
(2011) 03 SHI CK 0068
In the High Court Of Himachal Pradesh
Case No : FAO No. 307 of 2004

Parkash Chand

APPELLANT

Vs

New India Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 147
Motor Vehicles Act, 1939 — Section 95

Citation : (2011) ACJ 2459 : (2012) 2 RCR(Civil) 249

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal by the owner is directed against the Award of the learned Motor Accident Claims Tribunal, Chamba dated 1.6.2004 whereby he exonerated the Insurance Company and held the owner liable to pay the amount of compensation.

2. The claimants who are the widow and children of late Shri Majnu alias Bhajan Lal filed a Claim Petition alleging that Sh. Majnu died in an accident involving Canter No. HP-48-0706. In the Claim Petition, it was alleged that the deceased was a bona fide passenger in the goods vehicle.

3. The petition was contested and the learned Motor Accident Claims Tribunal, Chamba has awarded compensation of Rs. 1,75,000/- alongwith interest @ 9% per annum to the claimants but has exonerated the Insurance Company on the ground that it has not been proved on record that the deceased was travelling in the goods vehicle as owner of the goods or representative of the owner of the goods.

4. There is no allegation in the Claims Petition itself that the deceased was the owner of the goods or the representative of the owner of goods. All that was stated was that he was a bona fide passenger in the goods vehicle. The only eye

witness examined as PW/4 is the nephew of the deceased. He has not stated a word that the deceased was taking goods in the vehicle in question. In fact, even the owner had not put any suggestion to this witness that the deceased was travelling in the capacity of owner or representative of owner of the goods. It has rightly been held by the learned Tribunal that there is no iota of evidence in this behalf.

5. 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 Co. Ltd. v. Asha Rani and Ors.* (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 unamended 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.

6. 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-?-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.

7. 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.

8. 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 un-amended, 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 was not travelling as owner of the goods but was merely a gratuitous passenger. Not a word has been stated by any witness that he had hired the vehicle. It is thus obvious that he was only a gratuitous passenger and even assuming that he had also taken some goods, he could not be said to be travelling as owner 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 his goods.

14. From the statement of the PW/4 itself, it is apparent that the deceased was not travelling in the cabin of the truck but was in fact sitting in the Dala of the truck.

15. The Apex Court in National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, specifically held that the Insurance Company even in respect of the owner is only liable if such owner travels in the cabin of the truck and not if he is travelling in the rear of the truck. Reference may be made to that portion of the judgment wherein the Apex Court held as follows:

19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle.

16. In view of the above discussion, the Insurance Company could not be held liable to pay the compensation. I find no merit in the appeal which is accordingly dismissed. No order as to costs.