IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 841 of 2010

Beauti Barman & Ors.

Vs

The National Insurance Co. Ltd. & Anr.

For the Appellants/ Claimants	:	Mr. Saidur Rahaman.
For the Respondent No.1/ Insurance Company	:	Mr. Parimal Kr. Pahari.
For the Respondent No. 2/ Owner	:	None.
Hearing concluded on	:	14.08.2024
Judgment on	:	30.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the Claimants against the judgment and award dated **10.9.2008** passed by the Judge, Motor Accident Claims Tribunal, 3rd Fast Track Court, Cooch Behar in Motor Accident Claims Case No. 66 of 2003, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **The facts as stated by the claimants:-**

> *"On 21.06.2002, when the victim was returning to his house from Tufanganj on his bi-cycle through Salbari P.W.D. road, at that time, at about 8.30 P.M. there was an accident and a motor vehicle knocked down the victim from behind and the vehicle in question fled away. As a result the victim sustained grave multiple injuries in his person and was admitted at S.D. Hospital, Tufanganj where he died. The said accident occurred due to rash and negligent driving of the driver of the said offending vehicle. The victim was an educated boy having passed 12 examination in 1990. He was 34 years old, having good health and he was the only earning member of his family.*
>
> *The claimants have prayed for an award of compensation of Rs. 4,56,192/- (Rupees Four Lakh Fifty Six Thousand One Hundred Ninety Two) only. The offending vehicle was No. WB-63/2268 Truck. The deceased used to earn Rs. 3168/- per month before his death."*

3. The owner of the offending vehicle is Deownath Choudhury, S/O. Lalji Choudhury, P.O. Telipara, P.S. Kumargram, Dist – Jalpaiguri and the Insurer of the vehicle is The National Insurance Co. Ltd. Cooch Behar Branch.

4. The instant claim case was contested by **Respondent No.1/Owner** of the offending vehicle by filing W.S. As per O.P. No.1 there is no cause of action for the petitioners which is bad for non-joinder or mis-joinder of the parties. So, the petition is not maintainable in law and fact also barred by the principle of waiver, estoppel and acquisance. So, they prayed for dismissal of the claim case.

5. The **Respondent No. 2/National Insurance Company Ltd.** has contested the claim petition by filing separate written objection. According to the Insurance Company, the present petition is not maintainable and is liable to be rejected.

6. The Claimants examined **four witnesses** and proved relevant documents, which were marked **Exhibit 1 and 2 series**.

7. The Opposite parties did not examine any witness.

8. **The tribunal finally held as follows :-**

> *"**<u>M.A.C. 66 of 2003</u>***
> ***<u>Dated: 10.9.2008</u>***
> *…………As Insurance policy of a vehicle different from the offending vehicle, so the petitioners have failed to satisfy the court on their claims. As a result, all the issues are decided negatively and the petition for compensation is liable to be dismissed.*
>
> *Hence,*
>
> ***<u>Ordered</u>***
>
> *The petition for claim is dismissed on contest.*
> *There is no order as to costs.*
>
> ***Sd/-***
> ***Judge, Claims Tribunal,***
> ***3rd Fast Track Court,***
> ***Cooch Behar"***

9. **Being aggrieved the present appeal has been preferred on the following ground :-**

That the tribunal was wrong in dismissing the claim of the claimants.

10. From the materials including the evidence on record, the following is evident :-

i) The tribunal refused to believe that the offending vehicle No. A.S.C. 2836 of T.D.V. truck of 1978 was later transferred to West Bengal and renumbered as W.B. 63/2298, as no supporting documents were produced.

ii) **Ext. 2**, the Charge Sheet in this case has been filed under **Section 279/304(A) IPC**.

The vehicle (offending) as shown in the charge sheet is WB-63/2268 with valid Insurance Certificate.

iii) By the seizure list (**Ext 4**) the said offending vehicle along with its document were seized.

iv) The Insurance policy in this case is related to vehicle no. ASG 2836, also a Truck.

v) It is the case of the Respondent No.1/owner in his Written Statement that:-

> *"The statements made in para 17 of the claim petition is admitted and answering Respondent No.1 insured the vehicle No. ASG-2836 (T) WB-63/2268 (Truck) with the National Insurance Co. Ltd. vide Policy No. 200701/2001/67/00618 valid from 17.08.01 to 16.08.2002 a copy of the same is annexed herewith.*
>
> *That the Respondent/owner is not liable to pay any compensation as the alleged vehicle was duly insured with National Insurance Co. Ltd."*

vi) The Opposite Party/Insurance Company denied that the alleged accident had taken place by the vehicle No. WB-63/2268(Truck).

vii) **It appears that the fresh registration and renumbering of the vehicle (Truck) as stated by the Respondent/O.P. No. 1/Owner has not be denied by the Insurance Company, who has denied that the vehicle (named in the Charge Sheet) was involved in the accident.** No evidence was adduced by the Insurance Company to negate the case of the Respondent/Owner, whose statement has also been corroborated by the Charge Sheet.

viii) It is thus proved that the offending vehicle (truck) as per charge sheet being driven in a rash and negligent manner, caused the accident of the victim in this case, leading to his death.

Thus, the findings of the tribunal on this issue being not in accordance with law is set aside.

11. Section 157 M.V. Act lay down:-

> ***"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 clarified 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."*

12. The Supreme Court in ***Surendra Kumar Bhilawe vs The New India Assurance Company Ltd., AIR 2020 SC 3149, decided on 18th June, 2020,*** relates to a case where there was an agreement for sale of the vehicle.

> ***"9.*** *However, instead of reimbursing the loss, the Insurer issued a show cause Letter dated 22.3.2012 to the Appellant requiring the Appellant to show cause why the claim of the Appellant should not be repudiated, on the allegation that, he had already sold the said truck to the said Mohammad Iliyas Ansari on 11.4.2008. It is, however, not in dispute that the Appellant continued to be the registered owner of the said truck, on the date of the accident.*
>
> ***17.*** *From the judgment and order dated 9.1.2014 of the District Forum, it is patently clear that the complaint had been resisted by the Insurer on the purported ground that the Appellant had sold the said truck to Mohammad Iliyas Ansari for a consideration of Rs.1,40,000/- and also on the ground of delay in filing a police complaint and in lodging the claim for reimbursement of losses.*
>
> ***36.*** *It would also be pertinent to note the difference between the definition of owner in Section 2(30) of*

the Motor Vehicles Act, 1988 and the definition of owner in Section 2(19) of the Motor Vehicles Act, 1939 which has been repealed and replaced by the Motor Vehicles Act, 1988. Under the old Act 'owner' meant the person in possession of a motor vehicle. The definition has undergone a change. Legislature has consciously changed the definition of 'owner' to mean the person in whose name the motor vehicle stands.

37. *The National Commission also overlooked other applicable provisions of the Motor Vehicle Act 1988, particularly Sections39 to 41, 50, 51, 66, 69, 82, 84 (g), 86(c), 146, 157, 177 and 192A.*

38. *Some of the relevant provisions of the Motor Vehicles Act are set out herein below:*

*"**50. Transfer of ownership-***

1) Where the ownership of any motor vehicle registered under this Chapter is transferred-

(a) the transferor shall,-

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) …….

*(b) **the transferee shall, within thirty days of the transfer, report the transfer to the registering authority** within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transfer of ownership may be entered in the certificate of registration.*

(3) If the transferor of the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period the period prescribed, the registering authority may, having regard to the circumstances of the case, required the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5).

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

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66. Necessity for permits-

(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle ***in that place*** *in the manner in which the vehicle is being used.*

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82. Transfer of permit-

(1) Save as provided in sub-section (2), ***a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.***

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84. General conditions attaching to all permit-

The following shall be conditions of every permit …………….

(g) that the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permit relates on the exterior of the body of that vehicle on both sides thereof in a colour or colours vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters.

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86. Cancellation and suspension of permits:-

*(1) The Transport Authority which granted a permit **may cancel the permit or may suspend it** for such period as it thinks fit-*

………………….

*(c) if **the holder of the permit ceases to own the vehicle covered by the permit,***

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***140. Liability to pay compensation in certain cases on the principle of no fault**-*

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

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***146. Necessity for insurance against third party risk**-*

(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that person, as the case may be, a policy of insurance complying with the requirement of this Chapter.

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***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.

(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 regards to the transfer of insurance.

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163A. Special provisions as to payment of compensation on structured formula basis-

(1) Notwithstanding anything contained in this Act or in any other law for time being in force or instrument having the force of law, ***the owner of the motor vehicle or the authorised insurer*** *shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*

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177. General provision for punishment of offences-

Whoever contravenes any provisions of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundered rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

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192A. Using vehicle without permit-

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purposes for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both.

Provided that the Court may for reasons to be recorded, impose a lesser punishment.

44. *The explanation to Section 157 clarifies, for the removal of all doubts, that such deemed transfer would include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. The transferee might, within 14 days from the date of transfer, apply to the Insurer in the prescribed form, for making requisite changes in the certificate of insurance and the policy of insurance with regard to the factum of transfer of insurance. There could be no reason for a transferee of an insured motor vehicle, to refrain from applying for endorsement of the transfer in the Insurance Policy Certificate when insurance covering third party risk is mandatory for using a vehicle.*

47. In Pushpa @ Leela And Others vs. Shakuntala and Others, (2011) 2 SCC 240 the question before this Court was, whether liability to pay compensation to third parties as determined by the Motor Vehicles Accidents Claims Tribunal in case of an accident, was that of the purchaser of the vehicle alone, or whether the liability of the recorded owner of the vehicle was coextensive, and from the recorded owner it would pass on to the Insurer of the vehicle. This Court found that the person whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation, having regard to the provisions of Section 2(30) read with Section 50 of the Motor Vehicles Act, 1988 and since an insurance policy had been taken out in the name of the recorded owner, he was indemnified and the Insurer would be liable to satisfy the third party claims.

48. *In* ***Naveen Kumar vs. Vijay Kumar and Others, (2018) 3 SCC 1*** *a three-Judge Bench of this Court held that in view of the definition of the expression owner in Section 2(30) of the Motor Vehicles Act, 1988, it is the person in whose name the motor vehicle stands registered, who, for the purposes of the said Act, would be treated as the owner of the vehicle. Where the registered owner purports to transfer the vehicle, but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of his liability as owner.*

50. *The policy of insurance in this case, was apparently a comprehensive policy of Insurance which covered third party risk as well. The Insurer could not have repudiated only one part of the contract of insurance to reimburse the owner for losses, when it could not have evaded its liability to third parties under the same contract of Insurance in case of death, injury, loss or damage by reason of an accident.*

54. *In view of the definition of owner in Section 2(30) of the Motor Vehicles Act, the Appellant remained the owner of the said truck on the date of the accident and the Insurer could not have*

> *avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammad Iliyas Ansari.*
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> ***55. The judgment of this Court in Oriental Insurance vs. Sony Cheriyam (1999) 6 SCC 451 was rendered in the context of liability of an Insurer in terms of the insurance policy and is not attracted in this case, where the claim of the insured has not been rejected on the ground of the same not being covered by the policy of insurance, but on the ground of purported transfer to a third party by entering into a sale agreement.***
>
> ***57.*** *The judgment and order of the National Commission is unsustainable. The appeal is, therefore, allowed. The impugned order of the National Commission under appeal is set aside and the order of the District Forum is restored. The Insurer shall pay to the Appellant a sum of Rs.4,93,500/-as directed by the District Forum with interest as enhanced by this Court to 9% per annum from the date of claim till the date of payment. The sum of Rs.5,000/- awarded by the District Forum towards compensation for mental agony and Rs.2,000/- awarded towards the cost of litigation, is in our view grossly inadequate. The Insurer shall pay a composite sum of Rs.1,00,000/- to the Appellant towards costs and compensation for the agony caused to the Appellant by withholding his legitimate dues. The amounts as directed above shall be paid to the Appellant within six weeks from date of the judgment and order."*

13. In ***Mallamma (Dead) By L.R.s Vs. National Insurance Co. Ltd & Ors., 2014 (14) SCC 137, decided on 7th April 2014,*** the Supreme Court held:-

> ***"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."***

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."*

14. In the present case too, the evidence of the Respondent/Owner could not be destroyed by the Insurance Company. **The fresh registration and renumbering of the vehicle (Truck) as stated by the Respondent/O.P. No. 1/Owner has not be denied by the Insurance Company.**

15. Thus in view of the Judgments in ***Surendra Kumar Bhilawe vs The New India Assurance Company Ltd. (Supra)*** and ***Mallamma (Dead) By L.R.s Vs. National Insurance Co. Ltd & Ors. (Supra),*** the Insurance Company in this case in liable to pay the Insurance to the Claimants, there being a valid insurance in respect of the offending vehicle on the date of accident.

16. Accordingly, as the accident took place in the year **2002**, the income of the deceased be taken as **Rs. 3000/- per month,** as no documents in support of income has been proved.

17. The deceased was aged **34 years** (Post Mortem Report marked Ext -3), thus **multiple of 16** be applied. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

18. **Future prospects** at **40%** of Income, the deceased being self employed. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

19. Deduction shall be **1/4th** of the victim's income, there being **5 Claimants** on the date of application. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).***

20. General damages of **Rs. 70,000/-** under the conventional heads of loss of estate **Rs.15,000/-,** loss of the consortium **Rs.40,000/-** and funeral expenses **Rs.15,000/-. *(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

21. Thus the "Just Compensation" in this case would be:-

Monthly Income	*Rs. 3,000/-*
Annual Income *(3,000 x 12)*	*Rs. 36,000/-*
*Less : **1/4th** towards personal and living expenses*	*Rs. 9,000/-*
	Rs. 27,000/-
*Add : Future prospects @ **40%** of the annual income of the deceased*	***Rs. 10,800/-***
	Rs. 37,800/-
Multiplier x 16 *(37, 800 x 16)*	***Rs. 6, 04, 800/-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	***Rs. 84,000/-***
Total amount:-	***Rs. 6, 88, 800/-***

22. Steps for service was taken by the appellant at the time of filing of the appeal.

23. Admittedly, the Claimants have not received any **compensation/interest** by the order of the learned Tribunal, as the **claim case was dismissed.** Accordingly, the Claimants are now entitled to the **total amount of compensation of Rs. 6, 88, 800/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

24. The **Respondent No. 1/Insurance Company** shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the Claimant/Wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

25. **The appeal being FMA 841 of 2010 stands allowed.** The impugned judgment and award dated 10.9.2008 passed by the Judge, Motor Accident Claims Tribunal, 3rd Fast Track Court, Cooch Behar in Motor Accident Claims Case No. 66 of 2003, under Section 166 of the Motor Vehicles Act, 1988, **being not in accordance with law is set aside.**

26. All connected applications, if any, stand disposed of.

27. There will be no order as to costs.

28. Interim order, if any, stands vacated.

29. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

30. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)