



GAHC010288572019

Page No.# 1/12



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : I.A.(Civil)/3951/2019**  
**(In M.A.C. App. 146/2019)**

MRS. MONALISHA DEKA SAIKIA AND 2 ORS  
W/O LATE DWIPEN SAIKIA, R/O VILL. CHURAMONI GAON, P.S. TEOK,  
DIST. JORHAT, ASSAM, PIN 785112

2: AYUSHMAN SAIKIA (SINCE MINOR)  
S/O LATE DWIPEN SAIKIA  
R/O VILL. CHURAMONI GAON  
P.S. TEOK  
DIST. JORHAT  
ASSAM  
PIN 78511

VERSUS

THE ORIENTAL INSURANCE COMPANY LTD.  
A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956  
REPRESENTED BY ITS REGIONAL MANAGER, ULUBARI, GUWAHATI 07

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

For the applicants : Mr. G. Bokaliai.  
For the opposite party : Mr. S.K. Goswami.  
Date of hearing : 02.02.2021, 09.02.2021.  
Date of judgment : **30.03.2021.**



**JUDGMENT AND ORDER**

(C.A.V.)

Heard Mr. G. Bokalia, learned counsel for the applicant and Mr. S.K. Goswami, learned counsel for the opposite party.

2) This application is by the claimant in MAC Case No. 463/2014, wherein an award dated 23.10.2018 was passed by the learned Member, Motor Accident Claims Tribunal, Nagaon. The husband of the applicant no.1, who was the father of the applicant nos. 2 and 3 died in a road traffic accident when the vehicle bearing registration number AS-01-AD-1138 fell down from the road after its front left tyre had burst while being driven on Highway and resultantly, the vehicle fell down in a roadside pond and the predecessor-in-interest of the applicants had died on spot. At the date of death, the deceased was 37 years of age and was working in the Office of the Deputy Director of Economic & Statistics, Jorhat and claim on account of loss of dependency was computed at Rs.29,03,760/- and accordingly, by computing compensation of a total sum of Rs.70,000/- on account of loss of estate, funeral expenses and loss of consortium, the total compensation to the extent of Rs.29,73,760/- with interest @ 7% p.a. from the date of award till payment was awarded.

3) This Court by order dated 06.03.2019, passed in I.A.(C) 804/2019 arising in the connected appeal, had stayed the operation of the award subject to deposit of 50% of the awarded amount before the Registry. Accordingly, the applicants have prayed that the deposited amount be released in their favour.

4) The learned counsel for the applicant has submitted that in this case the registered owner had transferred the vehicle and therefore, the vehicle continued to remain under insurance coverage and the policy in the name of erstwhile owner stood transferred from registered owner to the present owner. In support of his contention, the learned counsel for the applicant has referred to the case of *Mallamma (Dead) by LRs. Vs. National Insurance*



*Co. Ltd. & Ors., (2014) 14 SCC 137.* In order to support his submission that the passenger travelling in the vehicle involved in the accident was covered by comprehensive package policy, the learned counsel has relied on the following cases, viz., (i) *Bhagyalakshmi & Ors. Vs. United Insurance Co. Ltd. & Anr., (2009) 2 CCR 794 (SC)*, (ii) *Kaustav Gogoi Ors. Vs. Bharati Gogoi & Ors., (2018) 0 Supreme(Gau) 832: (2019) 1 GLR 736*, (iii) *Shaik Ahammad Basheer (Died) Vs. D. Sethamarai & Anr., (2020) 0 Supreme(AP) 268*, and (iv) *Firdaus Vs. Oriental Insurance Co. Ltd. & Ors., (2017) 15 SCC 674*. It is submitted that on transfer of the insured vehicle, by operation of Section 157 of Motor Vehicles Act, the insurance will protect the interest of the transferee, the learned counsel has placed reliance on the case of (i) *M/s. National Insurance Co. Ltd. Vs. Sindhu P.T. & Ors., MFA (WCC) No. 107/2011 decided on 28.06.2011*, (ii) *Surendra Kumar Bhilawe Vs. The New India Assurance Co. Ltd., 2020 STPL 5355 SC: AIR 2020 SC 3149*. The case of (i) *Yashpal Luthra & Anr. Vs. United India Insurance Co. Ltd. & Anr., 2011 ACJ 1415*, (ii) *Oriental Insurance Co. Ltd. Vs. Surendra Nath Loomba & Ors., (2012) 13 SCC 792*, and (iii) *National Insurance Co. Ltd. Vs. Balakrishnan & Anr., AIR 2013 SC 473*, were cited to support his submission that pillion rider of motorcycle and passenger of a car are covered by comprehensive package policy and they are third party. The learned counsel for the applicant had also cited the case of the *National Insurance Co. Ltd., Salem Main Road, Mettur Salem Vs. Varadharaj & Ors., CMA No. 2314 of 2009 and M.P. No. 1 of 2009* to support his contention that by virtue of Section 157 of the Motor Vehicles Act, 1988, the liability of the claim has to be borne by the insurer.

5) It is submitted that when the ownership of a vehicle is transferred, statutory liability only gets transferred and that would not indemnify the new owner in whose name the policy is not transferred and in this regard, reliance is placed on the case of (i) *New India Assurance Co. Ltd. Vs. Satpal Singh & Ors.*, (2000) 1 SCC 237, (ii) *G. Govindan Vs. New India Assurance Co. Ltd. & Ors.*, (1999) 3 SCC 754, (iii) *Oriental Insurance Co. Ltd. Vs. Homi Rai & Anr.*, 2011 (4) GLT 260. To support his submission that the opposite party no.1, as an insurer had no liability towards gratuitous passenger, the learned counsel has referred to the case of (i) *General Manager, United Insurance Co. Ltd. Vs. M. Laxmi & Ors.*, (2009) 17 SCC 301, (ii) *National Insurance Co. Ltd. Vs. Balakrishnan & Anr.*, AIR 2013 SC 473, and (iii) *United India*

*Insurance Co. Ltd. Vs. Tilak Singh and Ors, (2006) 4 SCC 404.*

6) Thus, before analyzing the argument advanced by the learned counsel for both sides, it would be relevant to the following relevant facts which are undisputed, viz., (a) that the vehicle involved in the accident was a car with seating capacity of 4+1 including driver, (b) the car was insured with the opposite party no.1 under comprehensive package policy, (c) the said policy was in the name of Jhumur Barbhuyan, (d) the policy was valid from 13:51 on 11.02.2014 to midnight of 10.02.2015, (e) as per judgment and award dated 23.10.2018 in MAC Case No. 463/2004 passed by the learned Member, MACT, Nagaon, as per Ext.C (verification of registration certificate), the owner of the vehicle is Jogendra Nath and the previous owner was Aftab Hussain Shah (respondent no.4) and that as per Ext.B, the owner is Aftab Hussain Shah (respondent no. 4) and that his insurance was valid from 07.08.2014 to midnight of 10.02.2015 and that as per evidence of DW-1, as per Ext.A (system generated copy of insurance policy), the insured is Jhumur Barbhuyan.

7) It would be relevant to see the provisions of Section 157 of the Motor Vehicles Act, 1988 which is extracted below:-

**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.”*

8) In a quest to examine the issue, the Court had come across the case of *M/s. Complete Insulations (P) Ltd. Vs. New India Assurance Co. Ltd., 1995 STPL 9951 SC: AIR 1996 SC 586*, which was decided by the three Judge Bench of the Supreme Court of India. The relevant paragraph 1, 10 and 11 thereof, as extracted from *1995 STPL 9951 SC* are quoted below:-

*“1. A Maruti Car with registration No. CHK-9253 was purchased in the name of Mrs. Archana Wadhwa for which the respondent, M/s. New India Assurance Company Ltd., had issued a comprehensive insurance policy. The premium for the insurance was paid by the appellant company in whose favour the car was transferred. The registration of the car was transferred to the appellant on 15-6-1989. On 26-6-1989, the appellant intimated the transfer of registration and asked for transfer of the insurance policy. A reminder was sent on 24-7-1989. The respondent did not reply to the two letters. On 17-9-1989 the car met with a serious accident in which the Managing Director of the appellant suffered serious injuries and his sister died. On 11-10-1989 the appellant asked for the assessment of the damages as the car was a total loss. The respondent did not respond. A reminder dated 26-12-1989 met the same fate. The appellant got a notice issued to which the respondent replied that the appellant had no insurable interest in the car. The appellant filed the complaint before the Consumer Disputes Redressal Commission, Chandigarh, which directed the respondent to pay Rs.83,000/- i.e. the insured value of the vehicle, as the vehicle was a total loss, along with costs and interest. The National Consumer Disputes Redressal Commission set aside the order of the Commission at Chandigarh, dismissed the complaint and granted cost of the appeal. Hence the appeal.*

10. *There can be no doubt that the said chapter provides for compulsory insurance of vehicles to cover third party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party i. e. person other than the insured. This is clear from Section 147(1)(b)(i) which clearly refers to 'damage to any property of a third party' and not damage to the property of the 'insured' himself. And the limit of liability fixed for damage to property of a third party is rupees six thousand only as pointed out earlier. That is why even the claims Tribunal constituted under Section 165 investigated with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Here also it is restricted to damage to third party property and not the property of the insured. Thus, the entire Chapter XI of the new Act concerns third party risks only. It is, therefore, obvious that insurance is compulsory only in respect of third party risks since Section 146 prohibits the use of a motor vehicle in public place unless there is in relation thereto a policy of insurance complying with the requirements of Chapter XI. Thus, the requirements of that chapter are in relation to third party risks only and hence the fiction of Section 157 of the new Act must be limited thereto. The Certificate of insurance to be issued in the prescribed form (See Form 51 prescribed under Rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the new Act and the old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaiah's case because the transferee-insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that Section 157 of the new Act provides that the certificate of insurance together with the policy of insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred". If*

*the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the new Act and in realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. The view taken by the National Commission is therefore correct.*

*11. For the above reasons, we see no merit in this appeal and dismiss the same but with no order as to costs."*

9) The learned counsel for the applicant had referred to the case of *Mallamma (Dead) by LRs. (supra)*, which was also decided by the three Judge Bench of the Supreme Court of India, wherein it was held that in light of the deeming provision contained in Section 157(1) of the Motor Vehicles Act, 1988 the fastening of joint liability on the Insurance Company was valid. However, the said case is distinguishable on facts and in law. In the said case, the deceased was driving the tractor when it overturned and the driver was killed and accordingly, the claim was made under Workmen's Compensation Act. As per Section 147 of the Motor Vehicles Act, 1988 the liability arising out of death, arising out of and in course of his employment, of the employee of the person insured by the policy would be statutorily covered and therefore, by operation of Section 157 of the Motor Vehicles Act, it was held by the Supreme Court of India that the liability in respect of the workman was to be borne by the insurer. Similarly, in the case of *Firdaus (supra)*, the workman, who was the driver, had died in course of employment. Accordingly, by referring to the deeming provision contained in Section 157(1) of the Motor Vehicles Act, 1988 the appeal was allowed and liability to pay compensation was fastened on the Insurance Company. In the case of the case of *Sindhu P.T. (supra)*, the claim petition was filed under Employees Compensation Act. Thus, these cases are on distinguishable factual matrix, for which the said ratio cannot be applied in the present case in hand.

10) In the case of *Bhagyalakshmi & Ors. (supra)*, it was held by the Supreme Court of India that occupants of the car would be covered by a comprehensive policy. The said ratio was followed by this Court in the case of *Kaustav Gogoi & Ors. (supra)*. There is no quarrel with the said well settled legal position. However, in the said case, neither the Supreme Court was not deciding the issue of liability arising out of operation of Section 157 of the Motor Vehicles Act and therefore, there was no occasion for the Supreme Court of India to refer to the ratio laid down by a larger Bench in the case of *M/s. Complete Insulations (P) Ltd.(supra)*. Therefore, the ratio of the said cited case would not be applicable under the distinguishable facts of this case.

11) In the case of *Shaik Ahammad Basheer (supra)*, a gratuitous passenger in a vehicle had died and at the time of the accident, the vehicle was insured in the name of previous owner. The claim was made under Section 163-A of the Motor Vehicles Act, 1988. Therefore, it was held that the respondent no.1 therein, who was the original owner of the vehicle had remained as owner of the vehicle. Thus, it is seen that the High Court had not applied Section 157 of the Motor Vehicles Act, 1988 because the new owner was not recognized although reference was made to the case of *National Insurance Co. Ltd. Vs. Petlu Nagaratnam, 2009 (3) ALT 423*, decided by the High Court of Andhra Pradesh. Accordingly, as the deceased was a gratuitous passenger, by following the ratio decided by the Supreme Court of India in the case of *National Insurance Co. Ltd. Vs. Swaran Singh, (2004) 3 SCC 297*, the High Court of Andhra Pradesh had directed that the liability of satisfying the award shall be on the Insurance Company, who in turn was granted liberty to recover it from the owner of the vehicle as the liability was statutory in nature.

12) On a perusal of the case of *Varadharaj & Ors. (supra)*, it appears that the decision of the Supreme Court of India, rendered in the case of *M/s. Complete Insulations (P) Ltd.(supra)*, was never brought to the notice of the High Court of Madras. Therefore, the ratio laid down in the said case would not have persuasive value while deciding the present case in hand. In the case of *Surendra Kumar Bhilawe (supra)*, on facts, the Supreme Court of India



had held that the appellant therein continued to remain as the owner of the vehicle involved in the accident and accordingly, it was held that the Insurance Company could not have repudiated the claim. The relevant paragraphs 44 to 50, as extracted from 2020 STPL 5355 SC are quoted below:-

*“44. The explanation to Section 157 clarifies, for the removal of all doubts, that such deemed transfer would include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. The transferee might, within 14 days from the date of transfer, apply to the Insurer in the prescribed form, for making requisite changes in the certificate of insurance and the policy of insurance with regard to the factum of transfer of insurance. There could be no reason for a transferee of an insured motor vehicle, to refrain from applying for endorsement of the transfer in the Insurance Policy Certificate when insurance covering third party risk is mandatory for using a vehicle.*

*45. In any case, there could be no reason for the Appellant to take out an insurance cover in his own name as late as on 31.5.2011, covering the period from 2.6.2011 till 1.6.2012, if the Appellant had transferred ownership of the vehicle in April 2008. It is incredible that the transferee, Mohammad Iliyas Ansari would take the risk of operating a vehicle, owned by him, without taking out a policy of Insurance in his own name, inter alia, covering third party risks, notwithstanding the mandate of Section 146 of the Motor Vehicles Act, 1988 prohibiting the use of a motor vehicle without third party insurance*

*46. The judgment of this Court in Complete Insulations Private Limited vs. New India Assurance Company Limited, (1996) 1 SCC 221 was rendered in the context of Motor Vehicle Act, 1939 which has been repealed and replaced by the Motor Vehicles Act, 1988. As observed in the said judgment itself, under Section 103-A of the old Act, the Insurer had the right to refuse to transfer the certificate of insurance and/or the Insurance policy. However, Section 157 of the Motor Vehicles Act, 1988 introduces a deeming provision whereby the transfer of the certificate of Insurance and the policy of Insurance are deemed to have been made, where the vehicle along with the Insurance policy is transferred by the*

owner to another person. This provision has taken away the Insurers right of refusal to transfer the Policy Certificate of Insurance, which was there under the old Act. The judgment of this Court in *Dr. T.V. Jose vs. Chacko P.P. @ Thankachan and Ors.*, (2001) 8 SCC 748 was also rendered in the context of the Motor Vehicles Act of 1939.

47. In *Pushpa @ Leela And Others vs. Shakuntala and Others*, (2011) 2 SCC 240 the question before this Court was, whether liability to pay compensation to third parties as determined by the Motor Vehicles Accidents Claims Tribunal in case of an accident, was that 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 Court found that the person whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation, having regard to the provisions of Section 2(30) read with Section 50 of the Motor Vehicles Act, 1988 and since an insurance policy had been taken out in the name of the recorded owner, he was indemnified and the Insurer would be liable to satisfy the third party claims.

48. In *Naveen Kumar vs. Vijay Kumar and Others*, (2018) 3 SCC 1 a three-Judge Bench of this Court held that in view of the definition of the expression owner in Section 2(30) of the Motor Vehicles Act, 1988, it is the person in whose name the motor vehicle stands registered, who, for the purposes of the said Act, would be treated as the owner of the vehicle. Where the registered owner purports to transfer the vehicle, but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of his liability as owner.

49. The Judgment of this Court in *Pushpa @ Leela & Ors. vs. Shakuntala (supra)* and *Naveen Kumar vs. Vijay Kumar (supra)* were rendered in the context of liability to satisfy third party claims and as such distinguishable factually. However, the dictum of this Court that the registered owner continues to remain owner and when the vehicle is Insured in the name of the registered

*owner, the Insurer would remain liable notwithstanding any transfer, would apply equally in the case of claims made by the insured himself in case of an accident. If the insured continues to remain the owner in law in view of the statutory provisions of the Motor Vehicles Act, 1988 and in particular Section 2(30) thereof, the Insurer cannot evade its liability in case of an accident.*

*50. The policy of insurance in this case, was apparently a comprehensive policy of Insurance which covered third party risk as well. The Insurer could not have repudiated only one part of the contract of insurance to reimburse the owner for losses, when it could not have evaded its liability to third parties under the same contract of Insurance in case of death, injury, loss or damage by reason of an accident."*

13) Therefore, from para-50 as quoted above, it is seen that in spite of the fact that the policy of insurance in the said case was a comprehensive policy of insurance, the Supreme Court of India had specifically held that it was permissible for the Insurance Company to repudiate one part of the contract of insurance to reimburse the owner for losses, but it could not have evaded its liability to third parties under the same contract of Insurance in case of death, injury, loss or damage by reason of an accident. Therefore, the ratio of the cited case is found to support the contention of the Insurance Company, i.e. the opposite party. Moreover, it is seen that the case of *M/s. Complete Solutions (P) Ltd. (supra)* was referred for a different purpose and that the ratio laid down in the said case to the effect that "... *If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the new Act and in realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. ...*", had not been given any other interpretation which helped the applicant in any manner.



14) As the Court had relied upon the ratio of the case of *M/s. Complete Solutions (P) Ltd. (supra)*, the cases cited by the learned counsel for the opposite party has not been discussed herein.

15) Although the Court appreciates the Herculean effort made by the learned counsel for the applicants, but in light of the discussions above, the Court is not inclined to allow the applicants to withdraw any part of the award lying deposited with the Registry of this Court, pending disposal of the accompanying appeal. Therefore, the prayer in this regard, as made by the applicants, is rejected at this stage. However, it is needless to mention that the part of awarded amount, which is lying before the Registry of this Court, shall be subject to outcome of the connected appeal.

16) This interlocutory application stands disposed of.

**JUDGE**

**Comparing Assistant**