

National Insurance Co. Ltd. vs Bommithi Subbhayamma And Ors. on 21 February, 2005

Equivalent citations: III(2005)ACC423, 2005ACJ721, [2006]131COMPCAS280(SC), 2005(1)CTC706, (2005)141PLR546, (2005)12SCC243, 2005(2)UJ1087(SC), AIRONLINE 2005 SC 276, (2005) 3 ACC 423, (2005) 2 TAC 1, (2005) 4 REC CIV R 829, (2005) 2 MAD LW 163, (2005) 3 PUN LR 546, (2006) 131 COM CAS 280, 2005 (12) SCC 243, (2005) 2 ACJ 721, 2005 UJ(SC) 2 1087, (2005) 1 CTC 706 (SC), (2005) 2 WLC (SC) CIVIL 334, 2005 UJ(SC) 1087

Bench: S.B. Sinha, Ar. Lakshmanan

ORDER

1. The petitioners herein filed an application for grant of special leave questioning the legality of the judgment and order dated 3.10.2002 passed by a learned Single Judge of Andhra Pradesh High Court whereby and whereunder an appeal preferred by the respondents herein from a judgment and award passed by Motor Accidents Claims Tribunal being IV Additional District Judge, East Godavari District was allowed.

2. The fact of the matter is in a narrow compass. One Sri Bommithi Kondala Rao since deceased, was travelling in a lorry bearing registration No. AIK 4005 on 5.11.1995. The said lorry met with an accident resulting in death of the said Sri Bommithi Kondala Rao. On a claim application filed by the heirs of the said deceased, the IV Additional District Judge, East Godavari District awarded compensation for the death of the said Sri Bommithi Kondala Rao for a sum of Rs. 1,30,000 with interest at the rate of 12% per annum. The Motor Vehicle Accidents Claims Tribunal, however, was of the opinion that the appellant herein was not liable to pay the said amount of compensation as the deceased was travelling in a lorry as a gratuitous passenger. The said award passed by the Motor Vehicle Accidents Claims Tribunal came to be questioned before the High Court which, as noticed hereinabove, was reversed by the High Court relying on or on the basis of the decision of this Court in *New India Assurance Co. v. Satpal Singh*.

3. The petitioner herein filed a Special Leave Petition before this Court which was summarily dismissed by a Division Bench of this Court on 10.4.2003. The Petitioner herein thereafter filed a review petition in terms of Article 137 of the Constitution of India drawing this Court's attention to a 3-Judge Bench of this Court in *New India Assurance Co. Ltd. v. Asha Rani and Ors.*, wherein the decision of this Court in *Satpal Singh* (supra) was overruled. The same Division Bench in terms of its order dated 5.8.2003 directed issuance of notice in the review application stating:

"The notice to indicate also as to why in the light of a notice said to have been ordered in S.L.P. (C) Nos. 7149/2003, 6895/2003, etc. and 6916/2003, the order dated

10.04.2003 dismissing Special Leave Petition (C) No. 5628 of 2003 cannot be recalled and the matter directed to be posted along with the other pending matters."

4. Pursuant to or in furtherance of the said order, a notice was directed to be issued. Nobody has appeared despite service of notice. After hearing the learned counsel for the Appellant, we are of the opinion that the order of this Court dated 10.4.2003 dismissing the Special Leave Petition summarily should be recalled. Review Petition, therefore, is allowed.

Leave granted.

5. The learned counsel appearing for the appellant submitted that in view of the fact that the decision of this Court in Asha Rani (supra) the impugned judgment cannot be sustained. The learned counsel appears to be correct.

6. In Asha Rani (supra), this Court while overruling Satpal Singh (supra) has clearly held that the insurance company is not liable for payment of any compensation for death of a gratuitous passenger travelling in a goods vehicle.

7. Asha Rani (supra) was followed in Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy, 2003 (2) SCC 339. Yet again, the said view was upheld in New India Assurance Co. Ltd. v. Ajit Kumar, 2003 (9) SCC 668.

8. The question again came up for consideration before a 3-Judge Bench of this Court, of which we are members, in National Insurance Co. Ltd. v. Baljit Kaur and Ors., wherein upon considering the effect of amendment carried out in Section 147 of the Motor Vehicles Act, 1988 by Motor Vehicles (Amendment) Act, 1994, it was opined:

"By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J, was a party, however, bear repetition :

"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 therefore."

In *Asha Rani* (supra) it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act 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. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."

9. The same view was reiterated in *National Insurance Co. Ltd. v. Challa Bharathamma and Ors.*, 2004 (8) SCC 517; *Pramod Kumar Agrawal and Anr. v. Mushtari Begum (Smt.) and Ors.*, 2004 (8) SCC 667 and also in *National Insurance Co. Ltd. v. V. Chinnamma and Ors.*, 2004 (8) SCC 697.

10. In view of the aforementioned authoritative pronouncements of this Court, the impugned judgment of the High Court cannot be sustained which is set aside accordingly. This Appeal is allowed. We, however, make it clear that claimants-respondents will be entitled to recover the amount of compensation granted in their favour by the Motor Vehicle Accidents Claims Tribunal from the owner of the vehicle. No costs.