

Nanjappan Vs The Oriental Insurance Company Ltd., S. Kandasamy, Rukmani, S. Ponnusamy, S. Saraswathi

Court: Madras High Court

Date of Decision: Oct. 28, 2002

Citation: (2003) 2 ACC 642 : (2004) ACJ 690 : (2003) 1 LW 77 : (2003) 1 MLJ 187

Hon'ble Judges: R. Jayasimha Babu, J; Prabha Sridevan, J

Bench: Division Bench

Advocate: M.M. Sundaresh, for the Appellant; N. Vijayaraghavan, for respondent 1, for the Respondent

Final Decision: Allowed

Judgement

R. Jayasimha Babu, J.

The appellant was travelling in a goods vehicle on 15.09.1990 when on account of the rash and negligent driving of

that vehicle by it's driver the vehicle dashed against another goods vehicle. The appellant sustained injuries in that accident. The Tribunal awarded

a compensation in the sum of Rs.2,95,000/- with interest at 15%. The insurer appealed contending that in terms of the policy that had been issued

on 05.12.1989, though that policy was issued after the date on which the Motor Vehicles Act, 1988 had come into force, it's liability was limited

only to Rs.10,000/- as that was the figure mentioned in that policy. The learned single Judge acceded to that argument of the insurer and limited it's

liability to Rs.10,000/-. He took the view that the liability does not arise under the statute, but under the contract of the insurance and therefore, the

limitation provided in the contract would bind the insurer as also the claimant.

2. Section 147 of the Motor Vehicles Act, 1988 sets out the requirements of the policy for complying with Chapter XI of the Act. Section 146

sets out the necessity for the insurance against a third party risk. Section 147(1)(b)(i) stipulates that the policy of insurance must be a policy which

insures the person or persons specified in the policy against any liability which may be incurred by the insured in respect of death or bodily injury to

any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. That provision was

amended by Act 54 of 1994 with effect from 14.11.1994 and the words ""including the owner of the goods or his authorised representative carried

in the vehicle"" were added after the words ""injury to any person"". As the accident in this case occurred in the year 1990, it is the provision prior to

the amendment of the year 1994, which is required to be applied.

3. Section 149 of the Act deals with the duty of the insurers to satisfy judgments and awards against persons insured in respect of the third party

risks. Sub-section 4 thereof provides as under:

Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much

of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of

sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of

no effect.

4. It is clear from a perusal of sub-section 4 to Section 149 of the Act that so far as the third party is concerned the insurer is liable to the third

party in respect of matters which are required to be covered by an Act policy notwithstanding the terms embodied in the insurance policy, and the

rights the insurer may have against the owner.

5. The Supreme Court in the case of National Insurance Company Ltd. Vs. Behari Lal and Others, considered the proviso to Section 147(2)

which provides for the continued effectiveness of a policy issued prior to the commencement of 1988 Act for a period of four months after the

commencement of the Act or till date of expiry of the policy whichever is earlier. The reference therein to the policy of insurance ""with reference to

any limited liability"" was interpreted by the Court to mean merely a policy which had been issued under the old Act with the limits of liability

mentioned therein and that in respect of the accident which occurred after coming into force of the new Act such a policy has to be considered in

the same way as a policy issued after the new Act had come into force and which policy was intended to fulfil the mandatory requirement of a

policy provided for in Section 146 of the Act.

6. The words, ""any person"" occurring in Section 147(1)(b)(i) was considered by the Supreme Court in the case of New India Assurance

Company Vs. Shri Satpal Singh and Others, . It was held therein that those words in the new Act considered in the light of the other changes in the

old law and the new law, would take within their fold even gratuitous passengers travelling in a goods vehicle, though the apex Court, in the case of

Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , had held that under the Motor Vehicles Act, 1939 the Insurer would not

be liable for death or injury to gratuitous passengers travelling in goods vehicle. That decision, it was held, would not apply to cases arising under

the new Act. The decision of the apex Court in the case of Satpal Singh has not been over-ruled so far although a later Bench of equal strength

has, in the case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, opined that the decision rendered in Satpal's case requires

reconsideration and has referred the matter to a larger Bench.

7. The addition of words ""including owner of the goods or his authorised representative carried in the vehicle"" in Section 147(1)(b)(i) of the Motor

Vehicles Act by Act 54 of 1994, as has been held by the apex Court in the case of Ramesh Kumar Vs. National Insurance Co. Ltd. and Others, ,

has the effect of taking in it's fold, the owner of the goods or authorised representative even when they are carried in a goods vehicle. It has been

held so notwithstanding the fact that the definition of ""goods vehicle"" does not take within it's fold the carrying of passengers - whether the owner

of goods or other passengers - whether fare paying or gratuitous.

8. Black's Law Dictionary defines "include" as ""to contain as a part of something" and that the participle "including" typically indicates a partial list.

The word "including" is not always used to indicate the enlargement of the class, though ordinarily it is used for that purpose. The term may also be

used to clarify the scope of what is included in the class with specific reference to what is stated to have been included. It is, therefore, possible to

read the addition of the words ""including the owner of the goods or his authorised representative carried in the vehicle"" as clarificatory and intended

to state with greater clarity the legislative intention with regard to those covered by the word "person" which term, prima facie, would include all

persons. It is, therefore, possible to read section 147(1)(b)(i) even prior to it's amendment, as including the owner of the goods or it's authorised

representative as has been read by the Supreme Court in the case of Satpal Singh.

9. Moreover, the new Act has adopted a different approach to the extent of the insurer's liability. In the new Act the defences that are available to

the insurer to avoid liabilities to third parties have been reduced to the limited ground of misrepresentation and non disclosure of material facts at

the time the policy was obtained. The object apparently was to enlarge the protection for the victims of the accident.

10. The interpretation placed by the Supreme Court in the case of Satpal Singh on the words "any person" subserves the same object of enlarging

the protection for the victims of the accident. The emphasis is on the victim of the accident and not the class of the vehicle in which he had travelled

or the capacity in which he had travelled in that vehicle. The new Act also adopts a different approach with regard to the limits of liability of the

insurer where passengers in a public service vehicle are concerned. It has done away with the limits which the 1939 Act had recognised with

regard to the liability for the death or bodily injury to each individual passenger.

11. These aspects of 1988 Act are relevant while ascertaining the meaning of the given to the words "any person" in Section 147(1)(b)(i), as it is

well settled rule of construction that a statute must be read as a whole; that it's objects must be gathered from a perusal of it's preamble and the

provisions; that the meaning to be assigned to any part must be in the context of the whole; and that words which are not ambiguous must be given

their plain meaning.

12. Seen in this light, we do not find any difficulty in following the law laid down in the case of Satpal Singh which in any event binds us until the law

is declared otherwise by a larger Bench of the apex Court.

13. The appeal is, therefore, allowed.