

ONE HUNDRED AND SIXTH REPORT

ON

SECTION 103A, MOTOR VEHICLES ACT, 1939:

EFFECT OF TRANSFER OF A MOTOR VEHICLE ON INSURANCE

NOVEMBER, 1984.

Justice K.K. Mathew

D.O.No. F.2(7)/84-1G.

Dated, the 30th Novr. ,1984.

My dear Minister,

I am forwarding herewith the One Hundred and Sixth Report of the Law Commission on "SECTION 103A, MOTOR VEHICLES ACT, 1939: EFFECT OF TRANSFER OF A MOTOR VEHICLE ON INSURANCE." The subject was taken up by the Law Commission on its own.

The Commission is indebted to Shri P.M.Bakshi, Part-time Member, and Shri A.K.Srinivasamurthy, Member-Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,

*K.K-14*

( K.K. Mathew )

*cf/c*

Shri Jagannath Kaushal,  
Hon'ble Minister of Law  
and Justice,  
New Delhi.

Encl: 106th report.

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## CHAPTER I

### INTRODUCTORY

The question for consideration.

1.1. This Report deals with a point which is of direct relevance to the cause of social justice. Briefly, the issue to be dealt with is this: when the ownership of a motor vehicle is transferred, does the transferee also become vested with ownership of the benefits under the policy of insurance relating to the motor vehicle or if not does the law stand in need of reform?

Importance of the subject.

1.2. The matter is of some practical importance, and the subject needs to be considered at some length, because the present law does not achieve full justice. The threads of controversy have somehow got entangled; and if one is to have a clear picture of the law on the subject, one has to bear in mind several aspects relevant to the transfer of a motor vehicle.<sup>1</sup> By reason of the complicated nature of the legal position, the interests of social justice have suffered seriously,<sup>2</sup> in the context of effective recovery of compensation for accidents caused by motor vehicles.<sup>3</sup>

In view of the importance of the matter, the Law Commission has taken up the subject of its own.

Working Paper issued by the Commission.

1.3. The Law Commission had prepared and circulated on the subject a Working Paper<sup>4</sup> for inviting the opinion of interested persons and bodies. Points made in the comments on the Working Paper<sup>5</sup> will be referred to, in due course. At this stage, it may be mentioned that comments have been received from the following :-

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1. Chapter 2, infra.
  2. Chapter 3, infra.
  3. See Paragraph 2.14 infra.
  4. Law Commission of India, Working Paper on section 103 of Motor Vehicle Act, 1939; effect of transfer of a motor vehicle on insurance (21st May 1984).
  5. All comments received upto (21st May 1984) the signing of this Report have been covered.

- (a) Government of India in the appropriate<sup>1</sup> Ministry,
- (b) The Controller of Insurance, Government<sup>1a</sup> of India, Department of Insurance,
- (c) three State Governments,
- (d) five High Courts,<sup>2</sup> and
- (e) one lawyer's association<sup>3</sup> (Incorporated Law Society/Calcutta)

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Comments received will be dealt with later.

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- 1. Law Commission File No.F.2(7)84-L.C. S.No.3 (Ministry of Shipping and Transport, Transport Wing).
  - 1a. Law Commission File No.F.2(7)/84 L.C. letter of the Controller of Insurance dated 28th August, 1984.
  - 2. Law Commission File No.2(7)/84-L.C. S.No. 6, 8 and 9.
  - 3. Law Commission File No.F.2(7)/84-L.C. S.No. 3, 4, 10 and 11 and Law Commission's File No.F.2(1)84-LC., S.No.14.
  - 4. Law Commission File No.F.2(7)/84-L.C., S.No. 5.
  - 5. Chapter 4, infra.

CHAPTER 2

THE PRESENT LAW

**Three stages.**

2.1. There are three important chronological stages relevant to the issue now being considered. The most convenient course would be to state the present law with reference to each of these three stages.

2.2. The first stage is the transfer of the ownership of the motor vehicle from the previous owner to the subsequent owner. This stage is primarily governed by the sale of Goods Act. As a matter of the law governing the sale of goods, ownership of the motor vehicle may pass to the purchaser at the specified time. However, the mere fact that the transfer has been effectively achieved for purposes of the general law does not solve the question now under consideration, which relates to the transfer of insurance. Transfer of property in the vehicle does not, in itself, carry a transfer of insurance in favour of the purchaser of the vehicle.

2.3. The second stage is represented by transfer of the registration certificate of the vehicle in favour of the transferee. This stage is important from the point of view of the administrative provisions of the Motor Vehicles Act. But, here again, the transfer of registration does not, in itself, transfer the benefit of insurance of the vehicle to the transferee. The mere fact that the registration of the vehicle was transferred to the transferee may not, in itself, justify the conclusion that the policy also stood transferred to the transferee. This, at least, is the view of the Madhya Pradesh<sup>2</sup> and the Rajasthan High Court<sup>3</sup>, dissenting from the

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1. Paragraph 1.1, supra.

2. Gyarsilal v. Pandit Sitacharan Dubey, A.I.R. 1963 H.P. 164.

3. Motor Owners' Insurance Co. v. Khetpal Singh, A.I.R. 1983 Raj. 83 (May).

Calcutta view on the subject.<sup>1</sup>

Effect of  
transfer  
of regis-  
tration.  
(Section 31)

2.4. Construing section 31 of the Motor Vehicles Act, 1939, the Orissa High Court has held as under :-<sup>2</sup>

- (a) The provisions of the Act have nothing to do with the ownership of a motor vehicle. They provide only for regulation of the use of the motor vehicles in public places.
- (b) The certificate of registration is not a document of title, but it is a piece of evidence to show the owner of the vehicle, who is liable to pay taxes and to perform the duties and obligations under the Act. There is nothing in the act to indicate that it is the registered owner who shall be liable to pay compensation.

2.5. Conversely, a change of registration under section 31 of the Motor Vehicles Act is not a condition precedent to the transfer of ownership of the vehicle. Section 31 merely imposes, both on the transferor and on the transferee, the obligation to notify the transfer. Non-compliance with it would not, however, invalidate the transfer as such, which has already taken place.

2.6. The third chronological stage relevant to the issue under discussion is the formal transfer of the insurance benefit to the transferee. It is only when such a transfer is effected that the transferee of the motor vehicle gets the benefit of insurance. Consequentially, for any injury caused by any accident

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1. Bir Singh v. Hashi Rashi Banerjee, A.I.R. 1956 Cal. 555.

2. Panda v. Premlata Choudhury, A.I.R. 1980 Orissa 102, following A.I.R. 1973 Orissa 166.

in the course of the driving of the vehicle by the transferee or his servant, the injured person cannot make any claim against the insurer before the insurance policy is formally transferred as above.

2.7. This position arises because the majority of High Courts have taken the view that upon the transfer of ownership of a vehicle, the insurance policy comes to an end, and, in the absence of a stipulation to the contrary, the benefit of the policy is not available to the transferee without an express agreement with the insurance company. Of the numerous rulings taking this view, some are referred to in the footnotes.<sup>1-7</sup>

2.8. The Andhra Pradesh High Court is the only one that takes a different view on the subject.<sup>8</sup>

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1. Oriental Fire & General Insurance Co. v. Vimal Rai, A.I.R. 1973 Delhi 115.
  2. United India Fire & General Insurance Co. v. Chennamma, A.I.R. 1982 Kar 1.
  3. National Insurance Co. v. Thekkevil Rajan, A.I.R. 1982 Ker. 354, 357, 358.
  4. Gyarsilal v. Pandit Sitacharan Dubey, A.I.R. 1963 M.P. 164.
  5. (a) M. Bhoopathy v. M.B. Vijayalakshmi, A.I.R. 1966 Mad. 244.  
(b) Hema Ramaswami v. K.M.V. Panjani, A.I.R. 1981 Mad 174 (1981, M.L.J. 182)  
(c) National Insurance Co. v. Thirumalai Annal, A.I.R. 1982 Mad. 83.  
(d) South India Insurance Co. v. Lakshmi, A.I.R. 1971 Mad. 347.
  6. P.K. Fanda v. Premalata Choudhury, A.I.R. 1980 Orissa 102.
  7. (a) Automobiles Transport (Rajasthan) Pvt. Ltd. v. Dewalal, A.I.R. 1977 Raj. 121.  
(b) Padmadevi v. Gurbaksh Singh, A.I.R. 1973 Raj. 317 is apparently not good law now.  
(c) Motor Owners' Insurance Co. v. Khetpal Singh, A.I.R. 1983 Raj.83 (May) (review cases). See also paragraphs 2.9. to 2.13, infra.
  8. Haji Zakaria v. Haosher Cama, A.I.R. 1977 M.P. 171



2.9. It is not as if the Motor Vehicles Act is totally silent on the subject. In 1969, the Act was amended by inserting, in the Act, section 103A which is intended to deal with the procedure to be followed for the transfer of an insurance certificate and the policy of insurance. The gist of the section may thus stated :-

(1) The transferor of a motor vehicle must apply in the prescribed form to the insurer for the transfer of the certificate of insurance and of the policy, in favour of the transferee.

(ii) Within fifteen days, the insurer must intimate to the transferor and the transferee the refusal, if any, to the transfer the certificate/the policy.

(iii) If no such intimation of refusal is given to both such persons within fifteen days, 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 the transfer.

(iv) On refusal by the insurer, the insurer is bound to refund to the transferee the amount, if any, which, under the term of the policy, he would have had to refund to the insured, i.e. the transferor, for the unexpired term of the policy.

2.10. However, section 103A of the Motor Vehicles Act summarised above, <sup>1</sup> is not comprehensive enough on the subject of effect of transfer of vehicle on the policy. For example, it leaves out cases where no

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1. Paragraph 2.9, supra.

intimation of transfer is given to the insurer. The hardship resulting from the present state of the law is apparent from the state of the case law.<sup>1</sup> It has been specifically pointed out in a Kerala case,<sup>2</sup> to which we shall have occasion to revert later.<sup>3</sup>

2.11. It has been specifically held in Karnataka that the insurer can raise the objection that the policy of insurance lapses on the transfer of a vehicle without notifying the insurer in the prescribed form under section 103A of the Motor Vehicles Act.<sup>4</sup>

2.12. It would, then, seem, that according to the view of most High Courts, the policy of insurance is effectively transferred to the transferee of a motor vehicle only on compliance with the formalities prescribed by section 103A of the Motor Vehicles Act.<sup>5</sup>

2.13. This is also the English law, as stated by Goodard J. and confirmed by the Court of Appeal.<sup>6</sup> In fact, in one of the decisions of the House of Lords reported in 1931, Lord Buckmaster had expressed himself thus:<sup>7</sup>

"To me this policy depends upon the hypothesis that there is, in fact, an insured car. When once the car, which is subject of this policy, is sold, the owner's rights in respect of it cease and the policy so far as the car is concerned is at an end."

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1. Chapter Paragraphs 2.14 and 2.15, infra.
  2. National Insurance Co. Ltd. v. Thekkeyil Rajan.
  3. Paragraph 3.4, infra.
  4. United India Fire & General Insurance Co. Ltd. v. Chemmanura, A.I.R. 1982 Kar 1.
  5. For the gist of section 103A, see paragraph 2.9, supra.
  6. Peters v. General Accident & Life Assurance Corpn. Ltd. (1938) 2 All E.R. 267; 158 Law Times 476 (C.A.)
  7. Rogerson v. Scottish Automobiles etc. Insurance Co. Ltd. (1931) 48 T.L.R. 17; 146 L.T. 26 (H.L.). (1931) All E.R. Rep. 606 (H.L.).

2.14. The position as stated above may be technically correct in law, but it causes serious practical anomalies, and even injustice. Take the case of the transferee of the motor vehicle. Until the formalities<sup>1</sup> prescribed by section 103A of the Motor Vehicles Act are completed, the transferee has no protection in the nature of insurance. The premium towards the policy may have been paid in full by the transferor (for the relevant period), but its benefit does not travel to the transferee. Vested with the ownership of the vehicle, and acquiring use of the vehicle and control over it, the transferee becomes subject to all the risks that such ownership, use and control usually involve. This includes the risk of an accident, for which the transferee must pay compensation if someone is injured or killed. And yet, the transferee can recover nothing from the insurer, even though the policy covers third party liability, and is a subsisting one. This is anomalous.

2.15. The anomalies caused by the present position regarding the effect of transfer of a motor vehicle without transfer of the policy become apparent when one takes<sup>2</sup> actual cases. In a Punjab case, the transferor, who had transferred the motor vehicle, did not make any application for transfer of the insurance certificate. The transferee applied for transfer of the certificate on the 31st January, 1970, but, before that date, an accident took place on the 24th January of the same year. The accident took place after the transfer of ownership, but before the transfer of insurance. It was held that

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1. Punjab State v. Punjab
  2. Oriental Fire & General Insurance Co. Ltd. v. Sant Ram, A.I.R. 1981 P & H 143.

the transferee was not entitled to indemnity from the insurance company in respect of the accident. Thus, the transferee, even though he may incur liability towards third parties, does not get the benefit of the policy.

This seems highly anomalous. It is true that the transferee has not paid the premium, and therefore cannot feel aggrieved. But it is to be remembered that at least some person (the transferor) has paid the premium. Moreover, it is quite likely that the parties would have taken the premium into account in fixing the consideration.

2.16. From the point of view of the victim of an accident caused by a motor vehicle, again the present position causes serious hardship. Under the Motor Vehicles Act, the victim can enforce the liability arising from such accident, not only against the driver of the vehicle, but also against the insurer who has accepted third party risk. But this beneficial scheme may come to frustrated if the accident occurs after the transfer of the ownership of the vehicle, and the completion of the formalities prescribed by section 107A of the Motor Vehicles Act. This has been noticed in a Rajasthan case, to which we shall refer later.

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1. Paragraphs 3.2, and 3.3 infra.

CHAPTER 3  
NEED FOR REFORM

3.1: In the light of the last Chapter, the present position does not appear to be satisfactory. It causes injustice and confusion to the transferor, as well as the transferee and, - most of all, - to the victim of a motor vehicle accident who seeks compensation against the insurer.

3.2. In fact, the present position has not failed to provoke comments for law reform from the High Courts. The latest hint on the subject comes from the Rajasthan High Court. In the Rajasthan case, it was held (following a long line of decisions of various High Courts), that if, after the transfer of a motor vehicle to a third person, the insurance company is sought to be made liable to a third party in terms of sections 95(5) and 96 of the Motor Vehicles Act, 1939, the mere fact that the registration of the vehicle had been transferred was not enough; it must be shown that the fact of transfer was conveyed to the insurance company and accepted by it. This is because the contract of insurance is a contract of personal indemnity, which comes to an end when the vehicle is transferred to another person or when the insured person dies or becomes bankrupt. For this reason, the benefit of the policy of insurance could not after the transfer of the motor vehicle, be pursued against the insurance company. In view of the almost unanimous trend

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1. Paragraphs 2.14 and 2.15, supra.
  2. Paragraph 2.15, supra.
  3. Motor Owners' Insurance Co. Ltd. v. Khetpal Singh, A.I.R. 1983, Raj. 83, 90, para 25 (May).  
See further paragraph 3.3, infra.

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of judicial authority, the High Court had to come to this conclusion. However, this conclusion was arrived at very reluctantly.

3.3. The following observation made by Mr. Justice Dwarka Prasad, Acting Chief Justice, in his judgment in the Rajasthan case referred to above,<sup>2</sup> are pertinent as to the need for reform of the law :-

"The claim made by the injured against the insurance company fails and hence the same is dismissed as against the insurance company. It must be said that I have to come to the aforesaid conclusion with much regret, as in spite of the existence of the statutory provisions for compulsory insurance, persons injured in motor accidents are left with meagre prospects of obtaining compensation, without any fault of their own. The Government is well served, and with reason had the Motor Vehicles Act ensures to them that if they have the misfortune of being injured by a driver's negligence, they would at least get compensation for the injury received or their dependants would get reasonable compensation, if a person is killed in such an accident, knowing little about the pitfalls."

3.4. Further, the Kerala High Court had, while holding that section 105A of the Motor Vehicles Act, 1959 did not effectually transfer the insurance policy to the transferee of the motor vehicle, made the following observations for an amendment of the law :-<sup>3</sup>

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1. Chapter 2, supra.
  2. Motor Owners' Insurance Co. Ltd., v. Khetpal Singh, A.I.R. 1983 Raj. 83, 90 (May).
  3. National Insurance Co. Ltd. v. Thekkevil Rajan, A.I.R. 1982 Ker. 354, Paragraph 13 (December).

"It remains to be pointed out that section 103A does not go the whole way. No doubt, under that section, there is a fictional transfer of the certificate of insurance and the policy described in the certificate taken by the transferor of a vehicle to the transferee thereof, by providing that unless the insurer gives intimation of refusal to transfer the certificate of insurance and the policy mentioned therein to the transferee within 15 days of receipt of the application for transfer of the same in favour of the transferee, the same shall be deemed to have been transferred to the transferee with effect from the date of the transfer of the motor vehicle. However, the statute does not provide as to what is to happen if the transferor does not apply to transfer the insurance policy and certificate. The statute also does not provide for coverage by the insurer or 3rd party risk arising out of an accident that happens within the 15 days stated in the section - the insurer can very well in such an event refuse to transfer the certificate of insurance and the policy and avoid liability."

The Kerala judgment goes on to observe as under :-

"In view of the large use of motor vehicles on the road it appears to us that it is necessary that the legislature bestows its attention on these aspects and provide for such eventualities as are mentioned above. Perhaps the same could be achieved by providing for a statutory fictional transfer of the certificate of insurance and the policy mentioned therein automatically with the transfer of the vehicle, with the further provision that till the insurer repudiates the insurance and cancels the same with notice to the concerned authorities under the Motor Vehicles Act, the insurance policy shall be in force and that the same would not lapse on mere transfer of the vehicle in respect of which such policy has been taken."

CHAPTER 4

COMMENTS RECEIVED ON THE WORKING PAPER

4.1. As the law on the subject prima facie<sup>1</sup> appeared in need of reform, the Law Commission, in the Working Paper circulated on the subject, put forth the alternatives as to reform of the law, as follows:-

- (a) According to the first alternative, it was proposed that where transfer of a motor vehicle in favour of the transferee is recorded by the competent authority on the registration certificate, the insurance policy (or policies, if there be more than one) shall stand transferred to the transferee without the need of a fresh policy or a new licence or an endorsement or other formality. It can also be expressly provided that the transfer of a vehicle does not cause the policy to lapse. The provisions of section 103A of the Motor Vehicles Act, 1939 would, of course, need appropriate amendment for the purpose.
- (b) According to the second alternative, the proposal was that on the very transfer of ownership of a motor vehicle, the policy of insurance shall stand transferred to the transferee. This would mean that even the transfer of registration

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1. Working Paper circulated 31st May, 1984.



is not to be required. It was stated in the Working Paper that this might possibly raise some questions of proof. But it would be a simpler course than (b) above.

4.2. The Commission invited views on the subject, with specific reference to the question whether there was need to amend the Motor Vehicles Act, 1939, on the lines indicated above, and if so, which of the two alternatives put forth above should be adopted.

We give below the gist of the comments<sup>1</sup> received on the Working Paper.

4.3. At the outset, it may be stated that eleven Judges<sup>2</sup> of one High Court have no comments to offer. Some Judges<sup>3</sup> of another High Court have also no comments to offer.

4.4. Alternative (a) put forth in the Working Paper<sup>4</sup> has been preferred by the Government of Sikkim (though the Motor Vehicles Act does not apply in Sikkim),<sup>5</sup> and by the Incorporated Law Society, Calcutta.<sup>6</sup> The latter has further suggested that the provision should be phrased as under :-

"Upon the registration of the transfer of ownership of a motor vehicle, the existing policy of insurance in respect thereof shall be deemed to have been transferred to or in favour of the

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1. Comments received upto 31st October, 1984 have all been summarised.
  2. Law Commission File No. F.2(7)/84-L.C. S.No.3.
  3. Law Commission File No. F.2(7)/84-L.C.S.No.14.
  4. Paragraph 4.1(a), supra.
  5. Law Commission File No. F.2(7)/84-LC S.No.6.
  6. Law Commission File No. F.2(7)/84-LD. S.No.5.

transferee of the motor vehicle with effect from the date of transfer of the motor vehicle".

The Controller of Insurance, Government of India<sup>1</sup> (Department of Insurance), also favours the first alternative. He has raised the point that the police will issue summons only to the registered owner, and therefore, alternative at (a) is preferable.<sup>2</sup>

4.5. Alternative (b) put forth in the Working Paper<sup>3</sup> of the Law Commission has been favoured by the Government of India (Ministry of Shipping and Transport),<sup>4</sup> and also by two State Governments.<sup>5</sup> This alternative has been favoured by three High Courts also. The Judges<sup>6</sup> of one High Court who have favoured alternative (b) have expressed the view that this alternative would be more practicable. They have further made the suggestion that it may also be provided, as a requirement for every transfer of ownership of a motor vehicle, that "the transferor and transferee (should) intimate the insurer about such transfer as in section 31, deeming such intimation an application for the transfer of insurance." They have expressed the opinion that if these provisions are enacted, the lacuna pointed out<sup>7</sup> in the Kerala decision will probably be effectively filled up.

1. Law Commission File No.F.2(7)84-L.C. Comment of the Controller of Insurance, dated 28th August, 1984.
2. See further paragraph 5.4. infra.
3. Paragraph 4.1(b), supra.
4. Law Commission File No.F.2(7)/84-L.C.S.No.7
5. Law Commission File No.F.2(7)/84-L.C.S.Nos.9 and 10.
6. Madras High Court File No.F.2(7)/84-L.C.S.Nos.3,4,10341.
7. Law Commission File No.F.2(7)/84-L.C.S.No.4.
8. The reference seems to be to National Insurance Co.'s case, A.I.R. 1982 Ker. 354.

4.6. The State Government of Maharashtra, in its comment on the Working Paper issued by the Law Commission, has made a suggestion that the transferor must make to the insurer an application for transfer of the certificate of insurance and the policy, and, in case of the insurer's refusal, the transferee should not drive the vehicle in a public place without taking out a fresh insurance. The State Government further suggests penalisation of the failure to make an application for transfer of certificate of insurance and policy, and even suggests minimum sentence by amending section 125 of the Motor Vehicles Act, 1939. We have found ourselves unable to agree with the suggestion. It would hardly meet the demands of social justice and would not achieve the objectives underlying the proposal for reform as put forth in the Working Paper. Such a cumbersome procedure as is envisaged in the comment would leave matters substantially as they are. In practice, it is bound to raise various factual controversies as to when the application for transfer (as envisaged) was made, when it was refused, when the letter of refusal was received by the transferee. We see no need for keeping the law encumbered with such controversies.

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Reference is made to the Working Paper No. 107/1981-L.C. letter of the Secretary, Law Commission, Department, Maharashtra, No. LAC 1084/625(72) dated 21st September, 1984.

CHAPTER 5.

RECOMMENDATION

5.1. Having taken into account the present state of the law,<sup>1</sup> and the hardship caused thereby, and having considered ~~x~~ the various shades of view expressed in the comments received on the Working Paper,<sup>2-3</sup> the Law Commission has come to the conclusion that -

- (a) an amendment of the law is badly needed; and
- (b) the amendment should proceed on the basis that on the transfer of ownership of a motor vehicle, the policy of insurance shall stand transferred to the transferee from the date of transfer of ownership.

In other words, the Commission favours the second alternative out of the two alternatives - (a) and (b) - which were put forth in the Working Paper.<sup>4</sup> A point concerning notice will be dealt with in the detailed recommendation.<sup>5</sup>

5.2. The alternative favoured by us - automatic transfer<sup>6</sup> of insurance benefit on transfer of the vehicle - appears to be badly needed, in order to eliminate the serious anomalies that arise under the present law.

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- 1. Chapter 2, supra.
  - 2. Chapter 3, supra.
  - 3. Chapter 4, supra.
  - 4. Paragraph 4.1(b), supra.
  - 5. Paragraph 5.8, supra.
  - 6. Paragraph 5.1, supra.

If the other alternative - i.e. waiting for transfer of registration - is adopted, there will result considerable delay in the effective transfer of insurance benefits. It would mean that during the inter-regnum (i.e. during the period of transition of ownership and transfer of registration):

- (a) the vehicle would have been transferred (physically and legally) to the transferee, who (or whose employees) might be operating it;
- (b) and yet, a victim of an accident caused by the operation of the vehicle by the transferee, and entitled in law to be compensated, cannot enforce the liability against the insurer, since the insurer can take the plea that the transferee of the vehicle does not automatically become entitled to the benefit of the insurance;
- (c) the transferee of the vehicle himself would remain uncovered by insurance against the risks usually covered by policies of insurance of motor vehicles;
- (d) the transferor may, in theory, be entitled to the benefit of the insurance, but, as regards him, it is only a right of academic interest, because, having parted with the ownership of the vehicle, he does not need any protection.

Simpler  
scheme  
preferred.

5.3. For all these reasons, we prefer the simpler scheme of automatic transfer of insurance rights on transfer of ownership of the vehicle. As already stated, a point concerning notice will be dealt with, in the detailed recommendation that will be made in due course.

The  
question  
of issue  
of  
summons.

5.4. In the comment received on the Working Paper from the Controller of Insurance, the point has been raised that the alternative (a) of the Working Paper<sup>3</sup> should be preferred, as the police will always issue summons to the owner of the vehicle as registered, and therefore the benefit of insurance should be transferred to the transferee only from the date of registration. We do not, however, think that this, in itself, can constitute a sufficient reason for adoption of the second alternative (transfer of benefit of insurance on transfer of ownership). The issue of summons at the instance of the police is a matter concerned with criminal proceedings, and can arise only if there is a charge of an offence, either under the general law or under the Motor Vehicles Act. If a person, after having transferred ownership of the vehicle, still continues to operate the vehicle and gets involved in an accident attracting criminal liability, he has himself to blame. In any case, the policy of insurance has nothing to do with his criminal liability, and questions as to its effective date of transfer have therefore no direct relevance to criminal proceedings or investigation into offences.

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1. See Paragraph 5.8, infra.

2. Paragraph 4.4, supra (Controller of Insurance).

3. Paragraph 4.1 (a), supra.

Para  
5.4.  
contd.

As regards the civil liability to pay compensation for harm caused by an accident, after transfer of ownership and control of the owner, a person cannot be held liable for an accident caused by the car if he ( or his employee) was not driving the vehicle at the time of the driving.

Questions  
of  
proof.

5.5. Before coming to a firm conclusion<sup>1</sup> on the subject as indicated above, we have given some thought to the question of proof.<sup>2</sup> In fact, in the Working Paper,<sup>2</sup> we had made a specific reference to this aspect - without, of course, expressing any final view on the point. However, looking to the enthusiasm shown in favour of adopting this particular alternative<sup>3</sup> in the comments received on the Working Paper,<sup>3</sup> we think that no serious practical difficulties should arise on this score. The views expressed in the comments regard this alternative<sup>4</sup> as the more practicable. Apart from the<sup>4</sup> comments, we ourselves have tried to explore all possible difficulties of proof, and we have come to the conclusion that there should be none. Incidentally, the transferee of ownership would normally be in possession of the vehicle, and that itself is prima facie evidence of<sup>5</sup> ownership.

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1. Paragraph 5.3, supra.
  2. Paragraph 4.1(b), supra.
  3. Chapter 4, supra.
  4. Law Commission File No. F.2(7)/84-L.C. S.No.4.
  5. Section 110, Indian Evidence Act, 1872.

to  
serious  
possibi-  
lity of  
baseless  
claims.

Will there be many baseless  
claims for the insurance benefit, if  
the mere transfer of ownership is to  
have the effect of transfer of the benefit  
(as proposed)? We do not think so.  
Most claims against the insurer, in  
practice, are for re-imbusement in  
respect of -

- (i) total loss of the  
vehicle (e.g. by theft  
or fire); or
- (ii) damage caused to the  
vehicle by accident  
caused by another  
vehicle; or
- (iii) third party claims.

A person who has not acquired  
physical possession of the vehicle as a  
trustee will hardly, if ever, make  
such a claim. In general, he would put  
in a claim for total loss of, or partial  
damage, to the vehicle, only if he had  
actual possession of the vehicle.  
Similarly, before he claims re-imbusement  
for third party claims, he will have to  
substantiate that he ( or his employee) was  
actually operating the vehicle. These  
requirements should be enough to rule out  
baseless claims.



idea of  
transfer  
to be  
condition  
precedent  
transfer  
rights.

5.7. We do not also think it necessary that intimation of transfer to the insurer should be a condition precedent. In practice, such an intimation will be given in most cases, since the transferee would like to ensure that the renewal notice comes to his address. But we do not think that such an intimation should be made a condition precedent for transferring, to the transferee, the benefit of insurance. We are advertent to this aspect, because our comment received on the Working Paper issued by us makes such a suggestion.<sup>1</sup>

All that we would recommend is, that if notice of transfer of the motor vehicle has not been given by the transferor or the transferee before the institution of a suit based on the policy of insurance, the court may take that fact into account in awarding costs in such suit.

Recommendation to revise section 103A, Motor Vehicles Act, and for consequential changes.

5.8. In the light of what we have stated above, we recommend that section 103A, Motor Vehicles Act, 1939,<sup>2</sup> should be revised on the lines indicated in this chapter. The gist of what we have in mind regarding section 103A<sup>3</sup> is as under:

- (a) Upon the transfer of ownership in a motor vehicle, the policy of insurance in respect thereof shall stand transferred to the transferee with effect from the date of such transfer of ownership.

Such consequential changes as may be necessary in the other provisions of the act, and in the rules issued under the act, shall also be carried out.

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1. Paragraph 4.5, supra.
  2. Paragraphs 5.1 (ii) and 5.7, supra.
  3. This is not a draft amendment.

(b) If notice of transfer of the motor vehicle has not been given by the transferor or the transferee, before the institution by the transferee of a suit against the insurer based on the policy of insurance, the court may take that fact into account in awarding costs in such a suit.

(K.K. MATHEW)  
CHAIRMAN

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*P. M. Bakshi*

(VEER P. SARATHI)  
PART-TIME MEMBER

*Veer P. Sarathi*

(A.P. SRINIVASAMURTHY)  
GENERAL SECRETARY

*A. P. Srinivasamurthy*

DATED: 30<sup>th</sup> Novr., 1984