

CASE NO.:
Appeal (civil) 1578 of 1994

PETITIONER:
RIKHI RAM AND ANR.

RESPONDENT:
SMT. SUKHRANIA AND ORS.

DATE OF JUDGMENT: 05/02/2003

BENCH:
V.N. KHARE CJI & B.N. AGRAWAL & ASHOK BHAN

JUDGMENT:
JUDGMENT

2003 (1) SCR 872

The Judgment of the Court was delivered by

KHARE, CJ. On 1.3.1984, one Chinku, S/o Sukharania and Ram Dhan aged about 20 years, a rickshaw puller by profession was hit by a motorcycle bearing Registration No. PUT 3504. driven negligently by Ashok Kumar and Pawan Kumar, S/o Rikhi Ram. As a result of the aforesaid accident. Chinku died in the hospital. The deceased's parents filed a petition before the Motor Accident Claims Tribunal, Bhatinda claiming a sum of Rs. 3,60,000 alongwith interest under Section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Act'). Rikhi Ram and Pawan Kumar, appellants herein, while jointly denying the accident, pleaded that the motorcycle did not belong to them rather it belongs to M/s. Azad Engineering Works, Bhatinda who have been its owners. Ashok Kumar also filed a separate written statement taking identical objections. M/s. Azad Engineering Company was also added as a party to the claim petition. It was admitted that the motorcycle was got insured by M/s. Bhagwan Rai Amrit Lal, commission agents, Bhatinda. They were the registered owners of the vehicle. Subsequently, Rikhi Ram and M/s. Azad Engineering Works, appellant herein, purchased the motorcycle from its owners M/s. Bhagwan Rai Amrit Lal who did not give any intimation of the aforesaid transaction to the insurance company. It is also admitted that Ashok Kumar was an employee of M/s. Azad Engineering Works. The Tribunal found inter alia that the driver of the motorcycle was negligent and that the motorcycle was owned by M/s. Bhagwan Rai Amrit Lal, Commission Agents who subsequently transferred the same in favour of the appellants but did not give any intimation to the insurance company about the said transfer, that consequently in absence of any intimation, the appellants were liable to pay the amount of compensation which was determined at Rs. 64,000 and that the insurance company was not liable to pay the amount of compensation. Aggrieved, the appellants filed an appeal before the Division Bench of the High Court of Punjab and Haryana which was dismissed. It is in this way the appellants have filed the petition.

The question which arises in the appeal is whether in the absence of an intimation of transfer as required under Section 103-A of the Act, the liability of the insurer to pay compensation to the third party ceases. Earlier, there was a conflicting view of the High Courts as regards the question whether the insurance policy lapses and consequently the liability of insurer ceases when the insured vehicle was transferred and no intimation as prescribed under Section 103-A of the Act was given to the insurer.

This Court in G. Govindan v. New India Assurance Co. Ltd. and Ors., [1999] 3 SCC 754 has settled the controversy as regards liability of insurer to pay compensation to third party in the absence of any intimation of transfer of the vehicle to the transferee. It was held therein that since

insurance against third party is compulsory, and once the insurance company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of the Act or by any condition in the policy. We are of the view that said decision concludes the controversy in the present appeal. However, we would like to give further reasons that the liability of an insurer does not come to an end even if the owner of the vehicle does not give any intimation of transfer to the insurance company. Chapter VIII of the Act has been enacted following several English statutes. In England, Prior to 1930, there was no law of compulsory insurance in respect of third party rights. Whenever an accident took place the victim or the injured used to take legal proceedings against an erring motorist for recovery of damages. But many a times, it was found that the owner of an offending vehicle was not always in a position to pay compensation or damages to the injured or to the dependants of the deceased and in that event the claimants could not get the damages. To meet such a situation, various legislations were enacted in England. For the first time, Third Parties (Rights Against Insurers) Act, 1930 was enacted, the provisions of which find place in Section 97 of the Act which gave to third party right to sue directly against the insurer. Subsequently, the Road Traffic Act, 1930 was enacted which provided for compulsory insurance of motor vehicles. The provisions of the said Act was engrafted in Section 95 of the Act. Under Section 38 of English Act, 1930, certain conditions of insurance policy were made ineffective so far as the third parties were concerned. The object behind the aforesaid legislation was that third party right should not suffer on account of failure to comply with those terms of the insurance policy. Section 94 of the Act gives protection to third party in respect of death or bodily injury or damage to the property while using the vehicle in public place and, therefore, the insurance of vehicle had been made compulsory under Section 94 read with Section 95 of the Act.

A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risk, i.e. owner of the vehicle; property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:

"Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person."

The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

On an analysis of Section 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

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 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.

For the aforesaid reasons, the appeal is allowed. We set aside the order and judgment under challenge. It is hereby directed that the insurer shall pay compensation to the victims within eight weeks along with the interest @ 11% p.a. from the date of incident and it will be open to the insurer to recover the said amount either from the insured or from the transferee of the vehicle. However, there shall be no order as to the costs.

JUDIS