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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 342/2012

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through: Mrs. Suman Bagga and Mr. Pankaj Gupta, Advs.

Versus

ABRAR AHMAD & ORS

..... Respondent

Through: Mr. Banamali Shukla, Adv. for R-2 and R-6. Mr. Surender Kumar Bhardwaj, Adv. for R-3. Mr. Pankaj Kumar Deval and Mr. Shailender Sonaki, Advs. for R-4
Mr. Sameer Nandwani, Adv. for Mr. Vipin Nandwani, Adv. for R-5.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 25.04.2017

The liability of the insurer as determined in the Award dated 21.01.2012 has been impugned in this appeal on the ground that the motor vehicle insurance policy in question had been withdrawn much prior to the occurrence of the accident. It is the insurer’s case that it had cancelled the insurance policy and returned the premium to the assured pursuant to his request for the same. The respondent's case is that he had only intimated the insurer of the sale of the insured vehicle to the purchaser and had accordingly requested the insurer for issuance of a “no claim bonus certificate” and enclosed Form No. 29 and 30 with the said intimation letter.

The sold vehicle met with an accident on 06.12.2009. The Tribunal held the insurer liable for grant of compensation for the injuries suffered. In the claim proceedings, the assured had denied the fact that he had written to the insurer that the purchaser had taken a second policy. The appellant/insurer had relied upon the seller's intimation letter (Mark D-1). This document, however, was not proven. The Trial Court considered the arguments in this regard and found the Insurance Company liable for the claim. It recorded as under:

> "14. LIABILITY:-
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> Respondent no, 4 has stated that the policy in question was cancelled on the request of respondent no. 3,/insured and he was paid the balance premium of Rs. 780/- vide cheque dated 14/11/2009 alongwith letter/dated 19/11/2009. The contract of insurance therefore, came to an end and insurance was not liable.
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> Respondent no. 3 has stated that he had sold his vehicle to respondent no. 5 on 08/10/2009 and had claimed "no claim bonus". In cross-examination he denied the suggestion that after the signing of transfer document he had written a letter to insurance company for withdrawal of the policy in his name. He stated that he had only applied for "no claim bonus" and had never given any letter for cancellation/withdrawal of policy. He stated that he had intended to transfer his no claim-bonus in favour of his policy of his new vehicle. He also stated that after sale of vehicle, his ownership came to an end. He denied having written letter Mark D1 or receiving letter Mark D2.
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> R4W1- witness on behalf of insurance stated that respondent no. 3. had approached respondent no. 4 stating that he had sold the vehicle to one Satinder Pal Singh/respondent no. 5 and asked the company for issuance of "no claim bonus" of 65%. Accordingly

respondent No. 4 cancelled the policy and refunded the premium of Rs.780/- vide cheque dated 14.11.2009. Copy-of letters in this respect Ex./ R4W1/1, Mark Dl, Mark D2 and Ex. R3W1/R1/R4A have been placed on record. The cancelled insurance policy is R4W1/4. Ex. R3W1/R1 is the copy of letter stated to be written by respondent no. 3 to insurance, company for claiming "no claim bonus". As per the letter respondent no. 3 has stated to have sold the offending vehicle and had enclosed form no. 29 & 30 of the said transfer. He had claimed no claim bonus. As per letter Mark D1 which is denied by respondent no. 3, it is mentioned that he had sold the vehicle to Satinder Pal Singh who had got issued fresh insurance policy in his own name and therefore, no claim bonus be issued. This letter however, neither bears any date nor the address of the writer. Further the original of the document was never produced. The cancelled policy Ex. R4W1/4 w.e.f 11/01/2009 has also been placed on record. The fact admitted on this account are that respondent no. 3 had sold the offending vehicle to respondent no. 5 on 08/10/2009. Form no. 29 &30 was executed but the name was not transferred in the RC of the offending vehicle. The vehicle was thereafter, sold to respondent no. 6 and finally to respondent no. 2 but name in the RC was transferred in the name of respondent no. 2 only after the accident in question.

Respondent no, 3 on the grounds that he had sold his vehicle to respondent no.5 claimed “no claim bonus". Respondent/insurance refunded proportionate amount of premium and cancelled the policy. Respondent no. 4 has tried to prove on record document Mark 'Dl', as per which respondent no. 3 had conveyed that as respondent no. 5 had obtained a fresh insurance policy in his own name therefore, no claim bonus on the existing policy be given to him. This document has however, not been proved on record. Respondent no. 3 had categorically denied his

> signatures. The document does not bear the address of the writer nor is it dated. It also does not bear the receipt or dispatch. As per Mark D2 insurance company had refunded premium on cancellation of the policy. It is clearly mentioned therein the premium was being paid on account of vehicle being sold.
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> The simple question therefore, is that after the transfer of the offending vehicle in the name of respondent no. 5, can the insurance policy be cancelled without notice to the subsequent purchaser. As per Motor Vehicle Act, with the transfer of the ownership, insurance policy automatically stands transferred. Respondent/insurance was fully aware of this fact and is also apparent on the document produced by them. Respondent no. 4 has also produced on record the insurance manual wherein there is no provision for refund of "no claim bonus". The only provision existing is for return of premium for the remaining period after cancellation of the policy which is shown at Clause '5' of page 39 of the said document. In these circumstances, therefore, respondent no. 3 could not have cancelled the policy without notice to the subsequent purchaser. Accordingly, respondent/insurance is liable in the present case.
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> Accordingly, respondent no. 1, 2, 3, 5 & 6 are jointly and severally liable. Respondent no. 4/insurance to indemnify the claim."

The learned counsel for the respondent submits that the insurer could not have, on his own, cancelled the third party liability, because that is the statutory requirement i.e. the protective umbrella of insurance cover goes with the vehicle for the tenure of the policy. Assuming for the sake of argument that even if a "no claim bonus" was sought, the third party liability had to continue as per law and it would be deemed to have continued, unless specifically sought to be cancelled. The third party liability under a motor vehicle cover is linked to the vehicle. The documents of sale of the motor vehicle did not specify that it was without the insurance cover. Therefore, the presumption is that the sale consideration included the insurance premium paid for the continuation of the insurance cover. The assured could not have unilaterally taken additional benefit towards return of insurance premium after the vehicle had been sold with the insurance cover, without notice to and much to detriment of the motor-vehicle purchaser. Therefore, at best the refunded premium of Rs. 780/- could be claimed back by the insurer from the assured. The assured's letter seeking to cancel the policy was not proven by the insurer. The assured only wanted a "no claim bonus" certificate.

In the circumstances, the consequence of suo motu and unilateral cancellation of a running insurance policy pursuant to the sale of the motor vehicle by the assured will have to be borne by the insurer. The third party liability continued. The insurer could not repudiate the claim or escape from its statutory liability.

There is no substance in the appeal. It is accordingly dismissed.

Balance amount deposited in this Court shall be released to the beneficiaries of the award, in the terms specified therein.

Statutory deposit be refunded to the appellant.

NAJMI WAZIRI, J

APRIL 25, 2017/acm