

RAMESH KUMAR
v
NATIONAL INSURANCE CO. LTD. AND ORS.

AUGUST 17, 2001

[A.P. MISRA AND U.C. BANERJEE, JJ.]

Motor Vehicles Act 1939/Motor Vehicles Act 1988 (as amended in 1994)—Section 95/Section 147.

Compensation—Liability of insurance company—On account of death or bodily injury, of the gratuitous passengers, including owner of the goods or his representatives travelling in a goods vehicle—Liability under three categories—First under the 1939 Act as amended in 1969—Second under the 1988 Act prior to its amendment in 1994—Third under the 1988 Act pursuant to its amendment in 1994—Two category of cases dealt with—Held, under first category cases insurance company not liable under section 95 (1) (b) proviso (i) and (ii) as the vehicle involved is a goods vehicle—Liability rests on the owner of the goods vehicle—Under third category cases claim confined only to the owner or his representatives and not to gratuitous passengers—Thus, Insurance Company liable only for the owner or his representatives under section 147 (1) (i) and (ii)—Second category cases decided separately.

Constitution of India 1950

Art.136—New Plea—Raising of—Held, cannot be raised unless foundation laid in the pleading.

In these matters, the common question involved was as regards the liability of payment of compensation by Insurance Company under the Motor Vehicles Act on account of death or injury to either gratuitous passengers, owner or his representatives while travelling in a goods vehicle. On appeal, the cases were classified under three categories, the first category arose under the Motor Vehicles Act 1939 as amended in 1969, second category under the Motor Vehicles Act, 1988 prior to its amendment in 1994 and the third category under the Motor Vehicles Act, 1988 pursuant to its amendment in 1994. The first and third category cases were dealt under the present appeals.

A Claimants under the first category cases contended that the insurance company is liable to pay compensation under proviso (i) and (ii) of Section 95(1) (b) of the Motor Vehicles Act, 1939 even though the vehicle involved was a goods vehicle. But the insurance company denied their liability.

B Claimants under the third category of cases contended that the insurance company is liable to pay the compensation under section 147(1) (i) and (ii) of the Motor Vehicles Act, 1988.

Disposing of the appeals, this Court

C HELD : 1.1 Under the first category of cases *viz.* those arising under the 1939 Act, the insurance company is not liable to pay compensation to the claimants on account of the death or bodily injury of the gratuitous passengers including owner or his representative of the goods, travelling in a goods vehicle. The liability is on the owner of the goods vehicle. [684-C, D]

D *Mallawwa (Smt.) and Ors. v. Oriental Insurance Co. Ltd. and Ors.*, [1999] 1 SCC 403, relied on.

E 1.2. In case insurance company had made part or full payment towards such compensation awarded, the same shall not be recovered from the claimant but is recoverable by the insurance company from the owners. In case the amount has been withdrawn by the claimants on furnishing any security, the said security shall stand discharged. In case no payment has been made by the claimant, the owners of the vehicles should pay the awarded compensation to the claimant within a period of three months from today. [684-D, E]

F 2.1. Section 147 (1) (i) and (ii) of the Motor Vehicles Act 1988 holds the insurance company liable to pay the compensation both for the owner and his representative and also for the gratuitous passengers travelling in a goods vehicle. But under the third category of cases the claimants have confined their claim only for the owner or his representatives who were travelling in a goods vehicle and not for the gratuitous passenger. Therefore, insurance company is liable to pay the compensation for the deceased or injured persons travelling in a good carriage, who were either the owners or their representatives. [684-G, H; 685-C]

G *New India Assurance Company v. Satpal Singh and Ors.*, [2000] 1 SCC 237, relied on.

H 2.2. Any compensation or part of it not paid shall be paid to the

claimant by the insurance company within eight weeks of the order. On such amount being withdrawn by the claimant which was deposited by the Insurance Company on furnishing security, such security stands discharged. [685-D] A

2.3. In the instant cases, a plea was raised whether the persons travelling were truly owners of the goods or not. Only in cases where it is recorded by the Tribunal that they were not the owners, the insurance company could succeed that they are not liable to pay. In any case if insurance company has not raised any such issue they cannot be permitted to raise it now. Unless such an issue was raised, foundation laid in the pleading, and if not adjudicate by the Tribunal, thereafter if a ground is raised before the High Court yet not decided there could be possibility of remanding the case, otherwise it cannot be permitted to be raised. [685-E-F] B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5010 of 1999.

From the Judgment and Order dated 12.6.98 of the Himachal Pradesh High Court in FA0176/90. D

WITH

C.A. No. 5051/1999, C.A. No. 623/1997, C.A. No. 40/1986, C.A. No. 5457 of 2001, C.A. No. 5458 of 2001, C.A. Nos. 3393-3395 of 1996, C.A. Nos. 10846-10850 of 1996, C.A. No. 5459 of 2001, C.A. No. 5460 of 2001, C.A. Nos. 950-957 of 1999, C.A. No. 1090 of 1999, C.A. No. 521 of 1993, C.A. No. 522 of 1993, C.A. No. 523 of 1993, C.A. Nos. 5461-62 of 2001, C.A. No. 1249 of 1999, C.A. No. 1253 of 1999, C.A. No. 1255 of 1999, C.A. No. 1254 of 1999, C.A. No. 1251 of 1999, C.A. No. 1252 of 1999, C.A. No. 5463 of 2001, C.A. No. 6542 of 1994, C.A. No. 6543 of 1994, C.A. No. 6544 of 1994, C.A. No. 6545 of 1994, C.A. No. 5385 of 2001, C.A. Nos. 16793-16796 of 1996, C.A. No. 229 of 1999, C.A. Nos. 5386-5410 of 2001, C.A. Nos. 5411-16 of 2001, C.A. No. 5417 of 2001, C.A. Nos. 5418-27 of 2001, C.A. No. 4458 of 1999, C.A. No. 5223 of 2000, C.A. Nos. 5428-32 of 2001, C.A. No. 1697 of 1999, C.A. Nos. 5433-44 of 2001, C.A. No. 6237 of 1997, C.A. Nos. 272-77 of 1999, C.A. Nos. 5445-50 and 5450A of 2001, C.A. Nos. 5451-52 of 2001, C.A. Nos. 5453-56 of 2001, C.A. No. 3843 of 2000, C.A. No. 5464 of 2001, C.A. No. 5465 of 2001, C.A. No. 6755 of 1999, C.A. Nos. 5466-67 of 2001, C.A. Nos. 5468-69 of 2001. E F G

Jitender Sharma, P.P. Malhotra, Rama Jois, Ashok Kumar Gupta, K.K. Jain, Pramod Dayal, Anand Padmanabhan Ms. Lipika Sharma, S.K. Paul, Ms. Indra H

- A Sahney, Kishore Rawat, M.K. Dua, Sunil Kapoor, Shailendra Sharma, Ms. Rekha Palli, Ms. Pankaj Bala Verma, Ms. Kiran Suri, Sanjeev Das, Parmanand Gaur, Ms. Minakshi Vij, N.M. Popli, Ms. Vrinda Dhar, T.C. Sharma, Joy Basu, B.K. Satija, Jay Savla, K.K. Moni, Romy Chacko, Rajiv Mehta, Anil Sinha, Naresh K. Sharma, Umesh Bhagwat, H.A. Raichura, Mahabir Singh, Rajiv Nanda, Ms. Neera Gupta, D.B.R. Vohra, S.N. Bhat, N.P.S. Panwar, D.P. Chaturvedi, Uday Gupta, Vineet Kumar, Dr. K.S. Chauhan, J.S. Attri, S. Srinivasan, Ms. B. Sunita Rao, V.B. Saharya, Sunil Kumar Jain, Vijay Hansaria, Goodwill Indeevar, Arvind Kumar, Ms. Laxmi, Arvind, Mr. Sunil Gupta, Ms. Binu Tamta, Rajesh Saxena, Anil Kumar Sangal, Anurag Pandey, V.D. Khanna, K. Sharada Devi, S.C. Patel, M.T. George, Dr. Sushil Balwada, Surya Kant, B.D. Sharma, Javed Mahmud Rao, E.C. Vidya Sagar, K. Khullar, R.C. Kohli, A.V. Palli, P. Narasimhan, Ms. Biraj Tiwari, Uma Datta, C.S. Ashri, M.K.D. Namboodiri, Sanjeev Malhotra, J.R. Midha, S. Ghosh, C.P. Pandey, Ajit Pudussery, K.L. Nandwani, Vipin Nandwani for Debasis Misra, H. Wahi and Ms. Meenakshi Vij for the appearing parties.

D The Judgment of the Court was delivered by

MISRA, J. Leave granted.

E The aforesaid sets of cases have been classified in three categories, which raises common question about the liability of payment of compensation by the Insurance Company under the Motor Vehicles Act.

Category I

- F CA No. 5010 of 1999, C.A. No. 5051/1999, C.A. No. 623/1997, C.A. No. 40/1986, C.A. No. 5457 of 2001 (arising out of SLP (C) 20312/1997), C.A. No. 5458 of 2001 (arising out of SLP (C) No. 20313 of 1997), C.A. Nos. 3393-3395 of 1996, C.A. Nos. 10846-10850 of 1996, C.A. No. 5459 of 2001 (arising out SLP (C) No. 13954 of 2000), C.A. No. 5460 of 2001 (arising out of SLP (C) No. 14855 of 2000), C.A. Nos. 950-957 of 1999, C.A. No. 1090 of 1999, C.A. No. 521 of 1993, C.A. No. 522 of 1993, C.A. No. 523 of 1993, C.A. Nos. 5461-62 of 2001, G (arising out of SLP (C) No. 15554-15555 of 2000), C.A. No. 1249 of 1999, C.A. No. 1253 of 1999, C.A. No. 1255 of 1999, C.A. No. 1254 of 1999, C.A. No. 1251 of 1999, C.A. No. 1252 of 1999, C.A. No. 5463 of 2001, (arising out of SLP No. 3938 of 1996), CA No. 6542 of 1994, CA No. 6543 of 1994, CA No. 6544 of 1994, and CA No. 6545 of 1994,

H *Category II*

CA No. 5385 of 2001 (arising out of SLP (C) No. 9873 of 2000), C.A. 16793-16796 of 1996, C.A. 229 of 1999, CA Nos. 5386-5410 of 2001 (arising out of SLP (C) Nos. 4098-4122 of 2001), CA Nos. 5411-16 of 2001, (arising out of SLP (C) Nos. 11427-11432 of 2001), CA No. 5417 of 2001 (arising out of SLP (C) No. 11760 of 2001), CA Nos. 5418-27 of 2001 (arising out of SLP (C) Nos. 10938-10947 of 2000), C.A. No. 4458 of 1999, C.A. No. 5223 of 2000, CA Nos. 5428-32 of 2001 (arising out of SLP (C) Nos. 12889-93 of 2001), C.A. No. 1697 of 1999, CA Nos. 5433-44 of 2001 (arising out of SLP (C) Nos. 12627-38 of 2000), C.A. No. 6237 of 1997, C.A. Nos. 272-77 of 1999, CA Nos. 5445-50 of 2001 (arising out of SLP (C) Nos. 8116-22 of 2001), CA Nos. 5451-52 of 2001 (arising out of SLP (C) Nos. 6956-57 of 2001), CA Nos. 5453-56 of 2001 (arising out of SLP (C) Nos. 10419-22 of 2001), and C.A. No. 3843 of 2000,

Category III

CA No. 5464 of 2001 (arising out of SLP (C) No. 3408 of 2001), CA No. 5465 of 2001 (arising out of SLP (C) No. 3409 of 2001), C.A. No. 6755 of 1999, CA Nos. 5466-67 of 2001 (arising out of SLP (C) Nos. 8765-66 of 2001), and CA Nos. 5468-69 of 2001 (arising out of SLP (C) Nos. 9892-93 of 2001).

The first category of cases arise out of the Motor Vehicles Act, 1939 (hereinafter referred to as 'Old Act'). The question raised for this category is:

"Whether insurance company is liable to pay the compensation on account of the death or bodily injury of the gratuitous passengers including owner or his representative of the goods, travelling in a goods vehicle under Section 95 of the said Act?"

The second category of cases arise out of the Motor Vehicles Act, 1988 (hereinafter referred to as 'New Act') prior to its amendment in 1994. In this category also similar question is raised. The third category of cases also arise under the new Act but after its amendment by Act No.54 of 1994. In this category also the same question is raised.

Thus the question raised in all these cases is about the liability of the insurance company, for the payment of compensation to the claimants for those falling under the aforesaid field on account of their death or bodily injury while travelling in a goods vehicle. We are disposing of through this judgment, the group of cases falling under category one and three respectively. So far cases covered under category two, we will be dealing with it through a separate judgment and order.

- A The category one cases are all in which a claim petition has been filed by the claimants on account of death or bodily injuries of either the owners or his representative or the gratuitous passengers. In all these cases claimant claimed compensation under Section 95(1)(b)(i) and clause (ii) of the proviso after its amendment in 1969 under the old Act. The submission is, it is the insurance company, which is liable to pay the compensation notwithstanding that vehicle involved in the accident is a goods vehicle. On the other hand submission for the insurance company is that they are not liable for those passengers who travels by a goods vehicle, in view of the language used in Section 95 of the old Act. The cases under this category need not detain us long as this question has been directly raised and decided in the case of
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- C *Mallawwa (Smt.) and Ors. v. Oriental Insurance Co. Ltd. and Ors.*, [1999] 1 SCC 403. In this case the accidents were for the period between 1971 and 1985. This Court held, the insurance company is not liable for any damage in cases the gratuitous passengers including owner of the goods or his representative who travelled in a goods vehicle. So the first category of cases are disposed of in term of this declaration that liability to pay compensation to the claimants of such person is not on the insurance company but on the owner of the goods vehicle. In case insurance company had made part or full payment towards such compensation awarded, the same shall not be refunded from the claimant but is recoverable by the insurance company from the owners. In case the amount has been withdrawn by the claimants on furnishing
- D
- E any security, the said security shall stand discharge. In case no payment or part payment has been made by the claimant, we direct the owners of the vehicle to pay the awarded compensation to the claimant within a period of three months from today. Accordingly the first category of cases are disposed of.
- F This takes us to the third category of cases where similar question is raised regarding liability of the insurance company under the new Act after its 1994 amendment. The submission for the claimant is, the insurance company is liable to pay the compensation both in view of the decision of this Court in *New India Assurance Company v. Satpal Singh and Ors.*, [2000] 1 SCC 237 and also in view of its 1994 amendment. This Court in this case, while
- G interpreting Section 147(1)(i) and (ii) of the New Act holds, the insurance company liable to pay the compensation both for the owner and his representative and also for the gratuitous passengers travelling in a goods vehicle. In this third category, in spite of the said declaration the claimants have confined their claim only for the owner or his representative who were
- H travelling in a goods vehicle and not for the gratuitous passenger. Since

Satpal Singh (supra) confers right over gratuitous passengers also, which is not claimed by any of the claimants under this category, thus declaration of law in *Satpal Singh* (Supra) is not required to be considered for this category, as claim for the owner and his representative is not disputed even by the learned counsel for the insurance company, after its aforesaid 1994 amendment, that insurance company is liable to pay compensation for such person even when they were travelling in a goods vehicle. This is in view of 1994 amendment in sub-clause (I) of Section 147 (1)(b) of the new Act in which the following words were brought in:

“.....injury to any person, including owner of the goods or his authorised representative carried in a vehicle.”

Thus this category of cases are also disposed of by declaring that compensation awarded in such cases where deceased or injured persons were travelling in a goods carriage who were owner or his authorised representative, the insurance company is liable to pay the compensation. Any compensation or part of it not paid shall be paid to the claimant by the insurance company within eight weeks of this order. Any such amount withdrawn by the claimant which was deposited by the Insurance Company on furnishing security, such security stands discharged.

Learned counsel appearing for the insurance company has submitted that even though the insurance company is liable to pay to the legal representatives of the owner or authorised representative, the question is, whether those travelling were truly owners of the goods or not? This in our considered opinion is a question of fact which we need not advert. Only in cases it is recorded by the Tribunal that they were not the owners then only insurance company could succeed that they are not liable to pay. In any case if insurance company has not raised any such issue they cannot be permitted to raise it now. Unless such an issue was raised, foundation laid in the pleading and if not adjudicated by the Tribunal thereafter if a ground is raised before the High Court yet not decided there could be possibility of remanding the case otherwise it cannot be permitted to be raised. We have not been shown in any of these cases to qualify for the above. Accordingly we dispose of these cases falling under the third category, by declaring that the insurance company is liable to pay the compensation for the deceased or injured persons travelling in a goods carriage, who were either the owner or his representatives. These appeals are disposed of accordingly.