
(2002) 08 AP CK 0039

In the Andhra Pradesh High Court

Case No : A.A.O. No's. 95, 339 and 688 of 1998

Branch Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Vibudhi Durgaiyah and Others

RESPONDENT

Date of Decision : 20-08-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2004) ACJ 1462 : (2003) 1 ALT 72 : (2002) 2 APLJ 478

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; K.V. Prasad Rao and Govardhana Chary, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The three civil miscellaneous appeals arise out of a common award/order dated 17.10.1996 passed by the Motor Accidents Claims Tribunal-cum-District Judge, Nalgonda (M.A.C.T.). New India Assurance Co. is the appellant. The insurance company is not aggrieved by the quantum of compensation. The appeals are filed questioning the finding of learned Tribunal holding that the appellant is liable to pay compensation to the respondents-claimants notwithstanding the fact that the claimants were owners of the goods travelling in a goods carriage which was insured with the appellant. The appellant is also not questioning the finding of the Tribunal that the accident occurred due to rash and negligent driving of the lorry involved in the accident which is owned by one B. Ashok Kumar, who is arrayed as a respondent in these appeals.

2. On 17.9.1992, all the claimants-respondents were travelling in a lorry bearing No. ADQ 4000 along with the goods like cots, utensils, cycles, bed sheets, mats, etc. They were labourers and beggars and going from Gandhamvarigudem village to Gurrampode for their livelihood. They paid the requisite charges to the owner of the vehicle. At about 9 a.m., the lorry turned turtle due to rash and negligent driving of the vehicle and as a result of which five persons died and others

sustained injuries. Claimants filed O.P. Nos. 108 to 111 of 1993. The insurance company filed counter/written statement opposing the claims. Inter alia, the insurance company objected to the claims on the ground that the insurance policy in unequivocal terms excludes the risk of hired passengers and owners of goods in a goods carriage and, therefore, the insurance company is not liable to pay damages for the death or bodily injuries. The Tribunal examined PWs 1 to 3 who were claimants and marked Exhs. A-1 to A-6. The amount of compensation awarded to the claimants and the appeals arising therefrom are as follows:

----- C.M.A. -----					
No.	O.P.	No.	Compensation	Interest	
95	of 1998	108	of 1993	Rs. 32,616	12 per cent per annum from 1.3.2003 till the date of realisation
339	of 1998	110	of 1993	Rs. 25,000	12 per cent per annum from 1.3.2003 till the date of realisation
688	of 1998	109	of 1993	Rs. 71,040	12 per cent per annum from 1.3.2003 till the date of realisation

3. In these appeals, learned counsel for the appellant, Mr. Kota Subba Rao raised only contention that the insurance policy does not cover owners of the goods travelling in a goods carriage and, therefore, the insurance company is not liable to pay compensation. According to the learned counsel, the claimants were unauthorised passengers in the goods vehicle. Learned counsel for respondents-claimants, however, placing reliance on the judgment of the Apex Court in New India Assurance Company Vs. Shri Satpal Singh and Others, , submits that the insurance company is liable to pay compensation.

4. The only point that arises for consideration is whether the passengers including the owners of the goods travelling in a goods vehicle are entitled to claim compensation on account of death or bodily injury?

5. The question whether the insurance company is liable to pay compensation for the death or bodily injury of the owners of goods travelling in a goods carriage/ vehicle is no more res integra by reason of the judgment in Satpal Singh, 2000 ACT 1 (SC) in which, the Apex Court considered this question and laid down as under:

"Under Clause (ii) of the proviso to Section 95 (1) of the Motor Vehicles Act, 1939 (for short "the old Act") the insurance policy was not required to cover liability in respect of the death of or bodily injury to persons who were gratuitous passengers of that vehicle. But the proviso to Section 147(1) of the Motor Vehicles Act, 1988 (for short "the new Act") shows that it is a recast provision by placing the erstwhile Clause (iii) as the present Clause (ii). In other words, Clause (ii) of the proviso to Section 95 (1) of the old Act is totally non-existent in the proviso to Section 147(1) of the new Act. Moreover, u/s 147(2) of the new Act there is no upper limit for the insurer regarding the amount of compensation to be awarded in respect of death or bodily injury of a victim of the accident. It is, therefore, apparent that the limit contained in the old Act has been removed

and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle."

6. Mr. Kota Subba Rao, however, submits that the Apex Court in a subsequent decision in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , felt that the decision in *Satpal Singh (supra)*, requires reconsideration and accordingly referred the matter to a larger Bench. He further submits that a Division Bench of this court in *New India Assurance Co. Ltd. v. Nadella Venkata Subbamma*, 2002 ACJ 1985 (AP) and a learned single Judge of this court in *Soroju Satyavathi and others Vs. Oriental Insurance Company Limited, Vijayawada*, , have held that a gratuitous passenger and owner of the goods travelling in a goods vehicle are not included within the meaning "third party" and, therefore, insurance company is not liable to pay compensation. While placing reliance on these two judgments, the learned counsel brought to my notice two judgments of this court rendered by two learned Judges in *S. Lolakshi and another Vs. N. Tatiah and others*, and *New India Assurance Co., Ltd., Arundalpet, Guntur Vs. Thanichintala Venkaiah and another*, , wherein their Lordships have taken contra view and held that insurance company is liable to pay compensation even to owners of the goods travelling in a goods vehicle.

7. In these cases, the accident occurred on 17.9.1992, whereas by the Central Act 54 of 1994, Section 147(1)(b)(i) was amended making the insurance company liable for the death or bodily injury of even owner of goods or his/her authorised representative carried in the vehicle with effect from 14.11.1994.

8. In *S. Lolakshi and another Vs. N. Tatiah and others*, , His Lordship Justice Ghulam Mohammed, after referring to *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, , as well as *New India Assurance Company Vs. Shri Satpal Singh and Others*, , held that insurance company is liable to pay compensation under Motor Vehicles Act, 1988, even if a deceased was a gratuitous passenger irrespective of the type or class of vehicle in which he travelled. His Lordship observed as under:

"Having considered rival contentions of both the parties and having regard to the facts and circumstances of the case, the Supreme Court in *New India Assurance Company Vs. Shri Satpal Singh and Others*, , after examining Section 95 of the old Act and also Section 147 of the new Act, and after considering its judgments in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, , observed that under the new Act, an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of insurance company in respect of any accident which occurred or would occur after the new Act came into force."

9. In *New India Assurance Co., Ltd., Arundalpet, Guntur Vs. Thanichintala*

Venkaiah and another, , His Lordship Justice N.V. Ramana, considered the legislative history of Section 95 (1) (b) (i) of the Motor Vehicles Act, 1939 as well as the legislative history, before and after amendment, by Act 54 of 1994 of Section 147(1)(b)(i) of 1988 Act and having regard to the principles of interpretation, held:

"In view of the aforementioned discussion and the observations of the Apex Court, I hold that the words "any person" used in the pre-amended provisions of Section 147 of the new Act shall be interpreted to mean and include owner of the goods" and that u/s 147 of the pre-amending provisions of the new Act, the insurer is liable to pay compensation in the event of death or bodily injury to the owner of the goods also. The contentions advanced on behalf of appellant insurer are rejected and the point is answered accordingly."

10. His Lordship Justice N.V. Ramana also referred to a Division Bench judgment of Himachal Pradesh High Court in New India Assurance Co. Ltd. Vs. Rama Devi and Others, and a judgment of Orissa High Court in Jayanti Sahu and Others Vs. Rama Chandra Behera and Others, and a judgment of the Madras High Court in United India Insurance Company Ltd, Branch Office, Dharmapuri Vs. A. Govindan and another, and a Full Bench judgment of Kerala High Court in Oriental Insurance Co. Ltd. Vs. Ajayakumar and Others, and took a view that u/s 147(1) (b)(i), even before the amendment by Act 54 of 1994 (with effect from 14.11.1994), the insurance company is liable to pay compensation even for death or bodily injury to the owners of goods travelling in a goods vehicle. All the courts placed reliance on New India Assurance Company Vs. Shri Satpal Singh and Others, , which was a judgment delivered on 2.12.1999. This court is bound by the dicta in Satpal Singh and it would be grossly improper to ignore the binding precedent of the Apex Court.

11. In Soroju Satyavathi and others Vs. Oriental Insurance Company Limited, Vijayawada, , His Lordship has held that u/s 147(1)(b)(i) as it stood before amendment by Act 54 of 1994, the owner of the goods travelling in a goods vehicle is not covered by the insurance policy. The judgment was delivered on 29.8.2000. The judgment of Justice Ghulam Mohammed was rendered on 21.12.99, in which New India Assurance Company Vs. Shri Satpal Singh and Others, , was considered. The judgment in S. Lolakshi and another Vs. N. Tatiah and others, , was not brought to His Lordship's notice. Further, the case in Nadella Venkata Subbamma, 2002 ACJ 1985 (AP), decided by a Division Bench is a case where the deceased was travelling in a goods vehicle paying the fare/hire. It is not a case of owner of the goods travelling in the vehicle. Therefore, the said case can be distinguished. In view of the binding precedent in Satpal Singh (supra), which squarely applies to the facts of this case, the appeals are liable to be dismissed.

12. The learned counsel for the appellant Mr. Subba Rao, however, submits that New India Assurance Company Vs. Shri Satpal Singh and Others, , stands referred to a larger Bench and, therefore, this court may consider the effect of

the amendment of Sub-Clause (i) of Clause (b) of Sub-section (1) of Section 147 of the Act having regard to the judgment in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, . It is no doubt true that Section 95(1)(b)(i) (after amendment by Amendment Act 54 of 1994) of 1939 Act and Section 147(1)(b)(i) of 1988 Act were in pan materia. Ordinarily, when a provision is interpreted by Supreme Court, the High Court cannot interpret similar provision in a different manner. Further, in Mallawwa (supra), the Division Bench of the Supreme Court categorically held as under:

"The 1939 Act is now replaced by the 1988 Act. Section 147 which corresponds to the old Section 95 has been substantially altered by the legislature. Therefore, the above interpretation of Section 95 of the 1939 Act will govern the cases which have arisen under the 1939 Act. According to our interpretation of Section 95(1) (b) (i) and the proviso, the appeals filed by the insurance company are allowed. In SLP (C) Nos. 10745, 10747 and 10748 of 1995 filed by the insurance company, "leave" is granted and those appeals are also allowed. The appeals filed by the claimants/ owners of the vehicles are dismissed. SLP (C) No. 9727 of 1989 filed by the owner of the vehicle is also dismissed."

13. In view of the binding obiter as above, Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , would govern the cases arising under 1939 Act and it is always permissible for the High Court to take a different view. That also would not arise having regard to the case of New India Assurance Company Vs. Shri Satpal Singh and Others, .

14. In my considered opinion, when a judgment of the Supreme Court which is binding on the High Court, is referred to a larger Bench by a subsequent Bench of equal strength, the same does not take away the binding effect of the earlier Apex Court judgment. A reference may be made to the judgments of the Supreme Court in State of Orissa Vs. Dandasi Sahu, and State of Rajasthan Vs. R.S. Sharma and Co., .

15. In State of Orissa Vs. Dandasi Sahu, , an award passed under the Arbitration Act and upheld by the High Court of Orissa was challenged before the Supreme Court, inter alia, on the ground that the question of validity of non-reasoned award is awaiting determination of a larger Bench of the Supreme Court and, therefore, the matter may await the decision of the larger Bench. The Supreme Court while rejecting the said contention, laid down as under:

"In that view of the matter, we think that the pendency of this point before the larger Bench should not postpone the adjudication and disposal of this appeal in the facts of this case. The law as it stands today is that award without reasons are not bad per se. Indeed, an award can be set aside only on the ground of misconduct or on an error of law apparent on the face of the award. This is the state of law as it is today and in that context the contention that the award being an unreasoned one is per se bad, has no place on this aspect as the law is now..."

16. In State of Rajasthan Vs. R.S. Sharma and Co., , also, similar observations

were made to the following effect:

"The law as it stands today is clear that unless there is an error of law apparent on the face of the award, the award cannot be challenged merely on the ground of absence of reasons. This is settled law by a long series of decisions. Interests of justice and administration of justice would not be served by keeping at bay final adjudication of the controversy in this case on the plea that the question whether an unreasoned award is bad or not, is pending adjudication by a larger Bench."

17. Under the Motor Vehicles Act, the claims arising out of death or injury need expeditious disposal. In these matters, the accident occurred in the year 1992. Therefore, the cases will not brook further delay, especially when there is binding principle of law laid down by the Supreme Court.

18. In the result, for the foregoing reasons, following the judgment in New India Assurance Company Vs. Shri Satpal Singh and Others, , the appeals are dismissed. No costs.