

National Insurance Co. Ltd vs Cholleti Bharatamma & Ors on 12 October, 2007

Equivalent citations: AIR 2008 SUPREME COURT 484, 2007 AIR SCW 7337, 2008 (2) AIR JHAR R 213, (2007) 2 CLR 831 (SC), 2008 (1) SCC(CRI) 224, 2007 (2) CLR 831, 2007 (12) SCALE 560, (2007) 60 ALLINDCAS 235 (SC), (2008) 1 ALLMR 436 (SC), (2008) 1 ACC 225, 2008 (1) ALL MR 436, 2008 (1) ACC 235, 2008 (1) SCC 423, (2007) 7 SUPREME 265, (2007) 4 RECCIVR 755, (2007) 4 CURCC 176, (2008) 2 GUJ LR 1403, (2008) 1 MAD LJ 66, (2008) 2 MAD LW 1, (2008) 1 PUN LR 315, (2008) 2 TAC 374, (2008) 1 WLC(SC)CVL 291, (2008) 1 ACJ 268, (2007) 4 ALL WC 3957, (2008) 1 CIVILCOURTC 105, (2007) 12 SCALE 560, (2008) 1 RAJ LW 684

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Bench: S.B. Sinha, Harjit Singh Bedi

CASE NO.:

Appeal (civil) 4845-4847 of 2007

PETITIONER:

National Insurance Co. Ltd

RESPONDENT:

Cholleti Bharatamma & Ors

DATE OF JUDGMENT: 12/10/2007

BENCH:

S.B. Sinha & Harjit Singh Bedi

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) Nos.7237-7239 of 2003) [With CA Nos. 4848-4850, 4852-4854 of 2007 arising out of SLP (C) Nos.7241-7243, 7248 and 7288-7290 of 2003] S.B. Sinha, J.

1. Leave granted in all the Special Leave Petitions.

2. The question involved in these appeals centres around the liability of the insurance company to indemnify the owner of the vehicle in respect of death of passengers travelling in goods carriage. The dates of accident being different, different provisions would apply. We would notice the law operating in the field at the outset and apply the same in each case separately.

3. The relevant portion of Section 147 of the Motor Vehicles Act (for short the Act), prior to its amendment, reads as under :

Requirements of policies and limits of liability.-

(1) In order to comply with the requirements of this Chapter, a policy of insurance may be a policy which-

(a) ***

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by a or arising out of the use of the vehicle in a public place;

(ii) *** Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employees insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee-

(a) ***

(b) ***

(c) if it is a goods vehicle, being carried in the vehicle; or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises

4. The said provision underwent an amendment in the year 1994 by Motor Vehicles Amendment Act, 1994 which reads as under :

47 - Requirements of policies and limits of liability (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) ***

(b) insurer the person or classes of persons specified in the policy to the extent specified in sub- section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) ***

5. In *New India Insurance Co. v. Satpal Singh & Ors.* [(2000) 1 SCC 237], this Court proceeded on an assumption that the provisions of 1939 Act and the provisions of 1988 Act are in *pari materia*.

6. In *Satpal Singh (supra)*, interpreting the provisions contained in Sections 147 and 149 of the Motor Vehicles Act, this Court held:

Hence, under sub-section (2), there is no upper limitation for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It is, therefore, apparent that the limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle . The legislature has also taken care of even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding the insurer's liability shall continue to be effective for a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months, a new insurance policy consistent with the new Act is required to be obtained .

11. The result is that under the new Act an insurance policy covering third-party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force.

7. In *Ramesh Kumar v. National Insurance Co. Ltd. & Anr.* [(2001) 6 SCC 713], this Court categorized the cases arise out of the Motor Vehicles Act, 1939, stating :

The first category of cases arise out of the Motor Vehicles Act, 1939 (hereinafter referred to as the old Act). The question raised for this category is:

Whether the insurance company is liable to pay the compensation on account of the death or bodily injury of the gratuitous passengers including the owner of the goods

or his representative, travelling in a goods vehicle under Section 95 of the said Act? The second category of cases arise out of the Motor Vehicles Act, 1988 (hereinafter referred to as the new Act) prior to its amendment in 1994. In this category also a similar question is raised. The third category of cases also arises under the new Act but after its amendment by Act 54 of 1994. In this category also the same question is raised.

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 injuries either of the owner of the goods or his authorized representative.

9. Correctness of the decision in Satpal Singh (supra) came up for consideration before a three Judge Bench of this Court in New India Assurance Co. Ltd. v. Asha Rani and Others [(2003) 2 SCC 223].

In Asha Rani (supra), having regard to various definitions involving the legal question, it was held :

3. The applicability of the decision of this Court in Mallawwa v. Oriental Insurance Co. Ltd. in this case must be considered keeping that aspect in view. Section 2(35) of the 1988 Act does not include passengers in goods carriage whereas Section 2(25) of the 1939 Act did as even passengers could be carried in a goods vehicle.

The difference in the definitions of goods vehicle in the 1939 Act and goods carriage in the 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words in addition to passengers occurring in the definition of goods vehicle in the 1939 Act were omitted.

Furthermore, it categorically states that goods carriage would mean a motor vehicle constructed or adapted for use solely for the carriage of goods . Carrying of passengers in a goods carriage , thus, is not contemplated under the 1988 Act.

24. We have further noticed that Section 147 of the 1988 Act prescribing the requirements of an insurance policy does not contain a provision similar to clause (ii) of the proviso appended to Section 95 of the 1939 Act. The decision of this Court in Mallawwa case must be held to have been rendered having regard to the aforementioned provisions.

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 goods 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.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v. Satpal Singh* is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid.

10. The effect of 1994 amendment came up for consideration in *National Insurance Co. Ltd. v. Baljit Kaur & Ors.* [(2004) 2 SCC 1], wherein this court following *Asha Rani* (supra) opined that the words "injury to any person" would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in *National Insurance Co. Ltd. v. Bommithi Subbhayamma & Ors.* [(2005) 12 SCC 243] wherein upon taking into consideration a large number of decisions, the said view was reiterated.

11. Yet again in *New India Assurance Co. Ltd. v. Vedwati & Ors.* [(2007) 3 SCALE 397] this Court held :

3. The difference in the language of "goods vehicle" as appear 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 "good vehicle" in the old Act. The position becomes further clear because the expression used is "good 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 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 'WC Act').

There is no reference to any passenger in "goods carriage".

14. The inevitable conclusion, therefore, is that provisions of the 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. [See also Oriental Insurance Co. Ltd. v. Brij Mohan & Ors. 2007 (7) SCALE 753] CA @ SLP (C) Nos.7237-7239 of 2003

12. The claimants were traveling in a lorry. It was a goods carriage carrying goods like rice, tent hours articles, chairs, utensils and vegetables required on the occasions of marriage. The marriage of one D. Bhaskar was to take place. When the lorry reached Ali Nagar cross road at about 8.30 a.m., as a result of rash and negligent driving of the driver, the accident took place as the lorry struck to a stationary truck. Several people suffered injuries. Two of them died. Several claim applications were filed on behalf of the injured as also the dependents of the deceased. The date of accident being 16.12.1993, the amendment carried out in the year 1994 in Section 147 of the Motor Vehicles Act would not be applicable.

13. The Motor Accident Claims Tribunal, Nalgonda, by a judgment and award dated 13.11.1997 awarded various sums overruling the defence of the appellant herein that they were unauthorized passengers. The High Court, however, by reason of the impugned judgment, relying on or on the basis of a decision of this Court in Satpal Singh (supra) directed as under :

The learned counsel for the Insurance Company submitted that the issue involved in these appeals is squarely covered by the decision of the Supreme Court in the case reported in New Indian Assurance Company Ltd. v. Satpal Singh, 2000 ACJ. 1 wherein their Lordships held that under the Motor Vehicles Act 1988 all insurance Policies covering third party risks are not required to exclude gratuitous passengers in the Vehicle though Vehicle is of any type or class. In view of the proposition of law down by the Supreme Court in the decision stated supra, these appeals are dismissed. No costs.

14. Following the aforementioned principles, the impugned judgment cannot be sustained which is set aside. The appeals are allowed accordingly. CA @ SLP (C) No.7241-7243/03

15. In the aforementioned case, accident took place on 24.12.1993. Respondents herein filed a claim petition claiming compensation for the death of one Kota Venkatarao who had allegedly paid a sum of Rs.20/- for travelling in the lorry. The Tribunal held :

In the absence of rebuttal evidence from the deceased and some others travelled in the said vehicle in the capacity of owner of the luggage which was carried by them at the time of accident. It cannot be said that it is a violation of the policy, since it is not fundamental breach so as to afford to the insurer to eschew the liability altogether as per the decision reported in AIR 1996 Supreme Court 2054.

16. The High Court, however, relying upon Satpal Singh (supra) opined :

This issue raised in this appeal is covered by the decision of the Supreme Court in *New India Assurance Co. Ltd. v. Satpal Singh*[(2000) 1 SCC 237] wherein their Lordships held that under the Motor Vehicles Act, 1988 all Insurance policies covering third party risks are not required to exclude gratuitous passengers in the vehicles though the vehicle is of any type or class. Following the same, the appeal is dismissed. No order as to costs.

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

18. In this case, the High Court had proceeded on the basis that they were gratuitous passengers. The admitted plea of the respondents themselves was that the deceased had boarded the lorry and paid an amount of Rs.20/- as transport charges. It has not been proved that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods. Travelling with the goods itself does not entitle anyone to protection under Section 147 of the Motor Vehicles Act.

19. For the reasons aforementioned, this appeal is dismissed.

20. The accident in this case took place on 3.1.1991. Twenty persons were travelling in the truck. The policy covered the risk only of the owner of the goods. Before the learned Tribunal, it was contended that the risk of the owners of the goods is covered by the policy. It was held :

On a careful consideration of the various authorities cited by the learned counsels for both the parties, Section 147, 149 Rule 277(3) and 252 of Rules framed under M.V. Act I have no hesitation to conclude that the risk of the owner of the goods is also covered by the policy issued by the insurance companies, from the evidence of R.W.1 who is no other than the employee of R-2 as well as terms of Ex.B-2 Policy, it is obvious that the risk of the owner of the goods is covered, but it is restricted only to one person as owner of the goods. Thus, there can be no doubt that the owner of the goods can travel in the goods vehicle and if they are involved in the accident, their risk is covered subject to the terms and conditions of the policy issued by the insurance companies.

21. The learned Tribunal, however, noticed :

Thus, the claim form corroborate the testimony of the petitioners that deceased or the injured as the case may be travelled in the vehicle as owner of goods. But it is mentioned in Ex.B-3 claim form as well as in Ex.B1 permit that the seating capacity of the lorry is only including driver and cleaner which would go to show that only one passenger can travel in it...

22. Upon considering the evidences on record, it was held :

As the permitted seating capacity of the lorry is only including the driver and cleaner and as only one non-fare paying passenger as owner of goods can travel in the cabin and as the deceased has admittedly travelled in the cabin beyond seating capacity and contrary to the terms of the permit as well as Rule 252(2) of the Motor Vehicles Act. I am of the view that R-2 cannot be fastened with the liability to pay compensation along with R-1 to all the injured and legal representatives of deceased. At best it is liable to pay compensation jointly and severally along with R-1 only in respect of one non-fare paying passengers, who is the owner of the goods. As per the endorsement I.M.T. 14(b) unless additional premium is paid for the number of persons who travelled in the lorry, as owners. I am of the view that R-2 cannot be fastened with liability. Further all the petitioners and deceased cannot be deemed to have travelled as owners of the paddy as the paddy is said to be in bags and orally kept in loose in the lorry and it is enough if any one of them have travelled in the lorry on behalf of all, as owner of the lorry Rule 277(3) of A.P. Motor Vehicles Rules, clearly shows that no person shall be carried in the goods vehicle except as provided in the Rule under the statute and as the only person, who are permitted to carry in goods vehicles are the owner of hirer or bona fide employee of owner of hirer and total number of such persons, who could be carried in goods vehicles is not more than seven including the driver. As per Rule 252(2) person shall be carried in the cab of the vehicle beyond the seating capacity as per clause (2). No person shall be carried on the load or otherwise. Rule 4 empowers the R.T.A. to allow large number of persons to be carried. As the seating capacity of the lorry is only as per Ex.B1 and B3 and as the risk of only owner of goods is covered by Ex.B2 policy, whereas about 40 to 42 persons travelled in the lorry by sitting on the load, which is not permitted and as there is no material to show that R.T.A. permitted carriage of more than seating capacity but on the other hand the permit is cancelled. I am in agreement with the contention of the learned counsel for the respondent that it cannot be fastened with the liability for compensation.

23. The High Court, however, dismissed the appeals preferred by the respondents relying upon Satpal Singh (supra). Submission of the learned counsel appearing on behalf of the respondent is that within the aforementioned twenty persons, it is the respondents having preferred an appeal, this Court should hold that at least the claimants-respondents are entitled to compensation as the deceased was travelling as owner of the goods. The learned Tribunal discussed the matter in great details. It is not in dispute that premium has been paid only for one person.

24. In the facts and circumstances of this case, we are of the opinion that the contention of the respondent should be accepted. This appeal is, thus, dismissed.

CA @ SLP (C) Nos.7288-7290/03

25. In this case, the accident took place on 1.5.1997. Indisputably, the respondent was travelling as a passenger. The Tribunal, while determining the issue as to whether the accident took place due to rash and negligent driving of the first respondent driver of lorry AEW 5199, held :

The lorry was overturned and caused the instantaneous death of four passengers. He received small injuries. He also deposed that the accident took place due to the negligence of the driver of the said lorry. On perusing his evidence I am satisfied that he is a truthful witness. He was travelling in the crime vehicle along with deceased along with his goods as per his evidence...

26. The learned counsel appearing for the respondent, submitted that from the aforementioned finding, it is evident that the respondent was travelling as the owner of the goods. We do not think that the said submission is correct. PW-2, in his evidence, stated :

I am doing Tamarind business. I witnessed the accident which took place about 3 years back at about 6 A.M. at Borrampalem junction beyond Talluru. At the time of the accident I was in the crime lorry by the side of the driver. Myself and 6 others were carrying tamarind in that lorry belonging to us. We boarded the lorry along with our load of tamarind at Dharamavaram to go to Rajanagaram. We were selling the Tamarind at Rajanagaram in retail by taking the tamarind there in our lorry from our village of Dharmavaram.

27. The Tribunal, therefore, correctly recorded that according to PW-2, he was travelling with his goods as owner thereof and not the deceased.

28. Shaik Shabbeer Pasha and Shaik Nazeer Pasha are the Driver and owner respectively of the lorry which was travelling to Rajahmundry from Visakhapatnam. At Borrampalem, while trying to overtake another speeding lorry, the same turned turtle. Three persons who were travelling in the vehicle had been killed. Claim for compensation were filed before the Motor Accidents Claim Tribunal. The appellants therein opposed the claim. Tribunal awarded compensation to the legal heirs of the deceased.

29. Challenging the legality of the award of the Tribunal, learned counsel for the appellant contended that the deceased were gratuitous passengers and the policy did not cover their lives. Learned counsel also submitted that the decision in Satpal Singh's case (supra) being referred to a Larger Bench in Asha Rani's case (supra), the same was not a binding authority.

30. While stating that the submissions of learned counsel for insurance company could not be sustained, the High Court dismissed the appeal of the insurance company following Satpal Singh (supra).

31. In view of the nature of evidence available before us, we have no other option but to set aside the judgment. These appeals are, therefore, allowed accordingly. There shall be no order as to costs in each case.