

New India Ass. Co. Ltd vs Asha Rani & Ors on 3 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 607, 2003 (2) SCC 223, 2002 AIR SCW 5259, 2003 (1) LRI 92, 2003 SCC(CRI) 493, 2002 (9) SCALE 172, 2002 (7) SLT 91, (2003) 3 ALLINDCAS 145 (SC), (2003) 1 JCR 224 (SC), 2003 (1) BLJR 448, 2003 (3) ALLINDCAS 145, 2003 (1) SRJ 569, 2003 (1) UJ (SC) 174, (2003) 1 KER LT 165, (2004) 3 MAD LW 771, (2002) 5 ANDHLD 96, (2002) 4 ICC 433, (2002) 2 ANDHWR 705, (2003) 1 ANDH LT 35, (2003) 2 GUJ LR 1001, (2003) 3 CAL HN 29, (2002) 9 SCALE 172, (2002) 3 ACC 753, (2003) 66 DRJ 161, (2003) 1 PAT LJR 213, (2003) 2 RAJ LW 213, (2003) 1 TAC 1, (2003) 1 ANDHLD 18, (2002) 8 SUPREME 594, (2003) 1 RECCIVR 671, (2003) 1 WLC(SC)CVL 509, (2003) 1 JLJR 213, (2003) 2 MPHT 474, (2003) 1 INDLD 543, (2003) 1 ALL WC 719, (2003) 1 ANDHWR 162, (2003) 1 CIVLJ 806, (2003) 113 COMCAS 520, (2003) 1 CURCC 9, (2002) 101 DLT 181, (2003) 3 BOM CR 765

Author: S.B. Sinha

Bench: S.B. Sinha

CASE NO.:

Appeal (civil) 5385 of 2001

PETITIONER:

New India Ass. Co. Ltd.

RESPONDENT:

Asha Rani & Ors.

DATE OF JUDGMENT: 03/12/2002

BENCH:

S.B. Sinha

JUDGMENT:

J U D G M E N T WITH C.A. Nos. 5433-5444/2001, 5386-5410/2001, 5418- 5427/2001, 1697/1999, 16793-96/1996, 6237/1997, 272-277/1999, 3843/2000, 5223/2000, 4458/1999, 229/1999, 5451-52/2001, 5445-50 & 50A/2001, 5453- 56/2001, 5428-32/2001, 5417/2001, 5411-16/2001, Civil Appeal Nos. 8013, 8014 & 8018/2002 (C.A.No.8013,8014 & 8018/2002 Arising out of SLP (C) Nos.12040, 12369 & 13159 of 2002.) S.B. SINHA, J :

Leave granted in Special Leave Petitions.

Though I respectfully agree with the judgment and order proposed to be delivered by My Lord, the Chief Justice of India; having regard to the importance of the questions involved in the matter, I would like to add a few words of mine.

It is not in dispute that in this batch of appeals, the cause of action in each case arose prior to coming into force of 1994 Amendment in the Motor Vehicles Act, 1988, and, thus, the effect thereof would have no bearing in the instant case.

The controversy in the instant case centres round the changes effected in the Motor Vehicles Act, 1988 vis--vis the Motor Vehicles Act, 1939. As would appear from the discussions made hereinafter a goods vehicle was required to be compulsorily covered by insurance policy in terms of 1939 Act but was not so required in terms of 1988 Act.

Before adverting to the pointed issue, we may notice the definitions of "goods vehicles", "public service vehicle" and "stage carriage" and "transport vehicle" occurring in Sections 2(8), 2(25), 2(29) and 2(33) of 1939 Act, which are as under :-

"2(8) "goods vehicle" means any motor vehicle constructed or adopted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;"

"2(25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;"

"2(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;"

"2(33) "transport vehicle" means a public service vehicle or a goods vehicle;"

Sections 2(14), 2(35), 2(40) and 2(47) of 1988 Act define "goods carriage", "public service vehicle", "stage carriage" and "transport vehicle" in the following terms :-

"2(14) "good carriage" any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;"

"2(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;"

"2(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;"

"2(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;"

The changes effected in the respective terminologies in the 1988 Act have a bearing on the question involved in these appeals.

Chapter VIII of 1939 Act and Chapter XI of 1988 Act deal with insurance of motor vehicles against third party risks.

Liability has been defined in Section 145 (c) as under -

"'liability', wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under Section 140;"

Section 146 specifies the necessity for insurance against third party risk. In terms thereof an owner of a motor vehicle is statutorily enjoined to have a policy of insurance complying with the requirements of the said chapter before he uses or causes or allows any other person to use a motor vehicle in public.

Section 147 deals with requirements of policies and limits of liability. Proviso appended thereto, however, makes an exception to the main provision which reads thus :-

"Provided that a policy shall not be required

(i) to cover liability in respect of the death, arising out of an 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."

We may notice that the proviso appended to Section 95 of 1939 Act contained clause (ii) which has been omitted in the 1988 Act and reads as under:-

"except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a 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,"

Thus, it may be noticed that so far as employees of the owner of the motor vehicle are concerned, an insurance policy was not required to be taken in relation to their liability other than arising in terms of the provisions of the Workmen's Compensation Act, 1923. On the other hand, proviso (ii) appended to Section 95 of 1939 Act, enjoined a statutory liability upon the owner of the vehicle to take out an insurance policy to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment. The Legislature has consciously not inserted the said provision in 1988 Act.

The applicability of decision of this Court in *Mallawwa (Smt.) & Ors. v. Oriental Insurance Company Ltd. & Ors.* [(1999) 1 SCC 403] in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 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 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 1988 Act.

We have further noticed that Section 147 of 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 1939 Act. The decisions of this Court in *Mallawwa's* case (*supra*) must be held to have been rendered having regard to the aforementioned provisions.

Section 147 of 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'.

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.

Furthermore, sub-clauses (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 Company v. Satpal Singh & Ors.* [(2000) 1 SCC 237] 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.

We may consider the matter from another angle. Section 149 (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub section 2 of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in *Satpal Singh's case* (supra).

For the foregoing reasons, I am in respectful agreement with My Lord the Chief Justice of India that the decision of this Court in *New India Assurance Company v. Satpal Singh & Ors.* [(2000) 1 SCC 237] has not laid down the law correctly and should be overruled.