IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2005

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE PRABHA SRIDEVAN

C.M.A.No.426 of 1997

A. Manickam .. Appellant/Applicant.

Vs.

1. Raju

2. The Oriental Insurance Co. Ltd.
Madras.

3. N.Mohan .. Respondents/
Opposite parties
1,2 and 3.

Prayer : Appeal against the order dated 25.2.1994 made in W.C.No.10 of 1993 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

For Appellant : Mr. M. Sathyanarayanan
For Respondent-1 : Mr. N. Thiagarajan
For Respondent-2 : Mr. M.S. Krishnan
For Respondent-3 : Served - No Appearance

J U D G M E N T

(Judgment of the Court was delivered by
Prabha Sridevan, J)

The claimant is the appellant. He was employed as a driver of the lorry bearing registration No.TAS 630. He sustained injuries when he was thrown over. He made a claim before the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem against the first respondent herein. Subsequently, he impleaded the second respondent Insurance Company and on seeing the counter filed by the opposite parties, he also impleaded the third respondent in whose name the insurance policy stood at the time of the accident. The Commissioner dismissed the claim on the ground that the accident did not arise out of employment and did not answer the other issues that were raised by him, since this issue was

answered in negative.

2. The following substantial questions of law were raised by the appellant :

(i) Whether the appellant/claimant is a workman as per the Workmen's Compensation Act? and

(ii) Whether the accident happened on 17.3.1992 arose out of and in the course of his employment?

Since the Deputy Commissioner did not go into the other issue and since we also find that there is mis-appreciation of oral and documentary evidence, we frame the following additional questions of law, viz.

(iii) Whether the mis-appreciation of oral and documentary evidence has not resulted in injustice? and

(iv) Whether the Insurance Company is not liable merely because the transfer of ownership was not intimated?

3. The learned counsel on either side advanced their arguments. Since remitting the matter will only result in unnecessary delay, we proposed to decide the matter on the basis of the records available and the counsel also agreed to the same.

4. It is not in dispute that the appellant was driving the lorry TAS 630. Ex.A1 which is the discharge summary shows that on 17.3.1992, the claimant was admitted due to onset of acute hemiplegia of the upper and lower limbs and there was also facial palsy and severe head ache preceded the episode of hemiplegia. The claimant also marked Ex.A2, which is a certificate given by the Assistant Surgeon, Government Medical Hospital, Salem, in which he has certified that the appellant was admitted in a nursing home on 21.3.1992 for sudden hemiplegia and he was taking treatment in the Government General Hospital from 17.3.1992 to 20.3.1992 and he was transferred to the hospital at Salem on 21.3.1992 and stayed there till 25.3.1992.

5. There is also a certificate given by AW2, the Doctor, which is marked as Ex.A6, wherein it is stated that the appellant, lorry driver by occupation, had suffered "head injury following an accident nearby Madras in the month of March 1992 and developed hemiplegia on the left side and facial palsy and aphasia". The Doctor has also certified that following this, the appellant is unable to earn for his family and he is fully depending on his family members for carrying out even his day-to-day activities. The percentage of physical disability was fixed at over 60%. In his evidence, the Doctor has stated that he had examined the appellant and the appellant was unable to move his left hand and left knee and that they were numb and the appellant is also unable to speak properly. In the cross examination on behalf of the first opposite party, the Doctor has stated that there are indications to show that the accident had occurred,

though the Doctor had not seen the accident register. He has denied the suggestion that there is no permanent disability. In the cross examination by the second opposite party, the Doctor has admitted that he had not treated the appellant and he had only seen the appellant at the time of giving certificate. He has further stated that if the hemiplegia is due to the accident, then it could have been treated by surgery. The learned counsel for the second respondent would point out this portion of evidence to show that this would clearly indicate that the disability of the appellant is not on account of the accident.

6. The evidence of PW1 regarding the accident has not been questioned in the cross examination. Apart from a suggestion by the first opposite party in the cross examination that there was no accident on 17.3.1992, there is no evidence disproving the accident. In fact, in the cross examination by the second opposite party, he has stated that he took the lorry on 15.3.1992 and signed in the trip sheet and he had also driven the lorry himself to the hospital and therefore, it is clear that the accident took place on 17.3.1992. The first respondent/first opposite party has stated in his chief examination that the appellant had worked for him only for one month from January, 1992 and he ceased to work from February 10th. He has admitted in the cross examination that he had a lorry and he had also stated that he had paid Rs.2500/- per month as salary and daily batta of Rs.10/-. So, the first respondent is the employer and the appellant sustained injuries on account of the accident in the course of employment since he was driving the lorry that belonged to the first respondent. Therefore, substantial questions (i) to (iii) are answered in favour of the workman.

7. The first respondent has stated in his chief examination that the vehicle has been insured with Oriental Insurance Company. According to the third respondent, he had sold the lorry on 26.12.1989. Ex.B1, the advance receipt and Ex.B2, the settlement receipt were marked. The insurance policies, Exs.A7 and A8 would show that on the date of the accident, the policy stood in the name of the third opposite party. He is not the employer of the claimant. Ex.A7 is for the period 24.7.1991 to 23.7.1992 and the name of the third opposite party is shown as insured and Ex.A8 is for the period from 24.7.1992 to 23.7.1993 and the name of the first opposite party is shown as name of the insured.

8. It is no doubt true that in their evidence, the first opposite party and the third opposite party have stated that the lorry had been sold on 26.12.1989 by the third opposite party to the first opposite party. But we also have to look at the probabilities of the case and see whether the person who had sold the lorry in the year 1989 would continue to pay the premium for the vehicle till 1992. The Deputy Commissioner had failed to appreciate the oral and documentary evidence from the proper perspective. As observed earlier, we feel that it would not be in the interest of justice to remand the matter back and hence, we have gone through the records available, which are sufficient for arriving at the decision.

9. No explanation is given by the third opposite party as to why he continued to pay the premium for the vehicle though he had sold the vehicle as early as 26.12.1989. The Insurance Company has also not explained why it continued to renew the policy and receive the premium long after the date of transfer. The Insurance Company had originally disowned its liability because they had not been intimated of the transfer.

10. This question, viz. substantial question (iv), is no longer res integra. In 1999 (II) C.T.C. 473 [G. Govindan vs. New India Assurance Co. Ltd.], the Supreme Court answered the question whether the insurance policy lapses and the liability of the insurer ceases when the insured vehicle is transferred and no application/intimation as prescribed under Section 103-A of the Motor Vehicles Act was made/given. In that case, the appellant purchased the vehicle on 15.8.1974 and the accident took place on 18.5.1975. Even after the date of the accident and the sale in favour of the appellant, the insurer continued to receive the premium for subsequent periods. The Supreme Court held that the third parties' interest will be protected and once the company had undertaken the liability of third parties specified in the policy, the third parties' right will not be affected notwithstanding the failure to intimate to the insurer about the transfer. The following paragraphs are relevant :

> "Thus, we are clearly fortified in our view that the insurable interest in the property is not necessary in the case of public liability insurance. The test is whether the liability under the statute ceased or not notwithstanding the passing of title and hence we respectfully dissent with the view expressed by various High Courts that on the sale of the vehicle the insurable interest ceases and the policy lapses. We agree that any claim of the transferee in respect of his property and his person cannot be enforced against the insurance company. He being a stranger he cannot have any claim against the insurance company. But the third party risk is concerned so long the obligations under the statute are not fulfilled, as contemplated under Section 31 read with Section 94, he continues to have the insurable interest till such obligations are fulfilled.
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> Any prudent purchaser should take steps to get the policy transferred to him under Section 103. The insurer is bound to accept the transfer and can only refuse to consent on specific grounds. It is clearly an impracticable view to take that on passing of property in the vehicle, the policy lapses and the obligation under Section 93 of the Act ceases. In fact as observed by Supreme Court, the policy is to the vehicle and hence normally it should run with the vehicle. It is just to expect a reasonable time for the transferor to make the necessary arrangement to notify the transfer under Section 31 and secure the certificate under Section 29-A within the time mentioned in those provisions. If this is not allowed, the moment the vendor receives the money and puts the vehicle in possession of the

transferee, the latter is not in a position to use the vehicle in view of Section 94 till a fresh policy is obtained. He cannot take the vehicle to his house passing through any public place. When the transferor is liable to pay penalty under Section 31 and also liable to be prosecuted under Section 112 for not notifying the transfer, we are clearly of the opinion such statutory liability makes him to retain the insurable interest as the liability subsists till he discharges the statutory obligations. We disagree with the view expressed in N. Kanagalakshmi vs. R.V. Subbharao, 1972 (1) APLJ 249.

... ...

The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the vehicle makes the transaction complete and the title will pass to the purchaser. When the policy of insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property (vehicle) and the third party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is a novation. So far the third party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under Sections 29-A and 31 read with Section 94 of the Act. Till he complies with the requirement of Section 31 of the Act the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risks are concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of Section 31, the liability of the transferor subsists and the policy is in operation so far as it relates to the third party risks. We answer the second question accordingly."

11. The above decision has subsequently been approved by a Three Judge Bench of the Supreme Court in 2003 (3) S.C.C. 97 [Rikhi Ram vs. Sukhrania], where the Supreme Court held that the object behind the beneficial legislation is that the third parties' right should not suffer on account of failure to comply with the terms of the insurance policy and it was held, "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 the purchaser does not give any intimation as required under the provisions of the Act". Following the above decisions, we hold that the Insurance Company cannot escape its liability to pay the compensation.

12. The Commissioner for Workmen's Compensation dismissed the claim petition on the preliminary ground that there was no employer-employee relationship. In view of the fact that the accident took place nearly 13

years ago, we felt that it would not be in the interest of justice to remand the matter to the Commissioner, after giving a finding that there did exist an employer-employee relationship. The material records relating to the nature of the injury are all available and without further investigation, it is possible to assess the compensation that is payable to the claimant.

13. Now, we come to the quantum of compensation. According to the second opposite party, the appellant was paid a salary of Rs.2500/- per month plus Rs.10/- towards batta. This evidence relating to the income of the appellant is elicited only in the evidence of first opposite party. According to the learned counsel for the appellant, if the amount of compensation is calculated on that basis, it works out to Rs.52,785/-. The appellant is entitled for the said amount with 12% interest from the date of petition till the date of payment.

14. The appeal is allowed and the impugned order is accordingly set aside. The Insurance Company shall pay the compensation which is quantified at RS.52,785/- with 12% interest from the date of the petition till the date of payment. It is open to the Insurance Company to proceed against the transferor or the transferee, as they may deem fit. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kpl/ab

To
The Commissioner for Workmen's Compensation
and Deputy Commissioner of Labour,
Salem.

+ 2 CCs to Mr.M. Sathyanarayanan, Advocate SR NO 26769 & 29317

+ 3 CCs to Mr.M.S.Krishnan, Advocate SR NO 29496 & 26552

+ 1 CC to Mr. N. Thiagarajan, Advocate SR NO 26405

C.M.A. No.426 of 1997

18.7.2005.

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bp/28.7.