

**Requirement To Intimate Transfer Of Vehicle To Insurance Company U/S 157(2) MV Act Only Directory: Kerala High Court**

**2022 LiveLaw (Ker) 555**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**ZIYAD RAHMAN A.A., J.**

**MACA NO. 2585 OF 2016 & MACA NO. 2554 OF 2017; 27 OCTOBER 2022**

**RELIANCE GENERAL INSURANCE COMPANY LIMITED *versus* ANNAMMA RAJU @ BINCY**

[Appeal against the Award in OP (MV) No. 345/2014 dated 9.5.2016 on the file of the Motor Accidents Claims Tribunal, Pala]

*Appellant / 3rd Respondent: by Advs. George Cherian (Sr.), Latha Susan Cherian, K.S. Santhi*

*Respondents / Claimants and Respondents 1 and 2: by advs. For R1 to R5 by A.N. Santhosh*

**J U D G M E N T**

Both these appeals arose from the award passed by the Motor Accidents Claims Tribunal, Pala, in OP(MV) No.345/2014. M.A.C.A. No. 2585/2016 is filed by the 3<sup>rd</sup> respondent/Insurance Company challenging the said award, mainly on the ground that they are not liable to pay the compensation in view of the fact that, at the time when the accident occurred, the vehicle stood transferred from the insured and such transfer was not intimated to them within the period contemplated under section 157(2) of the Motor Vehicles Act, 1988 and also as per the terms and conditions of the policy.

2. M.A.C.A. No.2554/2017 was filed by petitioners 1 to 5 in the said claim petition seeking enhancement of compensation. In this judgment, the parties are referred to, in the sequence as mentioned in the claim petition, for convenience.

3. The brief facts of the case are as follows: The claim petition was filed by petitioners 1 to 5 who are respondents 1 to 5 in MACA No.2585/2016, seeking compensation for the death of one Rajumon, who died in a motor accident that occurred on 24.11.2013. At the relevant time, the deceased was travelling as a pillion rider on the motorcycle bearing registration No. KL-35-B-0976, which was being ridden by the 1<sup>st</sup> respondent in the claim petition. According to the petitioners, he was the owner cum rider of the motorcycle and the vehicle was insured with the 3<sup>rd</sup> respondent at the relevant time. The 2<sup>nd</sup> respondent in the claim petition was the person in whose name the insurance policy at the relevant time was issued. The petitioners claimed an amount of Rs.60 lakhs as compensation.

4. Upon receipt of the notice, the 1<sup>st</sup> respondent appeared and filed a written statement, disputing the claim put forward by the petitioners. However, he admitted that he was the registered owner of the said vehicle. It was also contended by him that the vehicle was validly insured with the 3<sup>rd</sup> respondent at the relevant time and, therefore, if any amount is found to be payable, the same has to be deposited by the 3<sup>rd</sup> respondent.

5. The 2<sup>nd</sup> respondent submitted a written statement contending that he sold the vehicle to the 1<sup>st</sup> respondent and the said transfer is already affected as per the endorsement made in the registration certificate with effect from 17.10.2013, whereas, the accident in this case occurred on 24.11.2013. Therefore it was contended that, he is not liable to pay any compensation. The 3<sup>rd</sup> respondent Insurance Company admitted the existence of a valid policy in respect of the vehicle in question but disputed the liability on various grounds. The quantum of compensation was also seriously disputed by them. It

was further contended by the Insurance Company that as on the date when the accident occurred, the vehicle stood transferred to the 1<sup>st</sup> respondent, whereas the policy was issued in the name of the 2<sup>nd</sup> respondent, who was the previous owner of the said vehicle. It is contended that, by virtue of the stipulations contained in Section 157(2) of the Motor Vehicles Act, 1988, the transferee/ 1<sup>st</sup> respondent had an obligation to intimate the Insurance Company as to the said transfer within a period of 14 days from the date of such transfer. In this case, no such intimation has been given by the 1<sup>st</sup> respondent and, therefore, no liability can be fastened upon the 3<sup>rd</sup> respondent, since there is violation of statutory stipulations.

6. The evidence in this case consists of PWs.1 to 3 and Exhibits A1 to A11 from the side of the petitioners. From the side of the respondents RWs.1 and 2 were examined and Exhibits B1 to B10 were marked.

7. After appreciating the materials placed on record, the Tribunal passed an award, allowing an amount of Rs.28,77,000/- as compensation to the petitioners, which was directed to be deposited by the 3<sup>rd</sup> respondent-Insurance Company along with interest at the rate of 9% per annum from the date of petition ie. from 16.6.2014 onwards. With regard to the contention raised by the 3<sup>rd</sup> respondent Insurance Company, as to their liability on account of the failure in intimating the transfer of the vehicle in tune with the statutory stipulation contained in Section 157(2) of the Motor Vehicles Act, 1988, it was found that the same is not applicable to the claim put forward by the petitioners, since the policy issued is a comprehensive policy which takes in the liability of the pillion rider also.

8. Being aggrieved by the aforesaid finding, the Insurance Company filed MACA No.2585/2016 and being aggrieved by the quantum of compensation, the petitioners have filed M.A.C.A.No.2554/2017.

9. Heard Sri. George Cherian (Thiruvalla), the learned Senior Counsel appearing for the Insurance Company, the appellant in MACA No.2585/2016 and Sri. A.N. Santhosh, the learned counsel appearing for the petitioners who are the appellants in MACA No.2554/2017.

10. The first question to be considered in these appeals is about the liability of the Insurance Company. As per the findings of the Tribunal, the contention of the Insurance Company was rejected on the ground that the policy issued is a comprehensive/package policy which takes in the liability of the pillion rider. The learned Senior Counsel for the Insurance Company specifically contends that, even though Section 157 of the Motor Vehicles Act contemplates a deemed transfer of policy upon the vehicle being transferred, the benefit of the same cannot be claimed by a person who is not covered under the statutory coverage contemplated under Section 147 of the Motor Vehicles Act. It was pointed out that, as far as the claim of the petitioners is concerned, the same is in respect of a person travelling on a motor cycle as a pillion rider, who is not covered under the statutory policy as contemplated under Section 147 of the Motor Vehicles Act. Therefore, since Section 157 of the Motor Vehicles Act is included in Chapter XI of the Motor Vehicles Act, 1988, which deals with the insurance of motor vehicles against third party risks, the deemed transfer contemplated under the said provision would be applicable only in respect of statutory liability as contemplated under Chapter XI of the Act and nothing beyond that, contends the learned counsel. Since the pillion rider is not a person coming within the said statutory coverage, the deemed transfer as contemplated under Section

157 of the Motor Vehicles Act cannot be made applicable to such claim. According to the learned Senior counsel, the coverage can be provided only if the intimation of such transfer is given to the Company, within the period stipulated in the said provision and also as per the terms and conditions of the policy. The learned Senior Counsel for the Insurance Company places reliance upon the decision in Complete Insulations (P) Ltd v. New India Assurance Co.Ltd [(1996)1 SCC 221], United India Insurance Co.Ltd, Shimla v. Tilak Singh and Others [(2006)4 SCC 404] to substantiate these points.

**11 .** On the other hand, Sri.A.N.Santhosh, the learned counsel for the petitioners in the claim petition opposes the aforesaid contentions. According to him, Section 157 of the Motor Vehicles Act does not make any distinction between the statutory coverage and the liability of the insurer towards a third party. It was contended by him that even though the pillion rider is not included as a person covered under Section 147 of the Motor Vehicles Act, by virtue of the directions issued by the Insurance Regulatory and Development Authority (hereinafter referred to as 'IRDA'), the liability of Insurance Companies towards the occupants in a private car and the pillion rider on a two wheeler are included in Section 2 of the India Motor Tariff which deals with the liability to third parties. It was further contended that, since this being a liability towards a third party, the deemed transfer as contemplated under Section 157 of the Motor Vehicles Act would get attracted. With regard to the contentions raised by the learned counsel for the Insurance Company as to the failure to comply with the stipulation contained in Sub section (2) of Section 157 of the Motor Vehicles Act, it was contended by the learned counsel for the petitioners that, consequence of any failure on the part of the transferee is not mentioned in the said provision and hence it can only be treated as a provision which is directory in nature and not mandatory. Hence, the failure on the part of the transferee in informing the same to the Insurance Company would not take away the liability of the Insurance Company, as far as the claims at the instance of the 3<sup>rd</sup> parties are concerned. While referring to the term 'third parties', the learned counsel for the petitioners places reliance upon the meaning of the said term as used in a Circular issued in November, 2009 by the IRDA, which is binding on the Insurance company.

**12 .** The learned counsel for the petitioners places reliance upon the judgment rendered in Sayed v. Gopalakrishnan and Others [2016(2)KHC 351] and Unnikrishnan K.A. v. Vijayakumar K.S. @ Biju and Others [2016(2)KLT 920].

**13 .** I have gone through the materials placed on record and examined the contentions raised by the learned counsels on either side.

**14 .** The specific contention of the learned counsel for the Insurance Company is by placing reliance upon Section 157 of the Motor Vehicles Act which reads as follows:

“157. 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 declared 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.”

The impact of Section 157 of the Motor Vehicles Act was considered by a Division Bench of this Court in Sayed’s case(supra). That was a case in which the vehicle was transferred on 31.8.2000, the policy was taken on 14.01.2000 and the accident occurred on 21.11.2000. It was contended by the Insurance Company that since the transfer of the vehicle was not intimated to the Insurance Company as stipulated under Section 157(2) of the Motor Vehicles Act, they have no liability. The aforesaid contention was rejected by the Division Bench of this Court by observing that, once the vehicle is transferred, there is a deemed transfer of policy of insurance in the name of the transferee and the Insurance Company is liable to indemnify the insured or even the transferee by virtue of the deeming provision. It was further observed that, the Insurance Company could be exonerated from the liability only if they establish the violation of policy conditions or the defences as provided under Section 149(2) of the Motor Vehicles Act, 1988 and not otherwise.

15. It is true that, the aforesaid observations were made by this Court in respect of a matter which arose in connection with a claim covered under the statutory coverage as contemplated under Section 147 of the Motor Vehicles Act. As per the decision rendered by the Hon’ble Supreme Court in Thilak Singh’s case (supra), the liability of a pillion rider on a motorcycle (gratuitous passenger) would not come within the said provision. However, when we carefully examine Section 157 of the Motor Vehicles Act, it can be seen that, as rightly pointed out by the learned counsel for the petitioners, the said provision does not make any distinction between the statutory coverage and the other liability of the Insurance Company towards any third party. It is true that, sub-section (2) of Section 157 of the Motor Vehicles Act contemplates that the transfer of the vehicle shall be intimated to the Insurance Company within a period of 14 days of such transfer. However, no consequences of the non compliance of sub-section (2) of Section 157 are seen mentioned in the provision. On the other hand, Section 157(1) of the Act clearly contemplates a deemed transfer, the moment the vehicle is transferred to a third person. Therefore, what could be gathered from the aforesaid provision is that once a transfer is affected by following the procedure contemplated in the Motor Vehicles Act, the certificate of insurance is deemed to have been transferred in favour of the transferee without any further process. Though sub-section (2) of Section 157 provides for intimation of such transfer, since the statute is silent as to the consequence of failure in doing so, it can only be treated as directory in nature and not mandatory. The aforesaid view is fortified when we consider Rule 144 of the Central Motor Vehicles Rules, formulated under the provisions of the Motor Vehicles Act, 1988. Rule 144 of the Central Motor Vehicles Rules is extracted below:

“144. Transfer of certificate of insurance.— When the ownership of a motor vehicle covered by a valid insurance certificate is transferred to another person together with the policy of insurance relating thereto the policy of insurance of such vehicle shall automatically stand transferred to that other person from the date of transfer of ownership of the vehicle and the said person shall within fourteen days of the date of transfer intimate to the authorised insurer who has insured the vehicle, the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner

of the vehicle and the number and date of the insurance policy so that the authorised insurer may make the necessary changes in his record.”

On carefully going through the contents of Rule 144, it can be seen that, the purpose for which the information regarding the transfer of the vehicle has to be furnished to the Insurance Company is clearly mentioned therein. It is evident that such intimation is to enable the insurer to make necessary changes in their records and nothing beyond that. Therefore, it is clear that, as far as the non compliance with Section 157(2) is concerned, it will have no consequence as regards the liability of the Insurance Company to indemnify the insured in respect of the claims arising from the victims of the motor vehicle accident. In this case, the accident occurred after the transfer of ownership is completed by following the provisions of the Motor Vehicles Act, and therefore the deemed transfer of policy had occurred before the accident.

**16.** The next question that arises is whether, such transfer would include the transfer of the obligations of the Insurance company towards a pillion rider, whose risk is not covered under statutory coverage under section 147(1) (b) of the Motor Vehicles Act. It is true that, in Complete Insulations’ case (supra), after referring to the stipulations in Section 157 of the Motor Vehicles Act, it was held by the Hon’ble Supreme Court that, the deemed transfer contemplated under Section 157 of the Motor Vehicles Act may not be applicable in respect of own damage claims. As rightly pointed out by the learned counsel for the petitioners, there is a clear distinction between the factual situation in which the decision in Complete Insulations’ case (supra) was passed and the facts in this case. The subject matter of the decision rendered by the Hon’ble Supreme Court was the ‘own damage’ claims of the insured, whose name is mentioned in the certificate of insurance. When the transfer of the vehicle is made and the same is not intimated to the Insurance Company, the person who transfers the vehicle would cease to have any insurable interest in the property so as to make any claim in respect of the vehicle, which he already transferred. Therefore, the liability of the Insurance Company, as far as the own damage of the insured is concerned, will cease to have any effect, when the vehicle is transferred to another person and he fails to intimate such transfer in the manner prescribed. The aforesaid termination of the contractual liability of the Insurance Company is on account of the fact that, the transferee is not a party to the contract of insurance. Therefore, the deemed transfer as contemplated under Section 157 of the Motor Vehicles Act cannot be made applicable in the case of own damage since the claim of own damage is something between the insurance company and the insured, who are parties to the contract of insurance.

**17.** Moreover, the claim in respect of own damage is something which would not come under the jurisdiction of the Motor Accidents Claims Tribunal, constituted under the Act. The said Tribunal is constituted to streamline the procedure for adjudicating the claims in relation to the tortious liability of the driver and owner, arising out of the use of motor vehicles and it is not competent to decide a claim of the owner arising from the terms of insurance policy in respect of the own damages. On the other hand, the provisions in the Motor Vehicles Act relating to the claims to be adjudicated by the Motor Accidents Claims Tribunal are intended for determining the liability of the driver and owner of the vehicle towards the victims of the motor accident on account of the tortious act of such driver.

**18.** As far as the claim at the instance of a victim of a motor accident is concerned, he is a third party, from the point of view of the tortfeasor, even if such a claimant is not a

person specifically covered under Section 147(1)(b) of the Motor Vehicles Act, 1988. It is to be noted in this regard that the IRDA, as per the Circular bearing No.IRDA/NL/CIR/F&U/073/11/2009 dated 16.11.2009 pillion rider is specifically included in the mandatory coverage of comprehensive/package policy issued by the Insurance Company. The aforesaid circular reads as follows:

“INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

November 16,2009

Rf:IRDA/NL/CIR/F&U/073/11/2009

To

CEOs of all General Insurance Companies

Re: Liability of Insurance Companies in respect of Occupant of a Private Car and Pillion Rider in a Two Wheeler under Standard Motor Package Policy(also called Comprehensive Policy]

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Insurers' attention is drawn to wordings of Section (II) 1(i) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and Two-Wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:

“Section II – Liability to Third Parties

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward)but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.”

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the Tariff Advisory Committee o the subject:

(i) Circular M.V.No.1 of 1978 dated 18<sup>th</sup> March 1978[regarding occupants carried in Private Car] effective from 25<sup>th</sup> March 1977.

(ii) MOT/GEN/10 dated 2<sup>nd</sup> June 1986 [regarding Pillion Riders in a Two-Wheeler]effective from the date of the Circular.

The above circulars make it clear that the Insured's liability in respect of Occupant(s) carried in a Private Car and Pillion Rider carried on Two wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular no.066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions, wordings, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular no.019/IRDA/NL/F&U/Oct-08 dated November 6,2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All General Insurers are advised to adhere to be aforementioned circulars and any non-compliance of the same would be viewed seriously by the Authority.

This is issued with the approval of the Competent Authority.

Sd/-

Executive Director

A careful reading of the said Circular would reveal that, the claim at the instance of a pillion rider is specifically included under the head of a third party. Moreover, as far as the claim of the pillion rider of the motor cycle is concerned, it is a claim which can be adjudicated by the Motor Accident Claims Tribunal, even if his claim may not come with the statutory coverage contemplated under section 147(1) (b) of the Act. Therefore, while interpreting the deemed transfer contemplated under section 157, it has to be understood in such a manner to extend the benefit of the same to all the claims, which can be adjudicated by the Motor Accidents Claims Tribunal constituted under the Act. In other words, the deemed transfer as contemplated under Section 157 has to be made applicable in respect of the claim of the motor accident victim, which is to be tried by the Motor Accidents Claims Tribunal constituted under the provisions of the Motor Vehicles Act. It is also relevant to note that the provisions relating to the compensation contained in the Motor Vehicles Act are part of welfare legislation intended to ensure that a victim in a motor accident is compensated adequately. Therefore, exonerating the Insurance Company from the liability to meet such a liability would be against the spirit of the Motor Vehicles Act, particularly when the claim at the instance of the pillion rider is specifically included in the coverage of package policy by IRDA as per the Circular mentioned above, and it is a claim which can be adjudicated under the provisions of the Act. Thus, section 157 of the Act is required to be interpreted in such a manner that the deemed transfer of the policy contemplated therein includes the transfer of all actionable claims under the provisions of the Motor Vehicles Act, which come within the jurisdiction of the Motor Accidents Claims Tribunal constituted under the said Act.

19. Moreover, from the reading of section 157 of the Act, it can be seen that, the same does not contain any reference to the coverage contemplated under section 147 (1)(b) of the Act, but instead, it refers to the policy of insurance alone. Since Section 157 is provided for and in connection with the adjudication of the claims by the Motor Accidents Claims Tribunals, it has to be interpreted widely to promote the object of the legislation, and it should take in, all matters covered by the policy in respect of the claims of a third party, i.e. a victim of a motor accident. Therefore, the contention put forward by the Insurance Company in this regard is only to be rejected.

20. There is yet another aspect which fortifies the aforesaid view. The policy of insurance is issued in respect of the vehicle, though it is issued in the name of the owner of the vehicle. The coverage of policy, except that of the own damage claims, is intended for the benefit of the third parties (parties other than the driver and owner). Therefore, a change of name of the owner of the vehicle, cannot have any consequences, as far as the said coverage is concerned. This is because, identity of the owner is not at all material for the said purpose, as the policy is issued for the vehicle. Such a change of ownership would not have any impact on the insurable interest as per the policy, because of the reason that, in the case of third party coverage, the insurable interest is not that of the owner, but it is for the third parties, who are the victims of the accident. Therefore on this ground also, the contentions of the Insurance company is liable to be rejected.

21. The next contention that arises for consideration is regarding the enhancement sought by the petitioners in MACA No.2554/2017. One of the contentions put forward by

the learned counsel for the petitioners is that, even though the petitioners produced the salary certificate of the deceased showing that he was receiving an amount of Rs.21,000/- per month, the Tribunal took the monthly income of the deceased as Rs.12,000/-. According to the learned counsel for the petitioners, the said finding was not correct.

22. I have perused the records. It is evident that, Exhibit A8 is the salary certificate produced. Even though, it was stated by RW1, the employer, that he was paying an amount of Rs.21,000/- as monthly wages to the deceased, absolutely no documents produced to substantiate the same. It was further observed by the Tribunal that, even though the name of the deceased was claimed to be registered with the Panchayat, no document to substantiate the same was produced. The accident occurred in the year, 2013. Considering the facts and circumstances of the case and the specific reasons highlighted by the Tribunal for rejecting the contention of the petitioners with regard to the monthly income of the deceased, I am of the view that the amount taken by the Tribunal as monthly income is reasonable. Apart from the above, the learned counsel for the petitioners sought enhancement of compensation under various heads such as pain and suffering, rate of interest, transport to the hospital, loss of estate etc. However, on going through the amount of compensation awarded under various heads, I am of the view that the said amounts are reasonable. This is mainly because, in the light of the decision in National Insurance Company Ltd. v. Pranay Sethi [2017(4)KLT 662] as far as the amounts awarded under the heads of consortium, loss of estate, the loss of love and affection etc. are concerned, the same are on the higher side. When the total amount awarded by the Tribunal is taken into consideration, I do not find any unreasonableness in the said amount so as to warrant any further enhancement.

In such circumstances, I do not find any merits in both these appeals and the same are accordingly dismissed.

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