

CASE NO.:
Appeal (civil) 1227 of 2008

PETITIONER:
PRADEEP KUMAR JAIN

RESPONDENT:
BUTTAN AND ORS

DATE OF JUDGMENT: 11/02/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 1227 OF 2008
[Arising out of SLP(C) No.22369/2005]

Delay condoned.

Leave granted.

The claimants-respondents were travelling as unauthorized passengers in a Matador vehicle which was being rashly and negligently driven by one Chetan Kumar.

The contention raised by the Insurance Company is that the said Chetan Kumar did not have any valid licence while driving the said vehicle. One of the questions which was raised before the learned Motor Accident Claims Tribunal was as to whether the deceased and the injured persons were travelling as passengers or as employees of the owner of the vehicle.

It is not in dispute that the insurance policy prescribed that the vehicle may be used only for carrying goods within the meaning of the Motor Vehicles Act, 1988. The policy did not cover carriage of the passengers in the vehicle except the employees, other than the driver, not exceeding six in number coming within the purview of the Workmen's Compensation Act, 1923.

The Tribunal arrived at a finding that all the persons, who were 14 in number, were travelling in the said vehicle as passengers and not as labourers/employees of the owner of the vehicle. Despite the same, the Tribunal opined that as the Insurance Company has not been able to discharge the onus of proof that the owner of the vehicle has committed breach of the conditions of the contract of insurance, the claim petition should be allowed.

Aggrieved thereby the appellant herein preferred an appeal in terms of Section 173 of the Motor Vehicle Act which has been disposed of directing:

"Thus, we hold that all the respondents are jointly and severally liable to pay the amount to the appellant and in the event the amount is paid by the respondent No.3 shall be entitled to recover it from the insured in the same proceedings without initiating any fresh proceeding against the respondent No.2.

In the light of the above mentioned decision, which is fully applicable in this case, this appeal is allowed and it is directed that the respondent No.8/National Insurance Co. Ltd. shall make payment to the third party and in the event the amount is paid by the respondent No.8/National Insurance Co. Ltd., it shall be entitled to recover it from the appellant-owner Pradeep Kumar Jain (insured) in the same proceedings without initiating any fresh proceedings against the appellant."

Learned counsel for the appellant would draw our attention to the finding arrived at by the High Court to contend that there was nothing to suggest that, merely in the absence of production of licence or that the vehicle was driven by the driver without licence, on the basis thereof the impugned direction could not have been issued.

We, however, need not go into the aforementioned question as evidently in terms of a decision of this Court in *New India Assurance Co. Ltd. vs. Asha Rani & Ors.*, [2003 (2) SCC 223], which has been followed by this Court in a large number of decisions, it has been categorically held that a transport vehicle cannot be used for the purpose of carrying passengers. We are, therefore, of the opinion that there is no merit in this appeal which is dismissed accordingly.

Learned counsel for the appellant states that the awarded amount shall be deposited, within a period of eight weeks, before the Tribunal wherein proceeding for recovery of the awarded amount has been initiated.