

CASE NO.:
Appeal (civil) 5287 of 2004

PETITIONER:
Sri Pramod Kumar Agrawal and Anr.

RESPONDENT:
Smt. Mushtari Begum and Ors.

DATE OF JUDGMENT: 18/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T
(Arising out of SLP) No. 6042/2002)

ARIJIT PASAYAT, J

Leave granted.

Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court which did not find any error in the judgment of the Motor Accident Claims Tribunal, Bijnor (in short the 'Tribunal') either on facts or law to warrant interference.

Background facts in a nutshell are as follows:

The present respondents 1 to 10 filed a Claim Petition in terms of Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') claiming compensation from the present appellants and United India Insurance Company Ltd., (hereinafter referred to as the 'insurer').

According to the claimants, Amir Hassan (hereinafter referred to as the 'deceased') sustained injuries and subsequently died due to an accident on 11.11.2000 at about 4.00 p.m. The accident occurred on account of rash and negligent driving by Kamal Kumar Agrawal (appellant No.2) who was the driver of the vehicle No. UPN-8975 which was involved in the accident. It was stated that appellant No.1 was the owner of the vehicle, and that the vehicle was subject-matter of insurance with the insurer. Claim of Rs. 5,10,000/- was made as compensation.

The insurer took the plea that the driver had no valid or effective driving licence, vehicle was not insured and the claim petition was filed in collusion with the owner and the driver of the vehicle in question.

The Tribunal framed two issues which run as follows:

- 1) Whether the accident took place due to rash and negligent driving of Truck No. UPN 8975 by O.P. No.2?
 - 2) To what relief and compensation, if any, are claimants entitled?
- The Tribunal found that the accident took place when it was coming from Haridwar laden with sand. Thirty to forty persons were sitting on the sand and at the place called 'Chandighat' the said persons climbed on the truck and it overturned resulting in the accident. Three persons died including the deceased and several others were injured. According to the witnesses examined, none of them climbed on the truck forcibly. On the other hand, they had paid fare for traveling in the truck. They stated that Rs.25/- per passenger as fare was taken. The driver was examined as DW-1. According to him, number of persons forcibly climbed on the truck and as a

result the truck met with an accident. He admitted that there was a conductor in the vehicle who ran away from the place of accident. He also admitted in his written statement that the persons forcibly climbed on the truck and 30 to 40 persons were in the truck. Analysing the evidence, the Tribunal came to hold that the conductor of the truck had collected fare and the persons had not climbed forcibly. In these circumstances, taking into account the age of the deceased and his estimated income, it was held that the claimants were entitled to Rs.2,06,000/- as compensation. It was further held that the vehicle was a goods vehicle and the owner had not insured the vehicle for carrying passengers in a goods vehicle. Only the driver, conductor and certain number of labourers could be carried, but there was no scope for carrying any passenger. Taking note of the terms and conditions of the policy note it was held that the insurer was not liable to make payment of the compensation and it was the owner who has to make the payment of the awarded amount with interest @9% p.a. from the date of presentation of the claim petition. As noted above, the appeal filed by the owner and the driver before the High Court did not bring any relief to them.

Learned counsel for the appellants submitted that the accident took place after the amendment in 1994 in Section 147 of the Act and, therefore, the insurer ought to have been made liable to indemnify the award.

Learned counsel for the insurer on the other hand submitted that the position has not changed after amendment in 1994.

It is to be noted that in *Ramesh Kumar v. National Insurance Co. Ltd. and Ors.* (2001 (6) SCC 713) it was held that though the vehicle concerned was a goods vehicle yet the liability of the insurance company was not wiped out. The decision was subsequently reversed by a three-Judge Bench of this Court in *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (2003 (2) SCC 223) which was followed in *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy and Ors.* (2003 (2) SCC 339). Recently in *National Insurance Co. Ltd. v. Baljit Kaur and Ors.* (2004 (2) SCC 1) the effect of 1994 amendment vis-a-vis Section 147 of the Act was considered. It was observed as follows:

"17- By reason of the 1994 amendment what was added is "including 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 authorized representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words "any person" occurring in Section 147 would cover all persons who were traveling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as the 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 authorized representative besides the passengers who are gratuitous or otherwise.

19- In *Asha Rani's* case (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 traveling 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 authorized representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20- It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect of persons other than the owner of the goods or his authorised 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 was any premium paid to the extent of the benefit of insurance to such category of people."

The plea of the appellants has been rightly rejected both by the Tribunal and the High Court.

Therefore, while upholding the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the owner the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned 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. Before release of the amount to the claimants, owner of the vehicle i.e. appellant no.1 shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle i.e. appellant no.1 shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured (the appellant no.1).

The appeal is disposed of accordingly. No costs.