Supreme Court of India
Smt Mallawwa Etc vs Oriental Insurance Co, Ltd. And ... on 27 November, 1998
Bench: M.K. Mukherjee, G.T. Nanavati, B.N. Kirpal

CASE NO.:
Appeal (civil) 3659 of 1993

PETITIONER:
SMT MALLAWWA ETC.

RESPONDENT:
ORIENTAL INSURANCE CO, LTD. AND ORS.

DATE OF JUDGMENT: 27/11/1998

BENCH:
M.K. MUKHERJEE & G.T. NANAVATI & B.N. KIRPAL

JUDGMENT:

JUDGMENT 1998 Supp (3) SCR 152 The Judgment of the Court was delivered by NANAVATI, J. These appeals were earlier placed for hearing before a Division Bench consisting of our learned Brothers Bharucha and Majmudar, JJ. on 20.2.1996. Upon hearing the counsel, the Division Bench passed the following order:

"What we are concerned with in these matters is the correct interpretation of Section 95 of the Motor Vehicles Act, 1939. The question arises, specifically, in the context of the death of the owner of goods being carried in a goods vehicle, and the question is whether the insurer of the goods' vehicle is liable to pay the compensation awarded to his legal heirs. We note that there are divergent views expressed by the High Courts. Apart from that, in our view, a decision of a bench of two learned Judges in Pushpabai Parshottam Udeshi & Ors. v. M/s. Ranjit Ginning & Pressing Co. Pvt. Ltd. & Anr., AIR (1977) SC 1735, needs to be reconsidered in greater detail. In these circumstances, it is appropriate that these matters should be heard and disposed of by a bench of three learned Judges."

Accordingly, they have been placed before us for final disposal. In Civil Appeal Nos. 3659 of 1993 and 880/86, the deceased were owners of goods and as such were carried in the goods vehicles which had met with accidents. In C.A. Nos. 1478/87, 6001/90, 6002/90, 2098/96, 5872/94, SLP (C) Nos. 10745, 10747 and 10748 of 1995 the deceased were travelling in goods vehicles as passengers on payment of fare. In SLP (C) No. 9727 of 1989 the deceased was a gratuitous passenger.

In CA Nos. 3659 of 1993 the facts are that on 6.11.90 while Suresh was travelling in a goods carriage vehicle from Belgaum to Bagewadi, died as it met with an accident. His widow Mallawa, therefore, filed a claim petition claiming compensation. The claimant also made an application under Section 140 of the Motor Vehicles Act, 1988 for interim compensation. The Motor Accident Claims Tribunal, Belgaum, awarded Rs. 25,000 under Section 140 and directed the insurance company to pay that amount The insurance company filed an appeal before the Karnataka High Court against that

interim award. The High Court set aside the order holding that under a motor vehicle insurance policy issued by an insurance company in conformity with Section 147 of the 1988 Act, the insurance company is not liable to pay compensation in respect of death or bodily injury to any person travelling in goods carriage as passenger whether as a hirer or otherwise. It also held that under the insurance policy there is no extra coverage in respect of a passenger like an owner or hirer travelling in the vehicle and, therefore also, the insurance company is not liable to pay compensation to the claimants either on the ground of fault liability or on the ground of no fault liability. Aggrieved by the judgment of the High Court, the claimant has filed this appeal. In Civil Appeal No. 880 of 1986, one Poonam Chand when he was travelling with his goods in a vehicle died as that vehicle met with an accident. The Motor Accident Claim Tribunal, Kota, dismissed the claim petition on the ground that the accident had not occurred as a result of rash and negligent driving of the vehicle by its driver. It also held that the insurance company was exempted from any liability as the deceased was travelling in a goods vehicle contrary to the Motor Vehicle Rules Aggrieved by that order, the claimants filed an appeal to the High Court of Rajasthan. It was first heard by a Single Judge who referred it along with other connected appeals, to a larger Bench for deciding the question of liability of the insurance company under Sections 95 and 96 of the Act in respect of death or bodily injury caused to persons travelling in a goods vehicle with goods or without goods and pursuant to the contract of service with the owner's vehicle or otherwise. The Full Bench held that (1) in case pf a gratuitous passenger going on a joy-ride or on his own responsibility, insurance company is not liable; (2) in case of passengers carried for hire or reward or by reason of or in pursuance of a contract of employment in any vehicle, the Insurance Company is liable (this would include owner of the goods as well as his employees); (3) the insurer shall* hot be liable to cover liability in respect of employees of the insured for death or bodily injury arising Out of and in the course of his employment other than die liability arising under the Workman's Compensation Act, 1993, if such employee is (a) engaged in driving such vehicle or (b) if it is a public service vehicle, engaged as a conductor of the vehicle or (c) if it is a goods vehicle, being carried in the vehicle; and (4) insurer shall not be liable to cover any contractual liability. Thereafter, the learned Single Judge allowed the appeal holding that the driver of the vehicle was negligent in driving it that the proper amount of compensation would be Rs. 96,000 and that the insurance company is liable to the extent of Rs. 50,000. Aggrieved by the judgment and order passed by the High Court the insurance company has filed this appeal.

C.A. Nos. 1478/87, 6001/90, 6002/90, 2098/96, 5872/94, SLP (C)Mos. 10745, 10747 and 10748 of 1995 have been filed by the New Indian Assurance Company as it has been held in all those cases by the concerned High Courts that a passenger travelling in a goods vehicle is a person carried for hire or reward within the meaning of proviso(ii) to Section 95(1) of the Act and, therefore, the insurance company is liable to indemnify the insured except in cases of breaches of specified conditions.

In SLP (C) Mo. 9727/89, the deceased was a gratuitous passenger in a goods vehicle which met with an accident on 5.5.84. The Tribunal held that the owner of the vehicle alone liable to pay compensation. The Insurance Company was held not liable to pay it. Aggrieved by that part of the judgment and order the owner of the vehicle filed an appeal before the Karnataka High Court. The High Court held the insurance company not liable as the deceased was a gratuitous passenger and no additional premium was paid by the owner of the vehicle for covering risk of such passenger. As

her appeal was summarily dismissed she has filed this appeal.

In all these cases, the accidents had taken place between 1971 and 1985 and therefore we have to consider the position of law as it stood then, Section 95 of the 1939 Act before it was amended by Act 56 of 1969 was as under:

"95. Requirements of policies and limits of liability-{l) 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 authorised 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 sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not except as may be otherwise provided under sub-section (3) 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 public service Vehicle, engaged as a conductor of the vehicle or in examining tickets oh the vehicle, 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 of 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.

What is important to be noted is that the legislature, after providing generally in Clause (b) of Sub-section (i) in wide terms so as to include 'any person' and every motor 'vehicle' within its sweep, carved out certain exception by adding a proviso to that clause. By proviso (ii), it restricted 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". In absence of the proviso the main provision would have included all classes of vehicle including goods vehicles and all passengers whether carried for hire or reward or by reason of or in pursuance of a contract of employment or otherwise. That is the reason why there is a reference to different classes of vehicles in proviso (i). It refers to "vehicle", "public service vehicle" and "goods vehicle". The words "any person" in the main provision would have included the employee of the person insured, and therefore an exception was made by enacting proviso (i) so as to restrict liability of the insurer in respect of his employees. Both those exceptions were made as the legislature did not want to widen the liability of the insurer and the insured by making it more than what it was under the English Act, upon which Section 95 was based. As rightly pointed out by this Court in Pushpabai Purshottam Udeshi and Ors. v. M/s Ranjit Ginning and pressing Co. and Anr., AIR (1977) SC 1735. The requirement of compulsory coverage was limited then. We quote below what this court has stated in that behalf :

"19. As Section 95 of the Motor Vehicles Act, 1939 as amended by Act 56 of 1969 is based on the English Act it is useful to refer to that Neither the Road Traffic Act, 1960 or the earlier 1930 Act required users of motor vehicles to be insured in respect of liability for death or bodily injury to passengers in the vehicle being used except a vehicle in which passengers were carried for hire or reward or by reason of or in pursuance of a contract of employment In fact sub section 203(4) of the 1960 Act provided that the policy shall not be required to cover liability in respect of death of or bodily injury to persons being carried in or upon, or entering or getting on to or alighting from, the vehicle at the time of occurrence of the event out of which the claims arise. The provisions of the English Act being explicit the risk to passengers is not covered by the insurance policy. The provisions under the English Road Traffic Act, I960 were introduced by the amendment of section 95 of the Indian Motor Vehicles Act The law as regards general exclusions of passengers is stated in Halsbury's Laws of England, Third Edition, -VI. 22, at p. 368 para 765 as follows :'-

"Subject to certain exceptions a policy is not required to cover liability in respect of the death of or bodily injury to, a person being carried in or upon, or entering or getting or alighting from, the vehicle at the time of the occurrence of the event out of which the claim arises."

20. It is unnecessary to refer to the subsequent development of the English law and as the subsequent charges have not been adopted in the Indian statute. Suffice it to say that the Motor Vehicles (Passenger Insurance) Act, 1971 made insurance cover for passenger liability compulsory by repealing paragraph (a) and the proviso of sub section 203(4). But this Act was repealed by Road Traffic Act, 1972 though under section 145 of 1972 Act the coming into force of the provisions of Act 1971 covering passenger liability was delayed under December 1,1972, (Vide Binghams Motor Claims Cases, 7th Ed., p.704).

21. Section 95(a) and 95(b)(l) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960 and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death 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. The plea that the words "third party" are wide enough to cover all persons

except the person and the insurer is negatived as the insurance cover is not available to the passengers is made clear by proviso to sub-section which provides that a policy shall not be required :

"(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by a reason of 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."

Again turning back to proviso (ii), we find that it in clear terms restricted the scope of the main provision by confining its application to that vehicle which is 'a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment'. In the first instance, the vehicle had to be a vehicle of that class in which passengers were carried. If that was not intention of the Legislature, it would not have used the phraseology "the vehicle is a 'vehicle in which passengers are carried" and would have simply provided that "except where passengers are carried for hire or reward.," So also the compulsory coverage was not intended for all passengers and, therefore, it was provided that "passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Thus, the confinement of the operation of the main provision was in respect of vehicles and also passengers. And that was consistent with the English Law on which Section 95 was based.

As stated earlier, Section 95 was amended by Act 56 of 1969: Clause (b) was substituted by a new clause. The relevant part read as under :

"(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

0) 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 me 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;

The proviso remained as it was. The object of the Legislature in making that amendment was to cover the risk in respect of passengers of public service vehicles. The legislature, therefore, made a special provision in sub-clause(ii) of clause (b), leaving the rest of sub-section (1) including the proviso as it was. If this background is kept in mind, it becomes apparent that the Legislature did not want to make any change in the position of law except to provide specifically for covering risk to passengers of public service vehicles. We quote below the amended clause

(b) for ready reference :

"(b) insures the persons 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 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 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 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." Though apparently, it looked as if the Legislature by introducing two sub- clauses in clause (b) had tried to make a distinction between passengers and non-passengers, that was not really so. Though the proviso appeared after sub-clause (ii) of clause (b), it really remained a proviso to the earlier clause (b) which after the amendment became clause (b)(i). Neither the object of introducing sub-clause (ii) in clause (b) nor the language of the proviso indicate that the proviso was to act as a proviso to sub-clause

(ii) also. Even earlier, the passengers of a public service vehicle were required to be covered compulsorily as they answered the description of passengers carried for hire of reward. The only effect of making a special provisions for passengers of a public service vehicle was that proviso(ii) thereafter remained applicable vehicles other than public service vehicles.

For the purposes Of Section 95, ordinarily a vehicle could have been regarded as a vehicle in which passengers have carried if the vehicle was of that class. Keeping in mind the classification of vehicles, by the Act, the requirement of registration with particulars including the class to which it belonged, requirement of obtaining a permit for using the vehicle for different purposes and compulsory coverage of insurance risk, it would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions at that vehicle for carrying passengers for hire reward. For the purpose of construing a provision like proviso (ii) to Section 95(1) (b), the Correct test to determine whether a passenger was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so Used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward. The High Courts have expressed divergent views on the question whether a passenger can be said to have been carried for hire or reward when he travels in a goods vehicle either on payment of fare or along with his goods. It is not necessary to refer to those decisions which were cited at the Bar as we find that all the relevant aspects were not taken into consideration while expressing one view or the other. We may only refer to the decision of the Orissa High Court in New India Assurance Co. Ltd v. Kanchan Bewa & Ors:, (1994) ACJ 138 where Hansaria, J. speaking for the Full Bench observed as under ;-

"18. The aforesaid is not enough to take any view as to whether goods vehicle can or cannot come within the fold or proviso(ii) with which we are concerned. Our primary reason for differing, with respect, with Rajasthan Full Bench is that allowing goods vehicle to be taken within the fold of proviso (ii) would introduce to uncertainties in law as that would depend upon various factors to which we shall advert; the result would be that the law would cease to be certain which it has to be at least in a case of the present nature. We have said so because reference to the definition of goods vehicle shows that the first part of it does not deal with carrying of passengers. It is the second part which speaks about the same and that too when the vehicle is used for such a purpose. The word 'use has been defined in Chambers English Dictionary in its intransitive sense to mean 'to be accustomed; (to; used chiefly in the past tense);' 'to be in the habit of so doing'; 'to resort'. Reference to the meaning of this word, as given in Black's Law Dictionary, 5th edition, would show that even one user may amount to 'use' or it may be that for a thing being said to be 'used', it has to be 'employed habitually',

19. Being concerned with a beneficial legislation like the one at hand, we would have normally preferred liberal interpretation, but the question is whether, without any extra premium having been paid, the owner of a goods vehicle can claim indemnification from the insurer just because once in a year the goods vehicle had carried a passenger for hire or reward along with the goods. This would perhaps robe the third proviso dealing with coverage of contractual liability lame...

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22. Thus, to find oat whether an insurer would be liable to indemnify an owner of a goods vehicle in a case of the present nature, the mere fact that the passenger was carried for hire or reward would not be enough; it shall have to be found out as to whether he was the owner of the goods, or an employee of such an owner, and then whether there were more than six persons in all in the goods vehicle and whether the goods vehicle was being habitually used to carry passengers. The position would thus become very uncertain and would vary from case to case. Production of such result would not be conducive to the advancement of the object sought to be achieved by requiring a compulsory insurance policy.

23. There is another aspect of the matter which had led us to differ from the Full Bench decision of Rajasthan High Court. The same is what finds place in sub-section (2) of Section 95. That sub-section specifies the limits of liability and clause (a) deals with goods vehicle; and in so far as the person travelling in goods vehicles is concerned, it has confined the liability to the employees only. This is ah indicator, and almost a sure indicator, of the fact that legislature did not have in mind carrying of either the hirer of the vehicle or his employee in the goods vehicle, otherwise, clause (a) would have provided a limit of liability regarding such persons also."

Though, the conclusion was arrived at after taking into consideration the Orissa Motor Vehicle Rules, in our opinion the said view is correct, even otherwise also. In view of what we have said, the contrary view expressed by other High Courts has to be regarded as incorrect.

We will now consider whether the decision of this Court in Pushpabai's case (supra) requires reconsideration. That was a case of a passenger travelling in a motor car. He was not travelling for hire or reward. The vehicle was neither a public service vehicle nor a goods vehicle, but it was a different class of vehicle. It was in that context that this Court made the following observation in paragraph 21 and 22 :

"... The plea that the words"third party" are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers is made clear by the proviso to sub-section which provides that a policy shall not be required :

"(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by a 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.

(22). Therefore it is not required that a policy of insurance should cover risk to the passegners who are not carried for hire or reward. As under section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

What was held in that case, is, with respect consistent with our interpretation of Section 95 as it stood before and after its Amendment by Act 56 of 1969.

The 1939 Act is now replaced by the 1988 Act. Section 147 which corresponds to old Section 95 has been substantially altered by the Legislature. Therefore, the above interpretation of Section 95 of the 1939 Act will govern the cases which have arisen under the 1939 Act. According to our interpretation of Section 95(l)(b)(i) and the proviso, the appeals filed by the Insurance Company are allowed. In SLP(C) Nos. 10745,10747 and 10748 of 1995 filed by the Insurance Company, 'leave' is granted and those appeals are also allowed. The appeals filed by the claimants/owners of the vehicles are dismissed. SLP (C) No. 9727 of 1989 filed by the owner of the vehicle is also dismissed.