IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO. 14365 OF 2015
WITH
CIVIL APPLICATION NO. 260 OF 2017
WITH
CIVIL APPLICATION NO. 2786 OF 2015
IN
FIRST APPEAL (STAMP) NO. 14365 OF 2015

The New India Assurance Co. Ltd. .. Appellant
vs.
Mrs. Sundar L. Dongarkar & Ors. .. Respondents

Mr. D. S. Joshi for Appellant.
Mr. S. S. Kothiya with Mr. Ramesh Chavanke for Respondent Nos. 1 to 3.
Mr. Sachin Deokar with Mr. D. Pawar i/b. Mr. R. D. Suryawanshi for Respondent Nos. 4 and 5.

CORAM : M. S. SONAK, J.
DATE : 21 MARCH 2017

<u>P.C</u> :

1] Heard learned counsel for the parties.

2] Mr. Joshi, learned counsel for the appellant submits that the following substantial questions of law arise in this appeal :

> *"(b) Whether the trial court failed to consider a vital aspect that under the provisions of Workmen's Compensation Act 1923, the employees of the Insured for whom premium has been paid are covered whereas in the present case, admittedly, the Respondent No. 4 was the Insured whereas the deceased was working with the Respondent No. 5 hence no liability can be fastened on the Appellant for the death of some person other than employee of Insured covered under the Insurance Policy?*
>
> *(c) Whether the trial court failed to consider that in a claim*

under the Workmen's Compensation Act 1923, the Insurance Cover does not automatically gets transferred to the purchaser of the vehicle and the only persons covered under the Insurance Policy are the employees of the Insured whereas in the present case, admittedly, the deceased was not the employee of the Insured?

(d) Whether the trial court erroneously applied the provisions of Section 157 of the Motor Vehicles Act 1988 with respect to transfer of vehicle when the claim was filed under the provisions of Workmen's Compensation Act 1923 which covers the employees of the Insured covered under the Insurance Policy?

(e) Whether the trial court failed to consider that no extra premium was paid even by the Insured to cover the risk of other employees hence only driver is covered under the provisions of Motor Vehicles Act 1988 and other persons can be covered only by paying extra premium which is admittedly not paid in the present case?"

3] Mr. Chavanke, learned counsel for the respondent nos. 1 to 3, i.e. claimants submits that no substantial questions of law arise in this Appeal. He submits that the questions at (b), (c) and (d) above stand answered by the decision of the Hon'ble Supreme Court in the case of ***Mallamma (Dead) by L.Rs. vs. National Insurance Co. Ltd. & Ors***.[1] In so far as question at (e) is concerned, Mr. Chavanke submits that such an issue was never raised before the Commissioner and in any case, in terms of section 147(2) of the Motor Vehicles Act 1988, there is a statutory liability upon the Insurance Company to cover liability arising under the Employees Compensation Act 1923.

4] Mr. Joshi submits that the Commissioner in this case, has relied upon the provisions of section 157 of the Motor Vehicles Act 1988 and the decision of the Hon'ble Supreme Court in ***G.***

1 2014(2) T.A.C. 369 (S.C.)

Govindan vs. New India Assurance Co. Ltd. & Ors.[2], in order to take the view that in case of transfer of ownership of vehicle, the insurance policy is also deemed to be transferred to the new owner of the vehicle. Mr. Joshi however submits that the position under the Motor Vehicles Act, 1988 and the Employees Compensation Act, 1923 is quite different. He submits that *G. Govindan* (supra) was a case under the Motor Vehicles Act, 1988 and therefore, the principle therein, should not be applied to a claim under the Employees Compensation Act, 1923.

5] Section 157 of the Motor Vehicles Act, 1988, reads thus :

> *" Section 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.*
>
> *1[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.]*
>
> *(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".*

6] The aforesaid means that upon the transfer of the vehicle, the insurance policy also stands transferred from the date of transfer.

2 (1999) 3 SCC 754

The explanation clarifies that even a deemed transfer shall include the transfer of rights and liabilities with regards to the insurance certificate and insurance policy. No doubt, *Mallamma* (supra) is a decision delivered in respect of a claim under the Employees Compensation Act, 1923. In this case, the Hon'ble Supreme Court, relying upon *G. Govindan* (supra) has extended the principle to claims under the Employees Compensation Act, 1923.

7] In *Mallamma* (supra), the tractor in question, was initially owned and registered in the name of Gangadhara. The same was insured with the National Insurance Company Ltd. At the time of the accident however, it was found that the tractor had been transferred to Jeeva Rathna Setty. In such circumstances, the Commissioner held that though the insurance policy was in the name of Gangadhara, the ownership of the vehicle on the date of accident was with Jeeva Rathna Setty On this basis, the Commissioner concluded that the deceased was employed with Jeeva Rathna Setty, hence there is an employee-employer relationship between the deceased and the Respondent No. 1 and the deceased had died during the course of his employment.

8] The High Court of Karnataka affirmed the findings of the Commissioner but excluded the liability of the Insurance Company on the ground that the contention of deemed transfer of the insurance policy in favour of Jeeva Rathna Setty by virtue of Section 157 of M.V. Act was not actually urged before the Commissioner. The Hon'ble Supreme Court, however, reversed the judgment passed by the High Court and restored the judgment of the Commissioner.

9] The relevant observations are contained in paragraphs 10 to

16 reads thus :

> *“10. Before us, learned Counsel for the Appellants relying upon Section 157 of the M.V. Act, contended that there is an admitted transfer of ownership of the vehicle as proved before the Commissioner. Once the ownership of the vehicle is admittedly proved to have been transferred to Jeeva Rathna Setty, the existing insurance policy in respect of the same vehicle will also be deemed to have been transferred to the new owner and the policy will not lapse even if the intimation as required Under Section 103 of the M.V. Act is not given to the insurer, hence the impugned order passed by the High Court is contrary to law. In support of this contention, learned Counsel for the Appellant has relied upon a judgment of this Court in G. Govindan v. New India Assurance Co. Ltd***.** *(1999) 3 SCC 754.*
>
> *11. Learned Counsel has also brought to our notice a relevant portion from the 'Schedule of Premium' of the* ***insurance*** *policy, a copy of which is available on record as Annexure P-1., which reads thus:*

B.	LIABILITY TO PUBLIC RISK	Rs. 120-00
	Liability to Trailor	Rs. 87-00
Add:	for L.L. to persons employed in Connection with the operation and/ or loading of vehicle (IMT 19)	**Rs. 15-00**
Add:	for increased third party property damage limits. Section II-I(ii) upto Rs. Unltd. IMT 70	Rs. 75-00
	TOTAL PREMIUM (A +B)	Rs. 1318-00

> 12. *On the other hand, learned Counsel for the National Insurance Company, mainly contended that unless it is proved by evidence that the vehicle has been transferred in the name of Jeeva Rathna Setty, the deeming provision of Section 157 of the M.**V**. Act would not be applicable. In the absence of such evidence on record the High Court has rightly absolved the Insurance Company from the liability and the order passed by the High Court does not require any interference from this Court.*
>
> 13. *The counsel for the Insurance Company of course contended that as per their records, on the date of accident,*

the vehicle was registered in the name of Gangadhara. Hence in the absence of a valid proof that the ownership of the vehicle has been transferred in the name of Jeeva Ratna Setty, the benefits of insurance policy cannot be given to Jeeva Ratna Setty. However, the said contention is contrary to record. A specific finding by the Commissioner to this effect in his order dated 28th February, 2003 reads thus:

> *"The 4th Respondent had stated that on the date of the accident, this vehicle was in the name of Sh. Gangadhara. But the applicants have proved the said statement as false through documents and on the date of the accident, the vehicle was in the name of the Respondent No. 1".*

14. In view of the above finding, it can be discerned that on the date of accident, the ownership of the tractor stood transferred from Gangadhara to Jeeva Ratna Setty. In addition to that, a perusal of the 'Schedule of Premium' extracted above shows that an amount of Rs. 15-00 has been paid as premium "for L.L. to persons employed in connection with the operation and/or loading of vehicle (IMT 19)".

*15. In view of the above discussion we are of the considered view that as on the date of accident, the deceased workman was in the course of employment of Jeeva Rathna Setty in whose name the ownership of the vehicle stood transferred and the said vehicle was covered under a valid insurance policy, the High Court ought not have simply brushed aside the decision of the Commissioner fastening joint liability on the Insurance Company in the light of the deeming provision contained in Section 157(1) of the M.**V**. Act.*

16. For the foregoing reasons, we allow this appeal, set aside the impugned judgment passed by the High Court and restore the judgment of the trial Court."

10] As noted earlier, in case of *Mallamma* (supra), the Hon'ble Supreme Court has relied upon its decision in the case *G. Govindan* (supra). In this view, it cannot be said that the questions at (b), (c) and (d) above, give rise to any substantial questions of law.

11] In so far as the question at (e) is concerned, it is clear from the record that no such plea was ever raised before the Commissioner. In any case, the provisions of section 147(2) of the Motor Vehicles Act, 1988 will come into play. Accordingly, it cannot be said that even this is a substantial question of law.

12] For the aforesaid reasons, this appeal is dismissed since it raises no substantial questions of law. There shall be no order as to costs.

13] The ad interim relief granted earlier is vacated.

14] The Civil Applications do not survive and the same are disposed of accordingly.

(M. S. SONAK, J.)

Chandka