

A NATIONAL INSURANCE CO. LTD.

v.

PREMA DEVI & ORS.
(Civil Appeal No. 1667 of 2008)

FEBRUARY 29, 2008

B

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

Motor Vehicles Act, 1988 – Liability to pay compensation – For the victim of accident traveling in goods carriage as a gratuitous passenger – No policy taken by the owner of the vehicle for covering such passenger – Held: Liability to pay the compensation is on the owner of offending vehicle and not on the Insurance Company.

New India Assurance Co. Ltd. v. Vedwati and Ors. 2007
D **(3) SCALE 397 – relied on.**

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1667 of 2008

From the final Judgment and Order dated 05.11.2003 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in FAFO No. 618 of 2003.

Atul Nanda, Rameeza Hakeem, Rajesh Kumar, Sandeep Bajaj and P.N. Puri for the Appellant.

F A.K. De., V.P. Tripathi, Goodwill Indeevar, K. Sarada Devi and Shail Kumar Dwivedi for the Respondents.

The Judgment of the Court was delivered by

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

G 2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court, Lucknow Bench dismissing the appeal filed by the appellant.

3. Background facts in a nutshell are as follows:

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The accident in the instant case took place on 1.6.1996. A
The claimant was travelling in a goods carriage, as a gratuitous
passenger. Undisputedly she was not traveling in the goods
carriage in the capacity of owner of goods or representative of
owner of goods being transported in the goods carriage. This
aspect was also accepted by the claimant in the claim petition. B

4. Stand of the appellant was that the owner of the goods
carriage had not taken any policy for such passenger and there
was no requirement under law for obtaining a policy for
passenger. C

5. Learned counsel for the appellant submitted that the
claimant could not claim indemnification by the appellant and
the owners of the offending vehicles were to indemnify the award. C

6. Learned counsel for the claimant and the owners of the
offending vehicles supported the order of the High Court. D

7. In *New India Assurance Co. Ltd. v. Vedwati and Ors.*
(2007 (3) SCALE 397), it was held as under:

"6. This Court had occasion to deal with cases of
passengers traveling in goods vehicles which met accident
resulting in death of such person or bodily injury. Such
cases belong to three categories i.e. (1) those covered by
the old Act, (2) those covered by the Act; and (3) those
covered by amendment of the Act in 1994 by the Motor
Vehicles (Amendment) Act. 1994 (hereinafter referred to
as the 'Amendment Act'). E
F

7. The present appeals belong to the second category.

8. In Satpal Singh's case (supra) this Court proceeded on
the footing that provisions of Section 95(1) of the old Act
are in pari materia with Section 147(1) of the Act as it
stood prior to the amendment in 1994. G

9. On a closer reading of the expressions "goods vehicle",
"public service vehicle", "state carrier" and "transport
vehicle" occurring in Sections 2(8), 2(25), 2(29) and 2(33) H

A of the old Act with the corresponding provisions i.e. Section 2(14), 2(35) 2(40) and 2(47) of the Act, it is clear that there are conceptual differences. The provisions read as follows:

Old Act:

B "2 (8) "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers"

C "2(25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a motor cab contract carriage, and stage carriage."

D "2(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of the journey:"

E "2(33) "transport vehicle" means a public service vehicle or a goods vehicle:"

The Act (New Act):

F "2(14) "goods carriage" any motor vehicle constructed or adapted for use solely for the carriage of goods or any motor vehicle not to constructed or adapted when used for the carriage of goods:"

G "2(35) "public service vehicles" means any motor vehicles used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab a motorcab, contract and stage carriage:"

H " 2(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for (SIC) or reward at separate fares paid by or for individual passengers either for the whole journey or

for stages of the journey.” A

“2(47) “transport vehicle” means a public services vehicle
a goods carriage an educational institution bus or a private
service vehicle.”

(Underlined for emphasis) B

10. “Liability” as defined in Section 145(c) of the Act reads
as follows:

“Liability”, wherever used in relation to the death of
or bodily injury to any person, includes liability in
respect thereof under Section 140.” C

11. 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 of the Act (sic) is to be (sic) with Section 96
of the old Act. Proviso to Section 147 of the Act reads as
follows: D

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, 1993 (8 of 1923) in
respect of the death of or bodily injury to, any such
employee- E F

(a) engaged in driving the vehicle, or G

(b) if it is a public service vehicle engaged as
conductor of the vehicle or in examining tickets on
the vehicles, or

(c) if it is a good carriage, being carried in the vehicle,
or H

A (ii) to cover any contractual liability.”

12. It is of significance that proviso appended to Section 95 of the old Act contained Clause (ii) which does not find place in the Act. The same reads as follows:-

B “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
C or mounting or alighting from the vehicle at the time
of the occurrence of the event out of which a claim
arises.”

13. The difference in the language of “goods vehicle” as
D appear 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
E definition of “good vehicle” in the old Act. The position
becomes further clear because the expression used is
“good 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
F 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
G 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 (in short “WC Act”). There is no
reference to any passenger in “goods carriage”.

H 14. 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 travelling in a goods carriage and the insurer would have no liability therefor. A

15. Our view gets support from a recent decision of a three-Judge Bench of this Court in *New India Assurance Company Limited v. Asha Rani and Ors.* (2002 (8) Supreme 594] in which it has been held that *Satpal Singh's* case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award. B C

16. This position was also highlighted in *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy and Others* (2003(2) SCC 339). Subsequently also in *National Insurance Co. Ltd. v. Ajit Kumar and Others* (2003(9) SCC 668), in *National Insurance Co. Ltd. v. Baljit Kaur and Others* (2004 (2) SCC 1) and in *National Insurance Co. Ltd. v. Bommithi Subbhayamma and Others* (2005 (12) SCC 243), the view in *Asha Rani's* case (supra) was reiterated." D

8. Above being the position, the impugned order of the High Court is not sustainable and is set aside. It is open to the claimant to recover the amount awarded from the owners of the offending vehicles. E

9. The appeal is allowed with no order as to costs.

K.K.T.

Appeal allowed. F