IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214 **FAO-5482-2016 (O&M)**
Date of decision: 14.02.2023

Jaibir Singh **...Appellant(s)**

Vs.

The New India Assurance Co. Ltd. & Others **...Respondent(s)**

CORAM: **HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ashish Gupta, Advocate for the appellant.

Mr. Pradeep Kumar, Advocate for respondent No.1.

Mr. Atul Yadav, Advocate for respondents No.2 and 3.

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NIDHI GUPTA, J.

CM-18868-CII-2016

This is an application under Section 5 of the Limitation Act for condonation of delay of 207 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-18869-CII-2016

This is an application under Section 151 CPC for exemption from filing certified as well as true typed copy of impugned Award dated 21.08.2015.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE:

Present appeal has been filed by the driver-cum-owner of truck bearing registration No.DL-4C-NA-1134 (hereinafter referred to as "the offending vehicle") against Award dated 21.08.2015 passed by Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as "the learned Tribunal") in MACT Case No.35 of 2014 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The claimants/respondents No.2 and 3 herein, are parents of deceased-Bhupender.

Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Bhupender had died due to the injuries suffered by him in a motor vehicular accident that took place on 16.03.2014 due to rash and negligent driving of the offending vehicle being driven by the appellant. Accordingly, Learned Tribunal awarded compensation of Rs.9,45,600/- along with interest @ 7.5% per annum from the date of filing the petition till its actual realization. As the Offending vehicle was insured by Insurance Company/respondent No.1 herein, it was directed to satisfy the Award, however, recovery rights were granted to respondent No.1/Insurance Company to recover compensation amount either from the insured or from the transferee/subsequent purchaser of the offending vehicle. It was further directed that for the purpose of recovering the amount paid from the insured/transferee, the insurer shall not be required to file a Suit and would be entitled to recover the same by initiating proceedings before the Executing Court.

Learned counsel for the appellant submits that offending vehicle was sold by original owner/insured Pawan to the appellant. It is submitted that Registration Certificate of the offending vehicle was duly transferred in the name of the appellant however, insurance policy could not be transferred. It is submitted that a perusal of Exhibit P5 which is the certified copy of Registration Certificate of the offending vehicle, shows that it was registered in the name of the appellant; however, perusal of Exhibit R1/Exhibit R2 photocopy of insurance policy shows that though the offending vehicle was duly insured with respondent No.1 on the date of accident viz 16.03.2014/for the period from 10.06.2013 to 09.06.2014, yet, policy remained in the name of Pawan, earlier owner of the offending vehicle, from whom the appellant had bought the car.

It is submitted that the Learned Tribunal relied upon three-Judge Bench judgment of the Hon'ble Supreme Court in ***Rikhi Ram & Another Vs. Sukhrania & Others 2003 ACJ 534 (SC)*** wherein Their Lordships have held that transferee can't get any personal benefit under the policy unless there is a compliance of the provisions of Section 103A of Motor Vehicles Act.

It is submitted that it is in this circumstance that learned Tribunal had granted recovery rights to respondent No.1/Insurance Company in respect of compensation amount, either from the insured or from the transferee of the offending vehicle, as the policy was not transferred in the name of the subsequent purchaser/appellant. It is submitted that however, after amendment of Section 157 of the Act, upon transfer of vehicle in the name of transferee, there is also deemed transfer of the insurance policy. It is submitted that learned Tribunal had relied upon old Act, but as per amendment, no recovery rights could have been granted against the appellant.

No other argument is raised on behalf of the appellant.

Learned counsels for the respondents are unable to dispute this position in law.

I am in agreement with the legal submission made on behalf of the appellant. In holding as above, I find support from the following judgments rendered by this Court in:-

FAO-2837 of 2001 titled as "Om Prakash through LRs Vs. Ravinder Kumar & Others" wherein this Court held that: "*Motor Vehicles Act, 1988, Section 157 Liability of Insurer continuous even when the vehicle is transferred and the intimation of transfer of vehicle was not given to the Insurance Company – The Insurance Company cannot be absolve from its liability to pay the amount of compensation on account of transfer of vehicle – There is deemed transfer or insurance policy with transfer of vehicle." a*nd;

FAO No.893 of 1997 titled as "United India Insurance Company Limited Vs. Rajvinder Kaur & Others" wherein this Court has again held that: ***"****A. Motor Vehicles Act, 1988, Section 157 Transfer of Vehicle – Liability of insurer – Statutory protection is available under Section 157 – The insurer liable by a deemed transfer, even in the absence of information by the subsequent purchaser or his insurer."*

Accordingly, in view of the facts as canvassed above on behalf of the appellant, and the legal position as noticed above, present appeal is allowed and impugned Award is set aside to the extent whereby recovery rights were granted by the learned Tribunal against the subsequent purchaser/appellant and insured-Pawan.

Pending application(s) if any also stand(s) disposed of.

14.02.2023 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No