

(2011) 06 SHI CK 0034

In the High Court Of Himachal Pradesh

Case No : F.A.O. No. 360 of 2007 Alongwith F.A.O. No's. 78 of 2008 and 149 of 2008

Oriental Insurance Company

APPELLANT

Vs

Neelam Kumari and Others

RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles (Amendment) Act, 1994 — Section 147
Motor Vehicles Act, 1988 — Section 147

Citation : (2011) 2 ShimLC 335

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—These three appeals are being disposed of by a common judgment since identical questions of law and fact are involved in the case.

2. FAO Nos. 149 of 2008 and 360 of 2007 have been filed by the Insurance Company challenging the award and FAO No. 78 of 2008 has been filed by the owner and driver challenging the quantum of compensation.

3. Briefly stated the facts of the case are that Neelam Kumari and three others filed claim petition No. MACP No. 63-K of 2000 alleging that the deceased Kultar Chand, husband of claimant No. 1 and father of claimants 2 and 3 and son of claimant No. 4 died in a motor vehicle accident involving Jeep No. HP-53-1620. It is not disputed that this jeep was a goods vehicle. According to the claimants, the deceased was travelling in the Jeep from Pathankot to Kangra and the Jeep was being driven in a rash and negligent manner by its driver Ramesh Chand. The Jeep hit a tree resulting in the death of Kultar Chand. According to the claimants Kultar Chand was working as a Peon and was earning monthly salary of Rs. 6557/-.

4. Another claim petition No.RBT MACP No. 113-K/II/2005/01, was filed by Bimla

Devi widow of late Chotu Ram and Kewal Kumar and Sushil Kumar sons of Chotu Ram on similar allegations.

5. In the claim petitions it was only stated that the deceased were travelling in the Jeep and were coming from Pathankot to Kangra. The owner and driver of the Jeep filed a reply and denied the fact that the deceased were travelling in the Jeep. It was a case of bare denial and no other plea was raised. The Insurance Company raised the plea that the deceased were gratuitous passengers and hence the Insurance Company was not liable.

6. The parties led evidence and the claimants even in their statements did not state that the deceased were travelling in the vehicle as owner of goods. It is only when the owner stepped into the witness box that he stated that the deceased had hired the vehicle for carriage of goods. The owner was not present at the time of the accident and the driver was not examined. The owner admitted that the vehicle was a goods vehicle and the passengers could not be carried in it. No evidence has been led to show what were the goods being carried in the vehicle. No description of the goods has been given nor the log book has been produced nor the driver examined to show what books were being carried. It is obvious that the statement of the owner is a self-serving statement to avoid payment of compensation.

7. The law with regard to the liability of the Insurance Company in respect of passengers being carried in a goods vehicle is now well settled. A three Judge Bench of the Apex Court in *New India Assurance Company Ltd. v. Asha Rani and others* (2003) 1 SCC 223, considered the question whether it is compulsory for the Insurance Company to cover the liability in respect of passengers travelling in a goods vehicle. This decision was in context of the un-amended Act. The Apex Court over-ruled its earlier judgment in *New India Assurance Company Vs. Shri Satpal Singh and Others*, and held as follows:

... 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."

Justice S.B. Sinha in his concurring judgment held as follows:

"25. Section 147 of the 1988 Act, inter-alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "good carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been

used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

8. This matter again come up for consideration in Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., The Apex Court considered the difference between the definition of "goods vehicle" appearing in the Motor Vehicles Act, 1939 and "goods carriage" appearing in the Motor Vehicles Act, 1988 and held as follows:-

The difference in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in the definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the carriage of "goods". Carrying of passengers in a goods carriage is not contemplated in the Act.

Thus, the Apex Court held that passengers cannot be carried in a goods vehicle.

9. In National Insurance Co. Ltd. Vs. Baljit Kaur and Others, the Apex Court considered the impact of the amendment to the Motor Vehicles Act made in 1994. The Apex Court held that after the amendment of 1994, the Insurance Company was bound to cover liability in respect of owner of the goods or his authorized representative travelling in the goods vehicle. However, it further held that no passenger can be carried in a goods vehicle and the Insurance Company was not liable to pay compensation with respect to passengers especially gratuitous passengers. The Apex Court held thus:

20. It is, therefore, manifest that in spite of the amendment 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 was any premium paid to the extent of the benefits of insurance to such category of people.

10. The Apex Court also considered this point in National Insurance Co. Ltd. Vs. Ajit Kumar and Others, After considering the definitions and various provisions of the Motor Vehicles Act both amended and unamended, the Apex Court held as follows:-

The difference in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions

makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in the definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used in "goods carriage" is solely for the carriage of goods". Carrying of passengers in 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 the insurance policy. Even Section 147 of the 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 (In short "the WC Act"). There is no reference to any passenger in "goods carriage".

11. Following the aforesaid judgments, a similar view was taken by the Apex Court in National Insurance Co. Ltd. Vs. V. Chinnamma and Others,

12. In National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, , the Apex Court was dealing with a matter in which a large number of persons were travelling in a goods carriage vehicle. It was contended on behalf of the claimants that all these persons were travelling as owners of the goods and hence, the Insurance Company was liable to pay the compensation. The Apex Court rejected this contention and held as follows:-

8. The Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods as considerably the insurance policy covers the death or injury either of the owner of the goods or his authorized representative.

13. In the present case on the basis of the evidence on record it is apparent that the deceased were not travelling as owners of the goods but were merely gratuitous passengers. Not a word has been stated by any witness that the deceased had hired the vehicle. It is thus obvious that they were was only gratuitous passengers and even assuming that they had also taken some goods they could not be said to be travelling as owners of the goods. To be covered under the terms of the Act some evidence must be led to show that the deceased had hired the goods vehicle for transportation of their goods.

14. The next question which arises is whether the Insurance Company can be directed to satisfy the award and be directed to recover the amount from the insured?

15. It may be mentioned that this Court in National Insurance Company v. Maghi Ram and others Latest HLJ 2009 (HP) 532 , following the decision of the Apex Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, had directed that the Insurance Company should satisfy the award and recover the amount from the Insurer. The Insurance Company challenged the judgment of this Court before the Apex Court. This direction of this Court was set aside and the Apex

Court gave the following directions:-

14. For the reasons aforementioned, Civil Appeal arising out of SLP (C) No. 10694 is allowed and Civil Appeal arising out of SLP (C) No. 9910 of 2006 is dismissed. If the amount deposited by the insurance company has since been withdrawn by the first respondent, it would be open to the insurance company to recover the same in the manner specified by the High Court. But if the same has not been withdrawn the deposited amount may be refunded to the insurance company and the proceedings for realization of the amount may be initiated against the owner of the vehicle. In the facts and circumstances of the case, however, there shall be no order as to costs.

16. Reliance on behalf of the claimant has also been placed on the judgment of the Apex Court in Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., wherein after holding that the Insurance Company was not liable, the Court directed the Insurance Company to deposit the amount. In my view this judgment cannot apply since in this case, the Apex Court exercised its extra-ordinary jurisdiction under Article 142 of the Constitution to give these directions. This Court does not have any such jurisdiction. It would, however, be relevant to refer to another later judgment of the Apex Court in Oriental Insurance Co. Ltd. Vs. Zaharulnisha and Others, wherein the Apex Court after holding that the Insurance Company is not liable directed it to satisfy the award. Para 19 of the judgment reads as follows:-

19. In the result, the appeal is allowed to the limited extent and it is directed that the appellant-insurance company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle, viz. respondent No. 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd.,

17. The Apex Court in United India Insurance Co. Ltd. Vs. Suresh K.K. and Another, after holding that the Insurance Company was not liable, gave the following directions:-

16. Keeping in view the aforementioned facts and circumstances into consideration, we are of the opinion that with a view to do complete justice between the parties, a direction should be given to the appellant to pay the amount to the claimant and realize the same from the owner of the vehicle. Such a direction would, in our opinion, serve the ends of justice.

17. We are passing this order also in view of the fact that the appellant has already deposited the amount pursuant to a direction issued by this Court dated 13.11.2006.

18. On the basis of the aforesaid judgments, it has been urged that this Court should also give similar directions to the Insurance Company.

19. As noted above, in Deddappa's case (supra), the Apex Court gave the directions in exercise of the jurisdiction vested in it under Article 142 of the Constitution. In Zaharulnisha's case (supra), the Apex Court specifically followed the law laid down in Deddappa's case. Therefore, it can be said that in Zaharulnisha's case also, the orders were passed by the Apex Court in exercise of jurisdiction vested in it by Article 142 of the Constitution of India. In Suresh's case (supra), though the Apex Court has not specifically referred to Article 142, it is apparent that the directions have been given in the facts peculiar to that case.

20. On the other hand, in Kaushalya Devi's case (supra), the Apex Court set aside the directions given by this Court directing the Insurance Company to deposit the amount. It specifically held that if the amount had not been withdrawn by the claimants, it would be refunded to the Company and the claimant would recover the amount from the owner of the vehicle. This is the latest judgment cited before me and I am bound by the same.

21. In view of the above discussion, I am of the considered opinion that only the owner can be held liable to pay the award amount and this Court has no power to direct the Insurance Company to satisfy the award. Consequently, I am of the considered view that the award of the learned Tribunal in so far as it holds the Insurance Company liable to pay the compensation has to be set-aside.

22. In the appeal filed by the owner it is not disputed that the deceased Chotu Ram was working in the office of the Excise and Taxation Commissioner and his salary at the relevant time was Rs. 7755/-. If 1/3rd is deducted for his personal expenses the loss to the dependency works out to Rs. 5170/- per month or Rs. 62,000/- per year. The question is what is the relevant multiplier for this age group. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Apex Court has held that in case where the deceased was 54 years old the proper multiplier to be used would be 11. In the present case, the multiplier used is only of 8. Therefore, the compensation cannot be said to excessive.

23. In view of the above discussion, the appeals filed by the Insurance Company are allowed and that of the owner is dismissed. It is however, clarified that in case any amount has already been paid to the claimants out of the amount deposited by the Insurance Company, then the Insurance Company shall not recover the same from the claimants, but shall recover the same from the owner of the vehicle. No costs.