

(2003) 02 KAR CK 0108

In the Karnataka High Court

Case No : Civil Revision Petition No. 2154 of 2002

Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Shankra Naika and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Karnataka Motor Vehicles Rules, 1989 — Rule 100
Motor Vehicles Act, 1988 — Section 147, 147 (1)

Citation : (2004) ACJ 1753 : (2003) 4 KCCR 318 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy, for the Appellant; R.G. Mogali and R.S. Hegde, for the Respondent

Judgement

N.K. Patil, J.—These revision petitions are directed against the common judgment and award dated 5.2.2002 passed by the M.A.C.T. No. II, Bellary, in M.V.C. Nos. 634, 635, 636, 637, 638, 639, 640, 641, 646, 648, 679, 680, 567, 681 of 1992, 73 of 1993, 76 of 1993, 568 of 1992, 78 of 1993, 569, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633 of 1992 and 79 of 1993.

2. The case of the petitioner insurance company is that the respondent No. 2 being the owner of lorry bearing No. KA 25-2059 was carrying more than 40 labourers in the lorry on 17.7.1992 and 42 claim petitions were lodged before the M.A.C.T. seeking compensation for the personal injuries and death. The petitioner got marked Exhs. R-1 to R-6 including the amount deposited by the petitioner in W.C. Nos. 213 of 1996, 214 of 1996 and 26 of 1993 which were lodged by the employees of the owner of lorry. The Tribunal has proceeded to fasten the liability on the petitioner on the sole ground that the occupants were not unauthorised passengers and as such, petitioner is liable to pay compensation.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for respondent No. 2. The claimants are served but unrepresented. Notice to

respondent No. 3 is dispensed with in view of the fact that he has not contested the matter and remained ex pane before the Tribunal.

4. The principal submission canvassed by the learned counsel for the petitioner is that, following the law laid down in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, , the Tribunal has fastened the liability on the petitioner. He contended that the said decision has been overruled by a larger Bench of the Supreme Court in case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, and, therefore, the impugned judgment and award fastening the liability on the petitioner is not at-all sustainable. Further, he vehemently submitted that the Tribunal should have dismissed the claim petitions as the vehicle involved in the accident is a Tata Tipper and the coolies need not be carried for the use of the vehicle of the insured under the terms and conditions of the policy of insurance. It is contended by him that the Tribunal should have noticed that the vehicle involved is a goods vehicle, that too, a Tata Tipper which has no permit to carry passengers or coolies in excess of 6 numbers as per rule 100 of the Karnataka Motor Vehicles Rules. Further, he contended that Tribunal should have noticed that the coverage u/s 147(1) of the Motor Vehicles Act, is not to use the goods vehicle for transporting labourers from one place to another and carrying more than the permitted capacity is violative of the terms and conditions of the policy of insurance and as such, the entire claim petitions should have been dismissed at the threshold. It is also his contention that the Claims Tribunal should have noticed that the petitioner has already satisfied three claims which were lodged before the Commissioner for Workmen's Compensation and as such the liability to indemnify the insured would be in respect of another 3 cases only. He submitted that the Tribunal has failed to consider the permit violation while deciding the liability of the petitioner and that the impugned judgment and award is opposed to the ratio laid down in National Insurance Co. Ltd. Vs. Dundamma and others, and Oriental Insurance Co. Ltd. Vs. Smt. Irawwa and others, . Further, he pointed out that the Tribunal has given a finding that "Exh. R-4 has no bearing to the claim petitions. Foregoing contentions canvassed by the learned counsel for the insurance company cannot be disputed and are not disputed". He contended that when once such a finding has been given, the Tribunal ought not to have made the petitioner liable for payment of compensation to the claimants. He, therefore, prays that the finding of the Tribunal so far as fastening liability on the petitioner insurance company, be set aside.

5. Per contra, learned counsel appearing for respondent No. 2, inter alia, justified the impugned judgment and award and submitted that no error as such has been committed by the Tribunal in holding the petitioner insurance company liable to pay compensation to the claimants. To substantiate his submission, he strongly placed reliance on Exhs. R-4 and R-8 and submitted that these exhibits have been marked with the consent of the learned counsel appearing for respective parties and when once they consented for making of the said exhibits, the workers are covered under the workmen's compensation policy. He submitted

that the Tribunal has not at all taken into consideration this aspect of the matter nor has given any finding in this regard and, therefore, the impugned judgment and award may be set aside and the matter may be remitted back to the Claims Tribunal for reconsideration.

6. I have perused the impugned judgment and award and re-evaluated the entire material available on record.

7. The short question for consideration is whether the finding of the Tribunal fastening the liability on the petitioner insurance company, is in accordance with law?

8. The Tribunal has given a finding that the petitioner insurance company is liable to pay compensation to the injured claimants on the ground that they were not unauthorised passengers for hire or reward and at any rate, in each case on hand, liability of insurance company is governed by the decision of the Hon'ble Supreme Court in *New India Assurance Company Vs. Shri Satpal Singh and Others*, and subject to reconsideration by Full Bench, insurance company cannot be absolved from its liability. Therefore, it is clear that the liability has been fastened on the insurance company subject to reconsideration by Full Bench. As rightly pointed out by learned counsel for the petitioner, Satpal Singh's case has been reconsidered by a larger Bench of the Apex Court in the case of *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, wherein it is held that the decision in *New India Assurance Co. Ltd. v. Satpal Singh* (supra), has not laid down the law correctly and should be overruled. In view of the latest judgment of the larger Bench of the Apex Court as stated supra, the finding of the Tribunal based on the decision in Satpal Singh's case holding the insurance company liable to pay compensation, is not at all sustainable and it is liable to be set aside. The Supreme Court, considering the case of Satpal Singh's case, has held thus:

"In Satpal's case (supra), the court assumed that the provisions of Section 95 (1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles (Amendment) Act of 1994 is examined, particularly Section 46 of Act 54 of 1994 by which expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorised representative carried in the vehicle" the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or

his authorised representative being carried in the vehicle. The objects and reasons of Section 46 also states that it seeks to amend Section 147 to include the owner of the goods or his authorised representative carried in the vehicle for the purpose of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the preexisted expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand, it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this court in Satpal's case, therefore, must be held to have not been correctly decided." It is further held that:

"An owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid."

9. In the instant case, it is not the case of the respondent No. 2 that they have paid additional premium under the insurance policy and, therefore, in my considered view, the liability fastened on the petitioner by the Tribunal is not at all sustainable and it is liable to be set aside.

10. Further, it is significant to note that the Tribunal has considered the stand taken by the insurance company that workmen's compensation policy at Exh. R-4 has no bearing to claim petitions. Foregoing contentions canvassed by learned counsel for insurance company cannot be disputed and are not disputed. When once the said defence taken by the insurance company is accepted and not disputed, the Tribunal ought not to have held the insurance company liable to pay compensation to the claimants. Further, the learned counsel for the petitioner has relied on a judgment of the Constitutional Bench of the Apex Court reported in case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , wherein it is held that:

"The liability of insurance company could be statutory or contractual. The statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy

in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance which is not permissible."

11. If the law laid down by the Supreme Court in the decision in New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , is taken into consideration, the finding of the Tribunal holding the insurance company liable to pay compensation contrary to the policy covered, is not at all permissible. On this ground also, the judgment and award passed by the Tribunal is liable to be modified.

12. Having regard to the facts and circumstances of the case and taking into consideration the factual and legal aspect of the matter as enumerated above, I do not find any justification to sustain the impugned judgment and award fastening the liability on the petitioner. The same is modified by holding that the petitioner insurance company is not liable to pay compensation to the claimants. The impugned judgment and award in all other aspects remain undisturbed.

13. However, liberty is reserved to the respondent No. 2 to make appropriate application to the insurance company for payment of compensation covered under the Workmen's Compensation Act, if they are so advised. In case any representation/ application is filed by the respondent No. 2, the insurance company shall consider , the same and pass appropriate orders in accordance with law.