

\$ 12 & 13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 5th December, 2012

+ **MAC. APP. 82/2012**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. D.K. Sharma, Advocate.

Versus

PREM PRASAD BHANDARI & ORS. Respondents
Through: Mr. S.N. Parashar, Advocate for the
Respondent No.1.
Mr. Vegeesh Sharma, Advocate for the
Respondent No.2.

+ **MAC. APP. 86/2012**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. D.K. Sharma, Advocate.

Versus

CHANDER LAL & ORS. Respondents
Through: Mr. S.N. Parashar, Advocate for the
Respondent No.1 & 2.
Mr. Vegeesh Sharma, Advocate for the
Respondent No.3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. By virtue of these Appeals, the Appellant National Insurance Co. Ltd. challenges its liability to pay the compensation awarded on the ground

that the First Respondent (in MAC.APP.82/2012) and deceased Vishnu Prasad Bhandari (in MAC.APP.86/2012) were travelling as gratuitous passengers in the offending vehicle, that is, a tempo bearing No.DL-1LE-6870 and the Insurance Company was not at all liable to pay the compensation.

2. The Claims Tribunal awarded a compensation of ₹60,900/- in favour of the First Respondent (in MAC.APP.82/2012) and a sum of ₹3,72,800/- in favour of the Respondents No.1 and 2 (in MAC.APP.86/2012). The Appellant placed reliance on *National Insurance Co. Ltd. v. Cholleti Bharatamma & Ors.*, 2008 (8) SCC 423 to contend that the owner/representative of the owner of the goods cannot travel with the goods but can only travel with the driver in the driver's cabin. The same, however, did not find favour with the Claims Tribunal.
3. On the issue liability, the Claims Tribunal held as under:

“20. The insurance company has disputed its liability to pay the compensation. It was argued that the deceased and the injured were gratuitous passengers and were sitting in the open body of the offending vehicle. Accordingly, it amounted to breach of the terms of the insurance policy, therefore, the insurance company be absolved from making payment of the compensation. In support of the said contention, respondent No.2 relied upon the testimony of Sh. P.K. Sood. The witness admitted the insurance policy as Ex.R2W1/3 but deposed that as per the terms and conditions of the policy, unauthorized passenger in a goods vehicle are not covered and therefore, the insurance company is not liable to make the compensation.

21. Respondent No.2 further relied on the judgment report as National Insurance Co. Ltd. v. Cholleti Bharatamma & Ors., JT 2007(12) SC 319 wherein the Hon'ble Supreme Court held “the term ‘owner of the goods’ would mean only the person who travels in the cabin of the vehicle. Travelling with the goods itself does not entitle any one to protection under Section 147”.

22. Admittedly, the offending vehicle was a goods carriage and the same is prohibited from carrying any passengers. In the cases of gratuitous passengers the insurance company is not liable to make any payment of compensation as the same contravenes the terms of the policy. But in the present case, the deceased Vishnu Parsad Bhandari and the injured Prem Prasad Bhandari were not gratuitous passengers. It is evident from the testimony of PW1 and PW2 that they were the employees of Singhal Sweet House and Jain Tent House at Madhu Vihar Market, Patparganj, Delhi and were travelling in the tempo with the goods of the Tent house which were loaded from Shiv Vihar. The FIR of the accident supports the said version of PW1 and PW2 as in the FIR it has been mentioned that when the IO reached at the place of accident, he had found the goods of the Tent house scattered on the road. Moreover, the respondents have not rebutted these facts. Accordingly, being the employees of the Tent house, the injured and the deceased are covered for third party risk. Accordingly, the respondent No.2, insurance company is liable to pay the compensation.”

4. I have before me the Trial Court record. As per copy of the FIR placed on record by the Respondent/Respondents(Claimant/Claimants), the Tata Tempo No.DL-1LE-6870 which was a light goods vehicle was returning from Shiv Vihar at 4:00 am. Sanjay son of owner of the Tempo, Lalu S/o Ganga Ram, Respondent Prem Prasad Bhandari, deceased Vishnu Prasad, Vishram S/o Chiranjilal, Makhan Lal S/o Dakhan Lal, Jeevan S/o Churamani, Virender S/o Dhani Ram were travelling in the Tata Tempo when it collided with the pavement on account of rash and negligent driving by its driver and turned turtle. All the occupants came under the tempo and were extricated with the help of public persons. Injuries caused to Vishnu proved fatal who succumbed to the injuries in Dr. Hedgewar Hospital. Some of the injured were discharged after giving first aid, whereas some suffered grievous injuries.

5. It is urged by the learned counsel for the Appellant that the Respondents (that is, the Claimants as well as the owner of the offending vehicle) did not put up any specific case that the injured and the deceased were travelling as representatives of the owner of the goods. Moreover, eight persons travelling in the Tata Tempo could not be owner of the goods when sitting capacity of the vehicle as per registration certificate was only two persons. It is contended that owner of the goods can travel only in the driver's cabin and not in the body of the truck meant for carriage of the goods. Reliance is placed on *Cholleti Bharatamma*.
6. In the Claim Petition filed by Respondent Prem Prasad Bhandari, it was stated that he along with Vishnu Prasad Bhandari(since deceased), Sanjay @ Sanju, Virender, Lalu, Vishram, Makhan Lal S/o Dakhan Lal and Jeevan working with Singhal Sweet House and Jain Tent House at Madhu Vihar Market, Patparganj were going along with the material after loading the same from Vihar. In his affidavit Ex.PW1/A by way of evidence, this fact was corroborated by the Respondent Prem Prasad Bhandari.
7. To the same effect are the averments made by the legal representatives of deceased Vishnu Prasad in the Claim Petition filed by them (Ex.PW2/A) and in the affidavit of Chander Lal father of deceased Vishnu Prasad. Thus, the Petitioners never stated that they were owner of the goods or that they were representatives of the owner of the goods. What was stated in the evidence was that the goods were loaded from Shiv Vihar and they were travelling with the goods?
8. In the written statement filed by Respondent Rekha Jain (the owner of the offending vehicle), there was not even a whisper that the injured and the deceased amongst others were travelling as representatives of the goods.

Rather, in para 15 of the reply on merits, it was stated as under:

“15. That para 23 of the compensation application as stated is patently wrong, false and concocted and is vehemently denied. Further, it is specifically denied that on 25.08.2006 Prem Prasad Bhandari and others were going along with the material on the tempo bearing No.DL-1LE-6870 after loading the material from Shiv Vihar.”

9. Thus, the owner of the offending vehicle even denied that the deceased and the injured were going with the material on tempo involved in the accident.
10. It is no longer *res integra* that the Insurance Company is not entitled to cover the risk of any passenger travelling in a goods vehicle. In *New India Assurance Co. Ltd. v. Asha Rani* (2003) 2 SCC 223, a three Judge Bench of the Supreme Court drew distinction between the words ‘any person’ as used in Section 147 and the words ‘including the owner of the goods or its authorized representatives’ by virtue of amendment in Section 147 on 14.11.1994 and held that under Section 147 the insurer was not enjoined upon to cover the risk of owner of the goods or its authorized representatives before its amendment on 14.11.1994 and that the risk to the owner of the goods or its representatives is covered from the date of amendment on 14.11.1994. Para 23 to 26 of the report in *Asha Rani* are extracted hereunder:

“23. The applicability of the decision of this Court in Mallawwa v. Oriental Insurance Co. Ltd. in this case must be considered keeping that aspect in view. Section 2(35) of the 1988 Act does not include passengers in goods carriage whereas Section 2(25) of the 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of “goods vehicle” in the 1939 Act and “goods carriage” in the 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature

intended that a goods vehicle could not carry and passenger, as the words “in addition to passengers” occurring in the definition of goods vehicle in the 1939 Act were omitted. Furthermore, it categorically states that “goods carriage” would mean a motor vehicle constructed or adapted for use “solely for the carriage of goods”. Carrying of passengers in a “goods carriage”, thus, is not contemplated under the 1998 Act.

24. We have further noticed that Section 147 of the 1988 Act prescribing the requirements of an insurance policy does not contain a provision similar to clause (ii) of the proviso appended to Section 95 of the 1939 Act. The decision of this Court in Mallawwa case must be held to have been rendered having regard to the aforementioned provisions.

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-à-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.”

11. Thus, there is no manner of doubt and it is not even disputed by the learned counsel for the Respondent(owner of the offending vehicle) that there is no liability to pay compensation except for the owner of the goods or its representatives. As stated above, neither there is any

pleading by the Claimants nor by the insured, that is, owner of the offending vehicle to show that the persons travelling in the Tata Tempo were the owner of the goods or were the representatives of the owner of the goods. Rather eight persons travelling in the body of the truck while sitting above the goods cannot be said to be owner of the goods or the representatives of the owner of the goods. A tempo is a goods vehicle and is meant to carry the goods. In *Cholleti Bharatamma*, it was held that the owner of the goods meant only the person who travels in the cabin of the vehicle. While covering risk of the owner of the goods or its representatives under Section 147 of the Act, it was not the intention of the legislature that a large number of people may be huddled in the body of the truck meant for carriage of goods taking them as owner of the goods. The owner of the goods or its representatives can travel only in the cabin of the vehicle. The purpose for carrying the owner or its representatives is only for the protection of the goods.

12. In view of above discussion, the Appellant Insurance Company has successfully proved that the Respondent Prem Prasad Bhandari and deceased Vishnu Prasad Bhandari along with others were travelling as gratuitous passengers in the offending vehicle. The Claimants and the owner of the offending vehicle have failed to establish that they were representatives of the owner of the goods. As per dictum of the Supreme Court in *National Insurance Company Ltd. v. Baljit Kaur & Ors.*, (2004), 2 SCC 1, the Insurance Company has no liability at all to pay the compensation towards injury to gratuitous passengers. In *Baljit Kaur*, it was held that since the decision in *New India Assurance Co. v. Satpal Singh* (2000) 1 SCC 237 was to have prospective effect, the compensation shall be paid by the Insurance Company in the first instance and shall be

recovered from insured. In this case, the impugned judgment was passed only in the year 2011 much after *Baljit Kaur*. Consequently, it is held that the Appellant has no liability at all to pay the compensation. The Respondents(Claimants) shall be entitled to enforce the award against the driver and the owner of the offending vehicle, Respondents No.2 and 3 (in MAC.APP.82/2012) and Respondents No.3 and 4 (in MAC.APP.86/2012).

13. Both the Appeals are allowed in above terms.
14. The amount of compensation deposited by the Appellant Insurance Company shall be refunded along with the interest, if any, accrued during the pendency of the Appeal.
15. Statutory amount of ₹25,000/-, if any, in each of the Appeal shall be refunded to the Appellant Insurance Company.
16. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 05, 2012

pst