

Madras High Court

The National Insurance Co. Ltd. vs K. Kannan And Ors. on 24 August, 2007

Equivalent citations: 2007 (5) CTC 831, 2008 (1) MhLj 754

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Bench: S Palanivelu

JUDGMENT S. Palanivelu, J.

1. Insurance Company has filed this appeal, aggrieved over the award, made in M.C.O.P. No. 128 of 1995 on the file of Motor Accident Claims Tribunal, Gobichettipalayam. For the sake of convenience, the rank of the parties are referred to in this judgment as mentioned in M.C.O.P. before the Tribunal.

2. On 09.11<sup>1994</sup> at about 09.30 a.m., while lorry bearing registration No. TTI 7647, belonging to third respondent, driven by its driver in a rash and negligent manner/was coming on Sathy-Puliyampatti Main Road near Pungampalli Tank at Kadaimadai, it collided head on with another lorry, bearing registration No. TN 33 Z 0556, belonging to sixth respondent, driven by its driver, who was also reckless. In the said accident, the persons travelling in the cabin and those who were on the backside body of the lorry received injuries and some of them died.

3. The claimant was travelling in the lorry, belonging to sixth respondent. According to him, he was travelling in the said vehicle in the capacity of a Loadman to load the articles, such as chairs, tables and bedsheets and unload them. The vehicles of third and sixth respondents were insured with fourth respondent and the appellant respectively.

4. In the counter filed by the insurers, it was mainly contended that the lorries were meant only for carrying goods and it was not for travelling of third parties, like the claimant. It was further contended that the passengers should not be taken in the said vehicles, in violation of the policy conditions. It was also denied that the claimant was travelling in the lorry, as a Loadman.

5. After considering the oral evidence on record as well as the documents, the Tribunal reached a conclusion that both the drivers were responsible for the accident and both of them were careless at the time of accident.

6. As far as the negligence attributed to both the drivers is concerned, there is no debate, but the liability fastened on the insurers by the Tribunal is very much assailed.

7. R.W. 1 is the Assistant Divisional Manager of the appellant. He deposed that as per the policy conditions, no passenger should travel in the vehicle and that the appellant was not responsible to compensate the claimant. He produced Ex.B-1, Policy, for the vehicle of the appellant, which would show that the insurance company could indemnify six coolies in the lorry.

8. It is in the oral evidence of P.W. 1, claimant, that he was travelling in the lorry in the back side body along with other people and he did not know how many persons were there. In any way, it appears that there are number of persons, travelling in the lorry, at the time of accident.

9. It is not reported either before this Court or the Tribunal as to what are the other claim petitions and whether they were disposed of. This Court is in dark to know as to the number of persons travelled in the vehicles. Whatever may be, it could be observed without any hesitation that there were more than six persons in the lorry. -Hence, it will be difficult to fix the responsibility on the insurer.

10. Adverting to the judicial pronouncements on this subject, we have to refer to and follow the principles laid down by the Hon'ble Supreme Court.

11. Earlier, the view was that, the insurer would not be liable for paying compensation to the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury as ruled by the three Judges Bench of the Hon'ble Supreme Court in *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (2003) 2 Supreme Court Cases 223.

12. The judgment of the Supreme Court in *New India Assurance Co. v. Satpal Singh* was overruled in *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (2003) 2 Supreme Court Cases 223, holding that the law has not been correctly decided.

13. It is further observed in para 28 of the judgment in *New India Assurance Co. Ltd. v. Asha Rani and Ors.* which is as follows:

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other 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* 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.

14. As far as the case on hand is concerned, there is no proof to show that the claimant was travelling by the lorry as a load man along with other persons.

15. In this situation, the liability of the Insurance Company and the owner of the vehicle should be ascertained.

16. The above said decisions were again referred to and discussed by the subsequent Bench consisting of three Judges of the Hon'ble Supreme Court in *National Insurance Co. Ltd. v. Baljit Kaur and Ors.* and lays down the law of the land on this subject and directions have been issued to be followed by the Courts and Tribunals in identical cases.

17. The Hon'ble Supreme Court has interpreted Section 147 of the Motor Vehicles Act, 1988, as amended by the Motor Vehicles (Amendment) Act, 1994 and enunciated the dictum that the intention of 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 Parliament to carry out an amendment in as much as the 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.

18. By means of amendment to the Motor Vehicles Act in the year 1994, the effect of ingredients found in Section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised 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 of contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.

19. In the present case, the claimant has to be considered as a gratuitous passenger, who travelled by the lorry along with others.

20. In para 21 of the judgment in , the Hon'ble Apex Court has held as follows:

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear, so long such a direction, would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

21. Hence, the position of law has been very much clarified paving the way to the Courts and Tribunals to fix the liabilities of the insurer and the insured.

22. The above said decision was followed by a Division Bench of this Court in United India Insurance Co. Limited, Tiruvannamalai and Anr. v. Selvam and Ors. .

23. Guided by the principles laid down in the decision of the Supreme Court in , the Insurance Companies, namely, 3rd and 6th respondents as ranked In M.C.O.P. No. 128 of 1995 have to satisfy the claim of compensation awarded by the Tribunal and then to recover the same from the respective owners of the vehicles.

24. It is also directed that the insurance company need not file a separate suit for the recovery from the insured but they may initiate execution proceedings before the executing court having jurisdiction to recover the amount paid by them from the insured.

In fine, the appeal is allowed partly directing the third and sixth respondents to pay the compensation amount as awarded by the Tribunal and thereafter, the insurers can initiate execution proceedings before the Court concerned to recover the amount paid by them from the insured, namely, second and fifth respondents as ranked in M.C.O.P. No. 128 of 1995. No costs.