

## **National Insurance Co. Ltd vs V. Chinnamma & Ors on 25 August, 2004**

**Equivalent citations: AIR 2004 SUPREME COURT 4338, 2004 AIR SCW 5116, (2004) 7 JT 167 (SC), (2004) 22 ALLINDCAS 805 (SC), 2004 (6) SLT 500, (2004) 4 ALLMR 1200 (SC), (2004) 4 CTC 459 (SC), (2004) 2 KER LJ 750, 2005 SCC(CRI) 378, 2004 (22) ALLINDCAS 805, 2004 (4) CTC 459, 2004 (4) ALL MR 1200, 2004 (8) SCC 697, (2005) 1 MAD LW 92, 2004 (8) SRJ 345, (2004) 6 ANDHLD 57, (2004) 6 SUPREME 379, (2004) 4 RECCIVR 300, (2005) 1 ANDH LT 59, (2004) 4 ALL WC 2961, (2005) 1 BLJ 160, (2005) 1 CAL LJ 41, (2004) 4 CURCC 23, (2004) 4 PAT LJR 147, (2005) 1 PUN LR 98, (2004) 3 TAC 577, (2004) 4 JLJR 69, (2004) 3 ACC 1, (2004) 57 ALL LR 296, (2004) 4 CIVLJ 783, (2004) 3 ACJ 1909, (2004) 29 OCR 366, (2004) 122 COMCAS 50, (2004) 3 KER LT 397, (2004) 22 INDLD 419, (2004) 22 INDLD 98, AIRONLINE 2004 SC 28, (2005) 1 ANDH WR 11, (2004) 2 WLC (SC) CIVIL 708, (2004) 2 WLC(SC) CVL 708**

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**Bench: N. Santosh Hegde, S.B. Sinha, A.K. Mathur**

CASE NO.:

Appeal (civil) 5478 of 2004

PETITIONER:

National Insurance Co. Ltd.

RESPONDENT:

V. Chinnamma & Ors.

DATE OF JUDGMENT: 25/08/2004

BENCH:

N. Santosh Hegde, S.B. Sinha & A.K. Mathur

JUDGMENT:

**J U D G M E N T** (Arising out of S.L.P. ) No. 12019 of 2003) S.B. SINHA, J:

Leave granted.

The Appellant Insurance Company aggrieved by and dissatisfied with a judgment and order dated 28th March, 2002 passed by the High Court of Judicature Andhra Pradesh at Hyderabad in AAO No. 216 of 1997 is in appeal before us.

The respondents herein are heirs and legal representatives of one V. Gopal. The said V. Gopal (the deceased) used to carry on business in vegetables. He purchased 5 bags of vegetables on 24.11.1991 in a village known as Ayyapareddipalem and loaded the same in a trailer of a tractor bearing No. MH33-8109. He was traveling therein. He wanted to buy some more vegetables at a village known as Peddapadu. While the tractor approached the said village, a bus was seen coming from opposite direction. Because of rash and negligent driving on the part of the driver of the said tractor, and which was driven at a very high speed, it went to the extreme left side of road margin and because of heavy jerks, the deceased fell down and received serious injuries. He was immediately shifted to Peddapadu where he breathed his last.

A claim petition was filed by the respondents herein before the Addl. Motor Accidents Claims Tribunal, Nellore claiming a sum of Rs. 1,00,000/-. The Appellant herein denied and disputed its liability to pay any amount to the Respondents by way of compensation inter alia on the ground that the deceased was traveling in the said tractor as a 'paid passenger'.

The learned Addl. Motor Accidents Claims Tribunal inter alia held that carrying the goods, i.e., vegetables, by the deceased as owner thereof would entitle the Applicants to receive compensation from the Appellant.

The learned Tribunal observing that a person who is not a party to contract of insurance would be the 'third party' and in that view of the matter the respondents would be entitled to the amount of compensation even if the vehicle was only having third party insurance (Act policy). It was further held that the Tribunal was empowered to grant compensation over and above the amount claimed. A sum of Rs. 1,53,000/- was awarded by way of compensation in favour of the Respondents. The High Court by reason of the impugned judgment has dismissed the appeal preferred by the Appellant herein from the said judgment and award holding that as the deceased was traveling in the trailer alongwith his goods being vegetables, it was liable to pay compensation.

Mr. P.K. Seth, learned counsel appearing on behalf of the appellant would submit that as this Court in *New India Assurance Co. Ltd. Vs. Asha Rani and Others* [(2003) 2 SCC 223] overruled its earlier decision in *New India Assurance Co. Vs. Satpal Singh* [(2000) 1 SCC 237] holding that the insurance company would not be liable for paying compensation to a passenger in a goods vehicle, whether he was travelling as an owner of the goods when that vehicle meets with an accident, the impugned judgment is not sustainable.

Mrs. K. Sharda Devi, learned counsel appearing on behalf of the respondents, on the other hand, would submit that a tractor is not a 'goods carriage' vehicle and as carrying of vegetables in a tractor would be for agricultural purpose, the appellant cannot be absolved from its liability to pay the amount of compensation.

Section 147(1) of the Motor Vehicles Act, 1988 is in pari materia with the provisions of Section 95(1) of the Motor Vehicles Act, 1939. In the year, 1994, Section 147 was amended by reason of Act 54 of 1994 with effect from 14.11.1994 in terms whereof the words "including owner of the goods or his authorized representative carried in the vehicle" were added after the words "against any liability which may be incurred by him in respect of the death of or bodily injury to any person".

In Asha Rani (supra), this Court overruling its earlier decision in Satpal Singh (supra) observed:

"9. In Satpal Singh's case (supra) the Court assumed that the provisions of section 95(1) of Motor Vehicles Act, 1939 are identical with section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred."

One of us in a supplemental judgment in Asha Rani (supra) opined:

"25. 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'.

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 therefor.

27. 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.

28. 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* [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.

29. 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)."

Asha Rani (supra) was followed by this Court in *Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy and Others* [(2003) 2 SCC 339] holding:

"10. The inevitable conclusion, therefore, is that 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 carriage and the insurer would have no liability therefore."

Yet again in *National Insurance Co. Ltd. Vs. Ajit Kumar and Ors.* [JT 2003 (7) SC 520] this Court held:

"11. The difference in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passenger" as contained in definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the "carriage of goods". Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to section 95 of the old Act prescribing requirement of insurance policy. Even 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 'WC Act'). There is no reference to any passenger in "goods carriage"."

The effect of 1994 amendment came up for consideration before a 3- Judge Bench of this Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others [(2004) 2 SCC 1] wherein again it was held:

"19. 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 or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20. 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 was any premium paid to the extent of the benefit of insurance to such category of people."

(Emphasis supplied) An insurance for an owner of the goods or his authorized representative travelling in a vehicle became compulsory only with effect from 14.11.1994, i.e., from the date of coming into force of Amending Act 54 of 1994.

Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "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"

whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller".

The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle".

A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and

trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment.

For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. This appeal is allowed. In the facts and circumstances of this case, there shall be no order as to costs.