

SUPREME COURT OF INDIA

National Insurance Co. Ltd.

Vs.

Rattani

C.A.No.7399 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

18.12.2008

JUDGMENT

S.B.Sinha, J.

1. Leave granted.

2. Appellant is before us aggrieved by and dissatisfied with the judgment and order dated 31st July, 2006 whereby and where under an appeal preferred by it was dismissed in limine by the High Court of Punjab and Haryana at Chandigarh stating :-

“For the reasons in paras 43 & 44 of the award of the Tribunal, we find no ground to interfere in this matter. Dismissed.”

3. Ordinarily we would have remitted the matter back to the High Court as the appeal of the appellant under Section 173(1) of the *Motor Vehicles Act 1988* (for short `the Act) has not been considered on merit, but, keeping in view the fact that the respondent Nos. 1 to 6 being mother, brothers and sisters of the deceased having been awarded a total amount of compensation of Rupees one lac forty thousand only, we chose to hear the parties on merit.

4. The accident took place on 15th May, 2002 when deceased Sunil Kumar along with other injured persons, were traveling as members of a marriage party in a Tata 407 vehicle bearing registration No. HR-39-9869. Indisputably it was a goods vehicle. The first information report was lodged in relation thereto wherein the driver of the vehicle was made an accused.

5. Separate claim petitions were filed by the heirs and legal representatives of the deceased as well as by the injured before the Motor Vehicles Claims Tribunal, Bhiwani.

“In the claim petition in question, the relevant portion of the claim form was filled up as under:-

"Was the person in respect of the whom compensation is claimed, traveling in the motor vehicle involved in the accident, if so, give the name of station and start of journey and its destination?"

Yes, the deceased Sunil Kumar along with others was traveling as a Barati in the Tata 407 being driven by the respondent no.1 and they were returning after attending the marriage function from village Jharli to Kusumbi."

Against the column 'cause of accident with brief descriptions' it was stated:-

"Brief facts of the accident are that the deceased Sunil Kumar along with others was traveling in the capacity as Barati in Tata 407 in question and after attending the marriage function were returning from Jharli to village Kusumbhi in the Tata 407 which was being driven by the respondent no.1. The vehicle was being driven rashly, negligently and at a very high speed and inspite of warning to the respondent no.1 to drive the vehicle slowly the respondent no.1 continued driving rashly and negligently and on 15.5.2002 at about 6.30 PM when the vehicle after crossing Railway Phatak of Dhalwas and were going towards Sehlanga due to rash and negligent driving of respondent no. 1, the respondent no.1 lost control on the vehicle resulting to turn turtle and several persons suffered grievous injuries and deceased Sunil and one Photographer named Hazari died at the spot. On the statement of Rameshwar son of Akhey Ram, r/o. Mundhal Khurd, one of the eye witness and traveling as Barati FIR No. 98 dated 16.5.2002 was lodged against the respondent No.1, which contains the detailed manner of accident how it took place and be read as part of this petition. The respondents being the driver, owner and insurer, are jointly and severally liable to pay compensation to the petitioners."

6. As a reference has been made to the first information report bearing No. 98 dated 16th May, 2002, which was lodged against the driver, first respondent in the claim petition, we may also notice the relevant portion of the contents thereof from the award of the Tribunal.:-

"...He referred to the contents of FIR Ex. P2 wherein it is mentioned that all the members of marriage party were the occupants of the four wheeler and there was no mention that dowry articles or some furniture etc. were loaded in the vehicle."

7. We are not oblivious of the fact that ordinarily an allegation made in the first information report would not be admissible in evidence per se but as the allegation made in the first information report had been made a part of the claim petition, there is no doubt whatsoever that the Tribunal and consequently the appellate courts would be entitled to look into the same.

8. However, in their depositions, the claimants raised a new plea, namely that the deceased and the other injured persons were traveling in the said truck as representatives of the owner of the goods.

9. Mr. M.K. Dua, learned counsel appearing on behalf of the appellant would submit that in the aforementioned situation there is no escape from the conclusion that the deceased and the injured were members of a marriage party only and could not have travelled in a goods vehicle as representatives of the owner of the goods.

10. Mr. Subramonium Prasad, learned counsel appearing on behalf of the owner of the vehicle, on the other hand, submitted that it was for the insurance company to prove breach of conditions of the insurance policy and the same having not been done; the judgment of the Tribunal cannot be assailed.

In this connection our attention has been drawn to the following findings of the Tribunal:-

"In the present case the evidence on record indicates that deceased Sunil Kumar and other injured were occupying the offending vehicle as being representative of the owner of the goods. No evidence was produced on behalf of the Insurance Company to the effect that deceased and injured were gratuitous passengers.....All the injured petitioners were cross examined at length but nothing useful to the case of Insurance Company could be exacted from them. They deposed that for carrying members of marriage party there was one bus. Hence it is observed that Insurance Company failed to prove that insured had violated the terms and conditions of the Insurance Policy. Deceased Sunil and injured Maru and Rameshwar were not gratuitous passengers in the offending vehicle being representative of the owner of the goods."

11. Ordinarily we would not have entered into the realm of appreciation of evidence but as the High Court failed and/or neglected to do so, we have no other option but to undertake the job of the High Court. The first information report which was brought on record, clearly proceeded on the basis that the deceased and the other injured persons were members of the marriage party.

12. Even if the submission of Mr. Subramonium Prasad that in the truck the goods offered by way of gift by the bride party were being transported is correct, the deceased and others could not have become the representatives of the owner of the goods. Even otherwise in view of the averments made in the claim petition and the first information report the said contention cannot be accepted.

Furthermore in their depositions the witnesses examined on behalf of the claimants themselves stated that about 30 - 40 persons were traveling in the tempo truck. All 30 - 40 persons by no stretch of imagination could have been the representatives of the owners of goods, meaning thereby, the articles of gift.

13. The question as to whether burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay

would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers.

“As indicated hereinbefore, the First Information Report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the First Information Report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.”

14. An admission made in the pleadings, as is well-known, is admissible in evidence proprio vigore. We, thus, are of the opinion that the Tribunal as also the High Court committed a serious error in opining that the insurance company was liable.

“Reliance placed by the learned counsel on a decision of this Court in *National Insurance Co. Ltd. v. Baljit Kaur and Others*¹ is misplaced. The question which arose for consideration therein was as to whether the words "any person" shall include a gratuitous passenger despite the amendment made in Section 147 of the Act by reason of the *Motor Vehicles (Amendment) Act, 1994*. Following *New India Assurance Co. Ltd. v. Asha Rani*², it was categorically held:

"20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized 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 the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."

In *National Insurance Co. Ltd. v. Cholleti Bharatamma and Others*³, this Court categorically held:

"27. The learned counsel appearing for the respondent submitted that from the aforementioned finding, it is evident that the respondent was traveling as the owner of the goods. We do not think that the said submission is correct. PW 2, in his evidence, stated:

"I am doing tamarind business. I witnessed the accident which took place about 3 years back at about 6 a.m. at Borrampalem junction beyond Talluru. At the time of the accident I was in the crime lorry by the side of the driver. Myself and 6 others were carrying tamarind in that lorry belonging to us. We boarded the lorry along with our load of tamarind at Dharamavaram to go to Rajanagaram. We were selling the tamarind at Rajanagaram in retail by taking the tamarind there in our lorry from our village of Dharamavaram."

28. The Tribunal, therefore, correctly recorded that according to PW 2, he was traveling with his goods as owner thereof and not the deceased."

We, therefore, in the facts and circumstances of the case, have no hesitation to hold that the victims of the accidents were traveling in the truck as gratuitous passengers and in that view of the matter, the appellant herein was not liable to pay the amount of compensation to the claimants."

15. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside in so far as the liability of the appellant herein is concerned. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

¹[(2004) 2 SCC 1]

²[(2003) 2 SCC 223]

³[(2008) 1 SCC 423]