.2014, for the reasons summarized briefly hereinbelow:-

1. Even though the sale agreement with Mohammad Iliyas Ansari was dated 11.4.2008, the Appellant continued to pay instalments towards repayment of the loan obtained from ICICI Bank, for

purchase of the said truck, long thereafter.

2. The Appellant had produced documents to show that he had paid the premium for the insurance policy after 11.4.2008, and even as late as on 31.05.2011.

3. The Insurer had not produced any materials to show said that the insurance premium had not been paid by the Appellant, but had been paid by Mohammad Iliyas Ansari.

4. The said truck was registered in the name of the Appellant and the permit for operating the said truck for carriage of goods also stood in his name.

5. Mohammad Iliyas Ansari had not objected to release of compensation to the Appellant for damage caused to the vehicle, by reason of the accident.

6. The Insurer had not established that Driver, Rajendra Singh was an employee of Mohammad Iliyas Ansari.

21. It had also been argued on behalf of the Appellant, before the District Forum, that the Surveyor appointed by the

Insurer had taken a consent letter from the Appellant after the Survey, but had not taken any statement from Mohammad Iliyas Ansari or from the Driver which could show that Mohammad Iliyas Ansari was the owner of the said truck, or the Driver was the employee of Mohammad Iliyas Ansari.

22. The District Forum, thus allowed the claim, holding in effect, that the Appellant continued to be the owner of the vehicle. On the basis of the report of the Surveryor, the gross liability was calculated at Rs.8,48,500/- from which salvage value of Rs. 3,55,000/- was deducted and the net loss recoverable from the Insurer computed at Rs.4,93,500/-.

23. The District Forum directed the Insurer to pay to the Appellant the said sum of Rs.4,93,500/-, with simple interest at 6% per annum from the date of the institution of the complaint, that is, 6.10.2012, a sum of Rs.5,000/- for mental harassment and a sum of Rs.2,000/- towards litigation expenses.

24. In appeal the State Commission found:-

"11. We have perused the record of the District Forum. In Certificate of Registration of the vehicle in question, the name of the Respondent (complainant) Surendra Kumar Bhilawe is recorded as registered owner. In the license of Good Vehicle also vehicle bearing No.C.G.04-JA-3835 is registered in the name of the Respondent (Complainant) Surendra Kumar Bhilawe and the Insurance Policy was issued in the name of Respondent (Complainant) Surendra Kumar Bhilawe for the period from 02.06.2011 to 01.06.2012. Looking to the above documents, it appears that the vehicle in question was still recorded in the name of Respondent (Complainant) himself obtained insurance policy from the Appellant (Insurance Company).

12. The Respondent (Complainant) filed documents i.e. letter dated 08.01.2014 sent by ICICI Bank to the Respondent (complainant) Surendra Kumar Bhilawe and Statement of Account. It appears that the loan was being deposited by the Respondent (Complainant) himself and the Appellant (Ops) could not filed any document which shows or indicates that the amount of loan was paid by Mohd. Iliyas Ansari, in the name of the Respondent (Complainant). It appears that the Respondent

(complainant) himself had deposited loan amount with the ICICI Bank from where he had obtained loan.

13. An agreement was executed between the Respondent (complainant) Surendra Kumar Bhilawe and Mohammad Iliyas Ansari on 11.04.2008 and the Insurance Policy was obtained by the Respondent (Complainant) on 02.06.2011, which was effective from the period from 02.06.2011 to 01.06.2012. Had the vehicle in question was transferred by the Respondent (complainant) to Mohammad Iliyas Ansari, the Respondent (Complainant) could have intimated the R.T.O. regarding transferring the vehicle in favour of Mohammad Iliyas Ansari and Mohammad Iliyas Ansari himself could have deposited the amount of loan with the ICICI Bank. In the instant case, Mohammad Iliyas Ansari is a material evidence for the Appellant (Ops) to prove that he purchased vehicle in question from the Respondent (complainant) and Mohammad Iliyas Ansari, therefore, on merely filing an agreement executed between the Respondent (Complainant) and Mohammad Iliyas Ansari, it cannot be said the vehicle in question was duly transferred by the Respondent (Complainant) to Mohammad Iliyas Ansari and Mohammed Iliyas Ansari is owner of the vehicle in question.

14. Ld. District Forum, in para 12 of the Impugned Order has observed that Mohammad Iliyas Ansari has not raised any objection against the complaint filed by the Respondent (complainant) from which it is proved that sale agreement is meaningless. The Appellant (OPs) could not prove that river Rajendra Singh was an employee of Mohammad Iliyas Ansari, whereas the contention of the Respondent (complainant) is that vide letter dated 08.08.2012 which was received by the Appellant (OPs) (Insurance Company) wherein it was mentioned by him that by the above sale agreement, the purchaser has not received any right and the Respondent (complainant) only is registered owner of the vehicle. In para 13, the District Forum has observed that the contention of the Respondent (complainant) is that the Surveyor, who was appointed by the Insurance company, has taken consent letter dated 02.01.2012 of Respondent (complainant) after conducting survey. The Appellant (OPs) had not filed any evidence that they had taken statement of Mohammad Iliyas Ansari or statement of the driver who mentioned that the vehicle was of the ownership of Mohammad Iliyas Ansari.

15. The finding recorded by the District Forum, is just and proper and does not suffer from any jurisdictional erroneously, irregularity or illegality, hence does not call for

any interference by this Commission."

25. The National Commission set aside the orders of the District Forum and the State Commission, thereby rejecting the concurrent factual finding of both the fora, and dismissed the complaint on the ground that the Appellant had sold his vehicle to Mohammad Iliyas Ansari.

26. The National Commission observed that when an owner of a vehicle sells his vehicle and executes a sale letter without in any manner postponing passing of the title to the property in the vehicle, the ownership in the vehicle passes to the purchaser on execution of the sale letter. The delivery of the vehicle, to the purchaser, reinforces the title which the purchaser gets to the vehicle, on execution of the sale letter in his favour. The National Commission also drew adverse inference against the Appellant, since the FIR was lodged with the Police on 16.11.2008, that is, three days after the accident and intimation of the claim was given to the Appellant 12 days after the accident, that is, on 25.11.2011.

27. The National Commission Held:-

"A perusal of the sale agreement dated 11.4.2008 executed by the complainant with Shri Mohd. Iliyas Ansari would show that the complainant handed over the possession of the aforesaid vehicle to Shri Ansari on payment of Rs.1,40,000/- Since the vehicle had been got financed from ICICI Bank the remaining payment was to be made by the purchaser directly to the said bank. The aforesaid document also shows that a sum of Rs.1,40,000/- was received by the complainant from Shri Ansari on 11.4.2008. Thus, it stands duly proved that not only had the complainant received the sale consideration agreed with Shri Ansari he had also delivered the possession of the vehicle to him on 11.4.2008.

7.Though the vehicle was not got registered in the name of Shri Ansari by the time it met with an accident, that in our opinion, would be of no consequence in view of the sale having been already completed on 11.4.2008."

28. The National Commission completely ignored the following concurrent factual findings of the District Forum and State Commission:-

(I) Even after the date of the purported sale agreement, that is, 11.4.2008, the Appellant continued to pay instalments to ICICI Bank towards repayment of the loan for purchase of the said truck.

(ii) The ICICI Bank had neither released the said truck from hypothecation nor given 'No Objection" for the sale of the said truck.

(iii) The Appellant paid the premium and took out the policy of insurance on or about 31.5.2011 covering the period from 2.6.2011 to 1.6.2012 in his own name. This was over three years after the date of the purported sale agreement.

(iv) No steps were taken by the Appellant or by Mohammad Iliyas Ansari to have the registration of the said truck transferred in the name of Mohammad Iliyas Ansari.

(v) The permit for operating the said truck was still in the name of the Appellant over three years after the purported sale agreement.

29. There was no material evidence at all before the National Commission, on the basis of which the National Commission could have reversed the concurrent factual findings of the District Forum and the State Commission which unerringly led to the conclusion that ownership of the said truck never stood transferred to Mohammad Iliyas Ansari.

30. In fact, the National Commission did not address the following questions:-

(i) Who actually paid instalments to ICICI Bank after 11.4.2008 – the Appellant or Mohammad Iliyas Ansari? The concurrent finding of the District Forum and the State Commission that the Appellant paid instalments to ICICI Bank even after 11.4.2008, therefore, remained unshaken.

(ii) If the ownership of the said truck stood transferred on 11.4.2008, why would the Appellant continue to pay the instalments to ICICI Bank towards repayment of the loan for

purchase of the said truck?

(iii) Was any 'No Objection' obtained from ICICI Bank for transfer of the said truck?

(iv) Could the Appellant have transferred the said truck without 'No Objection' from ICICI Bank?

(v) Who actually paid the Insurance Premium on 31.5.2011 for the said Policy No.45030031110100001693 effective from 2.6.2011 to 1.6.2012?

(vi) If the ownership of the said truck were transferred, why would the Appellant have taken out an Insurance Policy covering the said truck in his own name even on 31.5.2011, after over three years?

(vii) Was the Driver Rajendra Singh employee of the Appellant or of Mohammad Iliyas Ansari? Was any statement in this regard taken either from Driver Rajendra Singh or Mohammad Iliyas Ansari?

(viii) Were any steps ever taken for transfer of registration of the said truck in the name of Mohammad Iliyas Ansari?

(ix) If the ownership of the said truck stood transferred to Mohammad Iliyas Ansari, why did he not take steps to have the registration of the said truck transferred in his own name even after three years?

(x) In whose name did the permit to operate the said truck stand?

(xi) Why would Mohammad Iliyas Ansari run the said truck with a permit in the name of the Appellant, if he was its owner, thereby exposing himself to penal consequences under the Motor Vehicle Act and the Rules framed thereunder?

(xii) Could ownership of the said truck be transferred without transfer of registration in the name of the transferee, in view of the Motor Vehicle Act, 1988 and the Rules framed thereunder?

31. In our considered opinion, Sections 19 and 20 of the Sale of Goods Act, 1930, which deal with the stage at which the property in movable goods passes to the buyer, is of no assistance to the Insurer. There can be no doubt that property in a specific movable property is transferred to the

buyer at such time as parties to the contract intend it to be transferred, provided such immovable property is free to be transferred, and/or in other words capable of being transferred.

32. If there is an impediment to the transfer, as in the instant case, where 'No Objection' of the financier bank was imperative for transfer of the said truck, there could be no question of transfer of title until the impediment were removed, for otherwise the contract for transfer would be injurious to the financier bank, immoral, unlawful and void under Section 10 read with Sections 23 and 24 of the Contract Act, 1872.

33. It was thus, an implicit condition of the agreement for transfer of the said truck, that the transfer would be complete only upon issuance of 'No Objection" by the financier bank and upon compliance with the statutory requirements for transfer of a motor vehicle.

34. The contract in this case, could not possibly have been an unconditional contract of transfer of movable property in deliverable state, but a contract to transfer, contingent upon 'No Objection" from ICICI Bank, and compliance with the

statutory provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder. Sections 19 and 20 of the Sale of Goods Act are not attracted.

35. The National Commission overlooked the definition of 'owner' in Section 2(30) of the Motor Vehicle Act, 1988. In Section 2(30) 'owner' has been defined to mean "a person in whose name a motor vehicle stands registered and, where such person is a minor, the guardian of such minor, and 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". Even assuming that Mohammad Iliyas Ansari was in possession of the said truck at the time of the accident, such possession was not under any agreement of lease, hire purchase or hypothecation with ICIC Bank.

36. It would also be pertinent to note the difference between the definition of owner in Section 2(30) of the Motor Vehicles Act, 1988 and the definition of owner in Section 2(19) of the Motor Vehicles Act, 1939 which has been repealed and replaced by the Motor Vehicles Act, 1988. Under the old Act 'owner' meant the person in possession of a motor vehicle. The definition has

undergone a change. Legislature has consciously changed the definition of 'owner' to mean the person in whose name the motor vehicle stands.

37. The National Commission also overlooked other applicable provisions of the Motor Vehicle Act 1988, particularly Sections 39 to 41, 50, 51, 66, 69, 82, 84(g), 86(c), 146, 157, 177 and 192A.

38. Some of the relevant provisions of the Motor Vehicles Act are set out hereinbelow:-

> ***"50. Transfer of ownership-***
> *1) Where the ownership of any motor vehicle registered under this Chapter is transferred-*
>
> *(a) the transferor shall,-*
>
> *(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*
>
> *(ii) ……*
>
> *(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 transfer of ownership may be entered in the certificate of registration.

(3) If the transferor of 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 the period prescribed, the registering authority may, having regard to the circumstances of the case, required 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.

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66. Necessity for permits-

(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.

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82.Transfer of permit-

(1)Save as provided in sub-section (2), ***a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.***

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84. General conditions attaching to all permit

The following shall be conditions of every permit-

……..

(g) that the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permit relates on the exterior of the body of that vehicle on both sides thereof in a colour or colours vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters.

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86. Cancellation and suspension of permits.-

(1)The Transport Authority which granted a permit ***may cancel the permit or may suspend it*** *for such period as it thinks fit-*

……..

(c) if ***the holder of the permit ceases to own the vehicle covered by the permit,***

xxx *xxx* *xxx*

140. Liability to pay compensation in certain cases on the principle of no fault-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

xxx *xxx* *xxx*

146. Necessity for insurance against third party risk-

(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that person, as the case may be, a policy of insurance complying with the requirement of this Chapter.

xxx *xxx* *xxx*

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.

(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 regards to the transfer of insurance.

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163A. Special provisions as to payment of compensation on structured formula basis-

(1) Notwithstanding anything contained in this Act or in any other law for time being in force or instrument having the force of law, ***the owner of the motor vehicle or the authorised insurer*** *shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*

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177. General provision for punishment of offences-

Whoever contravenes any provisions of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundered rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

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192A. Using vehicle without permit-

(1) Whoever drives a motor vehicle or causes or

allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purposes for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both.

Provided that the Court may for reasons to be recorded, impose a lesser punishment.

39. It appears that the National Commission patently erred in holding that the Appellant had been paid the consideration without even examining if Mohammad Iliyas Ansari had paid any instalments to ICICI Bank.

40. The finding of the National Commission that the fact of registration of the said truck in the name of the Appellant was inconsequential is also not sustainable in law. Section 2(30) of the Motor Vehicles Act, 1988 defines 'owner' to mean the person in whose name the motor vehicle stands registered. The definition of 'owner' has been overlooked and ignored by the National Commission. Had ownership of the said truck intended

to be transferred forthwith, the registration would have been transferred in the name of the transferee, as also the permit to operate the said truck for carriage of goods.

41. It is difficult to accept that a person who has transferred the ownership of a goods carriage vehicle on receipt of consideration, would not report the transfer or apply for transfer of registration, and thereby continue to incur the risks and liabilities of ownership of the vehicle under the provisions of law including in particular, under the Motor Vehicles Act, 1988 and other criminal/penal laws. It does not also stand to reason why a person who has transferred the ownership of the vehicle should, for over three years, benevolently go on repaying the loan for purchase of the vehicle, take out insurance policies to cover the vehicle or otherwise discharge obligations of ownership.

42. It is equally incredible that an owner of a vehicle who has paid consideration to acquire the vehicle would not insist on transfer of the permit and thereby expose himself to the penal consequence of operating a goods vehicle without a valid permit.

43. The National Commission also failed to appreciate that Section 157 of the Motor Vehicles Act provides that where a

person, in whose favour the certificate of insurance has been issued in accordance with the provisions of Chapter XI of the Motor Vehicles Act, 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 are to 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.

44. The explanation to Section 157 clarifies, for the removal of all doubts, that such deemed transfer would include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. The transferee might, within 14 days from the date of transfer, apply to the Insurer in the prescribed form, for making requisite changes in the certificate of insurance and the policy of insurance with regard to the factum of transfer of insurance. There could be no reason for a transferee of an insured motor vehicle, to refrain from applying for endorsement of the transfer in the Insurance Policy Certificate when insurance covering third party risk is mandatory for using a vehicle.

45. In any case, there could be no reason for the Appellant to take out an insurance cover in his own name as late as on 31.5.2011, covering the period from 2.6.2011 till 1.6.2012, if the Appellant had transferred ownership of the vehicle in April 2008. It is incredible that the transferee, Mohammad Iliyas Ansari would take the risk of operating a vehicle, owned by him, without taking out a policy of Insurance in his own name, inter alia, covering third party risks, notwithstanding the mandate of Section 146 of the Motor Vehicles Act, 1988 prohibiting the use of a motor vehicle without third party insurance

46. The judgment of this Court in **Complete Insulations Private Limited vs. New Indian Assurance Company Limited**[1] was rendered in the context of Motor Vehicle Act, 1939 which has been repealed and replaced by the Motor Vehicles Act, 1988. As observed in the said judgment itself, under Section 103-A of the old Act, the Insurer had the right to refuse to transfer the certificate of insurance and/or the Insurance policy. However, Section 157 of the Motor Vehicles Act, 1988 introduces a deeming provision whereby the transfer of the

1 (1996) 1 SCC 221

certificate of Insurance and the policy of Insurance are deemed to have been made, where the vehicle along with the Insurance policy is transferred by the owner to another person. This provision has taken away the Insurer's right of refusal to transfer the Policy Certificate of Insurance. which was there under the old Act. The judgment of this Court in **Dr. T.V. Jose vs. Chacko P.P. @ Thankachan and Ors**.[2] was also rendered in the context of the Motor Vehicles Act of 1939.

47. In **Pushpa @ Leela And Others vs. Shakuntala and Others**[3], the question before this Court was, whether liability to pay compensation to third parties as determined by the Motor Vehicles Accidents Claims Tribunal in case of an accident, was that of the purchaser of the vehicle alone, or whether the liability of the recorded owner of the vehicle was coextensive, and from the recorded owner it would pass on to the Insurer of the vehicle. This Court found that the person whose name continued in the

2 (2001) 8 SCC 748
3 (2011) 2 SCC 240

records of the registering authority as the owner of the truck was equally liable for payment of the compensation, having regard to the provisions of Section 2(30) read with Section 50 of the Motor Vehicles Act, 1988 and since an insurance policy had been taken out in the name of the recorded owner, he was indemnified and the Insurer would be liable to satisfy the third party claims.

48. In **Naveen Kumar vs. Vijay Kumar and Others**[4], a three-Judge Bench of this Court held that in view of the definition of the expression 'owner' in Section 2(30) of the Motor Vehicles Act, 1988, it is the person in whose name the motor vehicle stands registered, who, for the purposes of the said Act, would be treated as the owner of the vehicle. Where the registered owner purports 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 his liability as owner.

49. The Judgment of this Court in **Pushpa @ Leela & Ors. vs. Shakuntala** (supra) and **Naveen Kumar vs. Vijay Kumar** (supra) were rendered in the context of liability to satisfy third party claims and as such distinguishable factually. However, the dictum of this Court that the registered owner continues to remain owner and when the vehicle is Insured in the name of the registered owner, the Insurer would remain liable notwithstanding any transfer, would apply equally in the case of claims made by the insured himself in case of an accident. If the insured continues to remain the owner in law in view of the statutory provisions of the Motor Vehicles Act, 1988 and in particular Section 2(30) thereof, the Insurer cannot evade its liability in case of an accident.

50. The policy of insurance in this case, was apparently a comprehensive policy of Insurance which covered third party risk as well. The Insurer could not have repudiated only one part of the contract of insurance to reimburse the owner for losses, when it could not have evaded its liability to third parties under

the same contract of Insurance in case of death, injury, loss or damage by reason of an accident.

51. The FIR was lodged within three days of the accident. In the case of a major accident of the kind as in this case, where the said truck had turned turtle and fallen into a river, slight delay if any, on the part of the traumatized driver to lodge an FIR, cannot defeat the legitimate claim of the Insured. Of course in our view, there was no delay at all in lodging the FIR. In case of a serious accident in course of inter-state transportation of goods, delay of 20 days in lodging a claim is also no delay at all. It is nobody's case that the claim application filed by the Appellant was time barred. Moreover, the Insurer had, in any case, duly sent its Surveyors/ Assessors to assess the loss. The claim of the Appellant could not have, in this case, been resisted, either on the ground of delay in lodging the FIR, or on the ground of delay in lodging an Accident Information Report, or on the ground of delay in making a claim.

52. In any case, as held by this Court in **Om Prakash vs. Reliance General Insurance and Another**[5] delay in

5 (2017) 1 SCC 724

intimation of accident, or submission of documents due to unavoidable circumstances, should not bar settlement of genuine claims.

53. In our considered opinion, the National Commission erred in law in reversing the concurrent factual findings of the District Forum and the National Commission ignoring vital admitted facts as stated above, including registration of the said truck being in the name of the Appellant, even as on the date of the accident, over three years after the alleged transfer, payment by the Appellant of the premium for the Insurance Policy, issuance of Insurance Policy in the name of the Appellant, permit in the name of the Appellant even after three years and seven months, absence of 'No Objection' from the financier bank etc. and also overlooking the definition of owner in Section 2(30) of the Motor Vehicles Act, as also other relevant provisions of the Motor Vehicles Act and the Rules framed thereunder, including in particular the transferability of a policy of insurance under Section 157.

54. In view of the definition of 'owner' in Section 2(30) of the Motor Vehicles Act, the Appellant remained the owner of

the said truck on the date of the accident and the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammad Iliyas Ansari.

55. The judgment of this Court in **Oriental Insurance vs. Sony Cheriyam**[6] was rendered in the context of liability of an Insurer in terms of the insurance policy and is not attracted in this case, where the claim of the insured has not been rejected on the ground of the same not being covered by the policy of insurance, but on the ground of purported transfer to a third party by entering into a sale agreement.

56. We have not dealt with the judgments of the National Commission and/or other Fora under the Consumer Protection Act, 1986, relied upon by the parties, as they are factually distinguishable and are in any case, not precedents binding on this Court. In any case, we have considered and dealt with the submission of the respective parties at length.

57. The judgment and order of the National Commission is

6 (1999) 6 SCC 451

unsustainable. The appeal is, therefore, allowed. The impugned order of the National Commission under appeal is set aside and the order of the District Forum is restored. The Insurer shall pay to the Appellant a sum of Rs.4,93,500/- as directed by the District Forum with interest as enhanced by this Court to 9% per annum from the date of claim till the date of payment. The sum of Rs.5,000/- awarded by the District Forum towards compensation for mental agony and Rs.2,000/- awarded towards the cost of litigation, is in our view grossly inadequate. The Insurer shall pay a composite sum of Rs.1,00,000/- to the Appellant towards costs and compensation for the agony caused to the Appellant by withholding his legitimate dues. The amounts as directed above shall be paid to the Appellant within six weeks from date of the judgment and order.

.....J.
[R. Banumathi]

.....J.
[Indira Banerjee]

JUNE 18, 2020
NEW DELHI