National Insurance Co. Ltd vs Anjana Shyam & Ors on 20 August, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2870, 2007 (7) SCC 445, 2007 AIR SCW 5237, 2007 (5) AIR KAR R 555, (2008) 1 CURLJ(CCR) 492, (2008) 1 MPLJ 1, 2007 (3) SCC(CRI) 416, 2007 (10) SCALE 116, (2008) 1 PUN LR 179, (2007) 6 MAH LJ 525, (2007) 4 ACC 355, (2007) 57 ALLINDCAS 17 (SC), (2007) 5 ALLMR 436 (SC), (2007) 4 CTC 593 (SC), (2007) 5 SUPREME 856, 2007 (5) ALL MR 436, (2008) 1 RAJ LW 309, (2008) 1 MAD LW 878, (2007) 3 KER LT 993, (2007) 3 CURCC 304, (2007) 38 OCR 457, (2007) 2 WLC(SC)CVL 486, (2007) 5 MAD LJ 235, (2007) 4 RECCIVR 30, (2007) 10 SCALE 116, (2007) 4 ACJ 2129, (2006) 4 PAT LJR 443, (2007) 50 ALLINDCAS 909 (PAT), (2007) 4 TAC 48, (2007) 5 ANDHLD 89, (2007) 68 ALL LR 914

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Bench: A.K. Mathur, P.K. Balasubramanyan

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           CASE NO.:
Appeal (civil)  2422-2459 of 2001

PETITIONER:
NATIONAL INSURANCE CO. LTD

RESPONDENT:
ANJANA SHYAM & ORS

DATE OF JUDGMENT: 20/08/2007

BENCH:
A.K. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:
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J U D G M E N T [with C.A. Nos. 5992-6026/2002, 4288/2006 and C.A. No 3824/2007 @ SLP (C) No. 14167 of 2001] P.K. BALASUBRAMANYAN, J.

1. Delay condoned and leave granted in SLP(C) No.14167 of 2001.

2. A bus bearing registration No. HP-06-1245, owned by the Tehsil Cooperative Union and insured with the appellant met with an accident on 4.3.1996. The vehicle had a carrying capacity of 42 passengers, one driver and one conductor and in terms of Section 147(1)(b)(ii) of the Motor Vehicles Act (hereinafter "the Act") was insured for the 42 passengers. It goes without saying that the route

permit of the vehicle was for carrying 42 passengers other than the driver and the conductor.

3. On the day of the accident, the materials indicate that the bus was overloaded. There were at least 90 passengers. The bus fell off the road into a nullah leading to the death of 26 including the one who was driving the vehicle and injuring 63 persons. The legal representatives of the deceased and the injured, all approached the Motor Accident Claims Tribunal claiming compensation and seeking its adjudging on applications made under Section 166 of the Motor Vehicles Act, 1988. The claim was resisted by the owner, the insured and by the insurance company. The insurance company mainly contended that the bus was overloaded; that it was being driven not by an authorized driver at the time of the accident; and that the insurance company had no liability. Alternatively, it was sought to be pleaded that the owner having permitted the vehicle to be overloaded had committed a fundamental breach of the contract of insurance and therefore the insurance company could repudiate the policy and hence was not liable for the compensation that may be adjudged. The Tribunal had brushed aside these objections and passed various awards on the various claims and made the insurance company liable for paying the amounts covered by all the awards exceeding the 42 covered by the insurance. Feeling aggrieved, the insurance company filed 38 appeals challenging the awards. In the appeals, an application was made seeking impleadment of the State of Himachal Pradesh. This was on the basis that the authorities under the State had failed to check the overloading of the bus and it was due to the negligence of the authorities of the State in not checking overloading and adherence to the conditions of the permit by the owner of the vehicle and the relevant provisions of the Act that the accident had occurred and hence the State must be found to be liable in contributory negligence and for that purpose it was just and necessary to implead the State as a party to the proceedings. An amendment of the written statement of the company was also sought for to introduce the plea that the bus carried 90 passengers at the time of the accident as against the sitting capacity of 42 including the driver and the conductor and in that situation the liability should be apportioned between the insurance company, the owner and the State and the insurance company could be found liable only to the extent of the insurance it had provided and it was bound to provide in terms of Section 147 of the Act and in terms of the conditions of the permit held by the owner of the bus.

The Insurance Company also sought permission to raise other contentions which were not normally open to it, by invoking Section 170 of the Act. The High Court taking the view that overloading of the bus which had a permit to ply on the route with only 42 passengers, did not amount to violation of the route permit or any other law for which the State Government could be held to be contributorily negligent and that the insurance company was liable to pay the amounts as awarded by the Tribunal since it could not also question the quantum of compensation awarded. Thus, the High Court dismissed the appeals filed by the insurance company. It also dismissed the three appeals filed by three different claimants seeking enhancement of compensation in their respective cases. The insurance company has filed Civil Appeal Nos.2422-2459 of 2001 challenging the decision of the High Court.

4. In the accident giving rise to C.A. Nos.5992- 6026/2002, the vehicle had only the capacity to carry 42 passengers but at the time of the accident, there were 70 passengers in the bus. The stand of the insurance company is that only 42 passengers were insured and they cannot be compelled to

meet the award beyond the contract of insurance itself. The appeals actually challenge only the interim awards made in respect of the claims, even beyond the insured 42.

5. In the accident giving rise to C.A. No.4288/2006 the vehicle was insured for 38 passengers and two more including the driver and the conductor. There were more than 70 passengers at the time of the accident. The insurance company contends that its liability is limited to the claim of 38 passengers.

6. In the civil appeal arising from SLP(C) 14167 of 2001, the claim was one arising out of the accident that has given rise to Civil Appeal Nos.2422-2459/2001. The appeal before the High Court was disposed of in the light of the earlier judgment from out of which C.A. Nos. 2422-2459 have arisen.

7. Learned counsel for the insurance company did not pursue his argument before us that overloading the bus was a breach of a specified condition of the insurance in that it was a user of the insured vehicle for a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle. His only contention in all these appeals was that the insurance company having insured 42 passengers in two of the cases and 38 passengers in another, the liability of the insurance company cannot be enlarged and the liability is confined only to the 42 passengers insured. It was submitted that there is nothing in the Act which justifies the imposing of the liability on the insurance company in respect of persons who were not at all covered by the insurance policy and in respect of whom there was no obligation on the owner of the vehicle to take coverage of insurance in terms of Section 147 of the Act. Counsel submitted, however much we may keep in mind that the relevant provisions of the Motor Vehicles Act are for the benefit of third parties or passengers of a transport vehicle injured in an accident, the same did not contain any provision which could enlarge the liability of the insurance company compelling it to cover more persons than it had contracted to cover.

8. Counsel for the respondents in these appeals submitted that the victims of an accidents are not to be driven to chase the mirage of recovery of compensation or damages from the owner of the vehicle and it is to ensure that the victims are paid compensation, whatever might be the inter se rights and obligations of the owner of the vehicle and the insurance company, that the relevant provisions are made. Counsel relied on Section 149 of the Act to contend that once an award is passed, it was the duty of the insurer to satisfy the judgment and award and viewed from that angle, the insurance company was bound to pay the victims the entire amount covered by the various awards.

9. Before us, there were attempts by learned counsel for the insurance company to suggest the adoption of a formula in cases of over-loaded vehicles meeting with the accidents and more people than those covered by the policy getting killed or injured. Counsel for the respondent submitted that that was not an acceptable formula and it was not practicable to adopt the same. We shall consider that aspect at a later stage if it becomes necessary.

9. Under Section 146 of the Motor Vehicles Act, 1988, no vehicle can be plied on the road without taking out an insurance against third party risk. Section 147(1)(b)(ii) provides that in order to

comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which insures persons or classes of persons, specified in the policy to the extent specified in sub-section (2) of that Section 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. The limit in terms of Section 147(2)(a) of the Act is the amount of liability incurred. Under Section 149(1) of the Act, the insurance company has the obligation, subject to the provisions of that Section, to satisfy the decree or award made by the concerned court or Tribunal on claims by third parties. Section 149(2) of the Act provides that no sum shall be payable by an insurer unless notice of the proceedings had been given to the insurance company before the commencement of the proceedings through the court or the Claims Tribunal, and that it shall not be liable if there has been a breach of a specified condition of the policy as indicated in that sub-section. These cover use of the vehicle for hire or reward where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or use for organized racing and speed testing, or use for a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle, or use without side-car being attached where the vehicle is a motor cycle, or there is a breach of a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification, or a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion, or that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular. Under sub-section (5), it is provided that if the amount which an insurer becomes liable to pay under this Section in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would, apart from the provisions of this Section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person. Therefore, on the scheme of the Act, the insurance company, if it is not able to establish that there is a fundamental breach of a condition which would enable it to disclaim liability, it may have to pay the amount of compensation adjudged by a Claims Tribunal subject of course to its rights to recover from the insured, the owner of the vehicle such excess as it is obliged to pay.

11. Section 149 of the Act speaks of the judgment or award in respect of the liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 of the Act having to be satisfied. Section 147(1)(b) compels insuring the person or classes of persons specified in the policy to the extent specified in sub-section (ii) of that Section. The case on hand will come under sub-clause (ii) of clause (b) of Section 147 (1) of the Act which obliges the owner to take out insurance compulsorily 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.

12. Section 58 of the Act makes special provisions in regard to transport vehicles. Sub-Section (2) provides that a registering authority, when registering a transport vehicle, shall enter in the record of registration and in the certificate of registration various particulars. Clause

(d) provides that if the vehicle is used or adapted to be used for carriage of passengers, the number of passengers for whom accommodation is provided. Thus the registration of the vehicle, which

alone makes it usable on the road, records the number of passengers to be carried and the certificate of registration also contains that entry. So, an insurance company insuring the passengers carried in a vehicle in terms of Section 147(1)(b)(ii) of the Act, can only insure such number of passengers as are shown in the certificate of registration. The position is reinforced by Section 72 of the Act, which deals with grant of stage carriage permits. Sub-Section (2) provides that when a permit is decided to be granted for a stage carriage, the Regional Transport Authority can attach to the permit one or more of the conditions specified therein. Clause (vii) is the condition regarding the maximum number of passengers that may be carried in a stage carriage. Overloading also invites a consequence which can be termed penal. Section 86 of the Act provides for cancellation of a permit if any condition contained in the permit is breached. Therefore, the apparent wide words of Section 147(1)(b)(ii) of the Act have to be construed harmoniously with the other provisions of the Act, namely, Sections 58 and 72 of the Act. As early as in 1846, Dr. Lushington in Queen V. Eduljee Byramjee [(1846) 3 MIA 468] posited that to ascertain the true meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. This Court has accepted this approach in innumerable cases. Thus, the expression 'any passenger' must be understood as passenger authorized to be carried in the vehicle and 'use of the vehicle' as permitted use of the vehicle. Affording of insurance for more number of passengers than permitted, would be illegal since in that case the manifest intention would be the overloading of the vehicle, something not contemplated by law. Thus, it is not possible to accept a contention that the insurance can be taken to cover more passengers than permitted by the certificate of registration and the permit as a stage carriage and that it will cover all the passengers overloaded. Of course, in these cases, there is no dispute that the insurance cover took in only the permitted number of passengers.

13. In this situation, the insurance taken out for the number of permitted passengers can alone determine the liability of the insurance company in respect of those passengers. In terms of Section 149 of the Act, the duty of the insurer is only to satisfy judgments and awards against persons insured in respect of the third party risk. Obviously, this is to the extent the third party risk is coverable and is covered. Section 149 of the Act speaks of judgment or award being obtained against any person insured by the policy and the liability of the insurer to pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder subject to any claim the insurer may have against the owner of the vehicle. Section 149 could not be understood as compelling an insurance company to make payment of amounts covered by decrees not only in respect of the number of persons covered by the policy itself but even in respect of those who are not covered by the policy and who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and in terms of violation of a statute.

14. It is true that the provisions in Chapter XI of the Act are intended for the benefit of third parties with a view to ensure that they receive the fruits of the awards obtained by them straightaway with an element of certainty and not to make them wait for a prolonged recovery proceeding as against the owner of the vehicle. But from that, it would not be possible to take the next step and find that the insurance company is bound to cover liabilities not covered by the contract of insurance itself. The Act only imposes an obligation to take out insurance to cover third party risks and in the case of stage carriages, the passengers to be carried in the vehicle and the passengers to be carried in the

vehicle can be understood only as passengers authorized or permitted to be carried in the vehicle.

15. In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the insurance company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the insurance company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading.

16. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to

ensure the satisfaction in full of the awards that may be passed ultimately.

17. In these cases, we find that this Court has not issued notices to the claimants. We are therefore not in a position to vary the decision of the High Court as regards the claimants. But, we have clarified the law on the question and we grant the insurance company a decree to recover the excess amount that it has deposited, from the owner, who has been issued notice and who has contested these appeals. Obviously, the principle indicated by us here will have to be applied by the Tribunal in the case from which the appeal against the interim award has been filed by the insurance company.

18. Thus, the appeals are allowed to the extent indicated above. There will be no order as to costs.