

New India Assurance Company

Vs

Satpal Singh and Others

Civil Appeals Nos. 6926-27 of 1999

(K. T. Thomas, M. B. Shah JJ)

02.12.1999

JUDGMENT

THOMAS, J.:-

1. Leave granted.

2. A 10-year-old girl met with her death in a truck accident. Her name was Dupinder Kaur. The accident occurred while she was travelling in the truck on 11-3-1990. She died on the spot. Her father, brother and sister made a joint claim for compensation under the Motor Vehicles Act, 1988 (for short "the new Act"). The Motor Accident claims Tribunal before which the claim was made passed an award in a sum of Rs 25,000 to the claimants. The owner of the truck was found liable to pay the compensation amount. M/s New India Assurance company, the insurer had been directed to make the amount good with interest, as the vehicle was then covered by an insurance policy issued by that Company.

3. The claimants as well as the Insurance Company challenged the said award. The former was dissatisfied with the quantum of compensation awarded. The Insurance Company was aggrieved as the liability was imposed on them. The Insurance Company put forward a contention that the deceased Dupinder Kaur was a gratuitous passenger in the truck and hence no liability can be fastened with the insurer, but that contention was repelled.

4. A Division Bench of the High Court dismissed the appeal filed by the Insurance Company but allowed the other appeal by doubling the compensation amount. Hence this appeal by special leave at the instance of felt that it not necessary to send notice to the respondents to contest the appeal as there is no scope for absolving the Insurance Company from liability.

5. Learned counsel for the appellant banked on the decision of three- Judge Bench of this court in *Mallawwa v. Oriental Insurance Co. Ltd*¹. To disclaim liability on the premise that the victim of the accident was a gratuitous passenger in the vehicle covered by the insurance policy. But the said decision was rendered under section 95 of the Motor Vehicles Act, 1939 (which can be referred to as "the old Act"). The aforesaid provision contained a rider in clause (ii) of the proviso in the new Act. To pinpoint the said distinction we extract Section 95(1) of the old Act under:

"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

cooperative 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 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, 1922 (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 as 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 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, or

(iii) to cover any contractual liability."

6. As per the proviso when read with its clause (ii) it is clear that the policy of insurance shall not be required to cover liability in respect of the death of or bodily injury to persons who were gratuitous passengers of that vehicle. This court has held in *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.*². as under: (SCC p. 759, para 20)

"20. Sections 95(a) and 95(b) (I) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act 1960, and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death 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. The plea that the words 'third party' are wide enough to

cover all persons except the prison and the insurer is negative as the insurance cover is not available to the passengers made clear by the proviso not sub-section which provides that a policy shall not be required.

* * *

Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to passenger in a vehicle *who is not carried for hire or reward* is not required to be insured the plea of the counsel for the insurance company will have to be affected and the insurance company held not liable under the requirements of the Motor Vehicles Act.

7. In fact the said ration has been approved by the three-Judge Bench in *Mallawwa v. Oriental Insurance co. Ltd*¹. At the same time learned Judges pointed out that the old Act is now repealed by the new Act and Section 147 of the new Act corresponding to Section 95 of the old act has been substantially altered and hence the above interpretation of section 95 of the old Act will govern the cases which have arisen under the old Act.

8. The proviso to Section 147(1) of the new Act shows that it is a recast provision by placing the erstwhile clause (iii) as the present clause (ii). In other words, clause (ii) of the proviso in section 95(1) of the old Act is totally non-existent in the proviso to section 147(1) of the new Act.

9. Under section 147 of the new Act, the policy must be a policy which 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 unhorsed representative carries 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;

(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." (emphasis supplied)

10. The proviso to the said sub-section is not relevant here as it pertains to death or bodily injury to the employee mentioned therein. Sub-section (2) provided that a policy of insurance shall cover any liability incurred in respect of any 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;

Provide 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 policy whichever is earlier."

Hence, under sub-section (2), there is no upper limitation for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It is, therefore, apparent that the limit contained in the old Act has been removed and the *policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle*. The legislature has also taken care of even the policies which were in force on the date of commencement of the act by specifically providing that any policy of insurance containing any limit regarding the insurer's liability shall continue to be effective for a period of four months from commencement of the Act till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months new insurance policy consistent with the new act is required to be obtained.

11. 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 nay accident which occurred or would occur after the new Act came into force.

12. The division Bench of the High Court has rightly repelled the contention of the appellant Insurance Company on the aforesaid score. We therefore, dismiss these appeals.