IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1230 OF 2006

Smt.Sunandabai w/o Narayan Kathavate
Age: 44 Yrs., occu. Household,
R/o Maskavadsim, Tq. Raver,
District Jalgaon .. **APPELLANT**
(orig.claimant No.1)

Versus

1. Prakash s/o Fakira Koli
Age: 46 Yrs., occu.Business,
R/o Kathora, At Post Padalse,
Tq.Yawal, Dist.Jalgaon.

2. The Divisinal Manager,
Oriental Insurance Co.Ltd.
Divisional Office,
Central Phule Market,Jalgaon.

3. Jyoti Narayan Kathwate,
Age 23 Yrs., occu. Household

4. Bhavna Narayan Kathwate,
Age: 21 yrs., occu. Household

5. Jattantabai w/o Poona Kathwate
Age: 70 Yrs., occu. Household

Res.No. 3 to 4 r/o Kathora,
At post Padalse, Tq. Yawal,
District Jalgaon. .. **RESPONDENTS**
(Resp.Nos. 1 & 2 are
orig.Resp.Nos. 1 & 2
and Resp.Nos. 3 to 5
are orig.claimant
Nos. 2, 3 & 4)

...

Mr.SS Manale, Advocate for Appellant.
Mr.VB Patil, Advocate for Respondent No.1;
Respondent Nos.2 to 5 duly served.

CORAM : P.R. BORA, J.
DATED : 22nd October, 2018.

ORAL JUDGMENT:-

1. "Liability of insurer to third party whether ceases when owner or purchaser fails to give intimation of transfer to insurer?" is the main issue, which falls for determination in the present appeal.

2. Original claimant No.1 in Motor Accident Claims Petition No.62/2000, decided by Motor Accident Claims Tribunal, at Jalgaon (herein after referred to as the Tribunal) on 1st April, 2006, has preferred the present appeal against the Award passed in the said claim petition. The claimants had filed the aforesaid claim petition claiming compensation on account of death of Narayan Puna Kathavate, alleging the same to have been caused in a vehicular accident happened on 20th April, 1999, having involvement of a truck bearing registration No.MH 19-J-3128 owned by present Respondent No.1 and insured with present Respondent No.2.

3. Learned Tribunal, though partly allowed the claim petition filed by the claimants, held

present Respondent No.1, i.e. owner of the truck, only liable for the payment of compensation. Though there is no specific order dismissing the claim petition against Respondent No.2 – insurance company, from tenor of the order it has to be inferred that the Tribunal has dismissed the claim petition against the insurance company. Aggrieved by, original claimant No.1 has preferred the present appeal.

4. Heard Shri Manale, learned counsel appearing for appellant; Shri V.B.Patil, learned Counsel for Respondent No.1. Respondent No.2 insurance company though has been duly served, no one has entered appearance on its behalf. Respondent Nos.3 to 5, who are the original claimants, are the respondents.

5. Learned counsel for the appellant submitted that in the claim petition it was specifically stated by the claimants that the offending truck was duly insured with Respondent No.2 insurance company. The learned counsel further submitted that, in its written statement

filed by Respondent No.1, it was disclosed by him that he is the transferee owner of the offending truck and had applied for transfer of the insurance policy in his name. Respondent No.2 insurance company, however, in its written statement took a stand that the insurance policy was not confirmed.

6. The learned counsel further submitted that the insurance company filed an application at Exhibit 21, seeking deletion of its name arraigned as respondents. That application was allowed by the Tribunal and accordingly, name of the insurance company was deleted from the array of respondents. The learned counsel further submitted that the claimants thereupon filed an application at Exhibit 27 and filed certain documents along with the said application, evidencing the transfer of the policy in the name of Respondent No.1. The learned Tribunal, after having perused the documents filed on record and considering the averments in the application, allowed the said application and the insurance company was arraigned as party-respondent in the claim petition.

7. The learned counsel further submitted that in examination-in-chief, PW 1 – Sunanda has specifically deposed that the offending truck was owned by Respondent No.1 and was insured with Respondent No.2. The learned counsel further submitted that the fact so deposed by PW 1 – Sunanda was not denied or disputed by the insurance company. The insurance company also did not adduce any independent evidence. The learned counsel further submitted that the Tribunal, however, making some unwarranted observations, contrary to the evidence on record, exonerated the insurance company and passed the Award only against the insured, i.e. Respondent No.1.

8. The learned counsel submitted that when the insurer had not specifically denied the documents filed on record at Exh. 27 and when the contention of PW 1 – Sunanda in her examination-in-chief that the vehicle was insured with Respondent No.2 has also remained unshattered, the Tribunal must not have exonerated the insurance company from its liability to indemnify the insured.

9. The learned counsel further submitted that the Tribunal has also failed in appreciating the evidence on record as about the income of the deceased and has thus awarded unjust and inadequate compensation. For all these reasons, the appellant has prayed for setting aside the impugned Judgment and Award and to allow the claim petition in toto.

10. Shri Patil, learned counsel appearing for Respondent No.1, submitted that the offending truck was owned by Respondent No.1 and was insured with Respondent No.2 and the insurance policy was in force on the date of the accident. The learned counsel submitted that appropriate orders may be passed in the aforesaid circumstances.

11. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have also perused the impugned Judgment and Award and the evidence adduced in the matter.

12. From the material on record, it transpires that the offending vehicle was initially

registered in the State of Gujrat and it was, therefore, bearing registration number as GJ-7 2544. The material on record further reveals that Respondent No.1 -Prakash Fakira Koli purchased the said truck and thereafter it was registered in the State of Maharashtra and was given new registration number as MH-19 J 3128. It is the contention of the claimant as well as Respondent No.1 – Prakash Koli that the offending vehicle was insured with Oriental Insurance company when it was transferred in the State of Maharashtra and the policy continued to be in force and was in force on the date of the accident. However, it appears that the policy of insurance was not transferred in the name of the transferee owner i.e. Prakash Fakira Koli. That was the reason that an application was filed by the insurance company at Exh. 21 that since the policy is not in the name of Respondent No.1, the insurance company is not liable to indemnify Respondent No.1. The said application was allowed by the Tribunal and the name of Oriental insurance company was deleted from the array of respondents. However, the claimant thereafter filed an application at Exh. 27 and filed certain documents along with the said application, evidencing that an effort was made by the transferee owner to get transfer the policy in his name. The material on record shows that the said application was also allowed by the Tribunal and consequently, the Oriental insurance company was rearrayed as respondent in the claim petition.

13. The material on record further reveals that the appellant Sunandabai only testified before the Tribunal. Respondent No.1 – Prakash Fakira Koli did not depose before the Tribunal. The Oriental insurance company did not adduce any oral or documentary evidence. The learned Tribunal, while assessing the evidence on record, has recorded a finding that there is no iota of material to prove that the truck was insured with any insurance company much less with Respondent No.2. The Tribunal, therefore, did not pass any award against the insurance company and held Respondent No.1 Prakash Koli solely responsible for paying the amount of compensation.

14. Having considered the facts, as

aforesaid, it is quite evident that the claimant could have brought on record more concrete evidence in order to prove that the offending vehicle was insured with Oriental insurance company and the insurance policy was in force on the date of the accident. However, the Tribunal also appears to have failed in appreciating the evidence on record properly. I have carefully perused the testimony of claimant – Sunanda before the Tribunal. In her deposition, she has specifically deposed that Respondent No.1 was the owner of the truck and was insured with Respondent No.2 and further that both are jointly and severally liable to pay the compensation. In the cross-examination, the aforesaid averment has not been denied or disputed by the insurance company. Secondly, the insurance company did not adduce any oral evidence in rebuttal of the aforesaid contention raised by the claimant in the claim petition and reiterated by her on oath in her deposition before the Tribunal.

15. Moreover, the Tribunal also appears to have failed in considering that vide order passed on Exhibit-27, the Oriental insurance company was

re-arrayed as respondent in the claim petition. It is quite evident that the Tribunal reversed its earlier order whereby it had deleted the name of the insurance company from the array of respondents, relying on the contention of the insurance company that Respondent No.1 was not the insured person and as such, the insurance company was not liable to indemnify him because of some documents placed on record by the claimant along with his application at Exh. 27. As was submitted by the learned counsel for the claimant, the claimant has filed on record a copy of communication by Respondent No.1 to the insurance company for transfer of insurance policy in his name since he had purchased the said vehicle from the erstwhile owner of the vehicle, whose name was shown on the policy of insurance.

16. No doubt, the claimant must have shown diligence of proving the documents filed by her along with the application at Exh. 27 and could also have filed an application requiring the insurance company to produce certain documents on record. In its power the Tribunal also could have

called upon the insurance company to place on record a copy of the insurance policy of the offending vehicle to ascertain whether the offending vehicle was insured with the said insurance company and whether the policy of insurance was in force on the date of accident. Instead of adopting the said course, the Tribunal, by making one-line observation that there is no iota of evidence to show that the offending vehicle was insured with Respondent No.2 insurance company, has exonerated the insurance company from its liability to pay the amount of compensation to the claimant, who is admittedly a third party.

17. I am further constrained to observe that the Tribunal has dealt with the present matter in a casual manner. The Tribunal failed in appreciating the relevant legal provisions in the Motor Vehicles Act, more particularly the provision under Section 157 of the said Act. Section 157 of the Motor Vehicles Act, reads thus, -

> "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.

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.

18. As I have noted herein above, it was deposed by claimant Sunanda in her testimony before the court that on the date of the accident, the offending vehicle was insured with Respondent No.2 insurance company. The insurance policy was, however, not transferred in the name of the transferee owner. As has come on record, it was the contention of the transferee owner that he has already applied for transfer of insurance policy, but, the insurance company failed in transferring the said policy in his name.

19. The question arises, "liability of insurer to third party whether ceases when owner or purchaser fails to give intimation of transfer to insurer?". Similar question had fallen for consideration of the Hon'ble Apex court in the case of **United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Ors. - AIR 2006 SC 1576.** The Hon'ble Apex court in the said matter has held that, " upon the transfer of ownership of the motor vehicle, in respect of which insurance was taken together with the policy of the 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.

20. As has been held the Division Bench of the High court of Punjab and Haryana in the case of **United India Insurance Co. Ltd. Vs. Sharanjit Kaur and Ors. - (2005) A.C.C. 460**, "even if the transferee failed to move an application for transfer of the vehicle within fourteen days, it did not mean that insurance policy of the vehicle would become invalid, rather reading of section 157 of the Act made clear intention of the legislature that when a vehicle was transferred by owner, policy would also be deemed to be transferred as it was vehicle which was insured and not owner. Mere failure on part of transferee to intimate insurance company with regard to transfer within the prescribed period of 14 days, would not exonerate the insurance company from its liability."

21. In the present matter, as has been elaborately discussed by me herein before, the

insurance policy of the offending vehicle was well in force on the date of the accident though in the meantime, the vehicle was purchased by Respondent No.1 – Prakash Fakira Koli. It has also come on record that some correspondence was made in respect of the transfer of the insurance policy. However, the said documents could not be duly proved by the claimant.

22. Having considered the material, as aforesaid, it appears to me that the appellant had placed on record prima facie evidence, in the form of documents, but failed in adducing appropriate evidence in that regard and getting proved the said documents or to take further steps for production of the necessary documents by calling upon the insurance company to produce the same on record. In the circumstances, it appears to me that an opportunity needs to be given to the appellant and the other claimants with her to prove, by bringing on record appropriate evidence as about existence of the insurance policy on the date of accident. I am, therefore, inclined to remit the matter to the Tribunal for aforesaid purpose.

23. I am further convinced that the Tribunal has also failed in determining the just amount of compensation. The evidence adduced by the claimants as about income of the deceased, has not been properly considered by the Tribunal. In the circumstances, it appears to me that the said issue also can be decided by the Tribunal afresh when even otherwise, I have expressed my inclination to remit back the matter to the Tribunal for deciding the liability of the insurer to third party when policy of the insurance was not transferred in the name of the transferee though the vehicle was transferred in his name.

24. For the reasons stated above, following order is passed, -

ORDER

i. The Judgment and Award dated 1.4.2006 passed in MACP No.62/2000, is quashed and set aside and the matter is remitted to the Tribunal to decide it afresh with following directions, -

(a) The Tribunal shall permit the claimant to bring on record the necessary evidence as about the policy of insurance pertaining to the offending vehicle and existence of the said policy in force on the date of accident. Needless to state that equal opportunity shall also be given to the insurance company to rebut the said contention, if it so desires.

ii. The appeal stands allowed in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R. BORA)
JUDGE

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