

(2011) 01 P&H CK 0436

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 2801 of 2010 and FAO No's. 2802 to 2816 of 2010 and CR No. 5035 of 2010

New India Insurance Co. Ltd.

APPELLANT

Vs

Ram Avtar and Others

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 147, 147(2), 149, 149(2), 149(4)

Citation : (2011) 162 PLR 427

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—In all these cases, the only point urged is that the deceased and injured persons were traveling in a goods carriage as gratuitous passengers and there was no policy of insurance to cover the risk to such persons. The Tribunal did not consider such a plea by the Insurance Company nor did it frame any issue for consideration with reference to such a defense. However, I will not take that to be material since the parties went to trial knowing what the status was. The admissions in the petitions themselves were that all of them had boarded the goods carried to mourn the death of one Deep Chand. I will take the defense taken by the Insurance Company to be fundamental to cast the liability on the insurer and will not fetter this Court to consider whether a right of claim could be enforced against an insurer under such a circumstance. The law is too well laid down through the decisions of the Hon'ble Supreme Court and by a statutory interdict and a statutory provision for compulsory insurance as available only to owners of goods traveling along with the goods. The Insurance Company could not have been made liable particularly in view of the law laid down by the Hon'ble Supreme Court in *New India Insurance Co. Limited v. Asha Rani and Ors.*-1 (2001) PLR 637 and several other decisions that followed the judgment.

2. The learned Counsel refers me to a decision of a Full Bench of the Madras High Court in *Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal,*

Unnamalai and V.B. Krishnan, to say that in a case where a passenger, who is neither an owner or agent or owner of goods, accompanies goods in a goods vehicle, shall still be entitled to enforce the award against the insurer. The Full Bench ruling of the High Court is quite of the contrary. It specifically lays down that in a case where the passenger meets with an accident, the Insurance Company cannot be directed to pay the claimant and thereafter recover the same. However, the same judgment also refers to situations where there are violations of terms of policy in the manner contemplated u/s 149(2). In such type of cases Section 149(4) proviso and 149(5) will operate. A case of a gratuitous passenger in a goods carriage is not a situation of merely a violation of terms of policy. Here, the ground to reject a claim by the claimant against an insurer is by resort to Section 147 and not by reference to Section 149. Section 147 refers to the situations where insurance is statutorily provided for. While an owner or an authorized representative of the owner of the goods is protected, a passenger in a goods carriage is not required to be covered for risk for accident injury or death. In such a situation, the principle of pay and recover does not arise.

3. Learned Counsel for the owner seeks to place reliance on the judgment of the Hon''ble Supreme Court in Asha Rani to contend that there is no liability even for the owner or the driver. It is a disastrous understanding of the law laid down by the Hon''ble Supreme Court. What the law excepts is the duty of the owner to compulsorily insure for risk to passengers in a goods carriage. The Hon''ble Supreme Court was making a reference in the context of the changed definition of "goods carriage" and the new requirement to cover the risk by the amended provisions which allowed for compulsory coverage for persons who were entitled to the benefit of the Workmen's Compensation Act as well as to persons, who are owners of the goods being carried along with the goods. All that the Hon''ble Supreme Court expounds in the judgment is that there is no duty for an owner to cover the risk to classes of persons other than persons, who are specifically mentioned u/s 147(2). If there is no duty to cover the risk, the Insurance Company itself is not bound to underwrite a risk for covering a risk to a gratuitous passenger in a goods carriage. What Section 147 expressly excludes is to secure to an insurer a right not to underwrite the risk for gratuitous passengers in a goods carriage. This is the only way the judgment should be understood. An attempt by the learned Counsel for the driver that even a compensation claim cannot be filed before the MACT makes mockery of the provisions of the MV Act itself. A person, who is a tortfeasor and who allows passengers to get into the carriage and visits them with harm, such as death or injury, cannot be heard to contend that the liability will cease to exist in any form. Such a contention is frivolous and it is rejected.

4. It is further contended by the counsel for the driver that the Insurance Company has already satisfied some awards passed against the insurer by the Tribunal at Rewari before which some claim petitions had been filed. If the award of the Tribunal in Rewari had been satisfied, it does not mean that the Insurance

Company cannot assail the liability cast on it for the claims arising out of the same accident and disposed of before another Tribunal namely, the Tribunal at Bhiwani. Such a contention is also equally without merit. I vacate the finding relating to the liability of the Insurance Company on a point of law urged that there is no policy of insurance to cover the risk for passengers in a goods carriage and consequently, the Insurance Company could not have been made liable at all. There could be no estoppel on a point of law and if the Insurance Company had satisfied certain claims arising from the awards passed by the MACT at Rewari, the insured and the owner must thank themselves instead of making an issue out of it before the Appellate Court.

5. The liability shall be on the owner of the truck and the award of the Tribunal is, consequently, modified to provide for a right of enforcement of the claims against the owner only.

6. The appeals filed by the Insurance Company are allowed to the above extent.

7. During the pendency of appeal and after the respective awards passed by the Tribunal, if any amount has been recovered by any of the claimants from the insurer, the insurer shall obtain a right of recovery from the owner/insured and not against the claimants. For any portion of the recovered amount at the instance of the claimants, the liability shall thereafter be enforced only against the owner/insured and not against the insurer. All the amounts deposited in all the cases by the Insurance Company shall be ordered to be withdrawn by the Insurance Company itself.