

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

+ MAC.APP. 340/2010

% Judgment reserved on: 11th February, 2013
Judgment delivered on: 22nd February, 2013

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

Versus

VAUKI DEVI & ORS. Respondents
Through: Mr. Nitinjya Chaudhary and
Ms. Sushma, Adv. for R1 to R7.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been filed against the impugned award dated 01.04.2010, whereby appellant has been held responsible to pay compensation amount, consequently, directed to pay said amount in favour of the respondents / claimants.

2. The sole ground of challenge in this petition is that the deceased, who had loaded the cement in the offending vehicle, sustained fatal injuries while travelling in the offending vehicle for the delivery of the cement at the place of owner, was not a representative of owner of the goods.

3. Ld. Counsel for the appellant has submitted, PW1, son of the deceased admitted that deceased was a labourer. He did not state that

the deceased was the owner or representative of the owner of the goods. PW2 Hare Ram has also deposed that deceased had loaded the cement bags on the truck and the truck was to be unloaded by the labourers but did not state the deceased to be the owner or the representative of the owner of the goods.

4. Ld. Counsel further submitted that since the deceased was a gratuitous labourer, the owner of the offending vehicle has breached the terms of the insurance policy. Therefore, the appellant / insurance company is not liable to pay any amount in favour of the respondents / claimants.

5. Facts of the case are that on 25.06.2008, early morning, deceased along with other labourers loaded cement bags on the truck No. DL-1LC-9695 from cement siding Shakur Basti, Delhi for being delivered to Shahdra. All of the labourers boarded the truck for delivery. At about 7.30 AM when the truck was being driven on outer Ring Road, Burari at a high speed in a rash and negligent manner, the driver lost control and the truck overturned, due to which all the occupants including the deceased fell down. The deceased succumbed to his injuries on the spot itself. Therefore, vide FIR no. 317/2008, Ex.PW1/3, a case was registered against respondent no. 3 at Police Station – Timar Pur for the offences punishable under Sections 279/339/304A IPC on the statement of PW2 Hare Ram Das.

6. The appellant in its written statement filed before the Tribunal, admitted that on the date of accident, the offending truck stood duly

insured with them. It is further admitted, at the time of accident, the offending truck was being used for carriage of gratuitous passengers, therefore, the Insurance Company is not liable to pay any compensation.

7. Ld. Tribunal has recorded in its impugned award dated 01.04.2010 that owner of the truck (respondent no. 8 herein) in her written statement has pleaded that no accident took place with her vehicle and the truck in question has been falsely implicated in this case. Driver of the offending truck (respondent no. 9 herein) in his written statement admitted that accident took place with the offending truck, however, pleaded that the cause of accident was on the negligence of the deceased, who lost balance and fell down from the running truck and sustained injuries.

8. Ld. Tribunal has framed two issues. Issue no. 1 is relevant to adjudicate the instant appeal, which is as under:

“Whether the deceased Devo Tanti @ Debu Dass died because of the injuries sustained by him in an accident which took place on 25.06.2008 because of rash and negligent driving of offending vehicle i.e. Tata truck bearing no. DL-1LC-9695 by the respondent no. 1?”

9. Respondent no. 2 appeared in witness box as PW1, who placed the relevant records Ex.PW1/1 and also admitted that he was not the eye witness of the accident.

10. PW2 Hare Ram Dass, one of the labourers who claimed to be the eye witness of the accident was travelling with the deceased in the

offending vehicle at the time of accident has deposed that on morning of 25.06.2008, six persons including himself and deceased had loaded cement bags on the offending truck for being transported to Shahdra. All of those six persons boarded the offending truck so that the cement could be unloaded by them in Shahdra. He further deposed that offending truck was being driven at a speed of approximately 70 Kmph. When they reached Burari Chowk, one cyclist came in front of the truck, due to which the driver of the truck had lost control upon sudden application of brakes. Due to which the truck got overturned and caused injuries to all of its occupants.

11. PW2 has been cross-examined by the counsels for all the parties, however, they could not get any favourable material from him. Rather he re-affirmed, what he had stated in examination in chief and FIR as well.

12. MLC on the deceased has been proved as Ex.PW1/5 reflecting multiple crushed injuries in chest region. Post-mortem report of the deceased was prepared at Aruna Asaf Ali Hospital as Ex.PW1/6 in which cause of death is opined as haemorrhage and shock consequent upon blunt force impact to the chest and abdomen region.

13. I note, Id. Tribunal has recorded in Para 25 of the impugned judgment that as per the respondent no. 1 (appellant herein), deceased was a gratuitous passenger on the offending truck, as such the appellants is not liable to pay any compensation while as per the claimants (respondents herein) and the driver and owner of the

offending vehicle, the deceased was the representative of the owner of the cement being transported by offending truck. However, ld. Tribunal has held appellant liable to pay compensation.

14. Ld. Tribunal has further recorded that there is no evidence on record to show that the deceased was travelling on offending truck as a gratuitous passenger at the time of accident. Not even a suggestion to this effect was extended to any of the witnesses of the claimants. Rather, there is unchallenged testimony of PW2 on record that he and deceased along with 5 others had boarded the offending truck in order to accompany the cement bags being transported to Shahdra.

15. Ld. Tribunal has further recorded that PW2 deposed that labour charges were to be paid to them by the owner of the cement. However, there is no cross-examination of PW2 on these aspects. Even R1W1 in his cross-examination did not deny that the deceased was the representative of the owner of the goods being transported. R1W1 simply stated that he was not aware of this fact.

16. It is established by the evidence on record that deceased was travelling in the offending truck at the time of accident with cement bags being transported to Shahdra and not as a gratuitous passenger.

17. I note, ld. Tribunal has relied upon a case of ***National Insurance Company v. Baljeet Kaur 2004 ACJ 428 SC***, wherein it is held that “*the deceased being the representative of the owner of the goods being transported at the time of accident in an offending truck, Insurance Company cannot be absolved of its liability to pay.*”

18. Ld. Counsel for the respondents / claimants has submitted that in the present case there are 7 dependants of the deceased and the ld. Tribunal has deducted one-fifth of the total income upon himself. Whereas, law has been settled in case of ***New India Assurance Co. Ltd. v. Gopali & Ors. 2012 ACJ 2131***, wherein it is held that “*in case, where the family of the deceased comprised of 5 persons or more, having income of Rs.3000 to Rs.5000/-, it is virtually impossible for him to spend more than 1/10th of the total income upon himself.*”

19. Therefore, ld. Counsel for the respondents / claimants has orally prayed before this Court that though he has not filed the cross-objection, however this Court has power to enhance the compensation award.

20. Ld. Counsel has further argued that towards non-pecuniary damages and loss of consortium an amount of Rs.20,000/- only has been awarded, whereas keeping in view the inflation rates of the income, they should have been awarded at least Rs.1 Lac.

21. To strengthen his arguments, ld. Counsel has relied upon a case of ***Nagappa v. Gurdayal Singh & Ors. 2003 ACJ 12***, wherein it is held as under:

“The dates of accident resulting in similar injuries have great relevancy. For example, if a particular conventional sum of (say) Rs.10,000/- was awarded towards the non-pecuniary damages of loss of expectation of life, loss or amenities and pain and suffering all put together in a case of amputation of a leg

consequent to an accident in 1970, the award to be made for an identical loss today would have to be upgraded from the 1970 value to its value in 1987, having regard to the erosion of the value of the rupee. This can be done by comparing the cost of living index in 1970 with that in 1987. Charlesworth on Negligence, 6th Edn., 1977, para 14, says, the 'conventional figures' must keep 'pace with the times in which we live'. He says that this can be well illustrated by considering the class of injury resulting (say) in the loss of sight in one eye and the conventional sum lay around 2000 about a quarter of a century ago but today in 1977 it will probably exceed 5000 or it ought to do. Kemp & Kemp on Damages, 1982, Chapter 7, para 7001, say: If a court is seeking to make a comparison with some earlier award (for non-pecuniary losses) and if by the date of the comparison, the currency in which the earlier award was made has declined by, say, 50 per cent, one must surely double the earlier award in order to make a valid comparison. The authors have compiled two tables (at paras 7007 and 7008), one showing the current level of general damages for 'pain and suffering' and 'loss of amenities' in cases of severe injury and the other showing similar earlier years, and have compared whether courts are or are not keeping pace with inflation. The authors ask, why tort-feasors alone, as a class should be excused from paying the value-based price? In Walker v. John McLean & Sons Ltd., 1980 ACJ 429 (CA, England), the court found that while the value of the pound fell by 50% between 1957 and 1972 (over a period of 15 years), there was a steeper fall between 1973 to 1978 (within 5 years) when it again fell by 50% (vide Kemp & Kemp's Tables). 'Conventional' figures, if they do not keep pace with inflation, might indeed become 'contemptible'. Kemp &

Kemp point out that an award of 16000 in 1879 would be about 500,000 in 1982. After Walker's case (supra), courts in England are carefully adjusting awards for 'pain and suffering' and 'loss of amenities' to keep pace with inflation."

22. I have heard Id. Counsels for the parties.

23. The pertinent question arises for consideration is whether the deceased was travelling in the offending vehicle as the authorised representative of owner of the goods? It would be appropriate to quote Section 147 of the Motor Vehicles Act, 1988 which prescribes the legal requirements of the insurance policy, and the person included in coverage of the policy. For the convenience Section 147 of Motor Vehicles Act, 1988 is reproduced as under: -

“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) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub- section (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) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen' s Compensation Act, 1923 , (8 of 1923) in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.-- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub- section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:--

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four

months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”

24. Section 147 of the Motor Vehicles Act, 1988 had been amended in the year 1994 and the effect of the same has been discussed in ***National Insurance Co. Ltd. Vs. Baljit Kaur & Ors., (2004) 2 SCC 1***, wherein it is held as under:-

“17. 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.

18. 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."

19. 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.

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.”

25. It is made clear that subsequent to the amendment in Section 147 of the Motor Vehicles Act, 1988 enables the owner of the goods or his authorised representative carried in the vehicle entitled for compensation in respect of death or bodily injury.

26. It is established that deceased had loaded cement bags on Truck No. DL-1LC-9695 from cement siding Sakurpur Basti, Delhi for being delivered to Shahdra. The said Truck was being driven at high speed and in a rash and negligent manner, due to which the driver of the offending vehicle lost control and the truck overturned.

27. Undisputedly, on the date of accident the offending truck was duly insured with the appellant.

28. For the offences mentioned above, an FIR was registered at PS-Timar Pur under Sections 279/339/304A IPC on the statement of

PW2, Hare Ram Dass, who also received injuries in the aforesaid accident. Additionally, this fact has been proved by respondent no. 9, driver of the offending truck, who stated in his written statement that accident took place with the offending truck.

29. With respect to the contention that the deceased was travelling as gratuitous passenger, the appellant could not get material in their favour on cross-examining PW2. The appellant has not brought any material or witness on record to the effect that the deceased was travelling in the offending truck as a gratuitous passenger at the time of accident. Not even a suggestion to this effect was extended to any of the witnesses of the claimants.

30. Moreover, there is unchallenged testimony of PW2, who deposed that he and deceased along with five others had boarded the offending truck in order to accompany the cement bags being transported to Shahdra. PW2 deposed that labour charges were to be paid to them by the owner of the cement. However, there is no cross-examination of the said witness on this aspect. Moreover, R1W1 in his cross-examination did not deny that deceased was the representative of the owner of the goods being transported.

31. However, practice in our country is that whenever goods vehicle is engaged for loading and unloading and the distance is short, then the labourers are deputed for both the purposes, mentioned above. They get their payment only after the goods reaches to that particular place.

32. It is important to note that, in the present case the owner of the

goods was not travelling with goods in the offending vehicle. In a case where the owner of the goods is travelling with, then the other persons travelling in the offending vehicle would not be considered as his representative. The concept is clear as regards the liability arising in respect of death or bodily injury of owner of the goods or his authorised representative carried in the vehicle. As per Section 147 (1) (b) (i) of M.V. Act, 1988, the policy of insurance covers and includes, either the owner of the goods or the authorised representative carried in the vehicle. Therefore, the irresistible conclusion would be either the owner of the goods or his authorised representatives are entitled for the compensation; not both.

33. In the present case, the owner of the goods was not travelling with the goods in the offending vehicle and the charges were paid only after the goods reaches at the place of the owner of the goods. Therefore, it can be safely presume that, once the goods are loaded in the offending vehicle the possession of goods was in the hands of the deceased – labour, till it unloaded from the vehicle. I note, one of the attribute of the ownership of the goods is the possession of the same. Actual possession is *prima facie* evidence of a title in the possessor. Therefore, this Court is taking inference that the deceased was accompanying in the offending vehicle as authorised representative of the owner of the goods.

34. In view of the above discussion and legal position, I am of the considered opinion that there is no discrepancy in the impugned award dated 01.04.2010, therefore, I am not inclined to interfere therewith.

35. Consequently, the instant appeal is dismissed with no order as to costs.

36. I note, vide order dated 25.05.2010, this Court directed the appellant/Insurance Company to deposit the entire awarded amount along with interest with the Tribunal. The Tribunal was accordingly directed to keep the amount in fixed deposit till further directions are issued by this Court.

37. Since the appeal has been dismissed, therefore, Id. Tribunal is directed to release the awarded amount in favour of the respondents / claimants as per the terms and conditions enumerated in the impugned award.

38. Consequently, statutory amount shall be released in favour of the appellant.

CM. NO. 10048/2010

In view of the above, instant application has become infructuous and disposed of as such.

SURESH KAIT, J

FEBRUARY 22, 2013

Jg/RS