Before Permod Kohli, J.

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD,—*Petitioner*

versus

PERMANENT LOK ADALAT (PUC), GURGAON AND ANOTHER,—*Respondents*

CWP No. 15037 of 2008

14th September, 2010

Constitution of India, 1950—Art.226—Motor Vehicles Act, 1988-S.157—Indian Motor Tariff Regulations—G.R.17–Vehicle comprehensively insured—Owner selling vehicle—Registration of vehicle transferred—Accident—Damage of vehicle—Transferee failing to get insurance policy transferred in his name—Whether entitled to claim of damage—Held, no—No automatic transfer in favour of transferee to enable him to take benefit of damage to vehicle—Petition allowed, order of Permanent Lok Adalat accepting claim petition of respondent quashed.

Held, that G.R. 17 of the Insurance Act, 1938 makes it absolutely obligatory for a transferee to apply within a period of 14 days from the date of transfer in writing to the insurer of the vehicle giving the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner, the details of the policy as also the evidence of sale and fresh proposal form duly filled and signed. He is also required to surrender the old certificate and to pay a fee of Rs. 50 for issue of the fresh certificate in the name of the transferee. Thus, there is no automatic transfer in favour of the transferee to enable him to take the benefit of damage to the vehicle in the hands of transferee although the insurance is liable to 3rd party under Section 157 of the Motor Vehicle Act, 1988.

(Para 7)

R. K. Aggarwal, *Advocate for the petitioner.*

None *for respondent No. 1.*

P. R. Yadav, Advocate *for respondent No. 2.*

PERMOD KOHLI, J (ORAL)

(1) This petition has been filed by Bajaj Allianz General Insurance Company Ltd., an insurance company operating in the private sector, questioning the order dated 10th July, 2008 passed by the Permanent Lok Adalat (P.U.S.) Gurgaon dated 10th July, 2008, whereby the claim of respondent No. 2 for damage to the vehicle has been allowed. It may be useful to briefly notice the factual background. One Ramesh Kumar, son of Chunni Lal resident of Gurgaon was the owner of vehicle Mahindra Scorpio bearing registeration No. HR-26-AA-0485, Model 2005. This vehicle was got comprehensively ensured from the petitioner-company on payment of premium of Rs. 14,201 for the period with effect from 1st June, 2007 to 31st May, 2008. The sum ensured was Rs. 4.95 lacs. On 5th October, 2007 i.e. during the currency of the policy the registered owner sold the vehicle to respondent No. 2. The State Transport Authority was approached for transfer of the vehicle and the reigstration of the vehicle was transferred in the name of respondent No. 2. On the intervening night of 19th Janaury, 2008/20th Janaury, 2008 the above said vehicle met with an accident and an FIR in this respect came to be registered with Police Station, Sector 10, Gurgaon. The vehicle was totally damaged in the accident and was declared as a total loss being beyond repair. The petitioner-company appointed a Surveyor to assess the loss. During the course of the investigation by the Surveyor, it was found that even though the registration of the vehicle is in the name of respondent No. 2, however, one Ramesh Kumar was the person insured in respect to the vehicle in question. The insurance company did not pay the claim in respect to the damage to the vehicle which seems to have pursuaded the respondent No.2 to file a petition before the Permanent Lok Adalat (P.U.S.), Gurgaon *vide* his application dated 15th March, 2008. The Permanent Lok Adalat *vide* its order dated 10th July, 2008 allowed the claim of respondent No. 2 for damage to the vehicle by granting 36% less of the I.D.V. for which respondent No. 2 agreed during the course of the proceedings. The amount was directed to be paid with interest @ 12% per annum from the date of order.

(2) The only ground of challenge to the order is that the insurance policy in the name of the erstwhile owner (insured) having not been transferred in the name of respondent No. 2, no claim towards the damage to the vehicle is payable under the insurance policy or even under Section 157 of the Motor Vehicles Act.

(3) In support of the contentions raised, the petitioner-company has relied upon a case titled as **M/s Complete Insulations (P) Ltd.** *versus* **New Indian Assurance Company Ltd. (1)** wherein the Hon'ble Supreme Court held as under :—

> "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. a 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 is invested with jurisdiction to adjudicate upon claim 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 thrid party risks since Section 146 prohibits the use of a motor vehicle in a 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

(1) AIR 1996 S.C. 586

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 Kondaih's case because the transferee-insured could not be said to be a thrid 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 the 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."

(4) To the contrary, it has been contended and argued on behalf of respondent No. 2 that the petitioner is guilty of concealment of the facts. According to respondent No. 2, petitioner has not disclosed the 1994 circular issued by General Insurance Company Ltd. with regard to the transfer of vehicles. The said circular is part of the Indian Motor Tariff Regulations.

(5) In so far the contention of the respondents regarding the circular is concerned, though, no details of any such circular have been given in the reply, however, reliance is placed upon a judgement of the National Consumer Disputes Redressal Commission, New Delhi passed in Revision Petition No. 556 of 2002 titled as Shri Narayan Singh *versus* New India Assurance Company Ltd.

(6) In the aforesaid judgment the Commission replying upon the G..R. 10 of the Indian Motor Tariff Regulations held and ruled that the transferee is also entitled to the claim notwithstanding that the insurance

policy was not transferred in the name of the transferee of a vehicle. However, learned counsel for the petitioner has brought to my notice the revised Indian Motor Tariff which supersedes the earlier tariff which was in existence up to 30th June, 2002. Under the revised Indian Motor Tariff issued under the provisions of the Insurance Act, 1938, G.R. 17 deals with the transfer. The new transfer provisions, thus, read as under :—

"G. R. 17. Transfers.

On transfer of ownership, the Liability Only cover, either under a Liability Only policy or under a Package policy, is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of transfer.

The transferee shall apply within fourteen days from the date of transfer in writing under recorded delivery to the insurer who has insured the vehicle, with 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 insurer may make the necessary changes in his record and issue fresh Certificate of Insurance.

In case of Package Policies, transfer of the "Own Damage" section of the policy in favour of the transferee, shall be made by the insurer only on receipt of a specific request from the transferee along with consent of the transferor. If the transferee is not entitled to benefit of the No Claim Bonus (NCB) shown on the policy, or is entitled to a lesser percentage of NCB than that existing in the policy, recovery of the difference between the transferee's entitlement, if any, and that shown on the policy shall be made before effecting the transfer.

A fresh Proposal Form duly completed is to be obtained from the transferee in respect of both Liability Only and Package Policies.

Transfer of Package Policy in the name of the transferee can be done only on getting acceptable evidence of sale and a fresh proposal form duly filled and signed. The old Certificate of

Insurance for the vehicle, is required to be surrendered and a fee of Rs. 50 is to be collected for issue of fresh Certificate in the name of the transferee. If for any reason, the old Certificate of Insurance cannot be surrendered, a proper declaration to that effect is to be taken from the transferee before a new Certificate of Insurance is issued."

(7) The National Commission's judgement relied upon was on the basis of the earlier transfer provisions G.R. 10 which were in force up to 30th June, 2002 and thereafter the above mentioned transfer provisions have been incorporated. The aforementioned G.R. 17 makes it absolutely obligatory for a transferee to apply within a period of 14 days from the date of transfer in writing to the insurer of the vehicle giving the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner, the details of the policy as also the evidence of sale and fresh proposal form duly filled and signed. He is also required to surrender the old certificate and to pay a fee of Rs. 50 for issue of the fresh certificate in the name of the transferee. Thus, there is no automatic transfer in favour of the transferee to enable him to take the benefit of damage to the vehicle in the hands of transferee although the insurance is liable to 3rd party under Section 157 of the Motor Vehicle act, 1988. In so far the liability towards the 3rd party is concerned, Hon'ble Supreme Court has clarified this position in a case titled as **G. Govindan** *versus* **New India Assurance Co. Ltd. and others,** (2) wherein it has been ruled that where the accident is caused by a vehicle in the hands of a transferee without the insuance policy being transferred, the insurer is liable to compensate the victim irrespective of non-communication of the transfer to the insurance company.

(8) In view of the above legal position, this petition is allowed. Impugned order passed by the Permanent Lok Adalat is hereby set aside and the claim petition of respodent No. 2 is dismissed. In the facts and circumstances of the case without any order as to costs.

R.N.R.

(2) AIR 1999 S.C. 1398