

(2000) 08 AP CK 0022

Andhra Pradesh High Court

Case No: RCMP No. 25220 of 1999

Soroju Satyavathi and others

APPELLANT

Vs

Oriental Insurance Company
Limited, Vijayawada

RESPONDENT

Date of Decision: Aug. 29, 2000

Acts Referred:

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

Citation: (2002) ACJ 1414 : (2000) 6 ALD 331 : (2000) 6 ALT 206

Hon'ble Judges: Elip Dharma Rao, J

Bench: Single Bench

Advocate: Mr. Y.V. Ravi Prasad, for the Appellant; Mr. Mikota Subba Rao, SC for Insurance, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This civil miscellaneous petition is filed to review the order passed by this Court dated 4-10-1999 in Civil Miscellaneous Appeal No.1736 of 1994.

2. The accident took place on 19-3-1990 and the deceased travelled as owner of the goods in the tractor and trailer bearing No.AEW 8532 and 8533, due to the rash and negligent driving of the driver of the tractor, resulting in the death of the husband of the first petitioner. Therefore, the wife and other dependents of the deceased filed claim petition before the Tribunal and the Tribunal awarded Rs.55,000/- with interest at 12% per annum. Aggrieved by the said judgment and decree Civil Miscellaneous Appeal No.1736 of 1994 was filed by the Insurance Company and it was allowed, as it was covered by the judgment of the Supreme Court in Malla\vwva and others v. The Oriental Insurance Company Limited and others, 1999 ACJ 1.

3. The claimants have now filed the above Civil Misc. Petition No.25220 of 1999 to review the orders passed earlier on 4-10-1999 allowing the Civil Miscellaneous Appeal in view of the judgment in Mailawwa's case (supra). The review petitioners contend that the subject matter of the above Miscellaneous Appeal deserves to be allowed in view of the dicta laid down by the Supreme Court in New India Assurance Company Limited v. Satpal Singh and others, 2000 ACJ 1.

4. To appreciate the submission made by the learned Counsel for the review petitioners that the subject matter of the Civil Misc. Appeal is covered by the decision in Satpal Singh's case or Mailawwa's case (supra), I have meticulously gone through both the judgments.

5. In Mailawwa's case (supra), all the accidents occurred in between the years 1971-85, therefore, Their Lordships have considered the position of law as it stood by then and also Section 95 of the Motor Vehicles Act, 1939 (for brevity, 1939 Act), before it was amended by the Act 56 of 1969. The Supreme Court while considering the proviso (ii) to Section 95 (1) (b) of 1939 Act, observed that in clear terms restricted the scope of the main provision by confining its application to that vehicle which is a "vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment". In the first instance, the vehicle had to be a vehicle of that class in which passengers were carried. If that was not the intention of the Legislature, it would not have used the phraseology "the vehicle is a vehicle in which passengers are carried" and would have simply provided that "except where passengers are carried for hire or reward". So the compulsory coverage was not intended for all passengers and, therefore, it was provided that "passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment". Thus the confinement of the operation of the main provision was in respect of vehicles and also passengers and that is consistent with the English Law on which Section 95 of 1939 Act was based.

6. Then Their Lordships have considered the Amendment to Section 95 under Act 56 of 1969 whereby clause (b) was substituted by a new clause. After such consideration, Their Lordships have observed that:

"...Though apparently, it looked as if the Legislature by introducing two sub-clauses in clause (b) had tried to make a distinction between passengers and non-passengers, that was not really so. Though the proviso appeared after sub-clause (ii) of clause (b) it really remained a proviso to the earlier clause (b) which after the amendment became clause (b)(i) Neither the object of introducing sub-clause (ii) in clause (b) nor the language of the proviso indicate that the proviso was to act as a proviso to sub-clause (ii). Even earlier, the passengers of a public service vehicle were required to be covered compulsorily as they answered the description of passengers carried for hire or reward. The only effect of making a special provision for passengers of a public service vehicle was that proviso (ii) thereafter remained applicable to vehicles other than public service vehicles.

For the purpose of Section 95, ordinarily a vehicle could have been regarded as a vehicle in which passengers are carried, if the vehicle was of that class. Keeping in mind the classification of vehicles, by the Act, the requirement of registration with particulars including the class to which it belonged, the requirement of obtaining a permit for using the vehicle for different purposes and compulsory coverage of insurance risk, it would not be proper to consider a goods vehicle as a passengers vehicle on the basis of a single use or use on some stay occasions of that vehicle for carrying passengers for hire or reward. For the purpose of construing a provision like proviso (ii) to Section 95(1)(b), the correct test to determine whether a passengers was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward. The High Courts have expressed divergent views on the question whether a passenger can be said to have been carried for hire or reward when he travels in goods vehicle either on payment of fare or alongwith his goods. It is not necessary to refer to those decisions which were cited at the Bar as we find that all the relevant aspects were not taken into consideration while expressing one view or the other. We may only refer to the decision of the Orissa High Court in [New India Assurance Company Ltd. Vs. Kanchan Bewa and Others,](#)"

7. The Full Bench in [New India Assurance Company Ltd. Vs. Kanchan Bewa and Others, ,](#) has observed that:

".....being concerned with a beneficial Legislation like the one at hand, we would have normally preferred liberal interpretation, but the question is whether, without extra premium having been paid, the owner of a goods vehicle can claim indemnification from the insurer just because once in a year the goods vehicle had carried a passenger for hire or reward alongwith the goods. This would perhaps robe the third proviso dealing with coverage of contractual liability....."

Ultimately Their Lordship, have held that the conclusion arrived at by the Orissa High Court, after taking into consideration the Orissa Motor Vehicles Rules, is correct and the contrary view taken by the others High Courts was regarded as incorrect. Their Lordships further observation that Section 147 of Motor Vehicles Act, 1988 (for brevity 1988 Act) which corresponds to Section 95 of 1939 Act, has been substantially altered by the Legislature and therefore, the above interpretation of Section 95 of 1939 Act will govern the cases which have arisen under the 1939 Act.

8. In the Satpal Singh's case (supra), relied on by the learned Counsel for the review petitioners, the Supreme Court has considered Section 147(1) of 1988 Act; wherein a ten year old girl, Dupinder Kaur, met with her death, on the spot, in a truck accident, which occurred on 11-3-1990 while she was travelling in the said truck. Therefore, her father, brother and sister made a joint claim for compensation under 1988 Act and the Claims Tribunal, before which the claim was made, awarded a sum of Rs.25,000/- and the owner of the truck was found liable to pay the compensation

amount and the New India Assurance Company Limited, the insurer, was directed to make the amount good with interest, as the vehicle was then covered by an insurance policy issued by the Company. The claimants as well as the Insurance Company challenged the said award inasmuch as the claimants were not satisfied with the quantum of compensation awarded by the Tribunal and on the other hand, the Insurance was aggrieved of the liability mulcted against it.

9. The contention put forth by the Insurance Company is that the deceased Dupinder Kaur was a gratuitous passenger in the truck and hence, no liability can be fastened with the insurer. That contention was repelled. A Division Bench of the High Court also dismissed the appeal filed by the Insurance Company but allowed the appeal filed by the claimants doubling the compensation amount. Therefore, the Insurance Company has filed appeal before the Supreme Court.

10. The learned Counsel for the Insurance Company has relied upon the judgment of a three Judge Bench of the Apex Court in *Mallawwa's* case (supra), to disclaim liability on the premise that the victim of the accident was a gratuitous passenger in the vehicle covered by the insurance policy. But the said decision was rendered u/s 95 of the 1939 Act. The said provision contained a rider in clause (ii) of the proviso to sub-section (1) which is absent in the corresponding provision in the 1988 Act. Comparing Section 95 and Section 147 of the 1939 and 1988 Acts, the Supreme Court has held that the ratio has been approved by the three-Judges Bench in *Mallawwa's* case, at the same time the learned Judges pointed out that the 1939 Act is now repealed by the 1988 Act and Section 147 of the 1988 Act corresponding to Section 95 of the 1939 Act has been substantially altered and therefore the above interpretation of Section 95 of 1939 Act will govern the cases which have arisen under the said Act, i.e., 1939 Act. Therefore, it can be held that under 1988 Act, an insurance policy covering third party risk is not required to exclude gratuitous passenger in a vehicle, to matter that the vehicle is of any type or class. Therefore, the decision rendered under the 1939 Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the 1988 Act came into force.

11. While that was the legal position, the learned Counsel for the Insurance Company has submitted that in the instant case, the accident had occurred on 19-3-1990 and the deceased was travelling in the tractor-trailor bearing No. AEW-8532 and S533 as owner of the goods and met with an accident and died and since neither in Section 95(1)(b) of the 1939 Act nor in Section 147(1)(b) of the 1988 Act, the phrase "Owner" is there, the ratio of the Apex Court in *Satpal Singh's* case (supra), is not applicable to the facts of this case.

12. In the above two cases, the Supreme Court has considered the liability arising out of the accident in respect of bodily injury or fatal accident in respect of the persons who travelled as fair paying passengers, gratuitous, etc., in a goods vehicle or any passenger vehicle for awarding compensation to the claimants. In *Mallawwa*

"s case (supra), the Supreme Court held that the Legislature in its wisdom has specified a goods vehicle and further held that it will not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions of that vehicle for carrying passengers for hire or reward. Observing so, a Three Judges Bench has held that the goods vehicles are not entitled to carry passengers. Therefore, neither the insurance company - insurer nor the owner of the vehicle - insured are liable to pay the compensation to the victims.

13. Coming to the ratio in Satpal Singh's case (supra), the Supreme Court has held that the passengers travelling in a goods vehicle carried either for hire or reward come within the meaning of third parties and therefore, the insurer is liable to pay the compensation for the bodily injury, etc., sustained in a motor vehicle accident. According to me, the phrase "owner of goods" travelling along with goods, either fare paying or not, when meets with an accident sustaining bodily injury, was not considered by the Supreme Court in the above two judgments and the phrase "Owner of goods" was introduced by the Parliament in 1988 Act which came into effect from 54th November, 1994. So in view of the interpretation given by the Supreme Court to Section 147 of 1988 Act, it can be held that the insurance company and the owner of the goods are liable to indemnify the claims for bodily injury sustained by owner of the goods travelling in a goods vehicle along with his goods, for hire or reward, from the date of insertion of the phrase "owner of the goods" in Section 147 of 1988 Act which came into effect from 14-11-1994. Prior to that either in the 1939 Act or in 1988 Act i.e., either in Section 95 or Section 147, the phrase "owner of the goods" did not find place. Therefore, the ratio that emerges from the decisions of the Supreme Court in Mallawwa's case and Satpal Singh's case (supra) cannot be made applicable to the facts and circumstances of the instant case. Accordingly I hold, since in the instant case, the accident had occurred on 19-3-1990 and the deceased was travelling in a goods vehicle in the capacity of owner of goods when it met with the accident, and since the phrase "owner of goods" did not find place in Section 147 of 1988 Act, the principle laid down by the Supreme Court in Satpal Singh's case (supra) is not applicable, inasmuch as the phrase "owner of goods" does not come within the scope of third party to direct the insurer or the owner of the vehicle to indemnify the claim of compensation.

14. For the foregoing reasons, the Review petition deserves to be dismissed and is accordingly dismissed. No costs.

15. During the course of arguments, learned Counsel for the respondents submitted that the respondents, as per the directions of this Court has deposited half of the compensation amount and the claimants were permitted to withdraw the same without furnishing any security. Therefore, the amounts, which have already passed on to the hands of the claimants, the Insurance Company is not entitled to recover the same, but is at liberty to proceed against the owner of the vehicle.