SUPREME COURT OF INDIA

United India Insurance Co. Ltd.

Vs.

Suresh K.K.

C.A.No.2565 of 2008

(S.B. Sinha and Lokeshwar Singh Panta,JJ.)

04.04.2008

ORDER

1. Leave granted.

2. Despite service of notice nobody has appeared on behalf of the respondent.

3. The core question which arises for consideration in this appeal is as to whether a person who has hired a goods carriage vehicle would come within the purview of sub-Section 1 of Section 147 of the Motor Vehicles Act, 1988, although no goods as such were carried in the vehicle. The claimant/respondent was a `coolie-worker'. He allegedly hired an auto rickshaw which is a goods carriage vehicle bearing registration No. KL-8/M8568. The accident occurred when he was sitting by the side of the driver. According to him the driver was driving the vehicle in a most rash and negligent manner. When the vehicle reached at Kandanchira, the driver turned it to the left side without applying brake, as a result whereof, it overturned. The claimant allegedly suffered the following injuries :

> "1. Compound fracture lower both bones of 1/3rd left leg and multiple abrasions.
>
> 2. Lacerated would (R) & (L) Legs." He filed a claim application in terms of Section 166 of the Motor Vehicles Act for a sum of Rs. 2.25 Lakhs; the details whereof are as under :
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> ``a) Loss of earning from 13.08.99 to till now Rs. 15,000.00
>
> b) Partial loss of earnings from . . . . . to . . . . . Rs. 10,000.00
> at the net rate of Rs. . . . . a day / week
>
> c) Transport of hospital Rs. 3,000.00
>
> d) Extra nourishment Rs. 25,000.00

e) Damage of clothing & Article	Rs. 2,000.00
f) Other : Medical Expenses	Rs. 40,000.00
	95,000.00
g) Compensation for pain & suffering	Rs. 30,000.00
h) Compensation for continuing or permanent disability, if any	Rs. 50,000.00
i) Compensation for the loss of earning	Rs. 50,000.00
	Rs. 1,30,000.00
	Total Rs. 2,25,000.00

4. Appellant in his written statement raised the contention that although the vehicle in question was insured, it is not liable to reimburse the owner of the vehicle as the injured was not the owner of the alleged goods carried therein, and he was travelling as a gratuitous passenger. Violation of conditions of policy was also alleged. By reason of the award dated 23.01.2003, the Tribunal held :

> "10. I have already found that the accident had occurred due to the rash and negligent driving of the goods auto rickshaw by the 1st respondent. That he was also the owner of that vehicle, at the time of accident, is evident from Ext. A3, Report of Inspection of the vehicle. Hence he is liable to pay the rickshaw was insured with the 2nd respondent the time of accident. Ext. B1 is copy of the insurance policy. Hence, they respondents 1 and 2 are liable to pay the compensation to the petitioner. Issue is found accordingly."
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> A sum of Rs. 1,19,300/- was awarded in favour of the claimant with interest @ 9% pr annum. Appellant preferred an appeal before the High Court in terms of Section 173 of the Motor Vehicles Act. The High Court negatived the contention of the appellant that the word `goods' was used in Section 147 of the Act, would not be referable to the word `carried' stating :
>
> ``According to us, the language of the amended provision does not show that the owner or the representative must accompany the goods or his representative who hires the vehicle travels in the hired vehicle from the place of hiring to the place where the goods are to be loaded into the vehicle and then proceeds to travel along with the goods. It is also common that after unloading the goods such passengers travel in the same vehicle to the place from where they commenced journey. The passenger does so and is allowed to do so in his capacity as the owner of the goods or his

representative who has hired the vehicle for transporting goods. The amended provision makes it explicitly clear that the word `carried' qualifies the owner of goods or his representative and not the goods carried. If goods are found inside the vehicle at the time of the accident, it is a clinching circumstance to establish that the passenger who claims to be the owner of goods or the owner's representative was travelling in that capacity. Chances of passengers or the insured raising false claims in this regard cannot be safe method to ascertain the intention of the Legislature. False claims can be disapproved by appropriate contentions. In our view, such issues are matters of evidence and will not stand scrutiny while construing a beneficial provision intended to compensate the loss caused to innocent victims of motor accidents. The party who claims that the person representative of the owner of the goods shall discharge the burden cast on him. Merely for the reason that the benefit granted will be misused, it will not be proper to give a narrow interpretation to the above provision. We, therefore, hold that the owner or the authorized representative need not invariably be shown to accompany the goods at the time the goods carriage meets with accident causing injury to or resulting in the death of the passenger who is either the owner of the goods or the authorised representative of the owner of the goods."

5. Mr. Nandwani, learned counsel appearing on behalf of the appellant would urge that the High court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that :

1. the vehicle in question being a goods vehicle, the driver could not have allowed anybody to sit by his side.

2. the Tribunal as also the High Court did not arrive at the finding that the claimant/respondent was the owner of goods particularly when no goods were found to have been carried therein.

3. on a plain reading of sub clause (i) of Clause (b) of the sub-section 1 of Section 147, the words 'carried in the vehicle" must be held to be qualifying `owner of the goods' or `his authorized representative'.

4. Section 147 (b) (i) reads as under :

``(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 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."

5. Section 147 provides for mandatory insurance. The policy of insurance in terms of the said provision must be in relation to the person or classes of person specified in the policy sought to be insured. The insurance would be against any liability which the insured incurs."

6. The insurance policy should, inter alia, be in respect of death or bodily injury of the person carried in the vehicle. Such person may be the owner of the goods or his authorised representative. The High Court, therefore, may be correct that the owner or the goods would be covered in terms of the said provision. But the question which has not been adverted to by the High Court is as to whether the policy contemplates the liability of the owner of the vehicle in respect of a person who was in the vehicle in a capacity other than owner of the goods. If a person has been travelling in a capacity other than the owner of the goods, the insurer would not be liable. The purpose for which the provision had to be amended by Act No. 54 of 1994 was to widen the scope of the liability of the insurance company. It is now well settled that the term `any person' envisaged under the said provision shall not include any gratuitous passenger.

(1) *(National Insurance Co. Ltd. v. Baljit Kaur*[1]

7. If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter in a three wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved. The Tribunal and the High Court, therefore, in our considered opinion, should have held that the owner of the vehicle is guilty of the breach of the conditions of policy. The question which arises for our consideration, however, is keeping in view the fact that the accident took place on or about 13.08.99, and further in view of the fact that the claimant was a coolie worker as to whether he would be in a position to realise the dues from the owner of the vehicle. We think not. Keeping in view the aforementioned facts and circumstances into consideration, we are of the opinion that with a view to do complete justice between the parties, a direction should be given to the appellant to pay the amount to the claimant and realise the same from the owner of the vehicle. Such a direction would, in our opinion, serve the ends of justice.
We are passing this order also in view of the fact that the appellant has already deposited the amount pursuant to a direction issued by this court dated 13.11.06. The appeal is allowed to the above extent. No costs.

Judgment Referred.

[1]*(2004) 2 SCC 0001*