

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 434/2010, CMA No. 833/2010

Date of order: 13.09.2012

New India Assurance Co. Ltd.

v.

Faqir Chand & ors.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

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| 1. Whether approved for Law Journal? | Yes |
| 2. Whether approved for publication in Press? | |
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Appearing counsel:

For Appellant(s) : Mr. R. K. Gupta, Sr. Adv with
 Mr. Prem Sadotra, Adv.

For Respondent(s): M/s. L. K. Sharma & Ajay Gandotra, Advs.
 (Oral)

1. Award dated 23rd April, 2010 passed by the Assistant Labour Commissioner, Jammu (for short “**ALC**”) under Workmen’s Compensation Act, 1923 (for short “**the Act**”) is called in question in this appeal filed in terms of Section 30 of the Act.

2. The Claim Petition was filed before the ALC, Jammu under Workmen’s Compensation Act, 1923 wherein it was claimed that claimants’ son namely Vijay Kumar was employed as driver by Suraj Parkash, who was respondent no.1 in the Claim Petition to ply his Temo Travellor No. JK02P-3374 from Jammu to Srinagar at a monthly salary of Rs. 5,000/- (rupees five

thousand) including Rs. 200/- (rupees two hundred) per trip. It was also pleaded that the deceased was making 15 trips per month to Srinagar. It was also pleaded that on 8th of January, 2003, the North India was covered by fog and because of that the vehicle driven by deceased Vijay Kumar skidded of the road and fell into a Nallah at Achar Kund Near Nandni, Tehsil Jammu resulting into death of Sh. Vijay Kumar. It was also stated that the death took place in the course of his employment under Sh. Suraj Parkash. It was also stated that the said vehicle was insured with appellant-Insurance Company under Insurance Note No. 411997 w.e.f. 09.05.2002 to 08.05.2003.

3. Respondent no. 1-Suraj Parkash filed his objections before the ALC, Jammu wherein he stated that the Claim Petition as also the claim projected therein is not maintainable against him as he had sold the vehicle in question to one Sh. Narayan Sharma S/o Late Jagan Nath vide Sale Deed dated 07.09.2001 and had also handed over the possession of said vehicle to him. The Appellant-Insurance Company also filed objections

in which they pleaded that, in the Claim Petition nowhere it is mentioned that the death of Sh. Vijay Kumar had taken place during the course of his employment with the employer. It was admitted by the Insurance Company that the vehicle in question was insured with them in the name of Sh. Suraj Parkash under Policy No. 352503/31/02/00208 for the period from 09.05.2002 to 08.05.2003. Copy of the Insurance Policy was enclosed along with the Objections.

4. The Assistant Labour Commissioner, Jammu vide its Award dated 23rd April, 2010 directed Suraj Parkash, who was respondent no. 1 in the Claim Petition to pay Rs.4,15,960(rupees Four lac fifteen thousand nine hundred sixty only) as compensation to the dependents of the deceased Vijay Kumar, driver. He was also directed to pay interest @ 12% as provided under Sub-Section 3(a) of Section 4-A of the Workmen's Compensation Act, 1923 to the dependents of Vijay Kumar from 24.05.2010 till the amount of compensation was paid. Appellant-Insurance Company was ordered to pay compensation amount and the interest for

the reasons that the vehicle was insured with them.

5. Mr. R. K. Gupta, learned senior counsel submitted that after the sale of the vehicle, which is governed by the Sale of Goods Act, to one Sh. Narayan Sharma, the appellant-Insurance Company could not have been saddled with the liability of paying compensation as there was no privity of contract between transferee and the appellant.

6. Learned counsel further submitted that the Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988 have not been held to be similar statutes and appellant can raise all the defenses available to it in law, in the proceeding, which are initiated in terms of Act of 1923 and such right cannot be circumscribed by having recourse to the limited defence available under the Motor Vehicles Act, 1988.

7. Learned counsel in support of his contentions referred to and relied upon the judgments titled ***National Insurance Co. Ltd Vs. Mastan & Anr.***, reported in AIR 2006, Supreme Court 577, titled ***Muni Ram Vs. Fakir Chand & Anr.***, reported in AIR 2010 Punjab and Haryana 50 and submitted

that this Appeal merits to be allowed and the appellant-Insurance Company be absolved from paying the compensation amount as ordered by the ALC, Jammu.

8. Mr. Ajay Gandotra learned counsel for Suraj Parkash-original owner of the vehicle invited attention of the Court to the statement of Sh. Ashwani Kumar Pandita, Administrative Officer, New India Insurance Company and submitted that the said Officer, in his statement, admitted that the vehicle was insured with the Insurance Company from 09.05.2002 to 08.05.2003 and the said vehicle was in the name of Suraj Parkash. The witness further deposed that it was never brought to the notice of Insurance Company that the said vehicle was sold. The witness has also stated that the Insurance Company is not liable to pay compensation as the Insurance Company has no privity of contract with the person to whom the vehicle has been sold. Learned counsel, however, submitted that the Insurance Company has been rightly ordered to pay compensation in terms of impugned order.

9. Mr. L. K. Sharma, learned counsel for the dependents of the deceased Vijay Kumar submitted that, even if it is admitted that the vehicle was sold, but at the time of accident viz., 08.01.2003 the vehicle continued to remain in the name of Sh. Suraj Parkash. Learned counsel in support of his contentions referred to and relied upon the judgment of Hon'ble Supreme Court titled ***Pushpa Alias Leela and others vs. Shakuntala and others***, reported in (2011) 2 Supreme Court Cases 240, and submitted that the appeal deserves to be dismissed.

10. The body of the beneficial legislation is to be laid bare and dissected on the table of construction and interpretation in a manner that its soul is not destroyed. Courts have to interpret and construe beneficial legislations in a manner that its life comes out in full bloom, and its benefits nurture and harness a dilapidated body and shattered soul.

11. The vehicle was transferred by Suraj Parkash to one Sh. Narayan Sharma on 7.9.2001. The factum of transfer was neither brought to the notice of R.T.O nor to the Insurance Company. The

vehicle was continuously being insured in the name of Suraj Parkash original owner and when vehicle met with an accident, the vehicle was insured in the name of Suraj Parkash.

12. The judgment referred to and relied upon by the learned counsel for the appellant provides that when claim is made before the Authority under the Workmen's Compensation Act, 1923, then the defence cannot be restricted in terms of the mandate contained in Section 149(2) of the Motor Vehicles Act, 1988. The Hon'ble Supreme Court has observed that keeping in view the nature and purpose of two statutes, all the defence can be raised by the Insurer before ALC, as the scope and ambit of the Act of 1923 is different from Motor Vehicles Act, 1988.

13. The facts of this case are similar to those of the case reported in judgment of Hon'ble Supreme Court (2011) 2 Supreme Court Cases, 240. The said judgment has been handed down in the case which was filed under the Motor Vehicles Act, 1988, but the issue involved in the case on hand and Pushpa's case are same, both in facts and in law.

14. The Claim Petition, on hand, has been filed under the Workmen's Compensation Act, 1923. The issue of law which has arisen in this case, arose in Pushpa's case as well, thus the law laid down in Pushpa's case in all fours is applicable to this case also. In order to indicate that the issue raised, is no longer *res integra*. Paragraphs 1, 6, 8, 9, 10, 11, 15, 16 and 17 are taken note of.

1. Whether in the facts and circumstances of the case the liability to pay the compensation amount as determined by the Motor Accident Claims Tribunal was 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 is the short question that arises for consideration in this appeal by special leave filed at the instance of the claimants.
6. Coming next to the question of liability of payment, the issue that is most crucial for the claimants from the practical point of view, the Claims Tribunal held that no liability for payment of compensation to the claimants would attach to Jitender Gupta since he had ceased to be the owner of the vehicle after its sale to Salig Ram on February 2, 1993. It further held that even though an insurance policy for the truck was taken out from Oriental Insurance Company Ltd., the policy was in the name of Jitender Gupta, who was no longer the owner of the truck on the date the policy was taken out and there was no privity of contract between Salig Ram, the owner of the truck and the insurance company. Hence, the insurance policy was of no use for indemnifying Salig Ram, the owner of the truck. In short, Salig Ram alone was liable for payment of the compensation amount to the two

claimants. In this connection, the Claims Tribunal in paragraph 46 of its judgment held and observed as followed:

“Because the subsequent policy was taken by respondent no.2 effective from 08.12.1993 to 07.12.1994 when he was not owner having no right, title or interest to obtain the policy. The owner at that time was respondent no.1 who never entered into any privy of contract with respondent no.3 to cover third party risks qua the vehicle.”

8. We have examined the judgments passed by the Claims Tribunal and the High Court and we find that both the Tribunal and the High Court addressed the question of the liability of the recorded owner of the vehicle on the basis of a provision that has no relevance to the issue. Both the Tribunal and the High Court discussed at length the provision of section 157 of the Motor Vehicles Act, 1988 (“the Act”, for short) that deals with “Transfer of Certificate of Insurance”, So far as that section is concerned the Tribunal and the High Court were right in holding that section 157 of the Act would apply only to the earlier policy (being that of New India Assurance Company Ltd.) taken out by Jitender Gupta during the validity period of which the truck was sold by him to Salig Ram and it can have no application to the second policy taken out from Oriental Insurance Company Ltd. in the name of Jitender Gupta after the sale of the truck. But as stated earlier, section 157 has no application in the facts of this case.

9. The question of the liability of the recorded owner of the vehicle has to be examined under different provisions of the Act. Section 2(30) of the Act defines “owner” in the following terms:

“2(30) ‘owner’ means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor,

and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement”

(Emphasis added)

10. Then, section 50 of the Act lays down the procedure for transfer of ownership. It is a long section and insofar as relevant it is reproduced 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) xxxxxxxx

(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 transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2)-(5)

(6) On receipt of a report under sub-section (1), or an application under subsection (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority".

11. It is undeniable that notwithstanding the sale of the vehicle neither the transferor Jitender Gupta nor the transferee Salig Ram took any step for the change of the name of the owner in the certificate of registration of the vehicle. In view of this omission Jitender Gupta must be deemed to continue as the owner of the vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale on February 2, 1993.

(Emphasis supplied)

15. Learned counsel for the insurance company submitted that even though the registered owner of the vehicle was Jitender Gupta, after the sale of the truck he had no control over it and the possession and control of the truck were in the hands of the transferee, Salig Ram. No liability can, therefore, be fastened on Jitender Gupta, the transferor of the truck. In support of this submission he relied upon a decision of this Court in National Insurance Company Ltd. vs. Deepa Devi.

16. The facts of the case in Deepa Devi are entirely different. In that case the vehicle was requisitioned by the District Magistrate in exercise of the powers conferred upon him under the Representation of the People Act, 1951. In that circumstance, this

Court observed that the owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remained under requisition, the owner did not exercise any control over it: the driver might still be the employee of the owner of the vehicle but he had to drive the vehicle according to the direction of the officer of the State, in whose charge the vehicle was given. Save and except the legal ownership, the registered owner of the vehicle had lost all control over the vehicle. The decision in Deepa Devi was rendered on the special facts of that case and it has no application to the facts of the case in hand.

17. In light of the discussion made above it is held that the compensation amount is equally realisable from respondent no.3, Oriental Insurance Company Ltd. and it is directed to make full payment of the compensation amount as determined by the Claims Tribunal to the appellants within two months from the date of this judgment.

15. Perusal of the aforementioned paragraphs of the judgment in Pushpa's case would show that on facts it is similar to the case on hand. The Hon'ble Supreme Court has held that notwithstanding the sale of the vehicle, neither transferor nor transferee took steps for changing the ownership of the vehicle and vehicle continued to remain in the name of original owner and even after transfer of vehicle, the insurance policy was taken in the

name of registered owner/original owner thus, Section 157 of the Act of 1988 would not protect the appellant and it shall have to comply with directions contained in the Award of ALC.

16. The further similarity in the facts of two cases is that even after the transfer of vehicle the insurance policy was taken in the name of Suraj Prakash, as had happened in Pushpa's case.

17. True it is that two statutes viz. Act of 1923 and Act of 1988 cannot be in all circumstances construed in like manner. But the issue of law which had arisen in Pushpa's case and which arose in this case can not be dealt with differently, inasmuch as, the liability of insurance company to pay compensation is the common issue in both cases, and similar provisions of law would thus be attracted.

18. The judgment in M. Periyansamy's case was rendered by Madras High Court (Madurai Bench) on 07.08.2008. the said decision was based on interpretation of Section 157 of Act of 1988. The decision by Hon'ble Supreme Court has been rendered on January 12, 2011, and after elaborate discussion of various provisions of Act of 1988, the

insurance company was directed to pay the compensation. The decision of Madras High Court in M. Periasamy's case does not lay down the correct law on the issue involved. The judgment of the Hon'ble Supreme Court in Pushpa's case is binding on all including this court in view of mandate contained in Article 141 of Constitution of India. The view of Madras High Court, with respects, is not subscribed to. The said decision is *per incuriam* as all the relevant provisions of Act of 1988 have not been raised, debated and considered.

19. In view of the aforementioned judgment of Hon'ble Supreme Court, no substantial question of law is involved in this Appeal. This Appeal along with connected CMA(s) is dismissed.

**(Muzaffar Hussain Attar)
Judge**

JAMMU
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Vijay

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 400/2010

Date of order: 13.09.2012

Faqir Chand & Anr. v. Suraj Parkash & Ors.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

Appearing counsel:

For Appellant(s) : M/s. L. K. Sharma & Ajay Gandontra, Advs.
For Respondent(s): Mr. R. K. Gupta, Sr. Adv with
Mr. Prem Sadotra, Adv.

Heard. Reserved.

(Muzaffar Hussain Attar)
Judge

JAMMU
13.09.2012
Paramjeet

