New India Assurance Co. Ltd. Vs Bhanwar Lal and Others

Court: Rajasthan High Court

Date of Decision: Jan. 7, 2003

Acts Referred: Motor Vehicles Act, 1988 â€" Section 147, 2

Citation: (2003) 3 WLN 407

Hon'ble Judges: N.P. Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

N.P. Gupta, J.
Heard learned counsel for the appellant.

2. All these appeals arise out of the same judgment and award, therefore, they are being disposed of by this common judgment.

3. The only contention raised is that, the vehicle was insured as a private vehicle, while it was carrying passengers, for hire or reward, which was in

violation of the terms of the policy, therefore the Insurance Company is not liable.

4. This contention was not raised before the learned Court below, as the only contention raised before the learned Tribunal was that the policy

does not cover the risk of passenger travelling in a private jeep, as no premium had been charged.

5. I was read over the statement of one of the victim passenger PW-2 Bhanwarlal whose relations were travelling in the Jeep, and some of whom

have died. He has clearly deposed in cross-examination that no hire or reward was paid whether to the owner, or to the driver of the Jeep. Thus, it

cannot be said that the victims were travelling in the Jeep as passengers for hire or reward.

6. The other contention in these circumstances that was raised was that, since no premium was charged for covering risk of passengers, and the

cover issued was only on Act Policy, therefore, the appellant cannot be held liable, even for passenger of the private vehicle. In support of the

contention judgment of Hon''ble Supreme Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, was cited, wherein Hon''ble the

Supreme Court was considering the case of accident which is covered by the provisions of Motor Vehicles Act, 1988, prior to its amendment in

1994, and it was held that prior to the amendment of 1994 the expression ""to any person"" does not cover either owner of the goods of his

authorised representative being carried in the goods vehicle. It was, however, noticed that subsequent amendment effected in 1994 does clearly

demonstrate that the legislature wanted to bring within the sweep of Section 147 and make 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 goods or his representative either dies, or suffers bodily injury. To this extent the earlier judgment of Hon"ble the Supreme Court

in New India Assurance Co. Ltd. v. Sat Pal Singh JT 1999 (9) SC 237 was held to have not been correctly decided. In the present case I am not

concerned with the case of ''goods vehicle'' but a case of ""private service vehicle"" which according to Section 2(33) is constructed or adapted to

carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying

persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public

purposes.

7. Thus, the vehicle was inherently supposed to carry passengers, and since it is not shown that the passengers were being carried for hire or

reward, or that the vehicle was used for public purpose, in my opinion, on the basis of the judgment cited by the learned counsel for the appellant

and as I presently stand advised, it cannot be said that the expression ""to any person"" used in Section 147 does not include the passengers in a

private car, or ""private service vehicle"" who are not being carried for hire or reward, so as to entitle the Insurer to claim to be not liable in the event

of such passengers either dying, or suffering injuries in an accident.

8. In that view of the dying, the appeals have no force, and are hereby dismissed.