

New India Assurance Co. Ltd vs Asha Rani & Ors on 17 August, 2001

Equivalent citations: 2001 AIR SCW 3295, 2001 (6) SCC 724, (2001) 3 PUN LR 637(2), (2001) WLC(SC)CVL 735, (2001) 4 CIVLJ 446, (2001) 3 KER LT 235, (2001) 6 SUPREME 359, (2001) 5 SCALE 374, (2001) 2 UC 470, (2001) 4 ALL WC 2855, 2002 ALL CJ 1 10, (2001) 4 RECCIVR 294, (2002) 1 MAD LW 644, (2001) 3 TAC 565, (2001) 2 ACC 479, (2001) 3 ACJ 1847, (2001) 45 ALL LR 469, (2001) 107 COMCAS 182, (2001) 6 JT 665 (SC), 2001 SCC (CRI) 1223

Bench: A.P. Misra, U.C. Banerjee

CASE NO.:
Appeal (civil) 5385 of 2001

PETITIONER:
NEW INDIA ASSURANCE CO. LTD.

Vs.

RESPONDENT:
ASHA RANI & ORS.

DATE OF JUDGMENT: 17/08/2001

BENCH:
A.P. Misra & U.C. Banerjee

JUDGMENT:

with C.A. 16793-16796 of 1996 National Insurance Co. Vs. Bhag Devi & Ors. ETC.

C.A. 229 of 1999 Satyabama Vs. Uttam Namdeo Patil & ANR.

CA No. 5386-5410 of 2001 Oriental Insurance Co. Ltd. Vs. (arising out of SLP © No.4098-4122 of 2001) Ganeshlal Nathuji Chaudhary & ors.

CA No. 5411-16 of 2001 Oriental Insurance Co. Ltd., A.P. (arising out of SLP © No.11427-11432 of 2001) Vs. A.P. Paper Mills & Ors.

CA No. 5417 of 2001 Oriental Insurance Co. Ltd. Vs. (arising out of SLP © No. 11760 of 2001) Potuganti Chimmannagari Basavamma & Ors.

CA No. 5418-27 of 2001 K.E. Suhara Vs. (arising out of SLP © No.10938-10947 of 2000) National Insurance Co. LTD. & Ors.

C.A. No. 4458 of 1999 Vidha Devi (Dead) Thru Ram Prasad Mittan Vs. Meera Bai C.A. Ndo. 5223 of 2000 New India Assurance Co. Ltd. And Anr. VS. Chaman Lal & Anr.

CA No. 5428-32 of 2001 M/S United India Insurance Co. Ltd. Vs. (arising out of SLP © No. 12889-93of 2001) Bharamavva & Ors.

C.A. No. 1697 of 1999 The Oriental Insurance Co. Ltd. Vs. K.J. Abraham & Ors.

CA No. 5433-44 of 2001 National Insurance Co. Ltd. Vs. (arising out of SLP © No. 12627-38 of 2000) Lala & Ors.

C.A. No. 6237 of 1997 National Insurance Co. Vs. Roshni Devi & Ors.

C.A. No. 272-77 of 1999 Oriental Insurance Co. Ltd. Vs. Shanti & Ors.

CA No. 5445-50 of 2001 New India Assurance Co. Ltd. Vs. (arising out of SLP © No. 8116-22of 2001) Shanta Devi & Ors.

CA No. 5451-52 of 2001 New India Assurance Co. Ltd. Vs. (arising out of SLP © No. 6956-57 of 2001) Lehri & Ors.

CA No. 5453-56 of 2001 Oriental Insurance Co. Ltd. Vs. (arising out of SLP © No. 10419-22 of 2001) Pagedala Venkata Narasamma & Ors.

Etc. Etc. C.A. No.3843 of 2000 United India Insurance Co. Ltd. Vs. Ladhu Devi & Ors.

J U D G E M E N T MISRA, J.

The aforesaid sets of appeals were listed under category two out of the three categories as referred in Civil Appeal No. 5010 of 1999. The arguments were heard, compositively for all the three categories. We have delivered judgment today for category one and three, while we are passing this order for the appeals falling under category two. The appeals falling under first category were those which fell under the Motor Vehicles Act, 1939 (hereinafter referred to as Old Act). The appeals falling under second category are those which falls under Motor Vehicles Act 1988 (hereinafter referred to as new Act), prior to its 1994 amendment, while the appeals falling under category three were those falling under the new Act but those after the 1994 amendment.

Learned counsel for the insurance company submits, that in *New India Assurance Company vs. Satpal Singh and Ors.* (2000) 1 SCC 227 this Court held that insurance company is liable to pay compensation in all cases where the deceased or injured persons are gratuitous passengers including owner or his representative of the goods while travelling in a goods carriage under Section 147 of the new Act. He seeks reference of this point to a larger Bench as it vitally affects Insurance Company and as relevant provisions of the new Act were not placed before this Court and if it were placed, a different conclusion would have come.

This Court in *Satpal Singh* (Supra) held:

The result is that under the new Act an insurance policy covering third-party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-à-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force.

To Section 95 of the old Act the corresponding section is Section 147 of the new Act, which deals with liability to pay the compensation. The relevant portion of Section 95 under the old Act and Section 147 of the new Act is quoted hereunder:

Section 95: Requirements of policies and limits of liability- (1) In order to comply with the requirements of this Chapter, a policy of insurance may be a policy which, -

(a) is issued by a person who is an authorised insurer [or by a co-

operative society allowed under section 108 to transact the business of an insurer], and

(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 no be required

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employees 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 Workmens Compensation Act, 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

(c) if it is a goods vehicle, being carried in the vehicle]; or

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

(iii) to cover any contractual liability;

Explanation For the removal of doubts, it is hereby declared that the death of or bodily injury to any person, or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of the use of a vehicle in a public place notwithstanding that the person who is dead or injured to the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.] (2) Subject to the proviso to sub-section (1) a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :-

[(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmens Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;]

(b) 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, -

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;]

(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees [six thousand] in all in respect of damage to any property of a third party] 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) is issued by a person who is an authorised insurer; or

(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, including owner of the goods or his authorised representative carried in the vehicle](brought in by amendment through Act No. 54 of 1994) 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 employees 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

(c) if it is a goods carriage, being carried in the vehicle]; or

(ii) to cover any contractual liability.

Explanation For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.] (2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any one accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

By comparing these two sections, what emerges is that clause (ii) to the proviso of Section 95(1)(b) under the old Act has been deleted and clause (iii) has been re-numbered as (ii) in Section 147 of the new Act. Sub-Section (2) of Section 95 is also modified under the new Act through sub-sections (2) of Section 147, which refers to quantum of compensation to which we are not concerned. The submission for the insurance company is, the earlier decision in *Mallawwa (Smt.) & Ors. Vs. Oriental Insurance Co. Ltd. & Ors.*, (1999) 1 SCC 403 held insurance company not liable to pay the compensation but it has been distinguished in *Satpal Singh (Supra)* that it was under the old Act while the case in hand is under the new Act. The submission is, mere deletion of sub-clause (ii) to the proviso of Section 95 (1)(b) under the old Act by itself would make no difference to hold the liability to fall on the insurance company. This apart some of the distinguishing features in the new Act, to which attention was not drawn would make a difference in drawing the conclusion.

The first striking distinguishing feature pointed out is with reference to the definition of the goods vehicle as defined under the old Act and the goods carriage as defined under the new Act. Section 2(8) of the old Act defines good vehicle:

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.

Under the new Act goods vehicle is substituted by the words goods carriage. There is no definition of goods vehicle. It is defined under Section 2(14) of the New Act as hereunder:

Section 2(14): goods carriage means 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.

The significant difference between the two definitions is that under the old Act the definition includes or in addition to passengers, while these words are deleted while defining the goods carriage under the new Act. The submission is, this exclusion itself is indicative that passengers are not to travel in a goods carriage.. The second distinguished feature pointed out is with reference to Section 149 under the new Act. The submission is, by virtue of sub-section (2) of Section 149 the defence which is

permissible to the insurer is obliterated, in view of the declaration of law in Satpal Singh (Supra). The relevant portion of Section 149 sub-section (2) is quoted hereunder:

149: Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks (1)..

(2) No sum shall be payable by an insurer under sub-section(1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

The submission is, Sub-section (2) declares that no sum is payable by the insurer, if any of the grounds mentioned under various sub-clauses of the sub-section (2) is proved to exist. For example,

no sum is payable by the insurer under sub-section (2) if there has been a breach of specified conditions of the policy, namely, where the vehicle on the relevant date is not covered by a permit to ply for hire or reward and if it plies for the same, i.e., in case the insured uses the vehicle for a purpose not allowed by the permit. If a permit for a goods carriage is not meant for the passengers to be carried and if passengers travel, the insurer would not be liable to pay the compensation. This defence of the insurer would not be available which stands negated in view of the declaration of law in Satpal Singh (Supra).

This apart, submission is also with reference to the deletion of sub- clause (ii) of proviso to Section 95 (1)(b) of the old Act that this by itself would make no difference for drawing conclusion different from what was declared by this Court in Malwa (Smt.) supra, if various earlier decisions of courts and amendment under the old Act is taken into consideration.

We may usefully refer here the decision of the Karnataka High Court in Oriental Insurance Co. Ltd. vs. Smt. Irawwa and Ors. AIR 1992 Karnataka 321. This judgment has very significantly brought the difference between Section 147 of the new Act and Section 95 of the old Act with reference to the definition clause. It reads:

It may be seen that S.147 of the 1988 Act, like S.95 of the 1939 Act, apart from prescribing the compulsory coverage in respect of third party risks, prescribed the compulsory coverage against death of or bodily injury to any passenger in a Public Service Vehicle caused by or arising out of the use of the vehicle in a public place. The proviso to S.147 of the 1988 Act which is similar to the corresponding Proviso to S.95(1) of the 1939 Act, makes it clear that compulsory coverage in respect of drivers of any motor vehicle, conductors of public service vehicles and employees carried in a goods vehicle shall be limited to the liability under the Workmens Compensation Act. Under S.147(2) of the Act, while the liability in respect of damage to any property of third party is limited to Rs. Six thousand as regards the liability in respect of passengers as also third parties it is made equal to the liability incurred. Section 2(35) of the 1988 Act which defines Public Service Vehicle is similar to S. 2(25) of the 1939 Act and does not include a goods carriage. The difference in the definition goods vehicle given in S.2(8) of the 1939 Act and the goods carriage given in S.2(14) of the 1988 Act is significant. While the definition given in the 1939 Act gave an indication, goods vehicle could carry some passengers, the definition in 1988 Act omits the words in addition to passengers and states that goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods. Therefore, the question whether risk in respect of passengers carried in a goods vehicle should be covered by an insurance policy does not arise at all under the 1988 Act.

This question of the liability of the insurance company in respect of gratuitous passengers travelling in a goods vehicle has been in issue before various High Courts under the old Act which has led to the conflicting judgments. As we have recorded earlier, Satpal Singh (Supra) held, insurance company liable both for the gratuitous passengers and the owners or his representative of the goods, while interpreting

Section 147 of the new Act. This was based on the fact of deletion of Clause (ii) of the proviso of the Section 95(1) of the old Act. It is relevant to refer to some of the decisions with brief background history both of the interpretation and incorporation of the said sub-clause (ii) of Section 95 of the old Act and its exclusion, to see whether the decision of Satpal Singh (Supra) requires reconsideration. It is not in dispute in Mallawwa (Smt.) and Ors. vs. Oriental Insurance Co. Ltd. and Ors. (1999) 1 SCC 403, this Court while interpreting Section 95(1) including the said sub-clause (ii) held the insurance company not liable to pay compensation either to the gratuitous passengers or to the owners of the goods.

The full Bench of the Karnataka High Court in National Insurance Co. Ltd. Vs. Dundamma, 1992 ACJ 1, while interpreting the said proviso

(ii) held that this proviso takes care of passengers in public service vehicle only because of the words used therein, namely, in which passengers are carried for higher or reward. However, in view of proviso (i) it was held that insurer would be liable to pay compensation to the employees and the owner of a goods vehicle.

Similar question came before the full Bench of the Rajasthan High Court, Jaipur Bench in Santra Bai and Ors. vs. Prahlad and Ors. 1985 ACJ

762. This decision contains a detailed discussion on the question, whether the said proviso is confined to public service vehicle only or takes within its hold goods vehicle also. It was held that the owner of the goods or his employee, if he travels in the goods vehicle, has to be taken to be a person carried for reward, if not for hire. Then with reference to the definition of goods vehicle and with reference to the words used in proviso (ii) it was pointed out that the legislature has not used the term public service vehicle but used the words where the vehicle is a public vehicle in which passengers are carried. It was held, the word used therein would also include goods vehicle and such goods vehicle can also carry passengers for hire or reward. Thereafter came the full Bench of the Orissa. In New India Assurance Company Ltd. Vs. Kanchan Bewa and Ors. II (1994) ACC 117 (FB). This full Bench considered the aforesaid two full Benches and came to the conclusion different from what was held in the said two Benches. The Court held:

The conclusion is irresistible unless a vehicle is a vehicle meant for carrying passengers for hire or reward or the said vehicle by reason of or in pursuance of contract of employment is required to cover the liability in respect of death of or bodily injury to persons being carried in or upon, the insurer will not be liable to pay compensation. Admittedly, the owner of goods who has hired a goods vehicle does not become a person travelling on the vehicle in pursuance of a contract of employment and even if he is carrying his goods after hiring the vehicle, the vehicle does not become a vehicle meant for carrying passengers for hire or reward and consequently, would not come within the proviso (ii) to section 95(1)(b). To come under the first part of Section 95(1)(b), proviso (ii), the vehicle in question must be a vehicle which is meant for carrying passengers for hire or reward and consequently, a

goods vehicle will not come within the proviso. We, therefore, state that proviso to Section 95(1)(b) did not apply to the passengers carried for hire or reward in a goods vehicle and it is restricted to such passengers carried in a public service vehicle.

As aforesaid, in view of the said conflict in the decision, when the matter came before this Court it settled the issue in the case of Mallawwa (Smt.) (Supra). This Court in this case approved the aforesaid full Bench decision of the Orissa High Court. This Court held, while interpreting Section 95(1)(b)(i) and proviso (ii) under the old Act, only a vehicle which is used for a systematically carrying of passengers can be said to be a vehicle in which passengers are carried for hire or reward, hence persons travelling in goods vehicle, whether owners of the goods or passengers on payment of fare or gratuitous passengers, could not be covered by proviso (ii) hence the insurer of the goods vehicle is not liable to pay compensation. This decision also considered and affirmed the decision of this Court in the case of Pushpabai Purshottam Udeshi and Ors. vs. M/s. Ranjit Ginning & Pressing Co. (P) Ltd. and Anr. (1977) 2 SCC 745.

Then came the new Act and the similar question is raised under it. We find corresponding to Section 95 of the old Act is Section 147 of the new Act. The only difference we find in Section 147(1) of the new Act from Section 95(1) of the old Act is that proviso (ii) which was under the old Act stands deleted and (iii) is re-numbered as (ii). There is also amendment to sub-Section (2) to Section 95 of the old Act in sub-section (2) of Section 147 of the new Act which is in respect of quantum to which we are not concerned.

It is because of this deletion of clause (ii) to the proviso to Section 95 (1)(b) of the old Act has been interpreted in Satpal Singh (Supra) to bring liability on the insurer to pay both for the gratuitous passengers and the owner or his representative of the goods travelling in a goods carriage.

We feel as some of the striking features of the new Act were not brought to the notice of this Court which we are recording hereunder may have bearing to the conclusion which was arrived at in Satpal Singh (Supra), Viz., (a) Difference between the definition of Goods Vehicle under the old and Goods Carriage under the new Act. Under the old Act goods vehicles is defined under Section 2(8) and under the new Act Section 2(14) defines goods carriage. The significant difference is, under the old Act the goods vehicle could be used for the carriage of goods or in addition to passengers while in definition of goods carriage the words or in addition to passengers stand deleted. The submission is, now goods carriage cannot carry any passenger. The other striking feature is with reference to Section 149(2) of the new Act. It is submitted that the defence available to the insurer under it would be obliterated in view of the declaration of law in Satpal Singh (Supra). Under New Act, it would be a breach of condition in case vehicle is used for a purpose other than for which permit has been issued. Thus in a case a permit is issued for a goods carriage it would not include any passengers and in case they travel it would be contrary to the mandate of the statute and thus in view of Section 149(2) no liability could be passed on to the insurance company. This apart, the effect of the deletion of sub-clause (ii) to the proviso to Section 95(1)(b) in the new Act also requires reconsideration.

Accordingly we feel it appropriate in view of what we have recorded above, Satpal Singh (Supra) requires reconsideration by a larger Bench. Let this matter be placed before Honble the Chief Justice for constituting a larger Bench.

..J (A.P. Misra) ..J (U.C. Banerjee) August 17, 2001