

215

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-1714-2015 (O&M)

Date of Decision: November 4th, 2019

Bhup Singh

.....Appellant

Versus

United India Insurance Co.Ltd. and another

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.Divay Sarup, Advocate
for the appellant.

Ms.Vandana Malhotra, Advocate
for respondent No.1.

.....

NIRMALJIT KAUR, J.

The present appeal is filed against the award dated 14.10.2014 granting compensation with a prayer to set aside the said award.

As per the brief facts, respondent No.2 filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short,'the 1988 Act') for grant of compensation on account of accidental injuries sustained by him in a motor vehicular accident alleging therein rash and negligent driving of driver of offending vehicle Mahindra Jeep No.RJ-27U-/0472 on 30.01.2013 in the area of village Mehrana. The claim petition was partly allowed and the appellant was held liable to pay compensation to respondent No.2 whereas respondent No.1-Insurance Company was exonerated from paying any compensation as it was observed that the registered owner at the time of the accident had not been impleaded as a party to the claim petition,

therefore, the driver was held liable to pay the compensation to claimant/respondent No.2.

It may be clarified that the driver Bhup Singh was also the registered owner but purchased the car after the date of accident.

While praying for setting aside the said award, learned counsel for the appellant submitted that the Tribunal has gone totally wrong with respect to the liability of the appellant to pay compensation to the claimant as the insurer-Company is liable to answer the claim of the third party by virtue of the provisions of Section 157(1) of the 1988 Act. To support his argument, reliance was placed on the judgment rendered in the case of **J.S.Choudhary vs Ritu Devi and others**, 2013 ACJ 944. Secondly, since there was no dispute regarding the ownership of the offending vehicle, which the appellant admitted was purchased by him, there was no need to implead the registered owner as a party. The registered owner at the time of the accident was not a necessary party especially when the insurance policy itself stood transferred to the subsequent owner.

Learned counsel for the respondent while vehemently opposing the appeal submitted that the accident took place on 30.1.2013. The registered owner at that point of time was S.P.Udaipur in his official capacity, whereas, the application for transfer of the vehicle in the name of the present appellant was filed on 27.02.2013, i.e. almost 27 days of the accident and the claim petition was filed on 4.4.2013. Since, the Insurance Company is liable to indemnify only the registered owner of the vehicle at the time of the accident, it was necessary to implead the said owner as a party and in the absence of impleading the said registered owner of the car at the time of the accident, the Insurance Company is not liable.

Learned counsel for the appellant also referred to Section 157 of the 1988 Act to contend that the policy was deemed to have been transferred in favour of the person to whom the motor vehicle was transferred and, therefore, the only objection that could have been raised under Section 149(2)(b) is not available to the insurer. It is further contended that in the absence of any objection with respect to the impleadment of the necessary party in the written statement, the said objection could not be raised subsequently.

Learned counsel for the parties are heard at length.

For proper adjudication, it is necessary to reproduce Section 157(1) of the 1988 Act, which reads as under:-

“157(1). **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.”

A perusal of Section 157(1) of the 1988 Act shows that transfer of Certificate of Insurance is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred w.e.f. the date of its transfer. As per facts in the case of Managing Director, K.S.R.T.C. vs New India Assurance Co.Ltd. and another, 2015(4) RCR (Civil) 938, the High Court had exonerated the registered owner and the insurer but the company that held that the actual control of the bus under the lease

agreement as well as the driver, who was driving the bus, was made liable. The Apex Court however set aside the order of the High Court. While setting aside the order of the High Court, the Apex Court in the above mentioned case of **Managing Director, KSRTC**(supra) held in para Nos.25 and 26 as under:-

“25. Apart from that what is provided under Section 157 of the Act of 1988 is that 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. Even if there is a transfer of the vehicle by sale, the insurer cannot escape the liability as there is deemed transfer of the certificate of insurance. In the instant case it is not complete transfer of the vehicle it has been given on hire for which there is no prohibition and no condition/policy of insurance as shown to prohibit plying of vehicle on hire. The vehicle was not used for inconsistent purpose. Thus, in the absence of any legal prohibition and any violation of terms and conditions of the policy, more so, in view of the provisions of Section 157 of the Act of 1988, we are of considered opinion that the insurer cannot escape the liability.

26. Now, we come to the question of exclusion of contractual liability under second proviso to Section 147(1). When we read provisions of Section 147 with Section 157 together, it leaves no room for any doubt that there is deemed transfer of policy in case of transfer of vehicle. Hence, liability of insurer continues notwithstanding the contract of transfer of vehicle, such contractual liability cannot be said to be excluded by virtue of second proviso to Section 147(1) of Act of 1988. Higher purchase agreement, an agreement for lease or an agreement for hypothecation are covered under Section 2(30) of the Act of 1988. A person in possession is considered to be an owner of the vehicle

under such agreements. In case such contractual liability is excluded then anomalous results would occur and financier under higher purchase agreement would be held liable and so on. In our view, an agreement for lease on hire cannot be said to be contract envisaged for exclusion under contractual liability in second proviso to Section 147(1) of the Act of 1988. The High Court has erred in holding otherwise.”

Thus, as far as the third party is concerned, entitlement of securing the Award and enforcing it against the insurer can never be denied and the liability would, therefore, be of the Insurance Company to satisfy the claim of the claimant.

The argument of learned counsel for the respondent-Insurance Company is that the said fact was not brought to the notice of the insurer. Hence, the insurer would still be liable to answer the claim of the third party by virtue of Section 157(1) of the 1988 Act, which is the deemed provision for transfer of policy of insurance. Learned Single Bench of this Court in **J.S.Choudhary’s** case (supra) in a case where the ownership was in doubt and the registered owner denied the ownership observed in para 5 as under:-

“5. In all cases, where the plea of owner-ship is in question, the first attempt must be to see who is the registered owner. If the registered owner denies the ownership and pleads transfer to a third party but the transferee is not made a party, the Tribunal may call upon any party to direct the impleadment and if the evidence shows admission of transfer by the transferee, the Tribunal will be justified in making the transferee alone as liable. If there is a policy of insurance, no matter the fact of transfer is not notified to the insurer but the insurer is a party in proceedings, the Tribunal will also be justified in making the insurer liable to answer the claim of a third party, by virtue of the provisions under Section 157(1) of the Motor

Vehicles Act, constituting the deeming provisions for transfer of policy of insurance. ”

In the present case, the appellant has come forward to admit that vehicle in dispute was transferred to him and that he was the registered owner and hence, in terms of Section 157(1) of the 1988 Act, which contain the deemed provision, the Certificate of Insurance and policy is also deemed to have been transferred to him. Therefore, the Insurer cannot escape its liability on the ground that the earlier owner was not made a party.

The argument of the learned counsel for the respondent that the present appellant was not the owner on the date of the accident and, therefore, they cannot indemnify in the absence of the owner at the time of the accident has no merit and stands answered by the Apex Court in the case of **Firdaus vs Oriental Insurance Company Ltd. and others**, 2017(7) JT 244 holding that it was not necessary to give any finding regarding the ownership of the vehicle as the liability of the Insurance company continues even with the change of the owner. Para 16 of the said judgment reads as under:-

“16. In view of the above, it is not necessary to us to give any concluded finding regarding ownership of the vehicle No.HR 2 G 1875 on the date of accident for the purpose of this case. In either of the eventuality, i.e. whether defendant No.1 was the owner of the vehicle on the date of the accident, or defenant No.4 was the owner of the vehicle, the liability of Oriental Insurance Co.Ltd. Continues and Workmen compensation Commissioner has rightly fastened the liability on the Insurance Company. The remand made by the High Court to find out as to whether Parvez Khan was an employee of the defendant No.1 or not, was unnecessary.”

The subsequent purchaser is not taking any personal benefit

under the policy. Here, the compensation is being paid towards the third party, who are either insured or are the claimants of the deceased. Their right to enforce the liability undertaken by the insurer cannot be refused. Further, it is not disputed that the respondent did not raise any such objection in the written statement that the earlier owner was not impleaded as a party.

In view of the above, the present appeal is partly allowed by setting aside the Award to the extent vide which direction has been issued that the present appellant, who was the driver and the registered owner of the offending vehicle alone is liable and the liability is now fastened upon the respondent-Insurance Company, who alongwith the appellant shall be jointly and severally liable. The amount be deposited by the respondent-insurance Company within two months from the date of receipt of a certified copy of this order alongwith interest already fixed by the Tribunal . In case the said amount is not deposited within two months from the date of receipt of a copy of this order, the same shall be deposited alongwith interest @ 12% from the expiry of the said two months.

Disposed of accordingly.

November 04, 2019
meenuss

(NIRMALJIT KAUR)
JUDGE

- | | | |
|----|------------------------------------|---------------|
| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |