Ramashray Singh vs New India Assurance Co. Ltd & Ors on 22 July, 2003

Equivalent citations: AIR 2003 SUPREME COURT 2877, 2003 (10) SCC 664, 2003 AIR SCW 3601, 2003 AIR - JHAR. H. C. R. 995, 2003 (2) UJ (SC) 1263, (2003) 6 JT 97 (SC), 2003 (6) ACE 244, 2004 SCC(CRI) 953, 2003 (5) SCALE 377, (2003) 4 JCR 193 (SC), (2003) 3 KER LT 71, 2003 (3) KER LT 51, (2003) 10 ALLINDCAS 518 (SC), 2003 (6) JT 97, 2003 (4) SLT 583, 2003 (8) SRJ 282, 2003 (3) BLJR 2413, 2003 UJ(SC) 2 1263, (2003) ILR (KANT) (4) 3525, (2004) SC CR R 254, (2003) 2 WLC(SC)CVL 270, (2003) 2 ACC 706, (2003) 98 FACLR 976, (2003) 3 LABLJ 740, (2003) 3 MAD LJ 134, (2003) 3 PAT LJR 176, (2003) 3 PUN LR 796, (2003) 4 RAJ LW 537, (2003) 3 TAC 3, (2003) 5 SUPREME 118, (2003) 4 RECCIVR 1, (2003) 5 SCALE 377, (2003) 3 JLJR 172, (2004) 1 GCD 13 (SC), (2003) 8 INDLD 333, (2003) 3 ACJ 1550, (2003) 4 ALL WC 2792, (2004) 1 ANDHWR 15, (2003) 3 BLJ 657, (2003) 116 COMCAS 643, (2003) 3 CURCC 71

Author: Ruma Pal

Bench: Ruma Pal, B.N.Srikrishna

CASE NO.:
Appeal (civil) 5147 of 2003

PETITIONER:
Ramashray Singh

RESPONDENT:
Vs.

New India Assurance Co. Ltd & Ors.

DATE OF JUDGMENT: 22/07/2003

BENCH:
Ruma Pal & B.N.Srikrishna.

JUDGMENT:

J U D G M E N T (Arising out of SLP(C) No. 20600 Of 2002) RUMA PAL, J Leave granted.

The appellant is the owner of a vehicle, described as a "trekker", in which passengers are carried for hire. He employed Shashi Bhushan Singh as a "khalasi" of the vehicle. On 21.10.1998 the vehicle met with an accident as a result of which Shashi Bhushan Singh died. The legal heirs of the deceased employee filed a claim in the Workmen's Compensation Court against the appellant, as the owner of the vehicle, and against the respondent insurance company. The Workmen's Compensation Court held that the vehicle had been comprehensively insured with the respondent and that since the accident had occurred during the period of insurance, the insurance company was liable to pay the compensation on account of the death of the employee. The respondent was, therefore, directed to deposit the compensation determined under the provisions of The Workmen's Compensation Act, 1923.

The decision was challenged by the respondent before the High Court at Patna under Article 226. The High Court allowed the writ petition. It held that in the absence of any special contract between the appellant and the respondent , the rights of the parties were governed by statute which did not require the respondent to cover liability in respect of an accident to a khalasi. The statute in question is the Motor Vehicles Act, 1988 (referred to hereinafter as the Act). The appellant has impugned the decision of the High Court before this Court, primarily on the ground that the High Court had misconstrued the provisions of the Act and in particular clause (b) of subsection (1) of section 147. It was contended that the insurance policy expressly covered the death or injury to the khalasi. Our attention was drawn to the insurance certificate where under the heading "Particulars of the vehicle insured" there is a column which refers to "Seating capacity including driver and cleaner". Under this sub-head the figure "13+ 1" has been inserted. A cleaner, as accepted by both parties before us, would include a khalasi. The appellant submitted that he had paid premium on the basis of 13+1 to cover the liability in question.

The respondent has refuted the claim that any additional premium was paid to cover the risk pertaining to a khalasi. It is contended that in terms of the insurance policy, as also under the provisions of Section 147 (1) (b), no employee of the insured apart from the driver was covered.

Chapter XI of the Act covers the subject 'Insurance of Motor Vehicles Against Third Party Risks' under Section 146(1) of which no person shall use a motor vehicle in public unless there is a valid policy of insurance which complies with the requirements of the Chapter. The mandatory requirements of such insurance policy have been provided in Section 147. The relevant extract of Section 147 is reproduced with emphasis on the words on which the appellant's case rests :

> "Section 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) xxx xxx xxx xxx xxx
>
> (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 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 a conductor of the vehicle or in examining tickets on the vehicle, or

(b) If it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability".

Over and above the risks which are covered by this statutory provision, parties may of course enter into a contract by which the insurer agrees to cover additional risks. It is not the appellant's case that apart from the policy of insurance there was any contract between the appellant and the insurance company. The policy has a clause which defines the limits of liability in respect of death or bodily injury to any person caused by or arising out of the use of the motor vehicle under Section II(i) of the terms and conditions of the Policy. In proviso (b) to Section II (1), it has been expressly stated that "Except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment".

A copy of the original policy was produced by the respondents in the course of arguments. The appellant has objected to the production of the policy at this stage. We would have understood and upheld the submission had the appellant not based his claim on the policy. Indeed, in the absence of the policy, we could not have entertained the appellant's claim at all. [See: Dr. T.V. Jose V. Chacko P.M. alias Thankachan 2001 (8) SCC 748.] The appellant's first submission was that Shashi Bhushan Singh was a passenger. The appellant's submission that the phrases 'any person' and "any passenger" in clauses

(i) and (ii) of sub section (b) to Section 147(1) are of wide amplitude, is correct. [See: New India Assurance Company V. Satpal Singh and Others 2000 (1) SCC 237]. However, the proviso to the

sub-section carves out an exception in respect of one class of persons and passengers, namely, employees of the insured. In other words, if the "person" or "passenger" is an employee, then the insurer is required under the statute to cover only certain employees. As stated earlier, this would still allow the insured to enter into an agreement to cover other employees, but under the proviso to Section 147 (1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured unless: first : the liability of the insured arises under the Workmen's Compensation Act, 1923 and second : if the employee is engaged in driving the vehicle and if it is a public service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of "any person"

or "passenger". If this were permissible, then there would be no need to make special provisions for employees of the insured. The mere mention of the word "cleaner" while describing the seating capacity of the vehicle does not mean that the cleaner was therefore a passenger. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot now be enforced on the basis that the deceased was a passenger.

The decision of the Full Bench of the Kerala High Court relied on by the appellant National Insurance Co. Ltd. v. Philomena Mathew : 1993 ACJ 1116 was based on a construction of Section 95 of the Motor Vehicles Act, 1939 the corresponding section to which under the present Act is section 147. The relevant provisions of the two sections which are otherwise in pari materia are materially different in one respect. Section 95 covered a fourth category of employee after the three now mentioned in clauses (a)(b) and

(c) to the proviso to Section 147 (1)(b) viz.,:

"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". (emphasis supplied) So a person carried in pursuance of a contract of employment would be a passenger and would be covered as such. The exclusion of this clause in the proviso to Section 147(1)(b) of the present Act bolsters our reasoning that employees other than the three mentioned are not covered by Section 147 (1)(b).

The appellant's next submission was that the concerned employee was a 'conductor'. It is doubtful whether a 'khalasi' and a conductor are the same. But assuming this were so, there is nothing to show that the appellant had paid any additional premium

to cover the risk of injury to a conductor. On the contrary, the policy shows that premium was paid for 13 passengers and 1 driver. There is no payment of premium for a conductor.

The appellant's final submission was that as the policy was a comprehensive one, it would cover all risks including the death of the khalasi. The submission is unacceptable. An insurance policy only covers the person or classes of persons specified in the policy. A comprehensive policy merely means that the loss sustained by such person/persons will be payable upto the insured amount irrespective of the actual loss suffered. [See: New India Insurance Co. Ltd. v. J.M. Jaya 2002 (2) SCC 278; Colinvaux's: Law of Insurance (7th Edition) p. 93-94].

Consequently, although the appellant's claim under the insurance policy arose under the Workmen's Compensation Act, since the concerned employee was not engaged in the capacity of driver in respect of whom alone premium was paid apart from the passengers, his claim is unsustainable. The appeal is accordingly dismissed without any order as to costs.