

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

Reserved on: 13th February, 2012

Pronounced on: 26th March, 2012

+ **MAC.APP. 229/2009**

NEW INDIA ASSURANCE CO.LTD. Appellant
Through: Mr. D.K.Sharma, Advocate

versus

MOHAR BAI & ORS. Respondents
Through: None.

+ **MAC.APP. 230/2009**

NEW INDIA ASSURANCE CO.LTD. Appellant
Through: Mr. D.K.Sharma, Advocate

versus

MOHAR BAI & ORS. Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These two Appeals are preferred by the Appellant New India Assurance Company Limited against a common judgment dated 21.02.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while granting compensation of ₹ 54,000/- (in MACT No.563/08 and in MAC APP.229/2009) and

a compensation of ₹2,70,000/- (in MACT No.561/2008 and in MAC APP.230/2009), the Appellant was made liable to pay the compensation on the basis of the judgment of the Calcutta High Court in *New India Assurance Company Limited v. Rajender Singh*, 2000 ACJ 1039 and a judgment of the Gujarat High Court in *Savita Ben S. Valand v. Dhiraj Lal*, AIR 1998 Gujarat 266.

2. The Appellant Insurance Company has not challenged the finding on negligence or on the quantum of compensation. The only ground of challenge is that since deceased Ms. Suman and Respondent Smt. Mohar Bai were travelling in a tractor bearing registration No.RJ-29-R-3488 as gratuitous passengers (not as the owner of the goods), the Insurance Company had no liability to pay the compensation at all.
3. The Appeals must succeed.
4. The issue is no longer *res integra* and is settled by the reports of the Supreme Court in *New India Assurance Company Limited v. Asha Rani* (2003) 2 SCC 223, which was later on relied in *National Insurance Company Limited v. Baljit Kaur & Ors.*, (2004) 2 SCC 1.
5. On interpretation of Section 147 of the Motor Vehicles Act (the Act) it has been held in *Asha Rani (Supra)* and *Baljit Kaur (Supra)* that the Insured is under obligation to obtain a policy in respect of all goods vehicles, apart from liability to third party,

liability of injury to the owner of goods or his authorized representative who is travelling with the goods in the goods vehicle. Paras 7 to 13 and 20 of the report in *Baljit Kaur* (*supra*) are extracted hereunder:-

“7. In the case of New India Assurance Co. Ltd. v. Asha Rani (2003) 2 SCC 223, it was held that the previous decision in New India Assurance Co. v. Satpal Singh (2000) 1 SCC 237 was incorrectly rendered, and that the words "any person" as used in Section 147 of the Motor Vehicles Act, 1988, would not include passengers in the goods vehicle, but would rather be confined to the legislative intent to provide for third party risk. The question in the subsequent judgment in Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy (2003) 2 SCC 339 involved, as in the present case, the liability of the insurance company in the event of death caused to a gratuitous passenger traveling in a goods vehicle. The Court held that the Tribunal and the High Court were not justified in placing reliance upon Satpal Singh case (supra), in view of its reversal by Asha Rani (supra), and that, accordingly, the insurer would not be liable to pay compensation to the family of the victim who was traveling in a goods vehicle.

8. It was contended by the learned counsel appearing on behalf of the second and third respondents, the driver and owner of the vehicle respectively, that the decision in Asha Rani case (supra) and Konda Reddy case (supra) were delivered with respect to the position prevailing prior to the amendment of Section 147 by the Motor Vehicles (Amendment) Act, 1994. As such, the effect of the legislative amendment was not in question in the above cases, and therefore, the law laid down by these decisions would not be considered as binding law in view of coming into force of the said amendment. Since the accident in the present instance occurred in 1999, this

Court would now have to consider afresh the impact of the 1994 amendment, and could not consider itself circumscribed by the aforementioned decisions in the Asha Rani case (supra) and Konda Reddy case (supra) both of which involved motor accidents predating the said amendment.

9. It is the submission of the respondent vehicle owner and driver that the insertion, by way of legislative amendment, of the words "including owner of the goods or his authorized representative carried in the vehicle" in Section 147 would result in the inference that gratuitous passengers would as well be covered by the scope of the provision. Any other construction, it was urged by the learned counsel for the second and third respondents, would render the effect of the words "any person" as completely redundant.

10. The material portion of the provision contained in Section 147 of the Motor Vehicles Act, 1988, as amended by the Motor Vehicles (Amendment) Act, 1994 reads as follows:

"147. Requirements of policies and limits of liability-

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) x x x x x x x

(b) insures the person or classes of persons specified in the policy to the extent specified in Subsection (2) --

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by

or arising out of the use of the vehicle in a public place;

(ii) *x x x x x x x*

(emphasis added)

11. Admittedly, it is incumbent upon a Court of law to eschew that interpretation of a statute that would serve to negate its true import, or to render the words of any provision as superfluous. Nonetheless, we find no merit in the above submissions proffered by the learned counsel for the respondent. The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words "any person" could be held not to include the owner of the goods or his, authorized representative travelling in the goods vehicle, Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle as a medium of conveyance.

12. We find ourselves unable, furthermore, to countenance the contention of the respondents that the words "any person" as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous passengers from the ambit of the same. It was observed by this Court in the case concerning New India Assurance Co. Ltd. v. Asha Rani (supra) that the true purport of the words "any person" is to be found in the liability of the insurer for third-party risk, which was sought to be provided for by the enactment.

13. It is pertinent to note that a statutory liability enjoined upon an owner of the vehicle to compulsorily insure it so as to cover the liability in respect of a person

who was travelling in a vehicle pursuant to a contract of employment in terms of proviso (ii) appended to Section 95 of the 1939 Act does not occur in Section 147 of the 1988 Act. The changes effected in the 1988 Act vis-a-vis the 1939 Act as regards definitions of 'goods vehicle', 'public service vehicle' and 'stage carriage' have also a bearing on the subject inasmuch as the concept of any goods carriage carrying any passenger or any other person was not contemplated.

x x x x x x x x x x

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 any premium was paid to the extent of the benefit of insurance to such category of people.”

6. The Calcutta and the Gujarat High Court reports relied upon by the Claims Tribunal are no longer good law in view of the judgments in *Asha Rani (supra)* and *Baljit Kaur (supra)*.
7. Since there is no liability of the Insurance Company to pay compensation in case of injuries to gratuitous passengers there is no question of breach of the terms of policy and also no liability to satisfy the award in the first instance.
8. The Appeals are allowed the impugned judgment to the extent it

fastens liability on the Insurance Company directing it to pay the compensation awarded is set aside.

9. During inquiry before the Claims Tribunal in a joint written statement filed by them, the Respondents No.2 to 6 in MAC APP.229/2009 and Respondents No.3 to 7 in MAC APP.230/2009 did not dispute that they were driver and owners of the tractor bearing registration No.RJ-29-R-3488. Thus, they would be liable to satisfy the impugned judgment by payment of compensation to the first Respondent (in MAC APP.229/2009) and the first and the second Respondents (in MAC APP.230/2009).
10. The Respondents No.2 to 6 (in MAC APP.229/2009) and Respondents No.3 to 7 (in MAC APP.230/2009) are directed to deposit the compensation awarded within a period of 30 days of the passing of this judgment, failing which the Claimants shall be entitled to take execution against the Respondents mentioned earlier.
11. The Appeals are allowed in above terms.

(G.P. MITTAL)
JUDGE

MARCH 26, 2012

vk