(2020) 02 RAJ CK 0496

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 262 Of 2001

National Insurance Company Ltd APPELLANT

Vs

Geeta And Ors RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(1)
Motor Vehicles Act, 1988 — Section 147, 147(1)

Citation : (2020) 02 RAJ CK 0496

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : UCS Singhvi

Final Decision : Allowed

Judgement

The present appeal is a result of an unfortunate accident that happened on 3.9.1995 when the deceased Mithulal with his wife Geeta was travelling in

a truck bearing No. RJ 14/G 3837 and when this truck reached near village Soniyana, a bus bearing No. RNE 7694 coming from opposite direction

collided with the truck and resulted in to the death of Mithulal.

Learned counsel for the appellant Insurance Company submits that Mithulal and Geeta were travelling as gratuitous passengers in the truck bearing

No. RJ 14/G 3837 on 3.9.1995 and thus, the insurance company cannot be held liable for paying compensation in question.

Learned counsel for the appellant Insurance Company has drawn attention towards the relevant part of the Tribunal where this preposition has been

dealt with and decided in favour of the claimants while relying on the judgment of New India Insurance Company Vs. Satpal reported in ACJ 2000 1

(SC) whereby it has been held that the gratuitous passenger shall be indemnified by the concerned insurance company. Learned counsel for the

appellant submits that thereafter a full bench of the Honâ??ble Apex Court in the matter of New India Assurance Co. Ltd. Vs. Asha Rani & Ors.

Reported in 2003 ACJ 1 has overruled the earlier preposition and now nowhere gratuitous passenger would be entitled for any indemnification by the

insurance company in question. Relevant para No. 9 and 13 read as under:-

â??9. In Satpalâ??s case, 2000 ACJ 1 (SC), the court assumed that the provisions of section 95 (1) of 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 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 authorized 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 of 1994 by which expression â??injury to any personâ?? in the original Act

stood substituted by the expression â??injury to any person, including owner of the goods or his authorized representative is irresistible that prior to

the aforesaid amendment Act of 1994, even if widest interpretation is given to the expression â??to any personâ?? it will not cover either the owner

of the goods or his authorized representative being carried in the vehicle. The objects and reasons of section 46 also states 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 some times the legislature amends the law by way of amplification and clarificaiton 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 expressionâ?? including owner of the goods or his authorized representative carried in the vehicleâ?? which was added to the pre existed

expression â??injury to any personâ?? 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 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 Satpalâ??s 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 goods or his authorized representative on being carried in

a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

30. For the foregoing reasons, I am in respectful agreement with my Lord the Chief Justice of India that the decision of this court in New India

Assurance Co. Ltd Vs. Satpal Singh, 2000 ACJ 1 (SC).â??

Further learned counsel for the appellant candidly admits that the complete compensation has already been paid to the claimants by the insurance

company.

After hearing learned counsel for the appellant and perusing the record of the case, this Court is of the opinion that the law relating to the

indemnification of the gratuitous passengers is no more a good law and the Honâ??ble Apex Court has already reversed the preposition and thus the

gratuitous passenger who is not owner of the goods and travelling in the goods vehicle would not be entitled for any indemnification by the insurance

company.

In light of such settled preposition, the present appeal is allowed to the extent that the liability in question shall be upon the owner and driver jointly and

severally. The insurance company shall accordingly be entitled to recover the amount already paid from the owner/driver jointly or severally.