

Before Avneesh Jhingan, J.

RAKESH KUMAR—Appellant

versus

PINKI AND OTHERS—Respondents

FAO No.5062 of 2016

March 14, 2019

Motor Vehicles Act, 1988—S.147—Liability of insurer after amendment— Husband of claimant died due to rash and negligent driving of Truck boarded by him for selling mangoes—Claim petition filed by claimants absolved the insurance company from liability on ground that deceased was travelling in vehicle as a gratuitous passenger—Appeal preferred by owner—Held, insurer is liable to compensate for death or injuries suffered by owner of goods or his authorized representatives travelling with goods in transport vehicle—Appeal allowed.

Held that, in Section 147 (1) (b) (i), the term 'including owner of the goods or authorised representative carried in the vehicle' was inserted instead of 'any person'.

(Para 8)

Further held that, Supreme Court considering the cases prior to the amendment of 1994 held that earlier to the amendment the insurer was not liable to pay compensation on account of death or injuries suffered by the owner of the goods travelling in goods vehicle. After amendment, it was made mandatory for insurer to insure the owner of the goods or his authorised representative when travelling in goods vehicle.

(Para 10)

Further held that, As per the decision of the Supreme Court in ***M/s National Insurance Co. Ltd. versus Baljit Kaur and others, 2004 (2) SCC 1***, considering Asha Rani's case (*supra*) held as under:-

“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 authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a good 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 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.”

(Para 11)

Further held that, after amendment of Section 147 of the Act the insurance company shall be liable to pay compensation for death or injuries suffered by the owner of the goods or his authorised representatives travelling along with goods in the transport vehicle.

(Para 13)

Rahul Pathania, Advocate for
Aashish Gupta, Advocate
for the appellant.

Vipul, Advocate for Nitin Mittal, Advocate
for respondents No. 1 to 4.

Brijender Singh, Advocate Arjun Attri, Advocate
for respondent No. 5.

Satpal Dhamija, Advocate
for respondent No. 6.

AVNEESH JHINGAN J. oral

(1) The award dated 19.04.2016 passed by the Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') has been assailed by the owner of truck bearing registration No. HR-69A-7560 (for short 'the offending vehicle') being aggrieved of his liability to pay compensation awarded to the claimants under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

(2) The facts emanating from the record are that in the intervening night of 17/18.08.2015, Narender alongwith other farmers was going from Baddi to Ludhiana in a Truck bearing registration No. HR-69A-7560 (for short 'the offending vehicle') for selling the Mangoes. Narender was sitting with the loaded goods in the offending vehicle. The offending vehicle was being driven rashly and negligently, as a result, driver could not control the offending vehicle, it turned turtle and all the occupants suffered multiple grievous injuries.

Narender succumbed to the injuries and died at the spot. FIR was registered.

(3) A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner of the offending vehicle was held liable to pay compensation. The Insurance Company was absolved from the liability to pay compensation on the ground that the deceased was travelling in the offending vehicle as gratuitous passenger.

(4) The grievance raised in the present appeal is that the deceased owned the goods and was travelling with his goods in the offending vehicle. It is argued that the Tribunal erred in fastening the liability on the owner of the offending vehicle on the ground that the deceased was gratuitous passenger in the offending vehicle.

(5) The findings recorded by the Tribunal with regard to liability to pay are unsustainable. It has come on record that the offending vehicle was loaded with boxes of Mangoes and Narender-deceased was the owner or representative of the boxes and was going for selling the mangoes in Ludhiana. The Tribunal while passing the award has failed to consider that the deceased was not travelling as a gratuitous passenger in the offending vehicle rather he was travelling as an owner or representative of the goods.

(6) The fact that the deceased was owner or representative of the goods being carried in the vehicle is forfeited by the statement of PW-2 Alias who deposed before the Tribunal that the deceased along with him and others was going to Ludhiana Mandi to sell the mangoes.

(7) To decide the issue whether insurer is liable to pay compensation for death or injuries suffered by owner or authorized representative of owner of goods, the amendment to Section 147 of the Act has to be considered. The Section, before and after the amendment, is reproduced below:-

“Section 147 of the Motor Vehicles Act, 1988 **prior to its amendment** reads as under:

'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) is issued by a person who is an authorized insurer; and

(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 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 cause by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required-

(1) 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, and such employee

(2) engaged in driving the 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 carriage, being carried in the vehicle, or

(ii) 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.

(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand; Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(6) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.'

Section 147 of the Motor Vehicles (Amendment) Act, 1994 reads as under:

'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 authorised 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)”

XXXX XXXXX (emphasis supplied)

(8) In Section 147 (1) (b) (i), the term 'including owner of the goods or authorised representative carried in the vehicle' was inserted instead of 'any person'.

(9) Supreme Court in case of *New India Assurance Company Ltd.* versus *Asha Rani*¹; where after considering the effect of amendment of 1994 to Section 147 of the Act and overruling earlier decision in *New India Assurance Co.* versus *Sat Pal Singh*², it held as under:-

“In Satpal's case (supra) the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act 1939 are identical with Section 147(1) of the Motor Vehicles Act 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods of his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicle Amended Act of 1994 is examined, particularly Section 46 of the Act 6 of 1991 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person including owner of the goods or his authorised representative carried in the vehicle the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his

¹ 2003 AIR (SC) 607

² 2001 (1) RCR (Civil) 274

authorised representative being carried in the vehicle. The objects and reasons of Clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case, therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.”

X XXXXXXXXXXXXX (emphasis supplied)

(10) The Supreme Court considering the cases prior to the amendment of 1994 held that earlier to the amendment the insurer was not liable to pay compensation on account of death or injuries suffered by the owner of the goods travelling in goods vehicle. After amendment, it was made mandatory for insurer to insure the owner of

the goods or his authorised representative when travelling in goods vehicle.

(11) As per the decision of the Supreme Court in *M/s National Insurance Co. Ltd. versus Baljit Kaur and others*³, considering Asha Rani's case (supra) held as under:-

“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 authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a good 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 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.”

(12) A Division Bench of this Court in *National Insurance Co. Ltd. versus Ram Chander and another*⁴, the following Asha Rani's case (supra) and Baljit Kaur's Case (supra) held as under:-

“We have heard the learned counsel for the parties at length.

The only question that has to be determined is whether the claimants were the gratuitous passengers so as to exclude the insured from the purview of the policy as it amounted to a breach of a condition thereof. To establish the factum of the status of the claimants in the light of the provisions of the amended provisions of Section 147(1), we have also perused the evidence with specific reference to the cross-examination of the witnesses who had testified before the Tribunal. The claimants, whose cases were the subject matter of the aforementioned appeals, were the persons who were accompanying their goods to be carried to the fair. PW2, PW5, PW6, PW7, PW11 and PW12 had testified that bags of fodder, shoes, wooden planks and cattle feed were the goods which were being ferried in the offending vehicle to the accompaniment of the claimants. They could,

³ 2004 (2) SCC 1

⁴ 2007 (2) RCR (Civil) 51

therefore, not be gratuitous passengers so as to absolve the insurance company of its liability to pay the amount of compensation as determined by the Tribunal since they were all owners of the goods travelling in the vehicle at the time of accident.

The view aforesaid was determined by the Hon'ble Supreme Court in *Asha Rani's* case (supra) and followed in *Devireddy Konda Reddy's* case (supra) and later on again by a three-judge Bench of the apex court in *Baljit Kaur's* case (supra).

While considering the effect of the amendment carried out in Section 147 of the Motor Vehicles Act, 1988 by Motor Vehicles (Amendment) Act, 1994 it was opined:

“By reasons 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 authorised 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 travelling 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 authorised representative besides the passengers who are gratuitous or otherwise.

The observations made in this connection by the Court in *Asha Rani* (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-a-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 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 travelling in a goods vehicle, the insurers would not be liable therefore.'

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 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 for his authorised representative and not any passenger carried in a goods vehicle whether for hired 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 authorised representative remains the same. Although the owner of the goods or his authorised representative would not 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 same view was further reiterated in *Parmod Kumar Agrawal* versus *Mushtari Begum* (2005-3) 141 P.L.R. 540 (S.C.). In the light of observations made by the Hon'ble Supreme Court by dissecting provisions of Section 147, it is clear that the words 'any person' occurring in the said section would not cover all persons who were travelling in goods carriage in any capacity, but would certainly include the owner of goods or his

authorised representatives. As noticed above, the evidence conclusively establishes that the claimants were carrying their goods in the offending vehicle and were, thus, covered under the amendment and the appellant, therefore cannot escape the liability to satisfy the award qua the claimants in the aforestated appeals.”

(13) It is held that after amendment of Section 147 of the Act the insurance company shall be liable to pay compensation for death or injuries suffered by the owner of the goods or his authorised representatives travelling along with goods in the transport vehicle.

(14) The award dated 19.04.2016 with regard to the liability to pay compensation is modified to the effect that the owner, driver and the Insurer of the offending vehicle are jointly and severally liable to pay the compensation.

(15) Appeal is allowed.

Dr. Sumati Jund