
(2005) 06 BOM CK 0049
In the Bombay High Court
Case No : First Appeal No. 556 of 2004

New India Assurance Company Ltd.

APPELLANT

Vs

Diwakar Rohankar and Others

RESPONDENT

Date of Decision : 16-06-2005

Acts Referred:

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

Motor Vehicles Act, 1988 — Section 147, 147(1), 149(1), 149(2)

Citation : (2006) 2 ACC 254 : (2007) ACJ 215 : (2006) 1 ALLMR 321 : (2005) 6 BomCR 284 : (2005) 4 MhLj 773

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : A.J. Pophaly, for the Appellant; None for respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Heard the learned counsel for the parties finally.

2. This appeal can be disposed of at the admission stage itself because the question of law that arises for consideration is, whether the Insurance Company is liable in a case where the death occurs by travelling in a goods vehicle?

3. Mr. Pophaly, learned counsel for the appellant/Insurance Company contended that the accident occurred on 5-2-1993 at about 1.30 p.m. at village Sukli. The deceased female child Swati of the age of 11 years was travelling by sitting on the mud guard of the motor vehicle, i.e. tractor bearing registration No. MH-27/A-2354 owned by respondent No. 4 and driven by respondent No. 3.

4. The learned counsel for the appellant contended that the Insurance Company is not liable to pay the compensation in view of the decisions of Supreme Court in New India Assurance Com. Ltd. v. Asha Rani, AIR 2002 SCW 5259, National Insurance Co. Ltd. v. Ajit Kumar, 2003 (3) T.A.C. 273 and Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy, 2003 (2) Mh.L.J. 116 : AIR 2003 SCW 513.

5. The learned counsel for the appellant further contended that since the Insurance Company is not liable to pay compensation, the same may not be compelled to first pay to the claimants and then to recover the same from the owner in view of the decision of Supreme Court in the case of National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and in support of this contention he relied on the recent decision of Apex Court in National Insurance Co. Ltd. v. Bommithi Subbhavamma, 2005 (2) T.A.C. 1 wherein it has been made clear that the claimants would be entitled to recover the amount of compensation granted in their favour by the Motor Accident Claims Tribunal from the owner of the vehicle.

6. The learned counsel for respondents 3 and 4 supported the judgment and contended that the Claims Tribunal has rightly directed the appellant/Insurance Company. He also contended that the Tribunal was perfectly justified in holding that the Insurance Company would be jointly and severally liable to pay compensation to the claimants and no interference into the same is warranted and the appeal may kindly be dismissed.

7. This Court has given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. In Asha Rani's case, AIR 2002 SCW 5259, cited supra, the Apex Court while dealing with the question as to whether the Insurance Company would be liable to pay compensation to the legal representatives of the deceased travelling in a goods vehicle, has observed in paras 9 and 29 as under :

"In Satpal's case (supra) 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 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 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 6 of 1991 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 clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised 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 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 pre-existed 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 even in case of 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 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 authorised representative dies or suffers any bodily injury.

We may consider the matter from another angle. Section 149(2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of Sub-section (2) of Section 149 of the Act, one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in Satpal Singh's case (supra)."

8. The Apex Court also observed that for the foregoing reasons, the decision on the Supreme Court in *New India Assurance Company Vs. Shri Satpal Singh and Others*, , has not laid down the law correctly and should be overruled.

9. The decision in *Asha Rani's* case was subsequently followed by the Apex Court in *National Insurance Co. Ltd. v. Ajit Kumar*, 2003 (3) T.A.C. 273, cited supra and also in *Oriental Insurance Co. v. Devireddy Konda Reddy*, 2003 (2) MhL.J. 116 : AIR 2003 SCW 513 cited supra wherein it has been held as under :

"The difference in the language of "goods vehicle" as appearing in the old Act and goods carriage in the new Act is of significance. A bare reading of the provisions makes it clear that the legislative intent of new Act was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used in new Act is "goods carriage". Goods carriage is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the new 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". The inevitable conclusion, therefore, is that provisions of the new 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 therefor."

10. The Apex Court dealing with the same question has observed that it has followed the decision of Asha Rani's case and observed in paras 8 and 9 as under :

"Under the Motor Vehicles Act of 1939 the requirements of policies and limits of liability had been provided in Section 95. Proviso to Section 95(1) of the said Act unequivocally states that the policy shall not be required in case of a goods vehicle for passengers being carried in the said vehicle. In *Mallawwa (Smt.) and Ors. v. Oriental Insurance Co. Ltd and Ors.* (supra) while approving the earlier decision of the Court in *Pushpabai Purshottam Udeshi's case*, (1977) 2 SCC 749, the Court construed the provisions of Section 95(1)(b) of the Motor Vehicles Act, 1939 and held that while the expression "any person" and the expression "every motor vehicle" are in wide terms but by proviso (ii) it restricts the generality of the main provision by confining the requirement to cases where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, therefore, the vehicle had to be vehicle in which passengers are carried. The Court further held that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used on some stray occasions for carrying passengers for hire or reward. Undoubtedly *Mallawwa's case* (supra) was dealing with a situation under the Motor Vehicles Act, 1939.

In *Satpal's case* (supra), 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 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 Amended Act of 1994 is examined, particularly Section 46 of Act 6 of 1991 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 clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised 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 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 pre-existed expression "injury to any person" is either clarificatory or amplification of the preexisting 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 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 authorised 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."

11. Thus, having regard to the law position laid down by the Supreme Court, it is clear that the Insurance Company is not statutorily required to insure the passengers travelling in a goods vehicle and, as such, would not be liable to pay compensation. In the present case also admittedly the deceased was sitting on the mud guard of the tractor which is undoubtedly a goods carrier and in such circumstances the Insurance Company cannot be made liable to pay compensation to the respondents.

12. The learned counsel for the Insurance Company has rightly contended that in view of the decision of the Apex Court in National Insurance Co. Ltd. v. Bommithi Subbhayamma, cited supra the Insurance Company is not liable to pay compensation first to claimant and then to get it recovered from the owner as it is the owner of the goods vehicle who alone is liable to pay compensation.

13. In view of the aforesaid settled position of law, the appeal deserves to be allowed and it is made clear that the respondents/claimants would be entitled to recover the amount of compensation granted in their favour by the Motor Accident Claims Tribunal from the owner of the vehicle. The appeal is allowed. No costs.