IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

C.M.As.No.561 of 2005 and 188 of 2007

Between:

C.M.A.No.561 of 2005

The New India Assurance Co.Ltd.
Rep.by its Divisional Manager, Kakinada

... APPELLANT

AND

1. Sri Chintakayala Srinivasa Rao and two others

... RESPONDENTS

C.M.A.No.188 of 2007

The New India Assurance Co.Ltd.
Rep.by its Divisional Manager, Vijayawada

... APPELLANT

AND

1. Animisetty Nancharaiah S/o.Chittaiah
   And two others

... RESPONDENTS

DATE OF JUDGMENT PRONOUNCED :22.03.2021

SUBMITTED FOR APPROVAL

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No

2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the order? Yes/No

M.VENKATA RAMANA, J

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ C.M.As.No.561 OF 2005 AND 188 OF 2007

% Dated:22.03.2021
Between:

C.M.A.No.561 of 2005

#1. The New India Assurance Co.Ltd.
Rep.by its Divisional Manager, Kakinada

... APPELLANT

AND

$ 1. Sri Chintakayala Srinivasa Rao and two others

... RESPONDENTS

C.M.A.No.188 of 2007

#1. The New India Assurance Co.Ltd.
Rep.by its Divisional Manager, Vijayawada

... APPELLANT

AND

$ 1. Animisetty Nancharaiah S/o.Chittaiah
And two others

... RESPONDENTS

! Counsel for appellants : Mr. Naresh Byrapaneni
Smt.N.Jayanthi

^Counsel for Respondents : Mr. Josyula Bhaskara Rao
Mr.Siva Rama Krishna
Mr.Subba Rao

<GIST :

>HEAD NOTE:

? Cases referred:

1. 2006(5) SCC 513, 2016(2) ALD
2. (1996) 1 SCC 221
3. AIR 1986 AP 62
4. AIR 1986 AP 62(FB)
5. 1997 ACJ 1383
6. 2013(2) ALD SC 105
7. 2015(6) ALT 543
8. MANU/SC/0295/2005
9. (2005)12 SCC 217
10. AIR 2003 SC 1446
11. 2004(5) ALD 852
12. 2008 ACJ 1779
13. 2016(2) ALD 525
14. 2011(3) KL J 403
15. 2015 ACJ 714
16. 2021(1) L.S.123(A.P.) = 2021(1) ALT 268

M. VENKATA RAMANA, J

HON'BLE SRI JUSTICE M. VENKATA RAMANA

C.M.As.No.561 of 2005 & 188 of 2007

COMMON JUDGMENT:

The short question to consider in these two Civil Miscellaneous Appeals is liability of an insurer to indemnify the insured in case of transfer of the vehicle *vis-à-vis* the workmen, in terms of Section 3(1) of Workmen Compensation Act.

2. Both these matters are being considered together since the above question is involved in common and on account of arguments addressed for the parties together.

3. The facts concerned to these cases remain in short compass.

4. In C.M.A.No.561 of 2005 the first respondent was the driver of the lorry AP 9W 5731 on the date of the incident, viz. 06.07.2002. The registered owner of this lorry then was the second respondent and the policy of insurance issued by the appellant for this lorry was in his name. The third respondent had purchased this lorry by the date of the incident and the first respondent was working for the third respondent by then. He was being paid Rs.3,000/- per month towards salary.

5. On 06.07.2002, the version of the first respondent before the Commissioner was that he was loading and unloading the raw material like bamboo shafts for A.P.Paper Mills and in that process, when he was driving this lorry at the outskirts of Nakkapalli village at about 11.00 a.m. a bamboo shaft hit his right eye causing bleeding injury and ultimately this injury in spite of treatment lead to loss of vision. On such basis, the first respondent claimed a compensation of Rs.1,80,000/- against the respondents 2 and 3 as well as the appellant before the Commissioner for

Workmen Compensation cum Assistant Commissioner of Labour, Kakinada, East Godavari District, in W.C.Case No.1 of 2004.

6. The respondents 2 and 3 did not contest before the Commissioner. The appellant alone contested and denied the claim of the first respondent in entirety. The main contention of the appellant before the Commissioner was that there was no relationship between the first respondent on one hand and the respondents 2 and 3 on the other as servant and master and even otherwise, it is not liable to satisfy the claim of the first respondent in the above circumstances.

7. In C.M.A.No.188 of 2007, the respondents 1 and 2 are the parents of Sri A.Chowdary, the deceased, who was driver of the lorry AP 7V 3956. The registered owner of this lorry then was the third respondent and that he had sold it to the fourth respondent by then. The policy of insurance issued by the appellant for this lorry stood in the name of the third respondent by then and the fourth respondent was paying the premium there for.

8. Contending that their son was a regular driver of this lorry, who was earning Rs.3,500/- per month towards wages and Rs.600/- as batta, who was 24 years old by then, claiming a compensation of Rs.3,75,000/- with future interest at 15% per annum, an application was presented by the respondents 1 and 2 before the Commissioner for Workmen Compensation at Vijayawada, Krishna District. They further claimed that the death of their son due to heart-attack on 16.02.2001, at Gogoi, Rayapur Town, Chattisgarh State was during and in the course of his employment. Thus, they sought the respondents 3 and 4 and the appellant to pay the compensation as claimed jointly and severally.

9. The respondents 2 and 3 did not choose to contest this claim. The appellant alone resisted denying the entire claim including the nature of the accident and that the deceased died in usual course due to illness, which has nothing to do with his employment. It raised a similar contention as in the earlier case denying the relationship between the deceased and the respondents 3 and 4 being servant and masters with reference to its liability, while also questioning the jurisdiction of the Commissioner under Workmen Compensation Act to maintain such an application. Thus mainly denying its liability, it requested to exclude from this claim before the Commissioner.

10. On the material in the case concerned to C.M.A.No.561 of 2005, the Commissioner settled the following issues for trial:

1. Whether the applicant is entitled to claim for compensation from Opposite Parties 1, 2 and 3?
2. If so, what is the quantum of compensation he is entitled to?

11. The first respondent examined himself as A.W.1, A.W.2 being the eye-specialist, who issued disability certificate in Ex.A7 and A.W.3 being a witness to prove this accident, while relying on Ex.A1 to Ex.A8. On behalf of the appellant, R.W.1 Assistant Administrative Officer was examined before the Commissioner and Ex.R1 was relied on.

12. Basing on the material, the Commissioner accepted the claim of the first respondent and considering the disability at 30% on account of loss of right eye and vision, Rs.1,07,676/- was awarded as compensation making the respondents 2 and 3 as well as the appellant liable jointly and severally.

13. In the case concerned to C.M.A.No.188 of 2007 on the material, the Commissioner awarded a compensation of Rs.4,01,284/- against a claim for Rs.3,75,000/- basing on the evidence of the first respondent as A.W.1 and considering Ex.A1 to Ex.A4. No oral evidence was let in on behalf of the appellant therein except marking Ex.B1 insurance policy in support of its claim. The Commissioner did not formally frame issues in this case. Accepting the claim of the respondents 1 and 2, treating the wages of the deceased at Rs.3,700/- including VDA as per Minimum Wages Act, for the category of drivers as on 16.02.2001, treating loss of earning capacity at 50%, compensation was awarded making the respondents 3 and 4 as well as the appellant liable jointly and severally.

14. Heard Sri Naresh Byrapaneni, learned counsel for the appellant in C.M.A.No.561 of 2005 and Smt.N.Jayanthi, learned counsel for the appellant in C.M.A.No.188 of 2007. Heard Sri Josyula Bhaskara Rao, learned counsel for the first respondent in C.M.A.No.561 of 2005 and Sri Siva Rama Krishna, learned counsel for Sri Subba Rao, learned counsel for the respondents 1 and 2 in C.M.A.No.188 of 2007.

15. Now, the following points arise for determination:

1. Whether the relationship between the alleged victims as the servants and the owners of the lorries as alleged in question as masters is established on the material?
2. Whether want of transfer of insurance policies relating to the lorries in question exonerates the liability of the insurer in both the cases?
3. Whether orders of the Commissioners now impugned in these appeals are just and proper?
4. To what relief?

16. **POINT No.1:** In both these cases, the alleged owners of the lorries did not choose to participate and contest in the enquiry before the Commissioners.

17. There is evidence let-in on behalf of applicant/applicants (the first respondent in C.M.A.No.561 of 2005 and the respondents 1 and 2 in C.M.A.No.188 of 2007 respectively) describing the nature of incident.

18. The first respondent in C.M.A.No.561 of 2005 gave a categorical version of the manner in which he suffered injury to his right eye, his attempts to present a complaint to the police who was made to run pillar to post from one police station to another, ultimately leading to send the complaint to the concerned police by registered post. A.W.3 Sri K.Suri Appa Rao, corroborated A.W.1 and confirmed the nature of this incident. The evidence on record also makes out the difficulty A.W.1 had to put up for treatment at initial stage to his right eye and ultimately he lost vision through right eye.

19. There is evidence of A.W.2 in respect of the disability suffered by A.W.2 on account of loss of vision through right eye. She deposed that the right eye of A.W.1 was completely damaged and that he was unfit for driving. Thus, there is material through a qualified medical practitioner. When vision through right eye is completely lost, in terms of Part-II of Schedule – I the partial permanent disability stands at 30%. Rightly it was considered by the learned Commissioner.

20. Thus, the material on record makes out that when A.W.1 was attending on the lorry, he suffered such an injury and it was during and in the course of his employment. By then, the *de facto* owner of this lorry was the third respondent while the second respondent remained the *de jury* owner. Thus, the jural relationship in between them is established.

21. In C.M.A.No.188 of 2007, it is an unfortunate case of death of Sri A.Chowdary, an young driver of 24 years old, at Gogoi, a part of Rayapur City. The owner of the lorry did not choose to contest the claim before the Commissioner.

22. The evidence of A.W.1 Sri A.Nancharaiah – father of Sri A.Chowdary, when considered with Ex.A1 to Ex.A4 is establishing the manner of his death. His evidence points out that the deceased Sri A.Chowdary was at the driving wheel of the lorry when he suffered cardio respiratory arrest leading to his death. Though a question was raised before the Commissioner about the nature of the death of the deceased if in the course of his employment, very presence of the deceased on the vehicle at the driving wheel indicated that he was on duty at the time when the incident occurred. Possibly, stress and strain of driving a heavy vehicle like lorry had accelerated this sufferance.

23. In ***JYOTHI ADEMMA v. PLANT ENGINEER, NELLORE***[1], this fact was taken into consideration and in the circumstances, it was observed that the death was a part and parcel and during the course of employment. It is not necessary that it should be a personal injury suffered by the victim to attract Section 3(1) of Workmen Compensation Act. When the evidence on record and circumstances project that during and in the course of employment if the victim dies and *causa causins* was this employment, which had led to hastening the process of suffering an injury or leading to fatality, they did attract application of Section 3(1) of Workmen Compensation Act. No effective rebuttal is seen on record from the appellant in this context and failure of respondents 2 and 3 to contest the

[1] 2006(5) SCC 513, 2016(2) ALD

matter is a positive indicator to support the version of the respondents 1 and 2.

24. Thus, this point is answered against the appellants in both these C.M.As and in favour of the claimants/respondents.

25. **POINT No.2:** This point is the prime contention of the appellants – insurers in both these appeals.

26. The contention of the insurers is that despite the fact of establishing master and servant relationship, in view of admitted situation whereby the lorries involved in the incidents were already transferred to others, which fact when was not intimated to them, they cannot be made liable. Thus, they contended that in as much as the contract of insurance between the insurer on one hand and the insured on the other, when the alleged victim was employed for the alleged transferees of the lorries with whom the insurer did not have a subsisting contract of insurance, it is another ground on which no liability can be fastened.

27. Sri Naresh Byrapaneni, learned counsel strenuously contended that liability of an insurer in any instances is not considered by the Workmen Compensation Act. Learned counsel further contended that it is only in terms of Chapter 11 of the Motor Vehicles Act requiring insurance of motor vehicles against third party risks, this question is considered. Placing reliance on Section 14 of Workmen Compensation Act, Sri Naresh Byrapaneni, learned counsel contended that the transfer of the vehicle unless informed to the insurer and that the policy of insurance, gets altered in the name of the transferee of the vehicle, insurer cannot be made liable. Reliance is also placed in this context by Sri Naresh Byrapaneni, learned counsel on the effect of Section 157 of The Motor Vehicles Act relating to transfer of certificate of insurance.

28. Section 14 of the Workmen Compensation Act relates to insolvency claims, which reads as under:

> "14. Insolvency of employer.-
>
> (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman then they would have been under to the employer.
>
> (2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.
>
> (3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non- compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub- section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman:
>
> Provided that the provisions of this sub- section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and

of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the Presidency- towns Insolvency Act, 1909 (3 of 1909), or under Section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under Section 530 of the Companies Act, 1956 (1 of 1956), are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability where for accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half- monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half- monthly payment could, if redeemable, be redeemed, if application were made for that purpose under Section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub- section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub- section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub- section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company."

29. A careful consideration and analysis of this section of Workmen Compensation Act, gives an indication that it is governing the instances relating to insolvency of employer or liquidation of a corporate entity. These two specific instances alone for the purpose of recognizing the transfer of this nature are considered. In those events, the employees are given certain rights against employers, particularly for the recovery of dues payable to them.

30. The present instances are not compatible to the situation contemplated by Section 14 of Workmen Compensation Act.

31. But, the contention of Sri Naresh Byrapaneni, learned counsel for Workmen Compensation Act did not refer or cover the issues relating to contract of insurance is right.

32. Section 157 of Motor Vehicles Act reads as under:

> "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."

33. Sub Section 1 of this section considers a deemed transfer of policy of insurance when there is transfer of the vehicle from one person to another. However, Sub Section 2 speaks of the application of the transferee to apply to the insurer within 14 days from the date of transfer in the prescribed format for making necessary changes relating to the transfer of the vehicle.

34. Sri Naresh Byrapaneni and Smt.A.Jayanthi, learned counsel for the insurers also contended that there is no proof that the vehicles in question in these cases though transferred from the original owner whose name is reflected in the registration certificate to another, that this alleged transferee had intimated the insurer in terms of Section 157(2) of Motor Vehicles Act. Another contention advanced by the learned counsel in the same context is that when an independent contract of insurance remained with the transferor of the lorries and the insurer by the date of the incidents alleged, the transferee cannot have benefit of the same. Thus, the strain of both the learned counsel is that this contract of insurance is personal in between the insured and the insurer and a third party cannot get benefited out of it.

35. In support of the contention of the appellants, reliance is placed in ***COMPLETE INSULATIONS (P) LTD. v. NEW INDIA ASSURANCE CO.LTD***[2] in para 10 of this ruling, it is stated that Section 157 of M.V.Act applies in relation to third party risks only. The relevant extract in para 10 of this ruling is reproduced hereunder:

> "…….
> The entire Chapter XI of the new Act concerns third-party risks only. It is, therefore, obvious that insurance is compulsory only in respect of third-party risks since Section 146 prohibits the use of a motor vehicle in a public place unless there is in relation thereto a policy of insurance complying with the requirements of Chapter XI.

[2] (1996) 1 SCC 221

> Thus, the requirements of that chapter are in relation to third-party risks only and hence the fiction of Section 157 of the new Act must be limited thereto. The certificate of insurance to be issued in the prescribed form (See Form 51 prescribed under Rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in **Madineni Kondaiah Vs. Yaseen Fatima**[3] because the transferee-insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks 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 the motor vehicle is transferred". If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the New Act and in the realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. ……."

36. This ruling considered ***MADINENI KONDAIAH v. YASEEN FATUNA***[4]**,** which is relied on by the respondents. Another ruling relied on for the appellants is ***ASHOK KUMAR AND ANOTHER v. MOHAN LAL KEHAR AND ANOTHER***[5]. However, this ruling cannot be held to lay down the correct proposition of law in the context of transfer of vehicles vis-à-vis liability of the insurer relating to third party risks in view of Supreme Court judgment in **Complete Insulations (P) Ltd.**(referred to above).

---

[3] AIR 1986 AP 62
[4] AIR 1986 AP 62(FB)
[5] 1997 ACJ 1383

37. On behalf of the appellants, reliance is also placed in ***SANJEEV KUMAR SAMRAT v. NATIONAL INSURANCE CO.LTD. AND OTHERS***[6]. In this ruling upon a comparison of Workmen Compensation Act and relevant provisions of Motor Vehicles Act, particularly Section 147, it is stated that an insurance policy is not required to cover the liability of the employee except under Workmen Compensation Act, who was carried on or travelling in the vehicle. These observations were made in the context of the claim of the third parties that they were the employees of the owner of the goods travelling in a goods vehicle.

38. In ***NATIONAL INSURANCE COMPANY LIMITED v. T.SABITHA AND OTHERS***[7] one of the learned Judges of this Court after reviewing the law in this context referring to various pronouncements of Hon'ble Supreme Court and this Court, observed that in terms of Section 147(1)(b) of MV Act with reference to an act policy, the liability of the insurance company qua the employees would not be unlimited but would be limited to that extent arising under Workmen Compensation Act. One of the decisions of Hon'ble Supreme Court considered in this ruling is in ***NATIONAL INSURANCE CO. LTD. v. PREMBAI PATEL***[8]**,** wherein the observations are as follows:

> "…….
>
> An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in sub-clause (i). However, the proviso(i) to clause (b) of sub-Section (1) of Section 147 says that a policy shall not be required to cover liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Act if the

[6] 2013(2) ALD SC 105
[7] 2015(6) ALT 543
[8] MANU/SC/0295/2005

> employee is such as described in sub-clauses (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The expression – "such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy)" – occurring in subsection (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1), has to be satisfied by the insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the Workmen's Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act."

39. The appellants also relied on ***SHYAMA DEVI v. UNION OF INDIA AND ANOTHER*** [9] while explaining the effect of Section 3 of Workmen Compensation Act and during and in the course of employment where award of compensation was considered when the employee had met with an accident after duty hours.

40. On behalf of the respondents, ***RIKHI RAM AND ANOTHER v. SMT.SUKHRANIA AND OTHERS***[10] is relied on. In para – 7 of this ruling in application of Section 94 of MV Act, 1939 (before amendment) it is observed as under:

---

[9] (2005)12 SCC 217
[10] AIR 2003 SC 1446

> "7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of the insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act."

41. This ruling was consistently followed in ***B.SRIKANTHA REDDY v. K.MAHESH AND ANOTHER***[11], ***TADI SATYANARAYANA v. MADDU MALLA RAO AND OTHERS***[12], ***SINGARENI COLLIERIES CO.LTD., SREERAMPUR AND ANOTHER v. ARKATI GATTU MALLU AND OTHERS***[13] by two learned judges of this Court.

42. In ***Tadi Satyanarayana Vs. Maddu Malla Rao and Others,*** want of intimation to the insurer upon transfer of the vehicle from the transferee was held not to exclude the insurance company from any liability, while relying on ***Rikhi Ram and Another v. Sukhrania***.

43. This question was also considered in ***THE NATIONAL INSURANCE COMPANY LTD. v. SINDHU P.T. AND OTHERS***[14] by High Court of Kerala. In paras 7 and 8 of this ruling of Division Bench of High Court of Kerala in the context of application of Section 157 and Section 147(1) of Motor Vehicles Act, it is stated as under:

> "7. The language of Section 157 of the Motor Vehicles Act is very clear. Where transfer of a motor vehicle takes place, then, notwithstanding the fact that the transfer has not been specifically noted in the policy of insurance, there is a deemed transfer of the policy of insurance from the transferor to the transferee. On such transfer, from the date of transfer, the certificate of insurance will operate to protect the interest of the transferee owner and the third party claimants against him. This is, notwithstanding the failure/omission on the part of the transferee to get the policy of

[11] 2004(5) ALD 852
[12] 2008 ACJ 1779
[13] 2016(2) ALD 525
[14] 2011(3) KL J 403

insurance formally transferred to the name of the transferee. It is easy to identify the rationale behind Section 157. For fault/omission on the part of the transferor and transferee to effect transfer of the policy of insurance to the name of the transferee, the third parties/victims, the liability in respect of whom is compulsorily insurable, should not suffer. So reckoned, we find not a trace of doubt on the question whether the policy of insurance in so far as it relates to the compulsorily insurable liability under Section 147 must be held to be transferred to the name of the transferee. Proviso (i)(a) of Section 147(1) includes the liability under the Act. The deemed transfer of policy by no acceptable process of reasoning and logic, cannot be said to be inapplicable to such liability under the Act.

8. The language of the statute appears to be eminently clear. It does not admit of any doubt. No binding precedents on this particular aspect has been brought to our notice. We have no hesitation to agree that the policy of insurance will stand transferred to the name of the transferee with effect from the date of the transfer and such transfer will take within its sweep all compulsorily insurable risks, covered under the policy of insurance."

44. However, Sri Naresh Byrapaneni, learned counsel contended that these observations of Kerala High Court stand against the statutory provisions of law and therefore they cannot hold the field.

45. Another ruling relied on for the respondents is in ***TARACHAND SHRAWANJI SHAMBHARKAR v. PRASHANT, NATIONAL INSURANCE CO. LTD.***[15] . A learned single Judge of Bombay High Court (Nagpur Bench) considered the effect of Section 157(1) and observed that sub-section 2 of Section 157 did not contain any provision pointing out consequences of its non-compliance. The relevant observations in para – 8 of this ruling are as under:

"It is clear from the language of sub-section (1) of Section 157 that when the vehicle is transferred together with the policy of

[15] 2015 ACJ 714

insurance relating thereto, the certificate of insurance and the policy described therein are deemed to be transferred in favour of transferee from the date of transfer of the vehicle, so far as third parties are concerned. This is a deeming provision and, therefore, only by virtue of the event of transfer of vehicle together with its insurance policy happening that the effect of even the transfer of insurance policy of the vehicle takes place. This provision in sub-section (1) is independent of provision contained in sub-section (2), which is ministerial in nature and comes into operation after the transfer of ownership of vehicle together with it's insurance policy takes place. Under sub-section (2), the transferee is only required to take some steps, within fourteen days from the date of transfer, for formally transferring the insurance policy in the record of the insurance company. It does not contain any provision explaining the consequence of not taking any such procedural steps by the transferee. Absence of such a provision only emphasizes the fact that transfer of insurance policy is controlled by sub-section (1) only, and it takes place the moment there is transfer of ownership of a vehicle together with it's insurance policy. The vehicle being a movable property, transfer of it's ownership, which can be by way of sale or gift, would be governed by the provisions of the Sale of Goods Act, 1930 (Chapters II and III) or the Transfer of Property Act, 1882 (Chapter VII) and under these provisions, essence of transfer of ownership is the transfer of property in the goods which can be ascertained from the conditions of the contract, intention of parties and/or delivery. That is the reason why sub-section (2) does not contain any provision stating consequence for non-compliance with it. If the transferee fails to apply within prescribed time or does not apply at all to the insurer for making necessary changes in regard to the factum of transfer in the certificate of insurance, it would not result in non-transfer of the insurance policy in favour of transferee. Of course, it casts a duty upon the transferee to comply with the requirement of sub-section (2), but that is only to add convenience to process of decision making as regards rights and liabilities under the insurance policy, and not for unsettling the transfer of ownership and deemed transfer of insurance policy under sub-section (1)."

46. I had an occasion to consider similar question in **National Insurance Company Ltd., Guntur Vs. Kumbha Sivamma and others**[16] when similar contentions were raised to exonerate the insurer from liability in given fact situation, I held that an insurer would not get insulated and the liability of the transferee of the vehicle in question gets indemnified on account of the contract indemnity and fidelity covering insurance contracts.

47. When the facts in both these cases are considered, the policies of insurances did not indicate in any manner that the liability of the workmen of insured is excluded. While the policy of insurance concerned to C.M.A.No.561 of 2005 reflected that premium for two employees was collected under the policy, in C.M.A.No.188 of 2007 entire document of insurance policy was not placed on record except certificate of insurance. Thus, necessary evidence was not let in before the Commissioner in the case concerned to C.M.A.No.188 of 2007.

48. On conspectus, the liability of the insurer in these circumstances should be held. When there is no transfer of policy in terms of Section 157 of MV Act to the transferee, in view of deeming provision in Section 157(1) of MV Act, it enures to the benefit of the transferee. In both these instances, the victim was the driver. In view of compulsorily insurable liability under Section 147(1) of MV Act, having regard to the effect of Section 157(1) of MV Act, the liability of insurer in these circumstances also stands. As rightly observed in ***Tarachand Shrawanji Shambharkar Vs. Prashant, National Insurance Co. Ltd.*** by Nagpur Bench of Bombay High Court, failure to get the policy of insurance transferred by the transferee would not meet any consequences for non-observance either in the nature of penalty or clearly specifying that the insurer, who entered the contract

[16] 2021(1) L.S.123(AP) = 2021(1) ALT 268

of insurance with the original owner, gets excluded from the liability. It did not provide for abatement of indemnity or an automatic rescission of this insurance contract due to failure to get the policy transferred.

49. Added to it, it should not be lost sight of the fact that the subject matter of this insurance contract is the vehicle in question. Any act or omission contemplated under this contract in view of the standard forms used in the policies the vehicle is not excluded specifically, to enable the insurer to avoid this contract. Thus, law remains silent without formulating the consequences of failure to get the policy of insurance of the vehicle transferred to the transferee.

50. Sri Naresh Byrapaneni, learned counsel further contended that the policy of insurance covered the third party risk and the driver of the vehicle is not a third party. A third party is defined in Chapter 9 of MV Act in Section 145(i) to include the Government. However, the Motor Vehicles Amendment Act, 2019 that amended MV Act, 1988 specifically included in Section 145(G) the driver or any other co-worker on a transport vehicle including the Government. On such basis, it is contended by Sri Naresh Byrapaneni, learned counsel that when the driver did not stand in the position of a third party under chapter 11 of MV Act as then applicable, the insurer cannot be made liable.

51. Reasons are assigned supra considering the application of Section 147(1) of MV Act relating coverage of compulsory risk and the effect of Section 157(1) of MV Act. It is also desirable to consider the view of Kerala High Court in National Insurance Company Limited Vs. Sindhu P.T. and Others, apart from the view of Nagpur Bench, Bombay High Court in *Tarachand Shrawanji Shambharkar Vs. Prashant, National Insurance Co. Ltd.* Therefore, in the circumstances, the insurer cannot be permitted to

contend that in case of a transferee who did not get the policy transferred cannot stand to indemnity from any liability. It is also to be noted that it is not the case of any one that the insurer has or had at any point of time repudiated this contract of insurance on account of transfer of the vehicle notifying the purpose of this contract. When subject matter of the contract has thus an incidence attached to it, when its ownership stood changed, the terms of such contract cannot be narrowed down to a small sphere of continuing relationship between the insurer and the original insured. By very nature of things, particularly having regard to nature of subject matter of this contract, i.e. vehicles being in the nature of 'goods' in terms of The Sale of Goods Act, when the ownership passes on to the person, who holds or possesses such goods, this instance of transfer cannot interdict the operation of indemnity flowing from the policy of insurance to the subject matter, viz., the vehicle and in turn to the transferee.

52. Therefore, the liability of insurer stands in both the cases and hence the contentions on behalf of the appellants stand rejected, accepting the contentions of the respondents/applicants. Thus, this point is answered.

53. **POINT No.3:** In view of the findings on points 1 and 2, the orders of the Commissioners under Workmen Compensation Act in both the cases should be confirmed, since no interference is required. Thus, this point is answered.

54. **POINT No.4:** In view of the findings on all the above points, both these Civil Miscellaneous Appeals are dismissed and in the circumstances, without costs.

55. In the result, Civil Miscellaneous Appeal No.561 of 2005 is dismissed confirming the order of the Commissioner under Workmen Compensation Act cum Assistant Commissioner of Labour, Kakinada, East Godavari

District, in W.C. Case No.1 of 2004 dated 15.03.2005. The amount if any deposited, if not paid to the first respondent shall be released immediately to the applicant, by the Commissioner without insisting any security. All pending petitions stand closed. Interim orders, stand vacated.

56. In the result, Civil Miscellaneous Appeal No.188 of 2007 is dismissed confirming the order of the Commissioner under Workmen Compensation Act cum Assistant Commissioner of Labour, Vijayawada, Krishna District, in W.C. Case No.93 of 2004 dated 28.06.2006. The amount if any deposited, if not paid to the respondents 1 and 2 shall be released immediately by the Commissioner without insisting any security. All pending petitions stand closed. Interim orders, stand vacated.

M. VENKATA RAMANA, J

Dt:22.03.2021
Rns

HON'BLE SRI JUSTICE M. VENKATA RAMANA

C.M.As.No.561 of 205 and 188 of 2007

Date:22.03.2021

Rns