

CASE NO.:

Appeal (civil) 981-990 of 2002

Appeal (civil) 1141-1158 of 2002

PETITIONER:

Oriental Insurance Company Ltd.

Oriental Insurance Company Ltd.

RESPONDENT:

Devireddy Konda Reddy & Ors. etc.etc.

Jogi Subbamma and Ors. etc.etc.

DATE OF JUDGMENT: 24/01/2003

BENCH:

SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T

ARIJIT PASAYAT, J.

These appeals are directed against the common judgment rendered by a Division Bench of the Andhra Pradesh High Court. By the said judgment, it upheld view of learned Single Judge that compensation is payable by the insurer even if the deceased persons in respect of whom claims are made were gratuitous passengers. Both the learned Single Judge and the Division Bench relied on the decision of this Court in New India Assurance Company vs. Satpal Singh and Ors. (2000 (1) SCC 237) for coming to this conclusion.

Since the point involved is one of law, the factual position which is almost undisputed needs to be noted in brief. Certain persons were traveling in goods vehicles which were subject-matter of insurance with the appellant-Oriental Insurance Company Limited (hereinafter referred to as "the Insurer"). The vehicles met with accidents resulting in death of several persons who were either unauthorized or gratuitous passengers in the said vehicles. Their legal representatives lodged claims under Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Though the accidents took place on different dates, the Motor Accident Claims Tribunal, Anantapur, (hereinafter referred to as 'the Tribunal') took up the cases together as according to it the points of dispute were identical. It held that the deceased persons accompanied the goods which were transported by the goods carriages in question. Accordingly, it held that the insurer was liable to indemnify the award passed. In appeals filed by the insurer, learned Single Judge concurred with view of the Tribunal relying on Satpal Singh's case (supra). As noted above, the Division Bench dismissed the appeals against learned Single Judge's judgments. The said common judgment as noted above is under challenge in these appeals.

Learned counsel for the insurer-appellant submitted that Section 149 (2) of the Act is etymologically different from proviso (ii) to Section 96 (2)(b) of the Motor Vehicles Act 1939 (hereinafter referred to as the 'old Act') and, therefore, the ratio in Satpal Singh's case (supra) has no application. In response, learned counsel appearing for the claimants submitted that in Satpal Singh's case (supra) such a stand has been negated and it has been held that insurer is liable to pay compensation to gratuitous passengers.

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 provision 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", "stage 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 motorcab, 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;"

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

so constructed or adapted when used for the carriage of goods;"

"2(35) "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 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 hire 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 service 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 needs to be juxtaposed with Section 95 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, 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 vehicles, or

(c) if it is a goods 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 new 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 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 passengers" 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 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 traveling 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 vs. Asha Rani & 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.

The appeals are accordingly allowed by setting aside judgments of Tribunal and High Court but in the peculiar circumstances without any order as to costs.

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JUDIS