

(2006) 01 SHI CK 0005

High Court of Himachal Pradesh

Case No: F.A.O. No"s. 249 and 254 of 2002

United India Insurance Co. Ltd.

APPELLANT

Vs

Hira Lal and Others and Smt.
Dropti and Another

RESPONDENT

Date of Decision: Jan. 11, 2006

Acts Referred:

- Motor Vehicles Act, 1939 - Section 95
- Motor Vehicles Act, 1988 - Section 147

Citation: (2007) ACJ 1398 : (2006) 1 ShimLC 349

Hon'ble Judges: Deepak Gupta, J

Bench: Single Bench

Advocate: Tarlok Chauhan, for the Appellant; Ashutosh Burathoki and V.S. Rathore for Respondent Nos. 1 to 4 and N.D. Sharma, for LRs 5 (a and b) in FAO No. 249 of 2002, Ashutosh Burathoki and V.S. Rathore for Respondent No. 1 and N.D. Sharma, in FAO No. 254 of 2002, for the Respondent

Judgement

Deepak Gupta, J.

This judgment shall dispose of two appeals being FAO No. 249 of 2002 and FAO No. 254 of 2002 as they arise out of the same accident and award.

2. Brief facts of the case are that truck No. HP-09-0712 was owned by Narain Singh Jandev. This truck was insured with United India Insurance Company. One Prem Singh was employed as a conductor in the said truck. Narinder Jandev, who is the son of the owner was also travelling in the said truck. The truck met with an accident on 5.6.1997 near petrol pump, Kandaghat. The driver, conductor Prem Singh and Narender Jandev died in the accident. M.A.C. Petition No. 61-S/2 of 1997 was filed by Hira Lal, father of Prem Singh and Sundra Devi, Ram Piari and Vinod Kumar, sisters and brother of Prem Singh. In this petition it was alleged that the deceased was the conductor in the truck and that the accident occurred due to the negligence of the

driver and hence they are entitled to compensation. Dropti Devi, wife of Narain Singh (owner) filed a claim petition alleging that the deceased Narender Jandev was her son. According to her the deceased had hired the truck for taking goods from Theog to Delhi. According to her the truck was on its way back from Delhi to Theog and the deceased who was doing the business of selling apples, potato, peas and other fresh vegetables had hired the truck for selling and taking fresh consignments of vegetables to Delhi. The case set up is that the deceased was travelling in the truck as hirer of the goods.

FAO No. 249 of 2002

3. In this case the deceased was admittedly a conductor in the truck. The Insurance Company, as per the terms of the policy, had covered the liability for the conductor. Even otherwise, as per the provisions of the Motor Vehicles Act the Insurance Company is liable. There is no merit in the appeal which is accordingly dismissed.

FAO No. 254 of 2002

4. The main question to be decided is whether the deceased was travelling as a gratuitous passenger or as owner of the goods. The case set up is that he was owner of the goods.

5. Mr. Tarlok Chauhan, learned Counsel, submits that keeping in view the relationship of the parties and the fact that there were no goods being carried in the truck at the time of the accident, it cannot be believed that the deceased was travelling as owner of the goods or hirer of the truck. On the other hand Mr. Ashutosh Burathoki, Advocate, submits that there is nothing to prevent the son who is owner of goods and is doing separate business, to hire the truck of his father. He also submits that there is evidence in this case to show that parents were living separately and the son was not looking after the business of his father. In the claim petition it is mentioned that the deceased was travelling in the truck as owner of the goods. It is also mentioned that the claimant- petitioner Dropti Devi is residing in a remote village alongwith her children and is not being maintained by her husband, Narain Singh Jandev. In reply, all these facts are admitted clearly showing that there is connivance between the claimants and the owner. The Insurance Company in its reply took up the plea that the deceased was a gratuitous passenger.

6. Dropti Devi, mother of the deceased, appeared as PW-6. According to her the deceased had taken peas, potato and cauli-flower and hired the truck for this purpose. On the return journey he had talked to the driver for hiring the truck for another trip and had paid him Rs. 5,000/- in advance. According to her, her son was also doing the work of contractor. She further states that she is living separately from her husband for the last 15-16 years. She states that her village is at fairly long distance from Theog and it takes 4 to 5 hours to reach there by bus. She states that she owns an orchard, half of which is in her name and half in the name of her husband.

7. PW-7 Chet Ram states that the deceased and he were working as partners as contractors with the Forest Corporation.

8. Narain Singh, the owner appeared as RW-1. In cross-examination by the petitioners, he states that it is correct that when the accident took place, the driver, Kishori Lal conductor, Prem Singh and one person Narinder Singh were present, who died in the accident. He further states that he knew Narinder Singh and Narinder Singh used to do the work of forest contractor and pruning of apple trees. He further states that Narinder used to take vegetables in his truck to Delhi. According to him he had been paid Rs. 10,000/- for one trip to Delhi and on the return for the second round he had been given Rs. 5,000/- in advance.

9. In my opinion after going through the entire evidence, it is clear that the claimant, Dropti Devi, who is the wife of the owner, and Narinder Singh Jandev, have colluded and connived with each other so as to transfer the liability on to the Insurance Company. The learned tribunal has not even gone into the question as to the liability of the Insurance Company qua the deceased in this case. On the one hand the claimant would have the Court believe that she had separated from her husband, who is the owner of the truck and that she alongwith her children were living separately and on the other hand she would have the Court believe that the deceased had hired the truck of his father. If relations between the two sides were so strained that they were living separately from each other then the son who was living separately from his father would not have hired the truck of the father. Surprisingly no goods receipts, log book or any other documentary evidence has been placed on record to show that the deceased in fact had hired the truck in question. Another important fact to be noticed is that at the time of the accident admittedly there were no goods being carried in the vehicle.

10. Mr. Ashutosh Burathoki, Advocate, has relied upon the judgments of the [National Insurance Co. Ltd. Vs. Sushil Kumar](#), of the Madras High Court in [United India Insurance Company Limited Vs. V. Nachimuthu and Others](#), and submits that the Insurance Company should be held liable. I am unable to accept this plea. All these judgments have been delivered under the Motor Vehicles Act, 1939. The provisions of Motor Vehicles Act, 1988 as amended from time to time have been construed by the Apex Court in a number of decisions.

11. The law with regard to the liability of the Insurance Company in respect of passengers being carried in a goods vehicle is now settled. A three Judge Bench of the Apex Court in *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (2003) 1 SCC 223 , considered the question whether it is compulsory for the Insurance Company to cover the liability in respect of passengers travelling in a goods vehicle. This decision was in context of the unamended Act. The Apex Court over-ruled its earlier judgment in [New India Assurance Company Vs. Shri Satpal Singh and Others](#), . It held as follows:

...It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.

Justice S.B. Sinha in his concurring judgment held as follows :

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 Workmen's 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.

12. This matter again come up for consideration in [Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc.](#), The Apex Court considered the difference between the definition of "goods vehicle" appearing in the Motor Vehicles Act, 1939 and "goods carriage" appearing in the Motor Vehicles Act, 1988. It held as follows:

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 the 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.

13. Thus, the Apex Court held that the passengers cannot be carried in a goods vehicle.

14. In [National Insurance Co. Ltd. Vs. Baljit Kaur and Others](#), , the Apex Court considered the impact of the amendment to the Motor Vehicles Act made in 1994. The Apex Court held that after the amendment of 1994, the Insurance Company was bound to cover liability with respect to owner of the goods or his authorized representatives. However, it further held that no passenger can be carried in a goods vehicle and the Insurance Company was not liable to pay compensation with

respect to passengers especially gratuitous passengers. The Apex Court held thus :

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. 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, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefits of insurance to such category of people.

15. The Apex Court again considered this point in [National Insurance Co. Ltd. Vs. Ajit Kumar and Others](#). After considering the definitions and various provisions of the Motor Vehicles Act both amended and unamended, the Apex Court held as follows:

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 the definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used in "goods carriage" is solely for the carriage of goods. Carrying of passengers in goods carriages 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 the 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 (In short "the WC Act"). There is no reference to any passenger in "goods carriage".

16. Following the aforesaid judgments, a similar view was taken by the Apex Court in [National Insurance Co. Ltd. Vs. V. Chinnamma and Others](#).

17. In view of the aforesaid clear enunciation of law laid down by the Apex Court, the position of law may be summarized as follows:

Under the Motor Vehicles Act 1988, prior to its amendment in 1994, which came into effect from 14.11.1994, the Insurance Company was not liable in case of any passenger being carried in a goods vehicle. The only liability of the Insurance Company was to indemnify the insured with regard to the amount payable under the Workmen's Compensation Act in respect of death or bodily injury to any employee engaged in driving the truck or being carried in the vehicle. The only difference made by the amendment of 1994 is that now the Insurance Company is also liable to indemnify the insured for compensation payable in respect of the

owner of the goods or his authorized representative being carried in a goods vehicle. However, the Act does not contemplate the carriage of any other person in a goods vehicle.

18. In this case in my view it cannot be held that the deceased was travelling as owner of the goods. There were no goods being carried in the truck at the time of the accident. In my opinion the owner of a goods can only travel with the goods. There may be instances where for a short distance the owner of the goods may even travel when the goods may not have been loaded. There can be a case where a person hires a vehicle from the Union Office and takes it towards the shop or factory from where he has to load goods. In the meantime, an accident occurs. It may be construed that he is travelling as owner of the goods. However, by no stretch of imagination can a person be permitted to say that he has come back from Delhi to Theog, a distance of more than 400 k.m. in an empty truck as owner of the goods. Even otherwise, I have held above that in my opinion there is no cogent evidence worth the name to hold that the deceased was in fact either the hirer of the truck or travelling in it as owner of the goods.

19. In my view the appeal of the Insurance Company has to be allowed. Only the owner would be responsible to pay compensation in this case. The owner, Narain Singh Jandev has expired during the pendency of the appeal and his estate has been devolved upon Smt. Dropti Devi and one son, Sandeep Jandev. The compensation can be got only from the estate of the deceased which has already been inherited by the claimants. Therefore, the appeal is allowed and the claim petition is dismissed.

20. In view of the above discussion FAO No. 249 of 2002 is dismissed and FAO No. 254 of 2002 is allowed. No order as to costs.