Sanjeev Kr. Samrat vs National Insurance Co. Ltd. And Ors on 11 December, 2012

Equivalent citations: AIR 2013 SUPREME COURT 1125, 2014 (14) SCC 243, 2013 AIR SCW 301, 2013 AAC 566 (SC), AIR 2013 SC (CIVIL) 1267, (2013) 1 WLC(SC)CVL 228, (2013) 2 KER LJ 199, (2013) 1 ICC 866, (2013) 97 ALL LR 459, (2013) 2 ANDHLD 105, (2012) 4 ACC 834, (2012) 12 SCALE 77, (2013) 138 FACLR 16, (2013) 1 MAD LW 572, (2013) 1 ALLMR 402 (SC), (2013) 2 JCR 93 (SC), (2013) 123 ALLINDCAS 65 (SC), (2013) 1 ACJ 1, (2013) 2 ALL WC 1260, (2013) 1 CURCC 39, (2013) 1 RECCIVR 877, (2013) 54 OCR 441, (2013) 1 RAJ LW 366, (2013) 1 TAC 398, 2013 (1) KLT SN 41 (SC)

Author: Dipak Misra

Bench: Dipak Misra, K. S. Radhakrishnan

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8925 OF 2012
(Arising out of S.L.P. (Civil) No. 17272 of 2006)

Sanjeev Kumar Samrat ... Appellant

Versus

National Insurance Co. Ltd. and others ... Respondents

WITH

CIVIL APPEAL NO. 8926 OF 2012
(Arising out of S.L.P. (Civil) No. 17273 of 2006)

Sanjeev Kumar Samrat ... Appellant

Versus

National Insurance Co. Ltd. ... Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The centripodal issue that emanates for consideration in these appeals is whether the insurer is obliged under law to indemnify the owner of a goods vehicle when the employees engaged by the hirer of the vehicle travel with the owner of the goods on the foundation that they should be treated as “employees” covered under the policy issued in accordance with the provision contained under

Section 147 of the Motor Vehicles Act, 1988 (for brevity "the Act").

3. The expose' of facts are that a truck bearing HP/10/0821 was hired on 12.4.2000 for carrying iron rod and cement by one Durga Singh who was travelling with the goods along with two of his labourers. When the vehicle was moving through Khara Patthar to Malethi, 1.5 KM ahead of Khara Patthar, about 4.30 p.m., it met with an accident as a consequence of which the labourers, namely, Nagru Ram and Desh Raj and also Durga Singh, sustained injuries and eventually succumbed to the same.

4. The legal heirs of all the deceased persons filed separate claim petitions under Section 166 of the Act before the Motor Accidents Claims Tribunal (II), Shimla (for short "the tribunal"). Before the tribunal, respondent No. 3, namely, National Insurance Company Ltd., apart from taking other pleas, principally took the stand that it was not liable to indemnify the labourers employed by the hirer. The owner of the truck, the present appellant, admitted the fact of hiring the truck but advanced the plea that the insurer was under legal obligation to indemnify the owner.

5. On consideration of the evidence brought on record, the tribunal came to hold that the legal representatives of Nagru Ram and Desh Raj were covered as per the insurance policy, exhibit RW-2/3/A, as the policy covered six employees and accordingly fixed the liability on the insurer. As far as the legal representative of Desh Raj is concerned, the tribunal treated him as the owner of the goods who was travelling along with the goods and accordingly saddled the liability on the 3rd respondent therein.

6. Being grieved by the awards passed by the tribunal, the insurer preferred FAO (MBA) Nos. 175, 176 and 178 of 2003 before the High Court of Himachal Pradesh at Shimla. In appeal, the learned single Judge, by order dated 13.1.2006, allowed FAO Nos. 175 and 176 of 2003 wherein the legal representatives of the deceased employees were the claimants. As far as FAO No. 178 of 2003 is concerned, the High Court concurred with the finding recorded by the tribunal that Durga Singh was the owner of the goods and travelling along with the goods and, therefore, the insurer was liable to pay compensation to his legal representatives. It is worthy to note that as the insurance company had already deposited the amount of compensation, the High Court, placing reliance on the decision in National Insurance Company Ltd. v. Baljit Kaur and others[1], directed that the insurance company having satisfied the award shall be entitled to recover the same along with interest from the owner-insured by initiating execution proceedings before the tribunal. Hence, the present appeals at the instance of the owner of the vehicle.

7. We have heard Mr. Rajesh Gupta, learned counsel for the appellant, and Mr. M. K Dua, learned counsel for respondent No. 1.

8. It is submitted by Mr. Gupta that the High Court has committed serious error in coming to hold that an employee of the hirer is not covered without appreciating the terms of the policy which covers the driver and six employees. Learned Counsel has laid emphasis on the words "any person" used in Section 147 of the Act. Referring to the said provision, it is urged by him that the term "employee" has to be given a broader meaning keeping in view the language employed in the policy

and also in view of the fact that the Act is a piece of beneficial legislation. It is his further submission that there is a distinction between "passenger" in a goods vehicle and an "employee" of the hirer of the vehicle but the High Court has gravely erred by not appreciating the said distinction in proper perspective.

9. Mr. M.K. Dua, learned counsel for the first respondent, combating the aforesaid proponements, contended that the decision rendered by the High Court is absolutely flawless inasmuch as the entire controversy is covered by many a dictum of this Court some of which have been appositely referred to by the High Court. It is urged by him that the extended meaning which is argued to be given to the term "employee" by the appellant is not legally acceptable as the employee has to be that of the insurer. It is canvassed by him that there is a manifest fallacy in the argument propounded on behalf of the appellant that the policy covers such kinds of employees though on the plainest reading of the policy, it would be vivid that the same does not cover such categories of employees. It is his further submission that the policy in question is an "Act Policy" and in the absence of any additional terms in the contract of insurance, the same can be broadened to travel beyond the language employed in the policy to cover the employees of the owner of the goods making the insurer liable.

10. To appreciate the controversy, it is necessary to refer to certain statutory provisions. Section 146 of the Act provides for the necessity for injuries against third party risk. On a reading of the said provision, there can be no trace of doubt that the owner of the vehicle is statutorily obliged to obtain an insurance for the vehicle to cover the third party risk, apart from the exceptions which have been carved out in the said provision. Section 147 of the Act deals with requirements of policies and limits of liability. The relevant part of Section 147 (1) is reproduced below:-

> "147. 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) is issued by a person who is an authorised insurer; or
>
> (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, 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) 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:
>
> 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 employee of a person 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 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
>
> (c) if it is a goods carriage, being carried in the vehicle, or
>
> (ii) to cover any contractual liability."

11. Be it noted, before Section 147(1)(b)(i) came into existence in the present incarnation, it stipulated that a policy of insurance must be a policy which insured the person or classes of persons to the extent specified in sub-section (2) against the liability incurred by him in respect of the death of or bodily injury to any person or damage to any property or third party caused by or arising out of the use of the vehicle in public place.

12. Regard being had to the earlier provision and the amendment, this Court in New India Assurance Co. Ltd. v. Satpal Singh[2], scanned the anatomy of the provision and also of Section 149 of the Act and expressed the view that under the new Act, an insurance policy covering the third party risk does not exclude gratuitous passenger in a vehicle, no matter that the vehicle is of any type or class. It was further opined that the decisions rendered under the 1939 Act in respect of gratuitous passengers were of no avail while considering the liability of the insurer after the new Act came into force.

13. The correctness of the said decision came up for consideration before a three-Judge Bench in New India Assurance Co. Ltd. v. Asha Rani and Others[3]. The learned Chief Justice, speaking for himself and H.K. Sema, J. took note of Section 147(1) prior to the amendment and the amended provision and the objects and reasons behind the said provision and came to hold as follows:-

> "The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring

> within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury." [Emphasis supplied]

14. S.B. Sinha, J., in his concurring opinion, stated thus: -

> "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.
>
> 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[4] 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." [Emphasis supplied] Being of the aforesaid view, the three-Judge Bench overruled the decision in Satpal Singh (supra).

15. In Baljit Kaur (supra) and National Insurance Co. Ltd. v. Bommithi Subbhayamma and Others[5], the aforesaid view was reiterated.

16. In New India Assurance Co. Ltd. v. Vedwati and Others[6], after referring to the scheme of the Act and the earlier pronouncements, it has been held that the 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 carrier and the insurer would have no liability therefor.

17. In National Insurance Co. Ltd. v. Cholleti Bharatamma and Others[7], the Court laid down that the provisions engrafted under Section 147 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 vehicle and hence, any injury to any person in Section 147(1)(b) would only mean a third party and not a passenger travelling in a goods carriage, whether gratuitous or otherwise.

18. At this juncture, we may refer with profit to the decision of a three- Judge Bench in National Insurance Co. Ltd. v. Prembati Patel and Others[8] wherein the legal representatives of the driver of the truck had succeeded before the High Court and were granted compensation of Rs.2,10,000/- repelling the contention of the insurer that the liability was restricted as provided under the

Workmen's Compensation Act, 1923 (for short "the 1923 Act"). After discussing the schematic postulates of the provision, the Court ruled that where a policy is taken by the owner of the goods vehicle, the liability of the insurance company would be confined to that arising under the 1923 Act in case of an employer. It further observed that the insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in Sub-Sections (a), (b) or (c) of the proviso to Section 147(1)(b) may be fastened upon the insurance company and the insurer may become liable to satisfy the entire award. But for the said purpose, he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company is unlimited.

19. Keeping in view the aforesaid enunciation of law, it is to be seen how the term "employee" used in Section 147 is required to be understood. Prior to that, it is necessary to state that as per Section 147(1)(b)(i), the policy is required to cover a person including the owner of the goods or his authorised representative carried in the vehicle. As has been interpreted by this Court, an owner of the goods or his authorised agent is covered under the policy. That is the statutory requirement. It does not cover any passenger. We are absolutely conscious that the authorities to which we have referred to hereinbefore lay down the principle regarding non- coverage of passengers. The other principle that has been stated is that the insurer's liability as regards employee is restricted to the compensation payable under the 1923 Act. In this context, the question that has been posed in the beginning to the effect whether the employees of the owner of goods would come within the ambit and sweep of the term "employee" as used in Section 147(1), is to be answered. In this context, the proviso to Section 147(1)(b) gains significance. The categories of employees which have been enumerated in the sub-clauses (a), (b) and (c) of the proviso (i) to Section 147(1) are the driver of a vehicle, or the conductor of the vehicle if it is a public service vehicle or in examining tickets on the vehicle, if it is a goods carriage, being carried in the vehicle. It is submitted by the learned counsel for the appellant that sub- clause (c) is of wide import as it covers employees in a goods carriage being carried in a vehicle. The learned counsel for the insurer would submit that it should be read in the context of the entire proviso, regard being had to the schematic concept of the 1923 Act and the restricted liability of the insurer. It is further urged that contextually read, the meaning becomes absolutely plain and clear that employee which is statutorily mandated to be taken by the insured only covers the employees employed or engaged by the employer as per the policy.

20. It is the settled principle of law that the liability of an insurer for payment of compensation either could be statutory or contractual. On a reading of the proviso to Sub-Section (1) of Section 147 of the Act, it is demonstrable that the insurer is required to cover the risk of certain categories of employees of the insured stated therein. The insurance company is not under statutory obligation to cover all kinds of employees of the insurer as the statute does not show command. That apart, the liability of the insurer in respect of the said covered category of employees is limited to the extent of the liability that arises under the 1923 Act. There is also a stipulation in Section 147 that the owner of the vehicle is free to secure a policy of insurance providing wider coverage. In that event, needless to say, the liability would travel beyond the requirement of Section 147 of the Act, regard being had to its contractual nature. But, a pregnant one, the amount of premium would be different.

21. At this stage, we may usefully refer to Section 167 of the Act which reads as follows: -

> "167. Option regarding claims for compensation in certain cases.- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both." From the aforesaid provision, it is quite vivid that where a death or bodily injury to any person gives rise to a claim under the Act as well as under the 1923 Act, the said person is entitled to compensation under either of the Acts, but not under both.

22. Coming to the scheme of the 1923 Act, it is worth noticing that under Section 3 of the said Act, the employer is liable to pay compensation to the workman in respect of personal injury or death caused by an accident arising out of or in the course of his employment. Section 4 provides the procedure how the amount of compensation is to be determined. In this context, we may usefully quote a passage from Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy and Others[9]: -

> "....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." [Underlining is ours]

23. In Ved Prakash Garg v. Premi Devi and Others[10], after referring to the scheme of the 1923 Act in the context of payment of penalty for default by the insurer under Section 4-A of the Act, this Court held thus: -

> "On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4-A of the Compensation Act." [Emphasis supplied] Thereafter, the Bench proceeded to state thus:-

> "So far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time-limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow." Though the said decision was rendered in a different context, yet we have referred to the same only to highlight the liability of the insurer in respect of certain classes of employees.

24. It is worthy to note that sub-clause (i)(c) refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. On an apposite reading of Sections 147 and 167 the intendment of the Legislature, as it appears to us, is to cover the injury to any person including the owner of the goods or his authorised representative carried in a vehicle and an employee who is carried in the said vehicle. It is apt to state here that the proviso commences in a different way. A policy is not required to cover the liability of the employee except an employee covered under the 1923 Act and that too in respect of an employee carried in a vehicle. To put it differently, it does not cover all kinds of employees. Thus, on a contextual reading of the provision, schematic analysis of the Act and the 1923 Act, it is quite limpid that the statutory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kind of employee and therefore, someone who travels not being an authorised agent in place of the owner of goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to the language employed in the Statute. Therefore, we conclude that the insurer would not be liable to indemnify the insured.

25. Presently, for the sake of completeness, we shall refer to the policy. The policy, exhibit R-2/3/A, clearly states that insurance is only for carriage of goods and does not cover use of carrying passengers other than employees not more than six in number coming under the purview of the 1923 Act. The language used in the policy reads as follows:-

> "The Policy does not cover :
>
> 1. Use for organized racing, pace-making reliability trial or speed testing
>
> 2. Use whilst dwaing a trailer except the towing (other then for reward) or any one disabled mechanically propelled vehicle.
>
> 3. Use for varying passengers in the vehicle except employees (other than driver) not exceeding six in number coming under the purview of Workmen's Compensation Act, 1923." On a bare reading of the aforesaid policy, there can be no iota of doubt that the policy relates to the insured and it covers six employees (other than the driver, not exceeding six in number) and it is statutory in nature. It neither covers any other category of person nor does it increase any further liability in relation to quantum.

26. In view of the aforesaid analysis, we repel the contentions raised by the learned counsel for the appellant and as a fall-out of the same, the appeals, being sans merit, stand dismissed without any order as to costs.

.....J. [K. S. Radhakrishnan] .....J. [Dipak Misra] New Delhi;

December 11, 2012.

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[1] (2004) 2 SCC 1

[2] (2000) 1 SCC 237

[3] (2003) 2 SCC 223

[4] (2000) 1 SCC 237

[5] (2005) 12 SCC 243
[6] (2007) 9 SCC 486
[7] (2008) 1 SCC 423
[8] (2005) 6 SCC 172
[9] (2003) 2 SCC 339
[10] (1997) 8 SCC 1
