

(2007) 01 JH CK 0016
In the Jharkhand High Court
Case No : M.A. No. 392 of 2003

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Sumitra Mahto and Others

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Motor Vehicles (Amendment) Act, 1994 — Section 46

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

Motor Vehicles Act, 1988 — Section 147, 147(1), 173

Citation : (2007) 2 BLJR 1347

Hon'ble Judges : M.Y. Eqbal, J;D.K. Sinha, J

Bench : Division Bench

Advocate : G.C. Jha, for the Appellant; Manoj Tondon, Arvind Kr. and Ashok Kr., for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal u/s 173 of the Motor Vehicles Act is directed against the judgment and award passed by the Motor Vehicle Accident Claims Tribunal, Jamshedpur in Compensation case No. 53/200 whereby he has awarded compensation of Rs. 2,24,000/- and directed the appellant-Insurance Company to pay the said amount.

2. The only question that falls for consideration in this appeal is as to whether in a case where the deceased was traveling in a goods vehicle along with his goods and met with an accident before the Amendment Act, 1994 came into force, the Insurance Company is liable to pay compensation.

3. Mr. G.C. Jha, learned Counsel appearing on behalf of the appellant Insurance Company submitted that Motor Vehicles Act was amended in 1994 with effect from 14.11.1994 by which in case of death of a person traveling in a goods carrying vehicle with his goods, the Insurance Company shall be held liable. Since the accident took place before the amendment came into force, the Insurance Company is not liable to pay the compensation amount. Learned

Counsel relied upon a decision rendered in the case of *New India Assurance Co. Ltd. v. Asha Rani and Ors.* 2003 (2) SCC 223 and in the case of *National Insurance Co. Ltd. Vs. Ajit Kumar and Others*, .

4. Learned Counsel appearing on behalf of the owner of the vehicle on the other hand, submitted that since no such defence was taken before the Tribunal, the appellant cannot be allowed to raise that point in this appeal.

5. Admittedly the vehicle in question is a goods carrying vehicle which was insured for the period 30.3.93 to 29.3.95. It is also not in dispute that the accident took place on 27.3.94 and the deceased who was traveling on the vehicle with his goods sustained injuries and died. The question, therefore, that is involved in this appeal is no longer *res-integra*. In *Asha Rani's* case (*supra*) the Supreme Court held that prior to amendment of the Act in 1994, the Insurance Company cannot be held liable for payment of compensation. Their lordships observed:

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 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 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 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, 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 to 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 authorized representative being carried in the vehicle. The objects and reasons of Clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorized representatives 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 word 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 authorized representative

carried in the vehicle" which was added to the pre-existing expression "injury to (sic) 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 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 according 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 being carried in a goods vehicle when that vehicle meet with an accident and the owner of the goods or his representative dies or suffers any bodily injury.

6. In National Insurance Co. Ltd. Vs. Ajit Kumar and Others, the Supreme Court reiterated the ratio decided in Asha Rani's case (supra). It was the specific defence of the appellant before the Tribunal that on breach of conditions of the policy, the Insurance Company cannot be fastened with the liability to pay compensation.

7. Be that as it may, the question that the Insurance Company has liability before 1994 amendment came into force, is a question of law which can be taken up at any stage of the proceeding. In the impugned judgment the Tribunal has not considered the question of liability of the Insurance Company in case where accident took place causing death or injury to the owner of the goods traveling in a goods carrying vehicle.

8. Having considered the entire facts of the case and the law discussed hereinabove, we are of the view that the Insurance Company has no liability for payment of compensation, rather it is the owner of the vehicle who shall be held liable for payment of compensation to the claimants.

9. For the aforesaid reason this appeal is allowed and the impugned judgment and award passed by the Tribunal is set aside. It is held that the compensation amount as assessed by the Tribunal shall be paid by the respondent-owner of the vehicle.

M.Y. Eqbal, J.

10. I agree.