

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL No. 1726 of 1988****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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**NEW INDIA ASSURANCE CO.LTD. - Appellant(s)****Versus****VILASBHAI JAGNATH SONI & 3 - Defendant(s)**

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**Appearance :**

MR SB VAKIL for Appellant(s) : 1,  
None for Defendant(s) : 1 - 3.  
MR HM PARIKH for Defendant(s) : 4,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI****Date : 31/07/2006****ORAL JUDGMENT**

1. By way of this appeal, the appellant has challenged the judgement and award dated 11.05.1988 passed by the Motor Accident Claims Tribunal, Valsad at Navsari in MACP No. 242 of 1987 whereby the Tribunal has awarded a sum of Rs. 28000/- payable to the original claimant by original opponents.

2. The original claimant had filed claim petition seeking compensation to the tune of Rs. 40000/- in respect of the accident which occurred on 25.10.86 when

the original claimant along with other relatives was going in an auto bearing no. GTC 4571 to Khergam from Power House, Navsari driven by original opponent no.1. At about 5.00 am near Khakhwada village the opponent no.1 who was driving the said rickshaw rashly and negligently lost control and the rickshaw overturned. The original claimant therefore received injuries and was treated accordingly. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal has erred in not appreciating that when it is the case of the appellant that the appellant was not at any stage informed about the transfer of the insured vehicle by the respondent no.2 to the respondent no.3, the respondent no.3 could not have cancelled the policy nor could it have refunded the premium and under the circumstances the cancellation of policy for refund of premium could not be held against the appellant.

4. Heard learned Advocates for the parties and perused the documents placed on record. The issue involved in this appeal is squarely covered by a decision of the Apex Court in the case of **"G. Govindan Vs. New India Assurance Co. Ltd. And Others"** reported in 1999 A.C.J. 781.

4.1 In that case, the transferee had purchased the bus from the transferor, but, intimation of the same was not given to the insurer as required u/s. 103-A of the Act. The Claims Tribunal recorded a finding that after the date of the accident and knowing that the transferor had sold the bus in question to the transferee, the insurer had received the premium for the subsequent periods. The Apex Court, after considering the facts of the case, held that a victim or the legal representatives of the victim could not be denied compensation by the insurer on the ground that the policy was not transferred in the name of the transferee.

4.2 In the case on hand, the Tribunal in para 20 of the award has observed that the original opponent no.2 and the driver of the vehicle have denied that the rickshaw was sold or transferred to Sikandarsingh Udham Singh which is also supported by the said opponent. Thereafter the Tribunal after perusing the documents has concluded that when it is not proved when the vehicle was transferred in favour of original opponent no.3 by the owner, there is no question of breach of insurance policy.

5. I am in complete agreement with the reasonings given by and the findings arrived at by the Tribunal, and hence, find no reason to interfere in this appeal.

Hence, the appeal deserves to be dismissed. Learned counsel for the appellant has raised the contention of limited liability in the present case. The said contention cannot be accepted at this stage as the same was not raised before the Tribunal.

5. In the result, the appeal stands dismissed. No order as to costs.

(K.S. JHAVERI, J.)

Divya//