IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 2646 of 1998
Date of Decision: February 16, 2015

Naresh Kumar and another
....Appellants.

Versus

Manoj Kumar and others
....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Rajinder Goyal, Advocate,
for the appellants.

Mr. Ashish Gupta, Advocate,
for respondent No.1.

Mr. D.R. Bansal, Advocate,
for respondent No. 2.

Mr. Navin Kapur, Advocate,
for respondent No.3-Insurance Company.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

This appeal has been directed by driver and owner feeling aggrieved against award dated September 15, 1998 passed by Motor Accident Claims Tribunal, Kaithal (for short, "Tribunal") in MACT No. 31 of 1998, captioned as "***Manoj Kumar v. Ramesh Chand and others"*** whereby liability to pay compensation awarded on account of injuries sustained by Manoj Kumar, in a vehicular accident, occurred on December 13, 1994, in the area of RKSD College, Kaithal, has been fastened upon them.

2. The core question which requires determination in this appeal is whether in case of non-intimation of transfer of offending vehicle to the insurer and/or the non-transfer of ownership in the registration certificate prior to the accident by the transferee, insurance company is liable to pay compensation. The answer to both these questions is in affirmative.

3. It is an undisputed fact that offending vehicle i.e. motorcycle bearing No.HR05-A-8719 was owned by respondent No.2-Baldev Singh, who sold it to appellant No.1-Naresh Kumar vide delivery receipt (Ex. R-1) dated November 05, 1993 at 6:00 p.m. The possession of vehicle was also delivered at that time. As per the terms and conditions of delivery receipt, after delivery, appellant No.1-Naresh Kumar ceases to be the owner and all liabilities stood shifted upon Ramesh Chand. It is also an admitted fact that offending vehicle was duly insured vide insurance policy (Ex.P-10) and cover note (Ex. R-3). It is also an undisputed fact that ownership of offending vehicle was not transferred as per registration certificate, in favour of appellant No.1-Naresh Kumar, on the date of accident. Ld. Tribunal while relying upon authorities captioned as ***"Ouseph Varghese v. Kunjoonju Alekutty and others", 1993 ACJ 1981*** and ***"Ashok Kumar and another v. Mohan Lal Kuhar and another"***,

has fastened liability upon both appellants making them jointly and severally liable whereas registered owner i.e. Baldev Singh as well as insurance company-respondent No.3 were exonerated from liability to pay compensation. In fact, both authorities relied upon by ld. Tribunal are not applicable in the facts and circumstances of case in hand in view of latest proposition of law settled by Hon'ble Apex Court.

4. An identical question came up for hearing before the Hon'ble Apex Court in case "***Rikhi Ram and another v. Smt. Sukhrania and others", 2003(1) RCR (Civil) 756,*** in which law laid down in "***G. Govindan v. New India Assurance Co. Ltd. and others", 1999 (3) SCC 754*** was reaffirmed and it was added that liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer of vehicle to the insurance company. Similar view was expressed by Hon'ble Apex Court in case ***"United India Insurance Co. Ltd. Shimla v. Tilak Singh and others", 2007(4) Recent Apex Judgments 404.*** Thus, it is crystal clear that so far as failure of transfer of ownership of insured vehicle in so far as liability towards a third party is concerned, insurer can not be absolved of its liability during the currency of insurance policy as the very purpose of legislation was to protect the rights and interests of third party. To buttress this view, we can have the benefit of observations made by Hon'ble Apex Court in case ***United India Insurance Co. Ltd. vs. Tilak Singh's*** case (supra). The relevant

portion of the judgment which squarely covers the controversy involved in the instant case reads as under:-

> *"In Rikhi Ram and another v. Sukhrania (Smt.) and others, 2003 (1) RCR (Civil) 756 : (2003) 3 S.C.C. 97,, a Bench of three learned Judges of this Court had occasion to consider Section 103-A of the 1939 Act. This Court re-affirmed the decision in G. Govindan's case (supra), and added that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the insurance company, as the purpose of the legislation was to protect the rights and interests of the third party.*
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> *Thus, in our view, the situation in law which arises from the failure of the transferor to notify the insurer of the fact or transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the 1939 Act or under Section 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts before us, or the new Act applies, as far as the deceased third party was concerned, the result would not be different. Hence, the contention of the appellant on the second issue must fail, either way, making a decision on the first contention unnecessary, for deciding the second issue. However, it may be necessary to decide which Act applies for deciding the third contention. In our view, it is not the transfer of the vehicle but the accident which furnishes the cause of action for the application before the Tribunal. Undoubtedly, the accident took place after the 1988 Act had come into force. Hence, it is the 1988 Act which would govern the situation."*

5. A glance at the aforesaid observation makes it abundantly clear that insurance company is liable to pay compensation during currency of insurance policy, even if there is any failure on the part of registered owner to get vehicle transferred in the name of person to whom, it has been sold. No authority contrary of the above aspect could be cited during the course of arguments by ld. counsel for insurance company-respondent No.3.

6. As a net result of the aforesaid discussion, this Court is of the considered view that impugned award so far as it relates to fixation of liability upon appellants i.e. driver and owner on the basis of delivery receipt, is not sustainable and deserves to be set aside and ordered accordingly.

7. Accordingly, appeal is allowed. Both the appellants stand absolved from their liability to pay the compensation. It is further held that respondent No.3-Insurance company shall be solely liable to pay compensation awarded by ld. Tribunal vide impugned award dated September 15, 1998 to claimant-respondent No.1.

8. No order as to costs.

(JASPAL SINGH)

February 16, 2015 **JUDGE**

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