

SMT. THOKCHOM ONGBI SANGEETA @ SANGI DEVI AND ANR. A

v.

ORIENTAL INSURANCE CO. LTD. AND ORS.

OCTOBER 23, 2007 B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Motor Vehicles Act, 1988; Proviso to Section 147/Motor Vehicles Act, 1939; Section 95: C

Third Party risks—Goods Vehicle—Liability of Insurer—Held: Though Section 147 of 1988 Act makes compulsory insurance coverage against death/bodily injury to any passenger of public carriage but there is no reference of such coverage to any passenger in goods carriage—Provisions under both the Acts makes it clear that legislative intent was to prohibit goods vehicles from carrying any passengers—Provisions under the 1988 Act do not enjoin any statutory liability on the owner of a goods carriage to get his vehicle insured for any passenger traveling in a goods carriage and the insurer would incur no liability therefor—However, the matter remitted to High Court for the limited purpose of fixing the responsibility of the person who is to satisfy the award made by the Tribunal. D E

A Tata Truck while proceeding towards Mizoram met with an accident. Two claim cases were filed before the Motor Accident Claims Tribunal, Manipur under Motor Vehicles Act, 1988. The tribunal vide its common judgment and award awarded certain amount of compensation in both the cases. Insurer filed appeals thereagainst, which were allowed by the High Court. Hence the present appeals. F

Appellant contended that the High Court ought to have directed the insurer to pay and recover the amount from the insured. G

Disposing of the appeals, the Court H

A **HELD: 1.1. Third party risks in the background of vehicles which are subject-matter of insurance are dealt with in Chapter VIII of the Motor Vehicles Act, 1939 and Chapter XI of the Motor Vehicles Act, 1988. Proviso to Section 147 of the 1988 Act needs to be juxtaposed with Section 95 of the Motor Vehicles Act, 1939.**

B [Para 8] [612-E]

1.2. It is of significance that proviso appended to Section 95 of the 1939 Act contained in clause (ii) does not find place in the 1988 Act. [Para 8] [613-B]

C 1.3. The difference in the language of “goods vehicle” as appearing in the Old Act and “goods carriage” in the new 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 “goods vehicle” in the Old act. The position becomes further clear because the expression used is “goods 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. There is no reference to any passenger in “goods carriage”. 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 traveling in a goods carriage and the insurer would have no liability therefor.

[Paras 9, 10 and 12] [613-D, E, F]

Oriental Insurance Company Ltd. v. Devireddi
 Ors., AIR (2003) SC 1009 and *National Insurance*
 H *Ajit Kumar & Ors.*, AIR (2003) SC 3093, *reli*

2. The question that ought to have been dealt with by the High Court was the person who had the liability to pay the amount as compensation as awarded by the Motor Accident Claims Tribunal. Such a finding has not been recorded by the High Court. While issuing notice, this Court has instructed that the matter requires to be remitted to the High Court to fix the responsibility of the person who has to satisfy the Award made by the Tribunal eventhough, in law, the High Court was justified in holding that the Insurance Company had no liability. Accordingly, the matter is remitted to the High Court for the limited purpose of fixing the responsibility of the person who is to satisfy the Award made by the Tribunal.

[Para 13] [614-B, C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4946-4947 of 2007.

From the Judgment and final Order dated 4.11.2004 of the High Court of Guahati at Imphal in FAO Nos. 3/2003 & 4/2003.

Aribam Guneshwar Sharma for the Appellants.

M.K. Dua and Kishor Rawat for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in these appeals is to the order passed by a Division Bench of the Guwahati High Court, Imphal Bench, allowing the appeal filed by respondent No.1 (hereinafter referred to as 'the insurer').

3. Briefly stated, the facts are that on 19.12.1994 at about 7.30 a.m., near Lungthulien village about 7 km. southwest from Parbung Police Station on Tipaimukh Road, a Tata Truck bearing registration No.MN-01/3578 while proceeding towards Mizorm met with an accident. Two claim cases were filed before the Motor Accident Claims Tribunal, Manipur (in short 'Tribunal'), under Motor Vehicles Act, 1988 (in short the 'Act'). The Tribunal by common judgment and award dated 31.12.2002, awarded compensation of Rs.2,99,464/- in MAC Case No.61/95 and also an award of Rs.1,62,000/- in MAC Case

A No.27/95.

4. The Insurance Company assailed the said common judgment and award only on the ground that the vehicle involved in the accident is a Tata Truck which is a goods vehicle and, therefore, the Insurance Company is not liable to pay compensation.

B 5. The question of liability of the insurer with regard to the goods carrier has been dealt with by this Court in *Oriental Insurance Company Ltd. v. Devireddy Konda Reddy and Ors.*, AIR (2003) SC 1009. In the said case the provisions of Section 95(1) of Motor Vehicles Act, 1939 (hereinafter referred to as the 'Old Act') as well as Section 147 (1) of the Act were dealt with.

6. The High Court by the impugned judgment, accepted the plea and held that the insurer was not liable to pay the compensation.

D 7. In support of the appeal, learned counsel for the appellants submitted that the High Court ought to have directed the insurer to pay and recover the amount from the insured. Learned counsel for the insurer submitted that no such direction could have been given on the basis of the position in law stated by this Court.

E 8. 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 needs to be juxtaposed with Section 95 of the Old Act. Proviso to Section 147 of the Act reads as follows:

F "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, 1923 (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 A
(c) if it is a goods carriage, being carried in the vehicle, or
(ii) to cover any contractual liability. B

“It is of significance that proviso appended to Section 95 of the Old Act contained in clause (ii) does not find place in the new Act. The same reads as follow: C

”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.” D

9. The difference in the language of “goods vehicle” as appearing 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 “goods vehicle” in the Old Act. The position becomes further clear because the expression used is “goods 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. There is no reference to any passenger in “goods carriage”. E F G

10. 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 traveling in a goods carriage and the H

A insurer would have no liability therefor.

11. The above position was highlighted in *Devireddy Konda Reddy and Ors. 's case (supra)* and *National Insurance Company Ltd. v. Ajit Kumar and Ors.*, AIR (2003) SC 3093.

B 12. The High Court was, therefore, justified in holding that the insurer was not liable.

C 13. But the further question that ought to have been dealt with by the High Court was the person who had the liability to pay the amount awarded as compensation. Such a finding has not been recorded by the High Court. While issuing notice on 4.3.2005, it was indicated that the matter requires to be remitted to the High Court to fix the responsibility of the person who is to satisfy the Award made by the Tribunal even though, in law, the High Court was justified in holding that the Insurance Company had no liability. Accordingly, we remit the matter to the High Court for the limited purpose of fixing the responsibility of the person who is to satisfy the Award made by the Tribunal.

D

14. The appeals are disposed of accordingly.

S.K.S.

Appeals disposed of.