
(2005) 09 SHI CK 0022
In the High Court Of Himachal Pradesh

United India Insurance Co. Ltd.

APPELLANT

Vs

Gurbax Singh and Others

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2006) 3 ACC 411 : (2007) ACJ 21

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This judgment shall dispose of two appeals being F.A.O. Nos. 240 and 241 of 2001 as they arise out of a common award and the same accident.

2. The facts necessary for the decision of the case are that on 4.6.1998 a band party was being carried in a Tempo bearing registration No. HP-06 1303. This Tempo met with an accident resulting in the death of some members of the band party and injury to some others. Two claim petitions were filed. One was filed by Mohammad Latif, who was a member of the band party and was injured in the accident and the other was filed by the parents of Dev Raj, who died in the accident. In the claim petition, it was stated that the deceased and the injured were members of the band party and were made to board the said Tempo for their journey to Talmehra.

3. The defence of the owner and driver was that the members of the band party were sitting in Tempo in pursuance of the contract of employment along with their goods and were going to Kullu when the accident occurred. The stand of the insurance company was that the deceased were unauthorised passengers in a goods vehicle and as such the insurance company was not responsible.

4. The learned Tribunal vide its award dated 30.6.2001 has come to the conclusion that the insurance company was liable since Tempo was insured with it. It relied upon the judgment of the Supreme Court in New India Assurance

Company Vs. Shri Satpal Singh and Others, to hold that the insurance company was liable.

5. Mr. Tarlok Chauhan, learned Counsel appearing on behalf of the insurance company, submits that the judgment in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, , has been overruled by later judgments of the Apex Court. He submits that no passenger could be carried in a goods carriage and as such the insurance company could not have been held liable. On the other hand, Mr. Ashok Sood, learned Counsel for the owner and driver, submits that in fact the vehicle was hired for the purpose of carrying the musical instruments and the members of the band party had sat in Tempo for the protection of the instruments and they were travelling as owners of the goods and as such the insurance company as liable.

6. The Apex Court has considered both the unamended provisions of the Motor Vehicles Act, 1988 as well as the amended provisions of the Act which came into effect from 14.11.1994 in a number of cases. The law with regard to the liability of the insurance company in respect of passengers being carried in a goods vehicle is now settled. A three-Judge Bench of Apex Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, 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 overruled its earlier judgment in New India Assurance Company Vs. Shri Satpal Singh and Others, It held as follows:

...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.

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

(25) Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against death of or bodily injury to any passenger of a "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 "goods carriage".

(26) In view of the changes in the relevant provisions in 1988 Act vis-?-vis 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 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 came 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. It 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 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.

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

10. 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 with respect to owner of the goods or his authorised representatives. 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 authorised representative remains the same. Although the owner of the goods or his authorised 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 benefit of insurance to such category of people.

11. The Apex Court again 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:

(10) ...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 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 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 Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that the 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".

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

13. In view of the aforesaid clear enunciation of law laid down by Apex Court, the position of law may be summarized as follows:

Under the Motor Vehicles Act, 1988, prior to its amendment in 1994, which came into effect from 14.11.1994, the insurance company was not liable in case of any passenger being carried in a goods vehicle. The only liability of the insurance company was to indemnify the insured with regard to the amount payable under Workmen's Compensation Act in respect of death or bodily injury to any employee engaged in driving the truck or being carried in the vehicle. The only difference made by the amendment of 1994 is that now the insurance company is also liable to indemnify the insured for compensation payable in respect of the owner of the goods or his authorised representative being carried in a goods vehicle. However, the Act does not contemplate the carriage of any other person in a goods vehicle.

14. The only additional question to be decided in this case is whether the members of the band party were travelling as owners of the goods or not. Mohammad Latif, one of the members of the band party, who is also a claimant, appeared as PW 5. He stated that he along with 8-9 other persons who were members of the band party had boarded Tempo. He does not even say a word that Tempo was hired for carrying of the instruments and not the band party. He has been cross-examined by the owner and driver. He has stated that they had placed their musical instruments on their laps. According to him the weight of each instrument is 5 to 6 kg. He denied the suggestion that any of the musical instrument is more voluminous than a human being. In cross-examination he states that one Telu Ram had engaged them for playing band at the marriage. He states that Gian Chand, owner of Tempo, asked them to sit in Tempo. The owner has not stepped into the witness-box. Only the driver has stepped into the witness-box. His statement that the vehicle was in fact hired for use for carriage of musical instruments cannot be believed. Claimant, Mohammad Latif, has himself stated that the musical instruments were only weighing 5 to 6 kg and were not very big in dimension. There was no need to have separate goods carriage to carry these instruments. Even if the goods carriage was hired for the carriage of the band instruments then also there was no reason why all the members of the band party should have travelled for the protection of the said

instruments. The case which has been set up appears to be false.

15. In view of the above discussion both the appeals are allowed and it is held that the insurance company could not have been held liable to pay compensation. However, in view of the fact that the insurance company has already deposited the amount of compensation, it would serve no purpose to permit it to withdraw the said amount and drive the claimants to another round of litigation to recover the compensation awarded from the owner. Amount deposited by it shall be released in favour of the claimants. The insurance company may recover the amount deposited by it along with interest from the owner by filing the appropriate execution proceedings before Motor Accidents Claims Tribunal without being required to file separate suit or proceedings. The present judgment shall be treated to be the decision of the dispute between the insurer and the insured.

16. Both the appeals are disposed of in the above terms. No orders as to costs.