
United India Insurance Co. Ltd Vs Kalyan Singh And Anr

Miscellaneous Appeal No. 220 Of 2008

Court: Jammu And Kashmir High Court

Date of Decision: Feb. 16, 2023

Acts Referred:

Motor Vehicles Act, 1988 & Section 95, 149(4), 149(5)

Hon'ble Judges: Sanjay Dhar, J

Bench: Single Bench

Advocate: Dinesh Singh Chouhan, Damini Singh Chouhan

Final Decision: Disposed Of

Judgement

Sanjay Dhar, J

1) The appellant-Insurance Company has assailed the validity of award dated 30.07.2008 passed by the Motor Accident Claims Tribunal, Jammu

(hereinafter to be referred as the Tribunal), whereby a sum of Rs. 1,44,400/-has been awarded as compensation in favour of the claimant/respondent

No.1, which as per the award, is to be paid by the appellant-Insurance Company with a right to recover the same from the owner i.e. respondent No.

2.

2) Before coming to the contentions raised in the appeal, it would be apt to have a brief background of the facts leading to the filing of this appeal. It

appears that on 14.06.1999, respondent No. 1 boarded a truck bearing registration No. JK02E 5195 at Pull Doda. The vehicle in question suffered an

accident due to rash and negligent driving of its driver, which resulted in injuries to five passengers travelling in the truck including respondent No. 1

herein.

3) It seems that as a result of the injuries, respondent No. 1 suffered permanent disability of 20% of his left lower limb. He filed a claim petition before

the Tribunal impleading the appellant-Insurance Company and owner of the offending truck as respondents. The learned Tribunal after recording the

evidence of the parties, awarded a sum of Rs. 1,44,400/- alongwith interest @ 7.5% per month in favour of respondent No. 1, injured. The Tribunal on

the basis of the evidence led in the case also found that respondent No. 1, injured was travelling as a gratuitous passenger in the truck in question, as

such, risk to his life was not covered under the terms of the policy of the insurance. However, the Tribunal directed that award shall be satisfied by

the appellant-Insurance Company in the first instance and thereafter, the same shall be recoverable from the owner, respondent No. 2 herein.

4) Notice of this appeal was sent to the respondents. Despite having been duly served, nobody responded to the notice on their behalf. Accordingly,

they were set ex parte.

5) The only ground urged by the appellant-Insurance Company in this appeal is that once the Tribunal found that risk to the life of injured was not

covered under the terms of the policy, it was not open to it to pass a direction of pay and recover.

6) I have heard learned counsel for the appellant and perused record of the Tribunal.

7) The issue of pay and recover in the case of injuries suffered by a gratuitous passenger or even death of a gratuitous passenger has been a matter

of discussion before the Supreme Court in a number of cases. It would be apt to refer to some of these judgments in order to understand the legal

position of this aspect.

8) The concept of pay and recover has been discussed by the Supreme Court in the cases of National Insurance Co. Ltd. Vs. Swaran Singh, (2004) 3

SCC 297, Mangla Ram vs. Oriental Insurance Co. Ltd., (2018) 5 SCC 656, Rani vs. National Insurance Co. Ltd., (2018) 8 SCC 492 and Manuara

Khatun vs. Rajesh Kumar Singh, (2017) 4 SCC 796. The Supreme Court in all these cases has recognized the power of the Tribunal to direct that the

award in the first instance be satisfied by the insurer with a right to recover the same from the insured. However, in all these cases, the question

regarding liability of the Insurance Company to pay the compensation in respect of an unauthorised passenger travelling in a goods carriage vehicle did

not arise for consideration. Therefore, position of law on the subject in the cases of unauthorised passengers needs to be noticed.

9) In New India Assurance Co. Ltd. Vs. Asha Rani and others, 2003 (2) SCC 223, the Supreme Court, while explaining the difference between the

definition of "goods vehicle" under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988, held that under the Motor Vehicles Act,

1939, goods vehicle would mean even a carriage of goods solely or in addition to passengers, whereas under the Act of 1988, good vehicle means a

carriage solely used for carriage of goods. It was observed that in 1939 Act, the requirement of policies and limits of liability have been provided in

Section 95, which unequivocally stated that the policy shall not be required in case of a goods vehicle for the passengers being carried in the said

vehicle. The Court went on to notice that after the amendment of 1994, it is necessary for the insurer to insure the owner of the goods or his

authorised representatives being carried in a goods vehicle. It was held by the Supreme Court that provisions of 1988 Act do not enjoin any statutory

liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods vehicle and as such, insurer would not be liable

there for.

10) In National Insurance Co. Ltd. Vs. Baljit Kour and other, 2004(2) SCC 1, a three Judge Bench of the Supreme Court has taken a similar view and

has held that 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, after the amendment of 1994 in the Motor Vehicles Act, yet it was not the intention of the legislature to provide for the liability of the insurer

with respect to passengers, especially gratuitous passengers. The Court went on to hold that in such cases instead of the insurer, the owner of the

vehicle shall be liable for the decree. The Court further clarified that the said legal position would have prospective effect.

11) From the foregoing enunciation of law on the subject, it is clear that after declaration of law by the Supreme Court in Baljit Kour & Co's case

(supra), in the cases of claims awarded in favour of gratuitous passengers travelling in goods vehicles, the Insurance Company is not liable to satisfy

the award but it is the owner only, who has to satisfy the award. Thus, no direction can be issued by any Tribunal to the Insurance Company to pay

and recover the award in respect of the passengers travelling in a goods vehicle after the decision in Baljit Kour & Co's case (supra).

12) The legal position that emerges is that in the case of liability in respect of a passenger travelling in a goods vehicle, which is not required to be

covered under section 147 of the Act, the Insurance Company cannot be asked to satisfy the award and then recover the same from the owner.

However, where insurance policy covers the wider risks, the situation would be different.

13) It is only in the circumstances envisaged and enumerated in Sections 149(4) and 149(5) of the Motor Vehicle Act that even after being successful

in its defence, the Insurance company can be asked to pay the amount to the claimant and thereafter recover the same from the owner. Thus, the

principle of "pay and recover" as statutorily recognized in Sections 149(4) and Section 149(5) of the Act, is not applicable ipso facto to the cases

of gratuitous passengers travelling in a goods carriage vehicle.

14) Coming to the facts of the instant case, it has been proved that injured respondent No. 1 was travelling as a gratuitous passenger in the offending

truck, therefore, his risk was not covered under the terms of the policy of insurance. Thus, the direction for pay and recover could not have been

issued by the learned Tribunal while passing the impugned award.

15) However, there is another aspect of the matter which is peculiar to the instant case. The present appeal was dismissed for non-prosecution on

08.07.2021 and thereafter, it was restored on 01.08.2022. During the interregnum, the awarded sum deposited by the Insurance Company before this

Court has been released in favour of respondent No. 1-injured. Therefore, even if, this appeal is allowed, the appellant-Insurance Company would

have to seek recovery of the awarded sum from the injured/claimant. Thus, in any eventually, the appellant, Insurance Company will have to go for

recovery of the awarded sum either from the claimant or from the owner. This will hardly make any difference to time and effort needed by the

appellant, Insurance Company to effect the recovery. In fact it would be more practicable to seek recovery of the awarded sum from the owner than

from the claimant because if the awarded sum is recovered from the claimant then he will have to institute another proceeding to seek recovery of the

sum from the owner, thereby leading to multiplicity of proceedings.

16) In the peculiar facts and circumstances stated above, without making it a precedent for future cases, the direction passed by the Tribunal with

regard to pay and recover is upheld and the appellant, Insurance Company shall have the right of recovery of the awarded sum, that has already been

received by the claimant, against the owner of the offending vehicle i.e. respondent No 2 herein.

17) Disposed of.