ORIENTAL INSURANCE CO. LTD. A

v.

BRIJ MOHAN AND ORS.

MAY 15, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.] B

Motor Vehicles Act, 1988—s. 147—Third Party risk—Liability of insurer—Goods carriage—Earth dug up, carried in a trolley attached to tractor, to brick klin—Labourer travelling in a trolley suffered grievous injuries on negligent driving by driver—Compensation—Award of, against insurer—Held: Tractor was insured for carrying out agricultural work and tractor not used for the same—Claimant neither owner nor driver but merely passenger travelling on the trolley thus, claim not sustainable—However being poor labourer and having suffered grievous injuries, compensation awarded less—Thus, award to be satisfied by insurance company which it could realise from owner of the tractor and trolley. C D

First respondent-labourer was engaged in digging earth from field. Earth dug was loaded on trolley attached to the tractor and was carried to the brick klin. Respondent was sitting on the earth loaded on the trolley and the driver allegedly drove the tractor rashly and negligently and as a result the first respondent slipped from the trolley and came under the wheels thereof and suffered grievous injuries. The tractor was insured only for the purpose of carrying out agricultural work. Respondent filed a claim petition. Insurance Company contended that only tractor alone was insured and it was not used for agricultural purposes and that the premium was only paid for driver of the tractor. MACT awarded compensation in favour of the respondent. High Court dismissed the appeal of the Insurance Company. Hence, the present appeal. E F

Allowing the appeal, the Court

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HELD : 1.1. It does not appear that the contention of the appellant that the trolley was not insured had been gone into by the Tribunal. There is nothing on records to show that the owner of the tractor had produced any insurance cover in respect of the trolley. The tractor was insured only for the purpose of carrying out agricultural works. The representative of the

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A Insurance Company on cross-examination merely accepted the suggestion that cutting the earth and levelling the field with earth would be an agricultural work but respondent no.1 himself categorically stated in his claim petition before the Tribunal stating that the earth had been dug and was being carried in the trolley to the brick-klin. Evidently the earth was meant to be used only for the purpose of manufacturing bricks. Digging of earth for the purpose of B manufacture of brick-klin indisputably cannot amount to carrying out of the agricultural work. [Para 8] [846-G, H; 847-A-B]

National Insurance Co. Ltd. v. *V. Chinnamma & Ors.*. [2004] 8 SCC 697, referred to.

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1.2. Respondent was neither the owner of the tractor nor the driver but was merely a passenger travelling on the trolley attached to the tractor. Therefore, his claim petition, could not have been allowed. However, respondent no.1 is a poor labourer. He had suffered grievous injuries and had become disabled to a great extent. The amount of compensation awarded in his favour D appears to be on a lower side. In the aforementioned situation, although the other contentions of the respondent are rejected, extraordinary jurisdiction under Article 142 of the Constitution of India is exercised so as to direct that the award may be satisfied by the appellant but it would be entitled to realize the same from the owner of the tractor and the trolley wherefor it would not be necessary for it to initiate any separate proceedings for recovery of the E amount as provided for under the Motor Vehicles Act.

[Paras 10 and 13] [848-C; 851-E-F]

New India Assurance Co. Ltd. v. *Asha Rani & Ors.*, [2003] 2 SCC 223; *National Insurance Co. Ltd.* v. *Bommithi Subhayamma and Ors.*, [2005] 12 F SCC 243; *United India Insurance Co Ltd., Shimla* v. *Tilak Singh*, [2006] 4 SCC 404; *National Insurance Co. Ltd.* v. *Baljit Kaur & Ors.*, [2004] 2 SCC 1; *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut*, (2007) 4 SCALE 36; *Oriental Insurance Company Ltd* v. *Meena Variyal Ors.*, (2007) 5 SCALE 269 and *National Insurance Company Ltd.* v. *Kusum Rai & Ors.*, [2006] 4 SCC 250, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2532 of 2007.

From the Final Judgment and Order dated 27.01.2004 of the High Court of Judicature of Rajasthan at Jaipur Bench, Jaipur in D.B. Civil Appeal (Civil) No. 57 of 1999.

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M.K. Dua and Kishore Rawat for the Appellant. A

Indu Malhotra, Pooja Chandra, Shilpi Kaushik and Kavita Wadia for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. Leave granted.

2. Appellant Insurance Company is before us being aggrieved by and dissatisfied with the judgment and order dated 27.1.2004 passed by a Division Bench of the High Court of Rajasthan dismissing an appeal from the judgment and award dated 7.4.1999 passed by Motor Accident Claims Tribunal, Baran C in the State of Rajasthan.

3. First Respondent Brij Mohan filed the claim petition. He was a labourer. On or about 11.3.1998 he was travelling on a trolley attached to a tractor. There exists a dispute as to whether both the tractor and the trolley were insured or not. It may not be necessary to determine the said question. D He was engaged to dig earth from a place known as Shishwali Ka Rasta. The earth so dug was loaded on the trolley attached to the tractor. Respondent and other workers were returning to the Bhatta (brick-klin). He was sitting on the earth loaded on the trolley. The tractor allegedly was being driven rashly and negligently by Hemraj, the driver. He slipped down from the trolley, came E under the wheels thereof injuring his gall-bladder and left thigh, as a result whereof he suffered grievous injuries.

4. The learned Tribunal noticed the defence raised by the appellant herein in the said proceedings which, *inter alia*, were :

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(i) the trolley was not insured, and only the tractor was insured;

(ii) as the tractor was not being used for agricultural work, the claim petition was not maintainable.

(iii) issuance of premium having been paid only for one person, namely, the driver of the tractor; no award could be passed G against the insurer.

5. The Tribunal, however, by reason of its award, awarded a sum of Rs. 1,96,100/- by way of compensation in favour of the respondent in respect of the injuries suffered by him as a result of the said accident. An appeal, preferred thereagainst, as noticed hereinbefore, has been dismissed by the H

A High Court by reason of the impugned judgment.

6. Mr. M.K. Dua, learned counsel appearing on behalf of the appellant submitted that the Tribunal as also the High Court committed manifest errors in passing the impugned Award and judgment insofar as they failed to take into consideration :

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(i) The tractor alone was insured and thus the claim petition was not maintainable.

(ii) In any event, Respondent no.1 was merely a gratuitous passenger and thus the claim was not covered under Section 147 of the C Motor Vehicles Act, 1988.

(iii) The tractor having not been used for agricultural purpose there had been a violation of the conditions of contract of insurance.

7. Ms. Indu Malhotra, learned counsel appearing on behalf of the D respondent, on the other hand, submitted :

(i). The question as to whether both the tractor and the trolley were insured or not having not been raised before the Tribunal, this Court should not permit the appellant to raise the said contention before this Court.

E (ii) The representative of the appellant in his statement before the Court admitted that putting the earth and leveling the field would also be an agricultural work and thus it cannot now be contended that the tractor was not being used for the said purpose.

F (iii) In any event, having regard to the grievous injuries suffered by the respondent, this Court should direct the appellant to pay the awarded amount and recover the same from the owner of the tractor and trolley.

8. The Tribunal in its award has, *inter alia*, noticed that the appellant G herein had raised a specific defence, namely, the trolley was not insured. It does not appear that the said contention of the appellant had been gone into. There is nothing on records to show that the owner of the tractor had produced any insurance cover in respect of the trolley. It is furthermore not disputed that the tractor was insured only for the purpose of carrying out H agricultural works. The representative of the Insurance Company Mr. Hari Singh Meena on cross-examination merely accepted the suggestion that cutting

the earth and levelling the field with earth would be an agricultural work but respondent no.1 himself categorically stated in his claim petition before the Tribunal stating that the earth had been dug and was being carried in the trolley to the brick-klin. Evidently the earth was meant to be used only for the purpose of manufacturing bricks. Digging of earth for the purpose of manufacture of brick-klin indisputably cannot amount to carrying out of the agricultural work.

9. In *National Insurance Co. Ltd.* v. *V. Chinnamma & Ors.*, [2004] 8 SCC 697, this Court held :-

> "14. An insurance for an owner of the goods or his authorised representative travelling in a vehicle became compulsory only with effect from 14-11-1994 i.e. from the date of coming into force of amending Act 54 of 1994.
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> 15. Furthermore, a tractor is not even a "goods carriage". The expression goods carriage has been defined in Section 2(14) to mean
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> "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods"
>
> (emphasis supplied)
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> whereas "tractor" has been defined in Section 2(44) to mean
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> "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a roadroller".
>
> "Trailer" has been defined in Section 2(46) to mean
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> "any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle".
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> 16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor

A was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables. he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in *Asha Rani]* and other decisions following the same, as the accident had taken place on 24-11-1991 i.e. much prior to coming into force of the 1994 amendment."

10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in *New India Assurance Co. Ltd.* v. *Asha Rani & Ors.*, [2003] 2 SCC 223 wherein the earlier decision of this Court in *New India Assurance Co.* v. *Satpal Singh,* [2000] 1 SCC 237 was overruled. In *Asha Rani* (supra) it was, *inter alia*, held:-

"25. Section 147 of the 1988 Act, *inter alia*, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmens Compensation Act. It does not speak of any passenger in a "goods carriage".

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 the 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 therefor.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 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, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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." A B

[See also *National Insurance Co. Ltd.* v. *Bommithi Subbhayamma and Ors.*, [2005] 12 SCC 243 and *United India Insurance Co. Ltd., Shimla* v. *Tilak Singh and Ors.*, [2006] 4 SCC 404].

11. Although the effect in 1994 amendment in the Motor Vehicles Act did not call for consideration in *Asha Rani* (supra), a 3 Judge Bench of this Court had the occasion to consider the said question in *National Insurance Co. Ltd.* v. *Baljit Kaur & Ors.*, [2004] 2 SCC 1] in the following terms : C

"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 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. D E F

18. The observations made in this connection by the Court in *Asha Rani* case[2] to which one of us, Sinha, J., was a party, however, bear repetition: (SCC p. 235, para 26) G

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 the 1988 Act, we are of the opinion that as the provisions H

A 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 therefor.

19. In *Asha Rani*[5] 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 B 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 travelling in the vehicle. The premium in view of the 1994 amendment would only C cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

12. Interpretation of the contracts of insurance in terms of Section 147 D and 149 of the Motor Vehicles Act came up for consideration recently before a Division Bench of this Court in *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut,* (2007) 4 SCALE 36, wherein it was held :-

"24. As noted above, there is no contractual relation between the third party and the insurer. Because of the statutory intervention in E terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation.

25. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The F logic of fake licence has to be considered differently in respect of third party and in respect of own damage claims."

It was further observed :

"36. It is also well settled that to arrive at the intention of the legislation G depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside.

37. Francis Bennion in his book "Statutory Interpretation" described "purposive interpretation" as under:

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'A purposive construction of an enactment is one which gives effect to the legislative purpose by- A

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.' B

38. More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of U.S. Supreme Court in an article titled as Some Reflections on the Reading of Statutes (47 Columbia Law Reports 527), observed that, "legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose." C D

[See also *The Oriental Insurance Company Ltd.* v. *Meena Variyal Ors.*, (2007) 5 SCALE 269]

13. However, respondent no.1 is a poor labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of compensation awarded in his favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of Ms. Indu Malhotra, we are inclined to exercise our extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the award may be satisfied by the appellant but it would be entitled to realize the same from the owner of the tractor and the trolley wherefor it would not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act. E F

14. It is well settled that in a situation of this nature this Court in exercise of its jurisdiction under Article 142 of the Constitution of India read with Article 136 thereof can issue suit directions for doing complete justice to the parties. G

15. In *National Insurance Company Ltd.* v. *Kusum Rai & Ors.*, [2006] 4 SCC 250], this Court observed : H

A "19. Thus, although we are of the opinion that the appellant was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was in error in holding otherwise, we decline to interfere with the impugned award, in the peculiar facts and circumstances of the case, in exercise of our jurisdiction under Article 136 of the Constitution but we direct that the appellant may B recover the amount from the owner in the same manner as was directed in Nanjappan."

16. This appeal is allowed with the aforementioned directions. There shall, however, be no order as to costs.

C N.J. Appeal allowed.