

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1160-1989 (O&M)

Date of Decision:-10.04.2024

Vijay Kumar

... Appellant

Versus

Smt. Jashbir Kaur and Others

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Ms. Perna Malhotra, Advocate for
Mr. Prateek Mahajan, Advocate
for the appellant.

Service of respondents No.2 and 4 dispensed with
vide order dated 29.11.2022.

Mr. Neeraj Khanna, Advocate
for the respondent No.3-Insurance Company.

RITU TAGORE, J.

1. The Motor Accident Claims Tribunal, Ferozepur (for short 'Tribunal') on a claim petition filed by claimants under Section 110-A of the Motor Vehicles Act 1939 (in short referred to as 'the Act of 1939'), had fastened the liability to pay compensation ₹76,800/- alongwith interest @ 12% p.a. from the date of filing the petition till realisation on the driver and owner of the truck bearing No.PB-X-3250, on account of death of Kashmir Singh in a road side accident on 30.05.1985. The insurance company was absolved of its liability to pay compensation on the ground that there was no contract between the owner (Lakh Raj, since deceased) of the vehicle and the insurance company.

2. Aggrieved by the award dated 20.07.1989, Vijay Kumar, the driver of the truck has filed the extant appeal for setting aside the award of the Tribunal to the extent that liability to pay the compensation has been fastened upon him and Ramesh Kumar, the LRs of deceased Lekhraj, owner of the truck bearing No.PB X-3250.

3. At the time of admitting the appeal on 09.11.1989, the sole question raised was with regard to the liability for compensation being fastened upon the driver and owner of the truck and not upon the insurance company.

4. Brief facts of present appeal are that- On 26.08.1985 widow- Jasbir Kaur (also recorded as Jashbir Kaur) and minor son-Didar Singh, filed the claim petition under Section 110-A of the Act, 1939 against the driver Vijay Kumar (appellant), owner Lekh Raj and insurance company (respondents No.1 to 3), on account of the death of Kashmir Singh (husband of claimant-No.1) occurred on 30.5.1985, caused by respondent No.1, while driving the offending truck No.PB X-3250. During the currency of the proceedings before the learned MACT, it was transpired that owner Lekh Raj had died, his LRs Vijay Kumar (respondent No.1) and Ramesh Kumar (respondent No.2-A) and their wives were brought on record. However, the names of wives of respondents No.1 and 2-A were deleted from the array of the respondents, later on.

5. The learned Tribunal after appraisal of evidence found that accident had occurred due to negligent driving of the appellant Vijay Kumar-respondent No.1, the driver of offending vehicle bearing truck No.PBX-3250. However, the learned Tribunal observed that Lekh Raj, the owner of

the offending vehicle, since had died prior to the date of accident, so there was no contract with insurance company and policy was void, and insurance company was held not liable to make the payment of assessed compensation. The Tribunal made Vijay Kumar (who was also the driver of the offending truck) and Ramesh Kumar, both LR's of deceased Lekhraj-owner of the offending truck, liable to pay the assessed compensation ₹76,800/- along with 12% interest.

6. There is no dispute regarding the factum of accident and compensation awarded by the Tribunal.

7. The learned counsel for the appellant contended that offending truck was duly insured with the insurance company and premium was duly paid and as such liability should have been fastened on the insurance company but learned Tribunal wrongly fastened the liability on the appellant. Learned Counsel stated that policy in question was valid and further policy is to the vehicle and normally it should run along with the vehicle and obligation of the Act does not cease on the death of the owner. While referring to the statement of Vijay Kumar, the respondent- No.1, the driver (RW-2), learned counsel stated that the Insurance company was duly informed of the death of the owner and representative of the company informed that insurance was of the vehicle and not the insured. It is thus, submitted that findings of the Tribunal, absolving the insurance company, from liability to pay compensation are not sustainable in the eyes of law. A prayer is made to set aside the impugned award.

8. On the other hand, learned counsel for the insurance company contended that liability to pay compensation has been rightly fastened upon

the appellant-driver and the respondent No.2-A, LRs of deceased- owner of the truck. The learned counsel stated that policy Ex R-4 was obtained by the appellant against a dead person, as such, contract of policy was a nullity. Learned counsel stated that Vijay Kumar, respondent No.1 (RW-2) the driver of the offending vehicle, who is also son of deceased Lekh Raj, owner of truck, has admitted that his father had died prior to the accident and policy was obtained subsequently. The insurance company also placed on record death certificate Ex.R-3 of the deceased, establishing that policy holder had died much prior to the accident. It is stated that appellant and respondent No.2-A, LRs of deceased owner obtained insurance policy in the name of a dead person. It is submitted that self serving statement of Vijay Kumar (RW-2) that insurance company was informed about the death of the owner of the offending vehicle is not sufficient, particularly when he admitted that no written information of the death of their father was given to the company. The learned counsel stated that claim petition was filed under the Act 1939, which did not provide for deemed transfer of the policy either in the name of subsequent purchaser or legal heir of deceased- insured. However, submitted that admittedly, in present case, policy was obtained in the name of a dead person, therefore in given facts learned Tribunal has rightly held that policy was a nullity, and legitimately absolved the insurance company.

9. It is admitted position that Insurance Policy Ex.R4 was obtained in the name of Lekh Raj. Vijay Kumar (RW-2) admits that policy was taken in the name of his father and also admits that his father had died in 1983. The death certificate Ex.R3 tendered by the insurance company records the date of death of Lekh Raj as 02.12.1983. This fact is not controverted by the appellant, the LR of deceased Lekh Raj. In view thereof, policy Ex.R4

obtained on 17.01.1985 in the name of a dead person by appellant is nullity in eyes of law. Thus, this is not being a case to which provisions of Section 103-A of Motor Vehicles Act, 1939 applied. There is no plea of the appellant that he applied to the insurance company for transfer of policy on the death of his father. Rather, Vijay Kumar (RW-2) has admitted that no written application was given to the company informing the death of their father. Given the facts, self serving statement of Vijay Kumar cannot be relied upon to assume that representative of the company informed him that policy goes with the vehicle and not with the insured. The fact that company continued to renew the policy would not make policy in question valid, having issued in the name of a dead person as no contract can be concluded with a dead person. In **The Oriental Fire & General Insurance Company Ltd, Sector 17, Chandigarh vs Harbans Kaur and another 1983 PLR 492**, this Court, in a petition filed under the Act 1939, while dealing with the plea whether insurance company was liable to indemnify, when insured in whose name policy was issued was presumed to have died. In Para No.11 Court observed as under:

“11. The matter regarding the nature of contract of insurance came up for consideration before the Full Bench in The Oriental Fire & General Insurance Company's case (supra) where it was held that the very corner-stone of a contract of insurance was the principle of indemnity and thus under general law, no right would accrue to any third party under such a contract. In a contract of insurance, privity of contract was strictly between the insurer and the insured and, therefore, under general law in a

claim for carnages for a tortious act against the tortfeasor, the insurer of the latter was neither a necessary party nor in any way liable to the claimant. Section 96 of the Motor Vehicles Act provided an exception to this Rule, but here again the provisions thereof could not be construed so as to render the insurer liable independently of the insured. With this, thus being the correct legal position, there can be no escape from the view that on the death of the insured the liability of the insurer under the contract of insurance must come to an end.”

10. The learned Tribunal correctly observed, while considering evidence on the issue of liability, that person insured deceased before the accident, therefore, insurance policy obtained after his death was void and no liability arose against the insurance company to pay compensation as no judgment can be passed against a dead person. The precondition for the liability of the insurer arises, when a judgment is obtained against an insured person, who has taken up the policy of insurance. It is then, and then alone that the insurer is obliged to pay the claimant the amount due under the judgment, as if the insurer was the judgment-debtor. In absence of the judgment-debtor, such judgment obtained is nullity. Therefore, in the absence of a judgment obtained against the insured no liability whatsoever would arise against the insured. Reliance placed on authorities **M/s Complete Insulations (P) Ltd. vs. New India Assurance Co. Ltd., 1996 AIR (SC) 586** and **G. Govindan vs. New India Assurance Co. Ltd.** in **Civil Appeal No.1816 of 1982** decided on **08.04.1999**, by the counsel for the parties is of no help as both the cases falls under the Motor vehicles Act

1988. In **G.Govinda (supra)**, it is observed that there is no automatic transfer of insurance policy qua other claims than third party claims. The transferee who does not follow the procedure under section 157 of the Act 1988 is not entitled to claim for his personal damages to the vehicle from the insured. In **M/S Complete Solutions (P) Ltd. (supra)**, it is held that only in respect of third party risk that section 157 of the new Act provides that the certificate of insurance together with the policy of insurance described therein “shall be deemed to have been transferred in favour of the person to whom motor vehicle is transferred”.

11. In view of the established facts on record, this Court finds no illegality in the findings recorded by the learned Tribunal absolving the Insurance company from the payment of compensation amount. Consequently, the appeal filed by the appellants being devoid of merit stands dismissed.

12. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

10.04.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No