

United India Insurance Co.Ltd vs K.M.Poonam & Ors on 18 February, 2011

Equivalent citations: 2011 AIR SCW 2802, 2015 (15) SCC 297, 2011 AAC 997 (SC), 2011 (4) ALL LJ 143, 2011 (3) AIR JHAR R 618, 2011 (3) AIR KANT HCR 449, AIR 2011 SC (CIVIL) 719, (2011) 2 KER LJ 246, (2011) 4 MAD LJ 710, (2011) 2 RECCIVR 194, (2011) 101 ALLINDCAS 194 (SC), (2011) 86 ALL LR 725, (2011) 3 ALL WC 2355, (2011) 3 MAD LW 577, (2011) 2 RAJ LW 1356, (2011) 3 CGLJ 260, (2011) 2 PUN LR 477, (2011) 3 TAC 376, (2011) 2 SCALE 568, (2011) 1 WLC(SC)CVL 622, (2011) 2 ACJ 917, (2011) 5 ANDHLD 60, 2016 (2) SCC (CRI) 669, 2011 (1) KLT SN 152 (SC)

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Bench: Altamas Kabir, Cyriac Joseph

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1928 OF 2011

(Arising out of SLP(C)No.24188 of 2008)

United India Insurance Co. Ltd. ... Appellants

Vs.

?K.M.

Poonam

& Ors.

. . .

Respondents

WITH

CIVIL APPEAL NOS. 1929, 1930, 1931 OF 2011

(@ SLP(C)NOS.24212, 24210, 24211)

CIVIL APPEAL NOS. 1932, 1933, 1934 & 1935 OF 2011

(@ 24209, 24215, 24207 and 24213 OF 2008)

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J U D G M E N T

ALTAMAS KABIR, J.

1. Despite service of notice, none of the respondents in these Special Leave Petitions have entered appearance or are represented today to contest the same. All these Special Leave Petitions involve a common question of law as to whether an Insurance Company can be held to be liable for payment of compensation to passengers travelling in a public transport in breach of the conditions of the permit granted to the owner of the vehicle for operating the same. They are, therefore, taken up for consideration together. Delay, if any, in filing the Special Leave Petitions is condoned.

2. Leave granted.

3. Since the facts in all these appeals are the same, the facts in SLP(C)No.24188 of 2008, United Insurance Company Ltd. Vs. K.M. Poonam & Ors., are referred to in this judgment.

4. The Respondent No.5, Shri Surdeep Gusain, obtained an insurance policy insuring his Jeep No. UP-06-6244 with a sitting capacity of six persons, including the driver, for the period covering 23rd July, 2004 to 22nd July, 2005.

In other words, besides the driver, the vehicle was entitled to carry a maximum number of five passengers.

5. On 18th August, 2004, the aforesaid vehicle carrying fifteen passengers from Village Nansu to Dharkot Thapli, while being driven by Bharat Singh Rawat, the father of the respondents herein, fell into a ditch resulting in his death and the death of the majority of the passengers while causing serious injuries to the remaining passengers. The Respondent Nos.1 to 4 as the legal representatives of the deceased filed an application for compensation before the Motor Accident Claims Tribunal, Pauri. On the basis of the pleadings filed by the parties, the following issues were framed :-

1 Whether on 18.8.2004 the deceased Bharat Singh was driving the vehicle No.UP.-06/6244 on Jakheti-Nansu Road and due to the mechanical fault in the vehicle the jeep met an accident due to which Bharat Singh died ?

1 Whether the aforesaid accident occurred due to the negligence of the deceased?

1 Whether on the date of accident the alleged vehicle was being plied according to the conditions of insurance policy and permit?

1 Whether the complainants are entitled for any relief? If yes, how much and from whom?

6. In order to support their claim, the claimants filed the First Information Report, which was lodged by the owner of the jeep, Shri Surdeep Singh, on 19th August, 2004, at Patti Patwari Kafolsue, wherein it was stated that he had given the vehicle to Bharat Singh and that it had met with an accident which killed seven persons on the spot and caused injuries to the others. The jeep was badly damaged, but the cause of the accident was not known. On the basis of the said report, a case was lodged against Bharat Singh under Sections 279, 304-A, 337 and Indian Penal Code. The witness of the Insurance Company, who was examined as OPW.1, deposed that fifteen persons were travelling in the jeep at the time of the accident, but there was no negligence on the part of the driver.

7. The claimants also filed the driving licence of the deceased, Bharat Singh, which showed that the licence was valid till 12.3.2007. The photocopy of the registration certificate of the vehicle was also filed by the owner of the vehicle which established the fact that it was valid on the date of the accident and that taxes had been paid upto date and the fitness of the vehicle was valid from 13.8.2004 to 12.8.2005. In addition, a photocopy of the Insurance Cover Note was also filed to

indicate that the vehicle was duly insured from 23.7.2004 to 22.7.2005. Accordingly, on the date of the accident, all the papers of the vehicle were valid, the vehicle was legally insured and was being driven by Bharat Singh holding a valid and effective driving licence. However, on behalf of the Insurance Company, the Appellant herein, it was stated that on the date of the accident, passengers in excess of the number covered by the insurance policy were being carried in the vehicle.

8. On the basis of the aforesaid evidence, the Motor Accident Claims Tribunal held that even if a larger number of passengers than was permitted under the terms of the insurance policy were being carried in the vehicle, it could not be said that the Appellant Insurance Company would stand exonerated from its liability because the vehicle was insured for third party coverage for unlimited liability. The learned Tribunal, accordingly, answered Issue Nos.1 to 3 in favour of the claimants observing that carrying a larger number of passengers than was permitted in terms of the Insurance Policy, did not amount to breach of the terms and conditions of the Policy and the Insurance Company would still be liable since the vehicle was legally insured.

9. As far as the fourth issue is concerned, the first Respondent, Kumari Poonam, stated on oath that both her parents had died in the same accident and that her father as driver was earning Rs.4,000/- per month. Although, the claimants did not file the income certificate of the deceased, the Tribunal initially assessed his annual income at Rs.25,000/- and applying the multiplier of 16 arrived at a figure of Rs.4,03,200/- payable as compensation. After deductions, the total amount of compensation was assessed as Rs.1,86,200/-, along with interest @9% per annum. On the claimants' cross-appeal being allowed, the Tribunal assessed his income to be Rs.36,000/- per annum and since the age of the deceased was taken as 43 years at the time of the accident, applying the multiplier of 15 indicated in the Table of Section 163A of the Motor Vehicles Act, 1980, the total compensation was re-assessed as Rs.5,40,000/-. After deducting one-third of the amount on account of personal expenses of the deceased from the amount of the compensation, a balance amount of Rs.3,60,000/- was arrived at, from which a further one-third was deducted so that the amount of compensation to which the claimants were entitled was finally settled at Rs.2,40,000/-.

Certain other claims were also included so that the total amount of compensation was assessed as Rs.2,47,000/-. In keeping with its decision on the first three issues, the Tribunal held that since the vehicle was insured with the Appellant Insurance Company, it was liable to make payment of the said compensation. The Tribunal directed the Appellant Insurance Company to pay the aforesaid amount to the claimants within two months, failing which they would also be entitled to interest at the rate of 9% per annum from the date of the claim petition.

10. The Insurance Company preferred different appeals against the aforesaid judgment and awards dated 28.1.2006 of the Motor Accident Claims Tribunal, Pauri, which were taken up for consideration together and were dismissed by the High Court by a common judgment and order dated 25th September, 2007. Endorsing the views expressed by the Motor Accident Claims Tribunal, the High Court chose not to interfere with the impugned judgment and awards and confirmed the same. However, while doing so, the High Court held that the claimants would be entitled to a sum of Rs.2,75,800/- towards compensation in place of Rs.1,86,200/- and the rate of interest was reduced from 9% per annum to 7.5% per annum.

The other parts of the impugned judgment and award were confirmed by the High Court. Aggrieved thereby, the Insurance Company has filed these several appeals.

11. Learned counsel appearing for the appellant submitted that having regard to the provisions of Section 149 of the Motor Vehicles Act, 1988, the liability, if any, of the Insurance Company for payment of compensation would have to be limited to the number of passengers validly permitted to be carried in the vehicle covered by the insurance policy and did not extend to the number of passengers carried in excess of the permitted number.

Learned counsel submitted that the said question had been considered by a two-Judge Bench of this Court in *National Insurance Co. Ltd. Vs. Anjana Shyam & Ors.* [(2007) 7 SCC 445] decided on 20th August, 2007. While considering the provisions of Section 147(1)(b)(ii) and (2) and Section 149(1)(2) and (5) of the 1988 Act in relation to an insurer's liability, their Lordships came to the conclusion that the insurer's liability was limited by the insurance taken out for the number of permitted passengers and did not extend to paying amounts decreed in respect of other passengers. Taking recourse to a harmonious construction of the relevant provisions, their Lordships held that the total amount of compensation payable should be deposited by the Insurance Company which could be proportionately distributed to all the claimants, who could recover the balance of the compensation amounts awarded to them from the owner of the vehicle.

12. Reliance was also placed on another two-Judge Bench decision of this Court in *National Insurance Co. Ltd. Vs. Challa Bharathamma & Ors.*, 2004 AIR SCW 5301, in which, while taking note of the earlier decisions rendered by a two-Judge Bench of this Court in *New India Assurance Company Vs. Satpal Singh & Ors.* [(2000) 1 SCC 237] and a three-Judge Bench in *New India Assurance Co. Ltd. Vs. Asha Rani & Ors.*, [(2003) 2 SCC 223], and also the decision of another two-Judge Bench of this Court in *National Insurance Company Ltd. Vs. Nicolletta Rohtagi*, [(2002) 7 SCC 456], Their Lordships held that when an insurer proved not to be liable to pay compensation in terms of Section 149(2) of the 1988 Act, it could not be made liable for payment of the compensation awarded. However, their Lordships also observed that having regard to the beneficial object of the Act, it would be proper for the insurer to satisfy the award and to recover the amount from the owner, without taking recourse to a separate suit, from the Executing Court itself.

13. Learned counsel for the Insurance Company submitted that having regard to the aforesaid decisions of this Court, the liability of making payment of compensation would be to the extent of six passengers only, though it could be directed to pay the balance amount of the total compensation awarded, with liberty to recover the balance amount from the owner of the vehicle.

14. The law relating to the insurer's liability for payment of compensation to gratuitous passengers in a vehicle after the enactment of the Motor Vehicles Act, 1988, which replaced the Motor Vehicles Act, 1939, initially came up for consideration in *Satpal Singh's* case (*supra*) wherein this Court was called upon to consider the change in the provisions relating to third party risk, as was contained in Section 95 of the 1939 Act as against the provisions of Section 147 of the 1988 Act. Their Lordships held that as per the proviso to Section 95(1) when read with its Clause (ii), it would be clear that the policy of insurance was not required to cover the liability in respect of the death of or bodily injury

to persons who were gratuitous passengers of that vehicle. In contrast, under Section 147 of the 1988 Act, the insurance policy was required to insure the person or classes of persons specified in the policy to the extent specified in Sub-

section (2) 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 authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place and also 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.

15. On an interpretation of the aforesaid provisions of Section 147 of the 1988 Act, it was held that under Sub-section (2) there is no upper limit for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It was, therefore, apparent that the limit contained in the old Act having been removed the policy should insure the liability incurred and cover injury to any person, including the owner of the goods or his authorized representative, carried in the vehicle. Their Lordships concluded that as a result of the provisions of the new Act, the earlier decisions rendered under the 1939 Act were no longer relevant and an insurance policy covering third party risk was not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle was of any type or class.

16. The said view which had followed an earlier three-

Judge Bench decision of this Court in *Mallawwa & Ors. Vs. Oriental Insurance Co. Ltd. & Ors.* [(1999) 1 SCC 403], came up for consideration once again in a batch of appeals filed by different insurance companies, including the present Appellant Company, in the decision of this Court reported in [(2001) 6 SCC 724] under the lead case of *New India Assurance Co. Ltd. Vs. Asha Rani & Ors.*

Upon considering the various decisions which had preceded the judgment in *Satpal Singh's* case (*supra*) the two-Judge Bench was of the view that some of the striking features of the new Act had not been brought to the notice of the Court which could have a bearing on the conclusion arrived at in *Satpal Singh's* case, i.e., that on account of the definition of "goods vehicle" and "goods carriage" under the new Act, goods carriages were no longer used to carry any passenger. Their Lordships were also of the view that the defence available to the Insurance Company under Section 149(2) of the 1988 Act would stand obliterated on account of the law as declared in *Satpal Singh's* case.

Their Lordships felt that under the new Act, it would be a breach of condition in case the vehicle was used for a purpose other than for which permit had been issued.

Apart from the above, the effect of the deletion of Clause (ii) to the Proviso to Section 95(1)(b) in the new Act also required reconsideration. The matter was, therefore, referred to the Hon'ble Chief Justice to have the various issues reconsidered by a larger Bench.

17. The aforesaid questions were, thereafter, gone into by a Bench of three-Judges, where the issues decided in Satpal Singh's case were revisited. In the decision reported in New India Assurance Co. Ltd. Vs. Asha Rani & Ors. [(2003) 2 SCC 223] the three-Judge Bench considered the provisions of Section 95 of the 1939 Act and Section 147 of the 1988 Act in detail and also the amendments effected to Section 147(1)(b)(i) by the Amendment Act 54 of 1994 and came to the conclusion that in Satpal Singh's case (supra), this Court had proceeded on the assumption that the provisions of Section 95(1) of the Motor Vehicles Act, 1939, were identical to the provisions of Section 147(1) of the Motor Vehicles Act, 1988 as it stood before its amendment. It was held that Section 147 of the new Act deals with the requirements of the policy and limits of liability incurred to third party risks, but the Proviso thereto makes an exception to the main provision, which 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, 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 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."

It was also noticed that as far as employees of the owner of the motor vehicle were concerned, an insurance policy was not required to be taken in relation to their liability, other than arising in terms of the provisions of the Workmen's Compensation Act, 1923. On the other hand, Proviso (ii), included under Section 95 of the 1939 Act, imposed a liability upon the owner of the vehicle to take out an insurance policy to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment. The same was consciously omitted from the provisions of the 1988 Act. It was further held that the applicability of the decision in Mallawwa's case (supra) to the facts of the case before Their Lordships would have to be considered keeping that aspect of the matter in view. Proceeding further, their Lordships observed that Section 2(35) of the 1988 Act does not include passengers in goods carriages whereas Section 2(25) of the 1939 Act did, since even passengers could be carried in a goods vehicle. Noting the difference in the definitions of "goods vehicle" in the 1939 Act and "goods carriage" in the 1988 Act, Their Lordships held that carrying of passengers in a goods carriage was not contemplated under the 1988 Act. On the basis of the aforesaid findings, the three-Judge Bench over-ruled the decision of this Court in Satpal Singh's case, holding that the law had not been laid down correctly therein.

18. The aforesaid issue once again surfaced in the case of National Insurance Co. Ltd. Vs. Swaran Singh [(2004) 3 SCC 297], where the provisions of Section 149 and also Section 147 fell for consideration. While considering the liability cast upon an insurer under Section 149(1) and the limited grounds of liability in the insurance contract and third party claims as envisaged in the Proviso to Section 149(4), this Court also had occasion to refer to Section 147 relating to the statutory liability and any contractual liability under the insurance contract and whether the contractual exclusion of liability in respect of third party claim was permissible. The three-Judge Bench held that such a condition in the insurance policy, whereby the right of the third party is taken away would be void and that except under the situation provided for by Section 149(2)(b), the insurer would not be entitled to avoid its statutory liability, since its rights of recovery were preserved against the insured under the Proviso to Section 149(4) of the 1988 Act.

19. While the aforesaid judgment was delivered on 5th January, 2004, on the very next day, another three-Judge Bench of this Court rendered a decision in National Insurance Co. Ltd. Vs. Baljit Kaur [(2004) 2 SCC 1], in the context of the provisions of Section 147(1)(b) of the 1988 Act after its amendment in 1994. While referring to the earlier decision in the reference decided in Asha Rani's case (supra), their Lordships held that in spite of the amendment effected to Section 147(1)(b) in 1994, the position remained the same in respect of persons other than the owner of the goods and his authorized representative being carried in the goods vehicle. It was held that 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. It was, therefore, felt that the interest of justice would be subserved if the Insurance Company satisfied the awarded amount and recovered the same from the owner of the vehicle and for the said purpose it would not be necessary for the Insurance Company to file a separate suit, but to initiate a proceeding before the executing Court as if the dispute between insurer and the owner was the subject matter of the determination before the Tribunal which had decided in favour of the insurer and against the owner of the vehicle.

20. The law as regards the liability of insurers towards third parties killed or injured in accidents involving different types of motor vehicles, has been crystallized in the several decisions of this court referred to hereinabove. The kind of third party risk that we are concerned with in this case involves purported breach of the conditions contained in the insurance agreement executed by and between the insurer and the insured.

21. From the decision in Baljit Kaur's case (supra), which was later also articulated in Anjana Shyam's case (supra) what emerges is that a policy of insurance, in order to be valid, would have to comply with the requirements of Chapter XI of the Motor Vehicles Act, 1988, which deals with insurance of motor vehicles against third party risks. Section 146 of the Act stipulates that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is a valid policy of insurance in relation to the use of the vehicle complying with the requirements of the said Chapter.

Section 147 of the Act is an extension of the provisions of Section 146 and sets out the requirements of policies and the limit of their liability. Section 147(1)(a) provides that a policy of insurance must be issued by a person who is an authorized insurer. Section 147(1)(b) provides that a policy of insurance must be a policy which insures the person or class of persons specified in the policy to the extent specified in sub-section (2).

Sub-section (2) of Section 147 indicates that subject to the proviso to sub-

section which excludes the liability of the insurer in certain specific cases, a policy of insurance referred to therein must cover any liability incurred in respect of any accident, inter alia, for the amount of liability incurred.

22. However, in order to fix the liability of the insurer, the provisions of Section 147 have to be read with Section 149 of the Act which deals with the duty of the insurer to satisfy judgments and awards against persons insured in respect of third party risks.

Although, on behalf of the Insurance Company it has been sought to be contended that no third party risks were involved in the accident and that the persons travelling in the ill-fated vehicle were gratuitous passengers, the Insurance Company cannot get away from the fact that the vehicle was insured for carrying six persons and the liability of the Insurance Company was to pay compensation to the extent of at least six of the occupants of the vehicle, including the driver.

23. Sub-section (1) of Section 149 of the Motor Vehicles Act, 1988, makes it amply clear that once a certificate of insurance is issued under sub-section (3) of Section 147, then notwithstanding that the insurer may be entitled to avoid or cancel the policy, it shall pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured, payable thereunder, as if he was the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. Sub-section (2), however, places a fetter on the payment of any sum by the insurer under sub-section (1) in respect of any judgment or award unless, the insurer had notice of the proceedings in which the said judgment or award is given and an insurer to whom such notice is given shall be entitled to be made a party thereto and to defend the action on the grounds enumerated therein involving a breach of a specified condition of the policy.

24. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same.

In other

words,

as in

the

present

case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle.

25. As mentioned hereinbefore, in the instant case, the insurance policy taken out by the owner of the vehicle was in respect of six passengers, including the driver, travelling in the vehicle in question. The liability for payment of the other passengers in excess of six passengers would be that of the owner of the vehicle who would be required to compensate the injured or the family of the deceased to the extent of compensation awarded by the Tribunal.

26. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this case, are faced with the same problem as had surfaced in Anjana Shyam's case (*supra*). The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice we may apply the procedure adopted in Baljit Kaur's case (*supra*) and direct that the Insurance Company should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by

the Insurance Policy from the owner of the vehicle, as was directed in Baljit Kaur's case.

27. In other words, the Appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the Insurance Policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six Awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the Awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle.

28. The Appeals are, accordingly, disposed of. Having regard to the nature of the case, the parties shall bear their own costs.

.....J. (ALTAMAS KABIR)J. (CYRIAC
JOSEPH) New Delhi Dated:

18.2.2011