

New India Assurance Co. Ltd

v.

Asha Rani & Others

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. G.B. PATNAIK HON'BLE MR. JUSTICE
H.K. SEMA HON'BLE MR. JUSTICE S.B. SINH

Civil Appeal No. 5385 Of 2001 In F.A.O. No. 256 Of 1999 With C.A. No.
5433-5444, 5386-5410, 5318-5427 Of 2001, 1697 Of 99, 16793-96 Of 96, 6237
Of 97, 272-277 Of 99, 3843, 5223 Of 2000, 4458, 229 Of 99, 5451-52, 5445-50
& 50A, 5453-56, 5428-32, 5417, 5411-16 Of 2001, 8013, 8014 & 8081 Of 2002
| 03-12-2002

Patnaik, C.J.I

1. Leave granted in SLP (C) Nos. 12040, 12369 and 13159 of 2002.

2. The question that arises in this batch of appeals is whether the insurer is liable to pay compensation to the dependants of the deceased passenger, while the deceased passenger was traveling in a goods vehicle and that vehicle met with an accident, on account of which the passenger died or suffered bodily injury. Originally, when the bunch of appeals was being heard, a Bench of this court by order dated 27th March, 2001, came to the conclusion that all the appeals fall in three categories - category (i) being those cases which are covered by the provisions of Motor Vehicles Act, 1939, category (ii) are the cases which are covered by the Motor Vehicles Act, 1988, prior to the amendment of 1994; category (iii) are those cases which fall after the amendment of 1994. When the matters were finally heard, a Bench delivered judgment in respect of cases under category (i) and (iii) above on 17th August, 2001. But so far as cases falling under category (ii) namely which are covered under the Motor Vehicles Act, 1988, prior to its amendment in 1994, it was felt that the decision of the court in Satpal Singh's case, (2000 (1) SCC 237), requires reconsideration by a larger Bench and that is how this bunch of appeals had been placed before a three judge Bench. This, in turn, necessitates interpretation of the provisions in Section 147 of the Motor Vehicles Act, 1988 (herein after referred to as "the Act") as it stood prior to its amendment in 1994. It may be stated that the

provisions of Section 147 of the Act correspond to Section 95 of the Motor Vehicles Act, 1939.

3. Before considering the rival submissions, it would be appropriate to notice the provisions of Sec. 95 of the Motor Vehicles Act, 1939, Sec. 147 of the Act as it stood prior to its amendment of 1994 and the provision as it stands now after the amendment of 1994.

4. Section 95 of the Motor Vehicles Act, 1939 reads as under:

"95. 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 authorized 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 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 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 a conductor of the vehicle or in examining tickets on the vehicles, 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.

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 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 fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 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, -

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;

(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 two thousand in all in respect of damage to any property of a third party.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4-A) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period, of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

Section 147 of the Motor Vehicles Act, 1988 prior to its amendment reads as under:

"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 authorized 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 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 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 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.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports, to cover in the case of that person or those classes of persons".

Section 147 of The Motor Vehicles (Amendment) Act, 1994 reads as under:

"147. Requirement 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)

(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 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)"

5. Before the Tribunal, it was contended on behalf of the insurer that the insurer would not be liable to pay compensation for the death of the deceased who was going in a goods vehicle and met with death on account of an accident. The Tribunal, however, came to the conclusion that in view of the decision of the Supreme Court in the case of Mallawwa (Smt) and others vs. Oriental Insurance Co. Ltd. and others - 1999 (1) Supreme Court Cases 403, the insurer must be held liable and accordingly directed the compensation amount to be paid by the insurance company. The insurer carried an appeal to the High Court, but the High Court disposed of the appeal solely on the ground that the case is covered by the decision of this Court in the case of New India Assurance Company vs. Sat Pal Singh and others (2000) 1 Supreme Court Cases 237.

6. Mr. Rawat, learned counsel appearing for the appellant contended that the decision in Mallawwa's case on which the Tribunal relied upon is a decision interpreting the provisions of the old Act of 1939, and in fact that decision cannot be of any assistance. In view of the fact that Section 95(1) proviso (ii) of Motor Vehicles Act, 1939, is not the same as Section 147 (2) of the Motor Vehicles Act, 1988 as it stood prior to its amendment of 1994. Mr. Rawat contended that the decision of this Court in *New India Assurance Co. vs. Satpal Singh* is undoubtedly based on an interpretation of the proviso to Section 147(1) of the Motor Vehicles Act, 1988, but that decision cannot be held to be good law in as much as the Court has not borne in mind the relevant provisions as it stood nor has it considered the effect of the amendment that was brought about in 1994 as well as the purpose of such amendment. The learned counsel for the respondents on the other hand contended that the subsequent amendment that was brought about in the year 1994 is merely clarificatory in nature and does not bring about any substantive change and further the Act being a beneficial one, construction which is beneficial to the victims of the accident should be followed. Judged from that angle, the decision of this Court in *New India Assurance Company vs. Sat Pal Singh and others (supra)* does not require any re-consideration.

7. Under the Motor Vehicles Act of 1939 the requirements of policies and limits of liability had been provided in Section 95. Proviso to Section 95(1) of the said Act unequivocally states that the policy shall not be required in case of a good vehicle for passengers being carried in the said vehicle. In *Mallawwa (Smt.) and others vs. Oriental Insurance Co. Ltd. and others (supra)* while approving the earlier decision of the Court in *Pushpabai Purshottam Udeshi's case - (1977) 2 SCC 749*, the Court construed the provisions of Section 95(1)(b) of the Motor Vehicles Act, 1939 and held that while the expression "any person" and the expression "every motor vehicle" are in wide terms but by proviso (ii) it restricts the generality of the main provision by confining the requirement to cases 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, therefore, the vehicle had to be vehicle in which passengers are carried. The Court further held that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used on some stray occasions for carrying passengers for hire or reward. Undoubtedly *Mallawwa's case (supra)* was dealing with a situation under the Motor Vehicles Act, 1939.

8. In Satpal's case (supra) the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amended Act of 1994 is examined, particularly Section 46 of Act 6 of 1991 by which expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorised representative carried in the vehicle the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, 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. The judgment of this Court in Satpal's case, therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when

that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

S.B. Sinha, J

1. Leave granted in Special Leave Petition.

2. Though I respectfully agree with the judgment and order proposed to be delivered by My Lord, the Chief Justice of India; having regard to the importance of the questions involved in the matter, I would like to add a few words of mine.

3. It is not in dispute that in this batch of appeals, the cause of action in each case arose prior to coming into force of 1994 Amendment in the Motor Vehicles Act, 1988, and, thus, the effect thereof would have no bearing in the instant case.

4. The controversy in the instant case centres round the changes effected in the Motor Vehicles Act, 1988 vis-a-vis the Motor Vehicles Act, 1939. As would appear from the discussions made hereinafter a goods vehicle was required to be compulsorily covered by insurance policy in terms of 1939 Act but was not so required in terms of 1988 Act.

5. Before adverting to the pointed issue, we may notice the definitions of "goods vehicles", "public service vehicle" and "stage carriage" and "transport vehicle" occurring in Sections 2(8), 2(25), 2(29) and 2(33) of 1939 Act, which are as under:-

"2(8) "goods vehicle" means any motor vehicle constructed or adopted 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 motor cab, 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;"

6. Sections 2(14), 2(35), 2(40) and 2(47) of 1988 Act define "goods carriage", "public service vehicle", "stage carriage" and "transport vehicle" in the following terms:-

"2(14) "good 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 carriage, 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;"

7. The changes effected in the respective terminologies in the 1988 Act have a bearing on the question involved in these appeals.

8. Chapter VIII of 1939 Act and Chapter XI of 1988 Act deal with insurance of motor vehicles against third party risks.

9. Liability has been defined in Section 145(c) as under:-

"liability', wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under Section 140;"

10. Section 146 specifies the necessity for insurance against third party risk. In terms thereof an owner of a motor vehicle is statutorily enjoined to have a policy of insurance complying with the requirements of the said chapter before he uses or causes or allows any other person to use a motor vehicle in public.

11. Section 147 deals with requirements of policies and limits of liability. Proviso appended thereto, however, makes an exception to the main provision which reads thus:-

"Provided that a policy shall not be required:-

(i) to cover liability in respect of the death, arising out of an 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."

12. We may notice that the proviso appended to Section 95 of 1939 Act contained clause (ii) which has been omitted in the 1988 Act and reads as under:-

"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,"

13. Thus, it may be noticed that so far as employees of the owner of the motor vehicle are 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) appended to Section 95 of 1939 Act, enjoined a statutory 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 Legislature has consciously not inserted the said provision in 1988 Act.

14. The applicability of decision of this Court in *Mallawwa (Smt.) & Ors. vs. Oriental Insurance Company Ltd. & Ors.* [(1999) 1 SCC 403] in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 1988 Act is significant. By reason of the change in the definitions of the terminology, the Legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in

1939 Act were omitted. Furthermore, it categorically states that 'goods carriage' would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a 'goods carriage', thus, is not contemplated under 1988 Act.

15. We have further noticed that Section 147 of 1988 Act prescribing the requirements of an insurance policy does not contain a provision similar to clause (ii) of the proviso appended to Section 95 of 1939 Act. The decisions of this Court in Mallawwa's case (*supra*) must be held to have been rendered having regard to the aforementioned provisions.

16. Section 147 of 1988 Act, *inter alia*, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle".

Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'.

17. In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

18. Furthermore, sub-clauses (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of 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, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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.

19. An owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than 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 Company vs. Satpal Singh & Ors.* [(2000) 1 SCC 237] 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.

20. We may consider the matter from another angle. Section 149 (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub section 2 of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in *Satpal Singh's case* (supra).

21. For the foregoing reasons, I am in respectful agreement with My Lord the Chief Justice of India that the decision of this Court in *New India Assurance Company vs. Satpal Singh & Ors.* [(2000) 1 SCC 237] has not laid down the law correctly and should be overruled.