Supreme Court of India
M/S. National Insurance Co. Ltd vs Baljit Kaur And Ors on 6 January, 2004
Author: K . V.N.
Bench: Cji., V. N. Khare, S.B. Sinha, Dr. Ar. Lakshmanan.

CASE NO.:
Appeal (civil) 16 of 2004

PETITIONER:
M/s. National Insurance Co. Ltd.

RESPONDENT:
Baljit Kaur and Ors.

DATE OF JUDGMENT: 06/01/2004

BENCH:
CJI., V. N. Khare,S.B. Sinha & Dr. AR. Lakshmanan.

JUDGMENT:

JUDGMENT (Arising out of S.L.P. [C] No. 17763 of 2001) WITH CIVIL APPEAL NO. 17/04 (@ SLP (C) No. 17837/01) CIVIL APPEAL NO. 18/04 (@ SLP (C) No. 18027/01) CIVIL APPEAL NO. 20/04 (@ SLP (C) No. 5220/02) CIVIL APPEAL NO. 27/04 (@ SLP (C) No. 5225/02) CIVIL APPEAL NO. 28/04 (@ SLP (C) No. 6045/02) CIVIL APPEAL NO. 26/04 (@ SLP (C) No. 6046/02) CIVIL APPEAL NO. 25/04 (@ SLP (C) No. 6047/02) CIVIL APPEAL NO. 24/04 (@ SLP (C) No. 6048/02) CIVIL APPEAL NO. 23/04 (@ SLP (C) No. 6049/02) CIVIL APPEAL NO. 22/04 (@ SLP (C) No. 6050/02) CIVIL APPEAL NO. 21/04 (@ SLP (C) No. 6051/02) V.N. KHARE, CJI.

Leave granted.

The question that arises for consideration in these appeals is whether an insurance policy in respect of a goods vehicle would also cover gratuitous passengers, in view of the legislative amendment in 1994 to Section 147 of the Motor Vehicles Act, 1988.

The first respondent herein preferred a claim petition for compensation before the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'the Claims Tribunal'), in view of the death of her sixteen year old son, Sukhwinder Singh, due to the allegedly reckless driving by the second respondent and driver of the goods vehicle, bearing Number PB-10U-8937, on February 19, 1999. It was found by the Claims Tribunal that the victim, who was returning in the truck from a marriage ceremony, died as a result of the rash and negligent driving by the driver of the goods vehicle, the second respondent herein. It was an admitted fact that the said vehicle was insured with the appellant insurance company. The Claims Tribunal relying upon the decision of this Court in New India Assurance Co. v. Satpal Singh (2000) 1 SCC 237, accepted the claim petition, and rejected the contention of the appellant insurance company that the concerned vehicle being a goods vehicle, it would not have to incur any liability with respect to passengers transported in the vehicle. It further directed the appellant to pay an amount of Rs.1,32,000/- as compensation, with interest at the rate of 9% from the date of application. The High Court upheld the verdict of the Claims Tribunal on

appeal, with the further direction that in the event the owner, the third respondent herein, had committed any breach, the appellant insurer would be entitled to recover the amount of compensation from him.

It may be noticed at the outset that the Judgment rendered in Satpal Singh case (supra) has been subsequently reversed by a three-judge Bench of this Court in New India Assurance Co. Ltd. Vs. Asha Rani (2003) 2 SCC 223, which was followed in the case of Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy (2003) 2 SCC 339.

Reference in this connection may also be made to National Insurance Co. Ltd. v. Ajit Kumar and Others [JT 2003 (7) SC 520]. In the case of New India Assurance Co. Ltd. Vs. Asha Rani (Supra), it was held that the previous decision in Satpal Singh Case, was incorrectly rendered, and that the words "any person" as used in Section 147 of the Motor Vehicles Act, 1988, would not include passengers in the goods vehicle, but would rather be confined to the legislative intent to provide for third party risk. The question in the subsequent judgment in Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy (supra), involved, as in the present case, the liability of the insurance company in the event of death caused to a gratuitous passenger traveling in a goods vehicle. The Court held that the Tribunal and the High Court were not justified in placing reliance upon Satpal Singh case (supra), in view of its reversal by Asha Rani (supra), and that, accordingly, the insurer would not be liable to pay compensation to the family of the victim who was traveling in a goods vehicle.

It was contended by the learned counsel appearing on behalf of the second and third respondents, the driver and owner of the vehicle respectively, that the decision in Asha Rani case (supra) and Konda Reddy case (supra) were delivered with respect to the position prevailing prior to the amendment of Section 147 by the Motor Vehicles (Amendment) Act, 1994. As such, the effect of the legislative amendment was not in question in the above cases, and therefore, the law laid down by these decisions would not be considered as binding law in view of coming into force of the said amendment. Since the accident in the present instance occurred in 1999, this Court would now have to consider afresh the impact of the 1994 amendment, and could not consider itself circumscribed by the aforementioned decisions in the Asha Rani case (supra) and Konda Reddy case (supra) which both involved motor accidents predating the said amendment.

It is the submission of the respondent vehicle owner and driver that the insertion, by way of legislative amendment, of the words "including owner of the goods or his authorized representative carried in the vehicle" in Section 147 would result in the inference that gratuitous passengers would as well be covered by the scope of the provision. Any other construction, it was urged by the learned counsel for the second and third respondents, would render the effect of the words "any person" as completely redundant.

The material portion of the provision contained in Section 147 of the Motor Vehicles Act, 1988, as amended by the Motor Vehicles (Amendment) Act, 1994 reads as follows:

"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)

(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 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;

(ii) * * *"

(emphasis added)

Admittedly, it is incumbent upon a Court of law to eschew that interpretation of a statute that would serve to negate its true import, or to render the words of any provision as superfluous. Nonetheless, we find no merit in the above submissions proffered by the learned counsel for the respondent. The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words "any person" could be held not to include the owner of the goods or his authorized representative travelling in the goods vehicle, Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle as a medium of conveyance.

We find ourselves unable, furthermore, to countenance the contention of the respondents that the words "any person" as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous passengers from the ambit of the same. It was observed by this Court in the case concerning New India Assurance Co. Ltd. Vs. Asha Rani (supra) that the true purport of the words "any person" is to be found in the liability of the insurer for third party risk, which was sought to be provided for by the enactment.

It is pertinent to note that a statutory liability enjoined upon an owner of the vehicle to compulsorily insure it so as to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment in terms of proviso (ii) appended to Section 95 of the 1939 Act does not occur in Section 147 of the 1988 Act. The changes effected in the 1988 Act vis-`-vis the 1939 Act as regard definitions of 'goods vehicle', 'public service vehicle' and 'stage carriage' have also a bearing on the subject inasmuch as the concept of any goods carriage carrying any passenger or any other person was not contemplated.

In a situation of this nature, the doctrine of suppression of mischief rule as adumbrated in Heydon's case [3 Co Rep 7a, 76 ER 637] shall apply. Such an amendment was made by the Parliament consciously. Having regard to the definition of 'goods carriage' vis-`-vis 'public service vehicle', it is clear that whereas the goods carriage carrying any passenger is not contemplated under the 1988 Act as the same must be used solely for carrying the goods.

In Halsbury's Laws of England, Volume 44(1), fourth reissue, para 1474, pp 906-07, it is stated :

"Parliament intends that an enactment shall remedy a particular mischief and it is therefore presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment corresponds to its legal meaning, should find a construction which applies the remedy provided by it in such a way as to suppress that mischief. The doctrine originates in Heydon's case where the Barons of the Exchequer resolved that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered :

(1) what was the common law before the making of the Act;

(2) what was the mischief and defect for which the common law did not provide;

(3) what remedy Parliament has resolved and appointed to cure the disease of the commonwealth; and (4) the true reason of the remedy, and then the office of all the judges is always to make such construction as shall :

(a) suppress the mischief and advance the remedy; and

(b) suppress subtle inventions and evasions for the continuance of the mischief pro privato commodo (for private benefit); and

(c) add force and life to the cure and remedy according to the true intent of the makers of the Act pro publico (for the public good)."

Heydon's Rule has been applied by this Court in a large number of cases in order to suppress the mischief which was intended to be remedied as against the literal rule which could have otherwise covered the field. [See for example, Smt. PEK Kalliani Amma and Others vs. K. Devi and Others, [AIR 1996 SC 1963; Bengal Immunity Co. Ltd. vs. State of Bihar and Others, AIR 1955 SC 661; and Goodyear India Ltd. vs. State of Haryana and Another, AIR 1990 SC 781].

By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If

such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J, was a party, however, bear repetition:

"26. In view of the changes in the relevant provisions in the 1988 Act vis-`-vis the 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 the 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 traveling in a goods vehicle, the insurers would not be liable therefor."

In Asha Rani (supra), it has been noticed that sub-clause (i) of clause

(b) of sub-section (1) of Section 147 of the 1988 Act 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. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

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 any premium was paid to the extent of the benefit of insurance to such category of people.

The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub- served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the

dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding.

For the aforementioned reasons, the appeals are partly allowed to the aforementioned extent and subject to the directions aforementioned. But there shall be no order as to costs.