

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

Decided on: 5th March, 2012

+ **MAC.APP. 621/2010**

DAYAWANTI & ORS Appellants
Through: Mr.Peeush Sharma, Advocate

versus

LALA & ORS Respondents
Through: Mr. Madhuendra Kumar,
Advocate for R-2.
Mr.Pradeep Gaur, Mr.Amit
Gaur and Mr.Shashank Sharma,
Advocates for R-3

+ **MAC.APP. 853/2010**

RAJBIR SINGH Appellant
Through: Mr. Madhuendra Kumar,
Advocate

Versus

DAYAWANTI & ORS Respondents
Through: Mr.Peeush Sharma, Advocate
for R-1 to R-3.
Mr.Pradeep Gaur, Mr.Amit
Gaur and Mr.Shashank Sharma,
Advocates for R-5

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two appeals MAC APP.621/2010 and 853/2010 arise out of a common judgment dated 02.07.2012 passed by the Motor Accident Claims Tribunal whereby a compensation of ₹17,94,368/- was awarded in case of the Claimants who are Appellants in MAC APP.621/2010.

2. In MAC APP. 621/2010 the Appellants' (hereinafter referred to as Claimants) contention is that it is difficult to recover the award amount of compensation from the owner of the offending vehicle. It is averred that the Respondent/Oriental Insurance Company should be first asked to pay the awarded compensation and to recover the same from the owner of the vehicle i.e Respondent No.2 in this Appeal.

3. In MAC APP. 853/2010 filed by Rajbir Singh (hereinafter referred to as the owner) the owner of the Tata Tempo bearing No. DL 1LC 7387 it is contended that the driver (Lala, the Respondent No.1) was not authorized to carry the passengers for any satsang. He took the vehicle for washing and unauthorizedly carried the passengers. It is argued that the Owner's counsel did not contest the proceedings before the Tribunal properly and, therefore, a complaint was made against him to the Bar Council.

4. The learned counsel for the Claimants places reliance on *National Insurance Company Limited v. Baljit Kaur & Ors.*, (2004) 2 SCC 1, *Oriental Insurance Co. Ltd. v. Shri Nanjappan and Ors.*(2004) 13 SCC 224 and *Oriental Insurance Co.Ltd. v. Brij Mohan and Ors.*

2007 SC 640.

5. First of all, let me deal with the factual position.

6. The owner who was the Respondent No.2 before the Claims Tribunal filed a written statement and took a defence that no accident was caused by the Tata Tempo DL 1L C 7387 which was owned by him. Now a plea is sought to be taken that the driver had unauthorizedly taken the gratuitous passenger for attending some *satsang*. The learned counsel for the owner also places reliance on a judgment of *United India Insurance Co. Ltd. v. K.M.Poonam & Ors.*, 2011 ACJ 917, in support of the contention that even when there is violation of the policy, the Insurance Company cannot avoid the liability.

7. It is submitted by Mr. Pradeep Gaur, learned counsel for Oriental Insurance Co. Ltd. that since the policy did not cover the gratuitous passenger, the Insurance Company has no liability at all and there is no question of breach of the terms of the policy.

8. As per *Baljit Kaur (Supra)* which is a three judges bench decision of the Supreme Court it was held as under:-

“By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person'

occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J, was a party, however, bear repetition:

"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 traveling in a goods vehicle, the insurers would not be liable therefore."

In Asha Rani (supra), it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of 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. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

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.

The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be subserved if the appellant, herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding.”

9. The learned counsel for the Claimants urges that since the Claimants are poor, they would have difficulty in recovering the amount of compensation awarded from the owner and the Insurance Company may be directed to pay the compensation with a right to recover the same from the owner. No such direction can be issued by this Court in view of the law laid down in *Baljit Kaur (supra)* that Insurance Company has no liability to pay.

10. In *Oriental Insurance Co.Ltd. v. Brij Mohan and Ors.*, the Insurance Company was directed to satisfy the award (in exercise of an extra jurisdiction) by the Supreme Court under Article 142 of the Constitution of India. *United India Insurance Co. Ltd. v. K.M.Poonam & Ors.*, relied upon by the learned counsel for the owner does not help the owner as the issue before the Supreme Court in *K.M.Poonam (supra)* was about carrying of passengers more than the capacity of the insured vehicle. It was directed that the highest amount of six awards (which was the carrying capacity of the vehicle) be paid by the Insurance Company and be apportioned equitably amongst all the Claimants. The balance amount (which the Insurance Company was not liable to pay) was held to be recoverable from the owner of the vehicle. *K.M.Poonam (supra)* therefore does not help the owner of the vehicle rather it shows that when the Insurance Company has no liability to pay under the terms of policy it cannot be directed to pay the amount of compensation.

11. In view of the above discussion, both the Appeals are devoid of

merit. The same are, accordingly, dismissed.

(G.P. MITTAL)
JUDGE

MARCH 05, 2012

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