

New India Assurance Co. Ltd vs Vedwati & Ors on 20 February, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1334, 2007 (9) SCC 486, 2007 AIR SCW 1505, 2007 (3) ALL LJ 193, 2007 (2) AIR JHAR R 772, (2007) 52 ALLINDCAS 102 (SC), 2007 (52) ALLINDCAS 102, (2007) 3 ALLMR 312 (SC), (2007) 2 JCC 1078 (SC), (2007) 2 CTC 664 (SC), 2007 (2) JCC 1078, 2007 (2) JKJ 12, 2007 (3) SCALE 397, 2007 (3) ALL MR 312, 2007 (2) CTC 664, (2007) 3 EASTCRIC 185, (2007) 1 ACC 924, (2007) 1 WLC(SC)CVL 567, (2007) 2 JLJR 198, (2007) 2 ACJ 1043, (2007) 136 COMCAS 262, (2007) 2 MAD LW 704, (2007) 2 PAT LJR 216, (2007) 2 RAJ LW 1098, (2007) 2 RECCIVR 115, (2007) 3 SCALE 397, (2007) 67 ALL LR 133, (2007) 3 MAD LJ 117, (2007) 2 PUN LR 72, (2007) 2 TAC 8, (2007) 2 KER LT 219

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:

Appeal (civil) 860 of 2007

PETITIONER:

New India Assurance Co. Ltd

RESPONDENT:

Vedwati & Ors.

DATE OF JUDGMENT: 20/02/2007

BENCH:

Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T (Arising out of SLP(C) No. 8317 of 2002) WITH CIVIL APPEAL NO. 861 OF 2007 (Arising out of SLP(C) No. 8802 of 2002) Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in these appeals is to the judgment rendered by a Division Bench of the Allahabad High Court dismissing the appeal filed by the appellant (hereinafter referred to as the 'Insurer'). By the impugned judgment the High Court held that the respondent Nos.1 to 6 (hereinafter referred to as the 'Claimants') were entitled to compensation and that the same was to be paid by the insurer.

Background facts in a nutshell are as follows:

A Claim Petition was filed under Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') claiming compensation with the allegation that Paras Ram Agnihotri (hereinafter referred to as the 'deceased') was returning from his village Gokhia from Atarra in tractor No.MP 16A/2637 after delivering certain goods there. The tractor overturned due to rash and negligent driving by the driver, with the result the deceased has lost his life. He was aged about 38 years and was working as priest and agricultural farmer from which he was earning about Rs.7,000/- per month. Adjudicating the Claim Petition, the IVth Additional District Judge Banda-cum-Motor Accidents Claims Tribunal (in short the 'MACT') did not accept the plea of the insurer that there was violation of terms of the policy issued to Jagdish Prasad (hereinafter referred to as the 'insured'). The tractor could only be used for agricultural work. Since the same was used for carrying passenger, the insurer was not responsible to indemnify to any award and to pay any amount to the claimants. The Tribunal rejected this plea and held that in view of this Court's judgment in *New India Assurance Company v. Satpal Singh & Ors.* (2000(1) SCC

237), passenger travelling in a goods vehicle graciously was also entitled to claim compensation which was to be paid by the insurer. The High Court affirmed the view by the impugned order.

In support of the appeals, learned counsel for the appellant submitted that the view in *Satpal Singh's* case (supra) has subsequently been overruled by this Court and therefore the view of the High Court is unsustainable.

In response, learned counsel for the claimants submitted that in any event the liability of the insurer vis-a-vis the third party will not be altered.

This Court had occasion to deal with cases of passengers traveling in goods vehicles which met accident resulting in death of such person or bodily injury. Such cases belong to three categories i.e. (1) those covered by the old Act, (2) those covered by the Act; and (3) those covered by amendment of the Act in 1994 by the Motor Vehicles (Amendment) Act, 1994 (hereinafter referred to as the 'Amendment Act').

The present appeals belong to the second category.

In *Satpal Singh's* case (supra) this Court proceeded on the footing that provisions of Section 95(1) of the old Act are in pari materia with Section 147(1) of the Act as it stood prior to the amendment in 1994.

On a closer reading of the expressions "goods vehicle".

"public service vehicle", "state carrier" and "transport vehicle"

occurring in Sections 2(8), 2(25), 2(29) and 2(33) of the old Act with the corresponding provisions i.e. Section 2(14), 2(35) 2(40) and 2(47) of the Act, it is clear that there are conceptual differences. The provisions read as follows:

Old Act:

"2 (8) "goods vehicle" means any motor vehicle constructed or adapted 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:"

The Act (New Act):

"2(14) "goods carriage" any motor vehicle constructed or adapted for use solely for the carriage of goods or any motor vehicle not to constructed or adapted when used for the carriage of goods:"

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

" 2(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for (SIC) 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 services vehicle a goods carriage an educational institution bus or a private service vehicle:"

(Underlined for emphasis) "Liability" as defined in Section 145(c) of the Act reads as follows:

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

Third party risks in the background of vehicles which are subject-matter of insurance are dealt with in Chapter VIII of the old Act and Chapter XI of the Act. Proviso to Section 147 of the Act (sic) is to be (sic) with Section 96 of the old Act. Proviso to Section 147 of the Act reads as follows:

'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, 1993 (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 vehicles, or

(c) if it is a good carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

It is of significance that proviso appended to Section 95 of the old Act contained Clause (ii) which does not find place in the Act. The same reads as follows:-

"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."

The difference in the language of "goods vehicle" as appear 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 passengers" as contained in definition of "good vehicle" in the old Act. The position becomes further clear because the expression used is "good 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 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 therefor.

Our view gets support from a recent decision of a three- Judge Bench of this Court in New India Assurance Company Limited v. Asha Rani and Ors. (2002 (8) Supreme 594] in which it has been held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award. This position was also highlighted in Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy and Others (2003(2) SCC

339). Subsequently also in National Insurance Co. Ltd. v. Ajit Kumar and Others (2003(9) SCC 668), in National Insurance Co. Ltd. v. Baljit Kaur and Others (2004 (2) SCC 1) and in National Insurance Co. Ltd. v. Bommithi Subbhayamma and Others (2005 (12) SCC 243), the view in Asha Rani's case (supra) was reiterated.

Above being the position, the impugned order of the High Court is not sustainable and we accordingly set aside the same.

Appeals are allowed with no order as to costs.