

(2007) 01 GAU CK 0001
In the Gauhati High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Mintu Debnath and Others		RESPONDENT

Date of Decision : 08-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151
Motor Vehicles Act, 1988 — Section 147, 149, 166, 173, 174

Citation : (2007) 2 GLT 490

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Sarma, J.—This appeal is filed u/s 173 of the Motor Vehicles Act, 1988, by the appellant Insurance Company challenging the legality and the validity of the judgment and Award dated 12.07.2004 passed by the learned Motor Accident Claims Tribunal in TS (MAC) Case No. 228/2003 awarding a sum of Rs. 2,76,000.00 to the claimant respondent directing to be indemnified by the appellant Insurance Company.

2. I have heard Mr. D.K. Biswas, learned Counsel for the appellant Insurance Company and Mr. Somik Deb, learned Counsel for the claimant respondent.

3. The claimant filed the claim petition u/s 166 of the Motor Vehicles Act, 1988, before the Motor Accident Claims Tribunal, Agartala registered as TS (MAC) No. 228/2002 praying for compensation amounting to Rs. 35,00,000.00 for the injuries sustained by him on account of vehicular accident that took place at Baramura on Assam Agartala Road alleging rash and negligent driving of the vehicle bearing registration No. TR-01 -A-1517 (Truck) wherein the claimant was travelling on the fateful day.

4. It is pleaded by the claimant respondent in the claim petition, inter alia, is that on 05.02.2002 while he was travelling in the offending vehicle from Ambasa to Agartala, the vehicle had suddenly fell down at Baramura range in the road side,

as a result of which the claimant respondent sustained severe injuries on hand, leg, chest and fingers. After the accident, the claimant was treated in the GB Hospital, Agartala as indoor patient from 05.02.2002 to 18.02.2002. The accident in question having been reported to the Officer-in-Charge, Champak Police Station, the GD Entry No. 115/2002 dated 05.02.2002 was recorded. It is further alleged that the claimant was referred to Dr. B.R. Ambedkar Memorial Hospital for further treatment of his injuries where he was treated as outdoor patient on 26.02.2002. Thereafter he was sent to Guwahati Regional Institute of Ophthalmology for further investigation and treatment. It is alleged that the treatment of the claimant respondent is still continuing and for such treatment he spent Rs. 55,000.00. By making such allegations, the claimant respondent prayed for compensation as aforesaid.

5. In the said claim petition, the claimant respondent impleaded the owner and the Insurance Company as party respondents. Though the name of the driver disclosed in the claim petition, he was not impleaded as party respondent to the proceeding. The owner of the vehicle did not file any written statement whereas the appellant Insurance Company contested the claim by filing written statement and denied the allegations made in the claim petition. It is also pleaded that the claim petition is bad for non-joinder of necessary parties; and that the claim petition is not maintainable; and that the appellant Insurance Company is not liable in any manner indemnify the claimant and that the claim is highly excessive; and that the claim petition is barred under the provisions of Section 149, Motor Vehicles Act, 1988. However, the appellant Insurance Company did not deny the fact that they are the insurer of the offending vehicle.

6. On the basis of the pleadings of the parties the learned Tribunal framed the following issues:

1. Whether the claimant - petitioner sustained injuries in a road traffic accident occurred on 05.02.2002 at about 15-30 hrs (ie, 3.30 PM) at Baramura Range, Baramura Assam-Agartala Road under Jirania Police Station due to rash and negligent driving of vehicle No TRO1 - A-1517(Truck)?

2. Is the claimant-petitioner entitled to get any compensation ?

3. If so, what should be the amount and who is liable to pay the compensation ?

7. During the course of hearing, the claimant examined himself as PW-1 and produced another witness in support of his case as PW-2. On the other hand, the appellant Insurance Company and the owner of the offending vehicle examined none. The claimant also produced certain documents as Ext-A series in support of his case.

8. The learned Tribunal vide impugned judgment and Award dated 12.07.2004 awarded a sum of Rs. 2,76,000.00 in favour of the claimant respondent to be indemnified by the appellant Insurance Company, deciding all the issues in favour of the claimant respondent. While deciding the Issue No. 1, the learned

Tribunal specifically held that as there is nothing on record which lead the learned Tribunal to opine contrary to the claim of the claimant that the driver of the offending vehicle has been driving the same in rash and negligent manner with high speed, the said issue was decided in favour of the claimant.

9. After passing the impugned judgment and Award, however, the appellant Insurance Company filed an application u/s 114 read with 151, CPC, for review of the impugned judgment and Award on the ground that the claimant respondent was only a gratuitous passenger in the offending vehicle which was only a goods carrying truck and not a passenger carrying vehicle and, as such, the appellant Insurance Company could not have been saddled with the liability to indemnify the Award so passed. The learned Tribunal after hearing the parties rejected the said review petition holding, inter alia, there is no necessity of reviewing the earlier judgment and Award by modifying or altering the same. Challenging the impugned judgment and Award as well as the order dated 15.09.2005, appellant Insurance Company filed a writ petition being W.P.(C) No. 499/2005. Thereafter having understood the non-maintainability of the writ petition, the appellant Insurance Company filed the present appeal challenging the impugned judgment and Award and accordingly, on the prayer of the appellant Insurance Company said writ petition was closed as infructuous, vide order dated 22.03.2006.

10. Since there was considerable delay in filing the present appeal, the appellant Insurance Company vide CMA No. 65/2006 prayed for condonation of delay by narrating the grounds for not filing the appeal within period of limitation and the said delay was condoned after hearing the claimant vide order dated 04.09.2006 and the appeal was admitted to be heard on merit.

11. The learned Counsel for the appellant submits that the impugned judgment and Award is vitiated as it was passed on apparent violation of the provisions of Section 149 of the Motor Vehicles Act, 1988, inasmuch as, the offending vehicle was only a truck and it was not authorized to carry any passenger and the claimant respondent was neither the owner nor the representative of any goods carried by the offending vehicle and was only a gratuitous passenger and, as such, in view of the provisions of Section 149, Motor Vehicles Act, 1988 as well as authoritative pronouncements of the Apex Court made in various cases deciding the extent of liability of the Insurance Company to indemnify the Award passed in favour of the injured gratuitous passenger, the impugned judgment and Award is not sustainable in law against the appellant.

12. The learned Counsel for the claimant respondent, on the other hand, submits that a review application having filed by the appellant Insurance Company against the impugned judgment and Award and the same having been rejected, the present appeal is not maintainable. It is further submitted that the claimant respondent is entitled for compensation even if he is treated as gratuitous passenger and such compensation to be indemnified by the appellant Insurance Company. Moreover, the claimant having been picked up in the vehicle for the purpose of repairing the vehicle of the owner, he cannot be treated as gratuitous

passenger of the offending vehicle and, as such, the learned Tribunal has rightly passed the impugned Award which requires no interference in this appeal.

13. During the course of hearing the following decisions were cited at the Bar.

- 1) Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others,
- 2) Shanker Motiram Nale VS . Shilolsing Gannusing Rajput, (1994) 2 SCC 753
- 3) New India Assurance Company Vs. Shri Satpal Singh and Others,
- 4) Ramesh Kumar Vs. National Insurance Co. Ltd. and Others,
- 5) (2003) 2 SCC 223 : (New India Assurance Co. Ltd. v. Asha Rani and Ors.
- 6) National Insurance Co. Ltd. Vs. Baljit Kaur and Others,
- 7) National Insurance Co. Ltd. Vs. V. Chinnamma and Others,
- 8) (2005) 11 SCC 419 : National Insurance Co. Ltd. v. Swaroopa and Ors.
- 9) Rekha Mukherjee Vs. Ashis Kumar Das and Others,

14. I have considered the rival submissions made by the learned Counsel for the parties. The broad facts as pleaded in the claim petition relating to the involvement of the offending vehicle in the accident, to put otherwise, that the claimant was injured while he was travelling in the offending vehicle on 05.02.2002 is not disputed at the Bar. The offending vehicle was insured during the relevant time with the appellant Insurance Company, which is an admitted fact. Records also disclose that the appellant Insurance Company before filing the writ petition, filed an application praying for reviewing the impugned judgment and Award, which stood rejected and thereafter, the appellant Insurance Company filed WP(C) No. 499/2005 and during the pendency of the writ petition, the present appeal was filed and accordingly, the writ petition was closed as infructuous. The learned Counsel for the respondent referring to Order 47, Rule 7, CPC, and being armed with the ratio of the decision in the case of Shanker Motiram Nale v. Shiolalsing Gannusing Rajput (supra) and Rekha Mukyharjee v. Ashis Kumar Das and Ors. (supra), submits that after rejection of the review application, the appeal itself is not maintainable.

15. In reply, the learned Counsel for the appellant, submits that the review application was filed on an erroneous conception/notion and having understood the same not being maintainable, the appellant though challenged the same by filing a writ petition later on challenged the original Award by filing this appeal in exercise of statutory remedy u/s 173 of the Motor Vehicles Act, 1988. The appellant specifically made such a statement in the Memo of appeal and the present appeal was admitted to be heard on merit and in this view of the matter, the objection raised on behalf of the respondent stands rejected.

16. Records of the case disclose that the appeal itself was admitted by condoning the delay and the appeal has been filed challenging the impugned Award dated

12.07.2004. The present appeal has not been filed against the review order dated 15.09.2005. The strict application of the provisions of CPC including the provisions of Order 47, Rule 7, CPC, is not applicable in a claim proceeding before the Tribunal. The learned Tribunal is regulated and guided by the provisions of the Motor Vehicles Act, 1988 and the rules framed thereunder for disposal of a claim case. Section 173, Motor Vehicles Act, 1988, is clear enough not to include the provisions of Order 47, Rule 7, CPC, in the matter of deciding the claim cases by the Tribunal. Consequently, this Court is not inclined to hold that this appeal is to be thrown away on the face of the order rejecting the prayer for review vide order dated 15.09.2005. The ratio of decision of the Apex Court in Shankar Motiram Nale (supra) and Rekha Mukharjee (supra) which, sought to be pressed into service by the learned Counsel for the respondent are not applicable in the facts of the instant appeal.

17. Now the question that remains for consideration is as to whether the claimant is a gratuitous passenger travelling in the offending vehicle on the fateful day and whether the appellant Insurance Company is liable to indemnify the Award so passed in his favour.

18. In the instant appeal, the appellant has not challenged any factual part of the impugned judgment and Award. In fact, they are not to do so, inasmuch as, they have not adduced any evidence before the learned Tribunal nor they questioned the allegation made by the claimant respondent in support of his case. The claim of the appellant is based purely on question of law as to whether the claimant respondent being a gratuitous passenger in a good vehicle and not being the representative of the owner of the goods carried by the offending vehicle, the Award is indemnifiable by the appellant Insurance Company.

19. Now let us survey the decisions of the Apex Court holding the field in this respect. In Satpal (supra), it was held by the Apex Court, inter alia, that "under Clause (ii) of the proviso to Section 95(1) of the Motor Vehicles Act, 1939, the insurance policy was not required to cover liability in respect of the death of or bodily injury to persons who are gratuitous passengers of that vehicle. But the proviso to Section 147(1) of the Motor Vehicles Act, 1988, 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 authorized representative carried in the vehicle."

20. The Apex Court in the case of New India Assurance Co. Ltd. v. Asha Rani and Ors. (supra), which is a later decision by which a three Judges Bench of the Supreme Court over-ruling the decision rendered in the case of Satpal Singh

(supra) held, inter alia, that--

In Satpal case 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 authorized 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 representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the 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 authorized representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if the 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 Clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorized representative carried in the vehicle for the purposes 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 continue that the expression "including owner of the goods or his authorized representative carried in the vehicle" which was added to the pre-existing 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 or his authorized 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 case therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.

21. Replying on the decision in the case of New India Assurance Co. Ltd. v. Asha Rani and Ors. (supra), the Apex Court in the case of Oriental Insurance Company

Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., held, inter alia, that Section 147 of the 1988 Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923. There is no reference to any passenger in "goods carriage" vehicle. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore.

22. In the case of Ramesh Kumar (supra) replying on the decision in the case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, the Apex Court held that the Insurance Company is not liable for any damage in cases of the gratuitous passengers including owner of the goods or his representative who travelled in a goods vehicle. It was declared that the liability to pay compensation to the claimants in respect of passengers travelling in a goods vehicle is not on the Insurance Company in terms of Section 95 of the 1939 Act, but in case the Insurance Company had made part or full payment towards such compensation awarded, the same shall not be refunded from the claimants but is recoverable by the Insurance Company from the owner. However, in the instant case so far as the claimant is concerned he was travelling in a goods vehicle after passing 1988 Act and prior to amendment made in the year 1994 as well as after amendment the Apex Court relying on the decision in the Case of Satpal Singh (supra) held that the Insurance Company to be liable. However, as noted above, in New India Assurance Co. Ltd. v. Asha Rani and Ors. (supra), a three Judges Bench of the Apex Court has over-ruled the decision in the case of Satpal Singh (supra).

23. The Apex Court, again in the case of National Insurance Co. Ltd. v. Baljit Kaur and Ors. (supra) relying on the decision of the New India Assurance Co. Ltd. v. Asha Rani and Ors. (supra), at paragraph 20 of the judgment has held:

It is, therefore, manifest that in spite of the amendments of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

24. The Apex Court in the Case of Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, relying on the decision in the case of National Insurance Co. Ltd. v. Baljit Kaur and Ors. (supra) directed the Insurance

Company to pay quantum of compensation fixed by the Tribunal about which there is no dispute. The Apex Court approved the rejection of the claim of the driver and the owner of the vehicle and directed the Insurance Company is not liable to indemnify the passenger travelling in the good vehicle.

25. Following the decision in the case of *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (supra), the Apex Court in the case of *National Insurance Co. Ltd. v. Chinnamma and Ors.* (supra), accepted the plea of the Insurance Company and absolved it from liability to indemnify the award.

26. In a recent decision, the Apex Court in the case of *National Insurance Co. Ltd. v. Swaroopa and Ors.* (supra) has reiterated that the decision in *Satpal Singh* (supra) has been over-ruled in the case of *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (supra), wherein it has been held that the Insurance Company will not be liable to pay any compensation to the gratuitous passenger being carried in a goods vehicle met with an accident and set aside the Award passed against the Insurance Company.

27. Thus on survey of the relevant decisions on the point involved, as disclosed above, go to show that the law as it stands today is that the Insurance Company is not liable to indemnify an Award passed in favour of a gratuitous passenger travelling in a goods vehicle, if he. is not the owner or representative of the goods carried in the vehicle.

28. The learned Counsel for the claimant respondent tried to distinguish the present case from the aforesaid ratio of various decisions of the Apex Court regarding liability of the Insurance Company under the aforesaid contingencies by submitting that in the instant case the accident took place on 05.02.2002 but the *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (supra) was decided on 03.12.2002 and accordingly, the ratio of decision of the aforesaid case is not applicable. Accordingly, the learned Counsel submits that the interpretation given by the Apex Court in the earlier decided case in *Satpal Singh* (supra) would be applicable and on such count the Insurance Company is liable to indemnify the award. Although the said argument sounds leaning in favour of the contention on initial flash, but on a closer scrutiny it is to be found that the same to be without any substance. The Apex Court right from the interpretation given in *Asha Rani and Ors.* (supra), over-ruling the decision in *Satpal Singh*'s case is unanimous on the issue that the Insurance Company is not liable to pay compensation in respect of death of or bodily injury that might cause to a gratuitous passenger travelling in a goods vehicle, which has been arrived at after forensic analysis of various provisions of the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988, both before and after the amendment made in the year 1994, considering various provisions covering the field. In fact, in *Asha Rani* (supra), the Apex Court has rendered interpretation of the relevant provisions of the Act and those provisions are already in existence in the statute and the ratio of the Apex Court is only declaratory in nature. In my considered opinion, although the accident took place prior to the decision rendered in *Asha Rani* (supra) the ratio of the

said case and the subsequent series of cases decided by the Apex Court referred to above case would be applicable in full spirit.

29. The alternative submission made by the learned Counsel for the respondent that the claimant respondent being a mechanic his service was hired by the owner of the offending vehicle and as he was picked up in the said goods vehicle for the purpose of repairing his vehicle, as such, he cannot be termed as gratuitous passenger. The aforesaid submission of the learned Counsel for the claimant respondent equally is a misconceived one, inasmuch as, such a situation or circumstances under which the claimant respondent travelled in the said goods vehicle will not exclude him from the category of gratuitous passenger travelling in a good vehicle. Accordingly, the said contention of the learned Counsel stands rejected.

Records disclose that in terms of the order dated 04.09.2006 passed in CMA No. 66/2006, the appellant has already deposited 50% of the awarded amount which was already withdrawn by the claimant respondent as stated at the Bar. In view of the aforesaid discussions, the Insurance Company is not required to pay the balance 50% of the awarded amount and the appellant would be entitled to recover the said 50% of the awarded amount from the owner of the offending vehicle by resorting to Section 174 of the Motor Vehicles Act, 1988 and by filing an application before the Motor Accident Claims Tribunal to that effect.

30. view of the aforesaid discussions, this appeal stands allowed and the Judgment and Award passed against the appellant Insurance Company and the direction made by the learned Tribunal saddling the liability in the appellant stands set aside and quashed. The owner of the vehicle has not challenged the Award and it would be responsibility and obligation of the owner of the vehicle to satisfy the entire sum awarded by the learned Tribunal.

No costs.