

CASE NO.:
Appeal (civil) 1667 of 2008

PETITIONER:
National Insurance Co. Ltd

RESPONDENT:
Prema Devi & Ors

DATE OF JUDGMENT: 29/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
JUDGMENT

CIVIL APPEAL NO 1667 2008
(Arising out of SLP(C) No. 7058/2004)

Dr. ARIJIT PASAYAT, J

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court, Lucknow Bench dismissing the appeal filed by the appellant.
3. Background facts in a nutshell are as follows:
The accident in the instant case took place on 1.6.1996. The claimant was travelling in a goods carriage, as a gratuitous passenger. Undisputedly she was not traveling in the goods carriage in the capacity of owner of goods or representative of owner of goods being transported in the goods carriage. This aspect was also accepted by the claimant in the claim petition.
4. Stand of the appellant was that the owner of the goods carriage had not taken any policy for such passenger and there was no requirement under law for obtaining a policy for passenger.
5. Learned counsel for the appellant submitted that the claimant could not claim indemnification by the appellant and the owners of the offending vehicles were to indemnify the award.
6. Learned counsel for the claimant and the owners of the offending vehicles supported the order of the High Court.
7. In New India Assurance Co. Ltd. v. Vedwati and Ors. (2007 (3) SCALE 397), it was held as under:
"6. This Court had occasion to deal with cases of passengers traveling in goods vehicles which met accident resulting in death of such person or bodily injury. Such cases belong to three categories i.e. (1) those covered by the old Act, (2) those covered by the Act; and (3) those covered by amendment of the Act in 1994 by the Motor Vehicles (Amendment) Act. 1994 (hereinafter referred to as the 'Amendment Act').
7. The present appeals belong to the second

category.

8. In Satpal Singh's case (supra) this Court proceeded on the footing that provisions of Section 95(1) of the old Act are in pari materia with Section 147(1) of the Act as it stood prior to the amendment in 1994.

9. On a closer reading of the expressions "goods vehicle", "public service vehicle", "state carrier" and "transport vehicle" occurring in Sections 2(8), 2(25), 2(29) and 2(33) of the old Act with the corresponding provisions i.e. Section 2(14), 2(35) 2(40) and 2(47) of the Act, it is clear that there are conceptual differences. The provisions read as follows:

Old Act:

"2 (8) "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers"

"2(25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a motor cab contract carriage, and stage carriage."

"2(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of the journey:"

"2(33) "transport vehicle" means a public service vehicle or a goods vehicle:"

The Act (New Act):

"2(14) "goods carriage" any motor vehicle constructed or adapted for use solely for the carriage of goods or any motor vehicle not to constructed or adapted when used for the carriage of goods:"

"2(35) "public service vehicles" means any motor vehicles used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab a motorcab, contract and stage carriage:"

" 2(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for (SIC) or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of the journey:"

"2(47) "transport vehicle" means a public services vehicle a goods carriage an educational institution bus or a private service vehicle:"

(Underlined for emphasis)

10. "Liability" as defined in Section 145(c) of the Act reads as follows:

"Liability", wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under Section 140."

11. Third party risks in the background of vehicles which are subject-matter of insurance

are dealt with in Chapter VIII of the old Act and Chapter XI of the Act. Proviso to Section 147 of the Act (sic) is to be (sic) with Section 96 of the old Act. Proviso to Section 147 of the Act reads as follows:

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.

1993 (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 a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicles, or

(c) if it is a good carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

12. It is of significance that proviso appended to Section 95 of the old Act contained Clause (ii) which does not find place in the Act. The same reads as follows:-

"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 or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises."

13. The difference in the language of "goods vehicle" as appear in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "good vehicle" in the old Act. The position becomes further clear because the expression used is "good carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily

injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short 'WC Act"). There is no reference to any passenger in "goods carriage".

14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

15. Our view gets support from a recent decision of a three-Judge Bench of this Court in *New India Assurance Company Limited v. Asha Rani and Ors.* (2002 (8) Supreme 594] in which it has been held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award.

16. This position was also highlighted in *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy and Others* (2003(2) SCC 339). Subsequently also in *National Insurance Co. Ltd. v. Ajit Kumar and Others* (2003(9) SCC 668), in *National Insurance Co. Ltd. v. Baljit Kaur and Others* (2004 (2) SCC 1) and in *National Insurance Co. Ltd. v. Bommithi Subbhayamma and Others* (2005 (12) SCC 243), the view in Asha Rani's case (supra) was reiterated."

8. Above being the position, the impugned order of the High Court is not sustainable and is set aside. It is open to the claimant to recover the amount awarded from the owners of the offending vehicles.

9. The appeal is allowed with no order as to costs.