

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**Reserved on 01.03.2023  
Pronounced on 10.03.2023**

MA No. 9900008/2013

New India Assurance Co. Ltd. ....Appellant(s)/Petitioner(s)

Through: Mr. Udhay Bhaskar, Advocate

**Vs**

Anita Devi and others ..... Respondent(s)

Through: Mr. Divyanshu Malhotra, Advocate  
for respondent Nos. 1 to 3

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1. The appellant has preferred the instant appeal against award dated 07.08.2013 passed by the Commissioner Under Employee's Compensation Act (Assistant Labour Commissioner), Jammu (hereinafter to be referred as the Commissioner), whereby in a claim petition, filed by the claimants/respondents No. 1 to 3, have been awarded an amount of Rs. 7,60,651/- as compensation on account of death of deceased, Pritam Lal.
2. It appears that deceased Pritam Lal had died in an incident while working as a driver with truck bearing registration No. JK02A 3787. The incident took place on 14.10.2005 when the deceased was killed by the conductor of the truck Rakesh Kumar. The truck in question bearing registration No. JK02A 3787 was owned by Sunita Kumari respondent No. 4 herein. It appears that the deceased was done to death by the conductor as he had denied him the permission to leave the truck midway to destination because

the same was loaded with cement. The dependents of the deceased i.e. respondent Nos. 1 to 3 filed a claim petition before the Commissioner, wherein it was pleaded that the deceased was 33 years old at the time of the incident, earning Rs. 6,000/- per month. It was also claimed that the deceased had died during the course of his employment with respondent No. 4 herein.

3. The claim petition was contested by the appellant/insurance company, with which the truck in question was insured at the relevant time. The insurance company in its objections to the claim petition disputed the claim of the claimants. It was submitted that the vehicle in question was insured with it with effect from 30.01.2005 to 29.01.2006 in the name of Sutanter Singh respondent No. 5 herein as such, the insurance company had no statutory and legal obligation to indemnify the respondent-Sunita Kumari, with whom it was claimed that the deceased was having a relationship of employment. It has been claimed that since the deceased was not in the employment of insured-Sutanter Singh as such, the insurance company is entitled to be exonerated from its liability to satisfy the award.
4. Respondent-Sutanter Singh in his reply to the claim petition submitted that he had sold the vehicle in question to one Khemraj who got the same transferred in the name of his wife-Sunita Kumari. It was further submitted by the said respondent that the certificate of insurance of the vehicle has not been transferred from his name.
5. The Commissioner in the face of the pleadings of the parties framed the following issues:

- 1) “Whether the deceased ‘Pritam Lal’ falls under the definition of “employee” as prescribed under the Employee’s Compensation Act 1923. OPP
- 2) Whether the deceased met with an accident arising out of and in the course of his employment for respondent no. 1 OPP
- 3) What was the age and wages of the deceased at the time of accident. OPP
- 4) Whether the vehicle in question and involved in accident was insured and driven in violation of the terms and conditions of insurance policy OPR-2
- 5) Relief”

6. An additional issue came to be framed at the instance of appellant insurance company which reads as under:

“Whether the respondent no. 2 is liable to indemnify respondent no 1 and 3 as per the contract of insurance policy.”

7. After appreciation of the evidence led by the parties, the Commissioner came to the conclusion that the deceased had died in an accident arising out of and in the course of his employment with respondent-Sunita Kumari. It was further concluded by the learned Commissioner that the vehicle in question was not being driven in violation of the terms and conditions of the policy of the insurance and that insurance company was liable to satisfy the award. The learned Commissioner by taking the age of the deceased as 33 years and his wages at Rs. 4000/- per month, assessed the compensation of Rs. 3,94,120/- in favour of the claimants with an additional interest of Rs. 3,66,531 making the total awarded sum as Rs. 7,60,651/-. The insurer was made liable to pay the awarded sum.

8. The appellant insurance company has raised a number of grounds in the appeal challenging the impugned award but the main emphasis of the counsel appearing for the appellant was on following points:

I That the policy of insurance was not transferred in the name of respondent-Sunita Kumari, the employer of the deceased as such, the

insurance company had no privity of contract with the employer, consequently it was not liable to satisfy the amount of the impugned award.

II That the deceased was not the employee of the insured as such, the insurance company cannot be held liable to satisfy the award.

9. I have heard learned counsel for the parties and perused the record of the case including the record of the learned Commissioner.
10. The facts that have been proved from the evidence on record led by the parties before the learned Commissioner and which are not in dispute are that the deceased was an employee of respondent No. 4 Sunita Kumari. It is established that the policy of insurance in respect of the vehicle in question had not been transferred from the name of insured Sutanter Singh to the name of Sunita Kumari. It is also an admitted fact that the deceased was an employee of respondent No. 4-Sunita Kumari and not the employee of respondent No. 5-Sutanter Singh.
11. In light of aforesaid proved and admitted facts, the question arises as to whether the appellant insurance company can be held liable to satisfy the award passed by the learned Commissioner. In order to find an answer to this question, we will have to first ascertain as to what would be the effect of transfer of a vehicle from the name of the insured to another person without the transfer of certificate of insurance. In this regard, it would be apt to refer to the provisions contained in section 157 of the Motor Vehicles Act, which reads as under:

**“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 clarified 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.”

12. From a perusal of the aforesaid provision, it becomes clear that when a person who is holding a certificate of insurance in accordance with provisions of Chapter XI of the Motor Vehicles Act, 1988, transfers of the ownership of the said vehicle to another person, the certificate of insurance and the policy described in the certificate is deemed to have been transferred in favour of the person to whom the motor vehicle has been transferred with effect from date of its transfer.
13. It is to be noted that it is only the certificate of insurance which has been issued in accordance with Chapter XI of the Motor Vehicles Act which gets automatically transferred in the name of transferee of the vehicle, meaning thereby that a certificate of insurance to the extent it covers compulsory risks as per requirement laid down in section 147 of the Motor Vehicles Act which falls in Chapter XI of the said Act, would get transferred. In terms of Section 147 of the Motor Vehicles Act, the compulsory policy requirements include risks (i) against any liability which may be incurred in respect of death of or bodily injury to any person including owner of the goods or his authorized representative carried in the motor vehicle or

damage to any property of a third party. (ii) death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of goods vehicle. (iii) a liability arising under the Workmen's Compensation Act in respect of death or bodily injury to any employee. Therefore, the certificate of insurance to the extent it covers compulsory risks as contemplated in section 147 of the Motor Vehicles Act would get automatically transferred to the transferee upon transfer of a vehicle by the original insurer.

14. I am supported in my aforesaid view by the judgment of the Supreme Court in **Firdaus v Oriental Insurance Company Ltd and others, (2017) 15 SCC 674**. In the said judgment, the Supreme Court, while holding that liability of the insurance company continues so far as it relates to payment of award passed by the Workmen Compensation Commissioner even after the transfer of the vehicle by the insured to another person, relied upon its following observations made in the case of **Rikhi Ram and another v Sukhrania and others, 2003(3) SCC 97**:

(3) This Court in *G. Govindan v. New India Assurance Co. Ltd. and Ors.* 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.

4. 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:

“95. (5) 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.”

5. 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.

6. 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.

7. 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.”

15. From the foregoing analysis of the law on the subject, it is clear that whoever may be the actual owner of the motor vehicle at the time of the accident, compulsory risks covered under the policy of insurance get automatically transferred to the transferee of a vehicle even though certificate of insurance has not been transferred in his favour.
16. In view of the legal position discussed hereinbefore, it is immaterial whether the deceased was an employee of respondent Sunita Kumari or Sutanter Singh, so far as the liability of the appellant insurance company to satisfy the impugned award is concerned. Once the vehicle in question was transferred by Sutanter Singh to respondent-Sunita Kumari, the compulsory risks covered under the policy of insurance purchased by Sutanter Singh would get automatically transferred to respondent-Sunita Kumari from the date she became the owner of the vehicle. Since the deceased was an employee of respondent No. 4 and he died during the course of his employment as such, the appellant/insurance company cannot escape its liability to indemnify the award.

17. For the foregoing reasons, I do not find any merit in this appeal, the same is accordingly, dismissed. The deposited amount, if any, is directed to be released in favour of the claimants/respondent Nos. 1 to 3 in accordance with the terms of the impugned award.

**(SANJAY DHAR)**  
**JUDGE**

**Jammu**  
10.03.2023  
Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No