IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 15 OF 2002
WITH CA/143/2002 IN FA/15/2002

ORIENTAL INSURANCE CO.LTD
VERSUS
KAILAS OMPRAKASH AGRAWAL AND ORS
...
Advocate for Appellant : Mr. Dhananjay Deshpande
Advocate for Respondents 1 to 3 : Mr. U.N.Shete
Advocate for Respondent No.4 : Mr. M. P. Kale
…

CORAM : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. The present respondents 1, 2 and 3 had filed claim petition on account of death of deceased Omprakash who died in accident. The original respondents 1 and 2 were jointly and severally made liable to pay compensation amount to the claimants. The Insurance Company assailed the said order before this Court.

2. Mr. Deshpande, learned counsel for the appellant submits that the accident has taken place on 22nd September, 1994, whereas the amendment to Section 147 of the Motor Vehicles Act was introduced on 14.11.1994. The tribunal did not consider the said aspect and held the insurance company liable on the ground that the deceased was owner of the goods and was travelling with the goods. Learned counsel submits that the tribunal wrongly considered the legal provisions and in a way, applied amended provisions to an accident which had taken place before

the amendment. Learned counsel relies on the judgment of the Apex Court in the case of **New India Assurance Co. Ltd. Vs. Asha Rani and others,** reported in **AIR (2003) 2 SCC 223**.

3. Mr. Shete, the learned counsel for the respondents claimants, relied on the judgment of the Apex Court in the case of **New India Assurance Co. vs. Satpal Singh, AIR 2000 SC 235.** The learned counsel submits that the judgment of the tribunal is perfectly justifiable. The beneficial legislation has been considered properly. The deceased was owner of the vehicle so also owner of the goods which were being transported in the said vehicle. No illegality has been committed by the tribunal while passing the order.

4. I have also heard Mr. Kale, learned counsel for respondent No.4-Driver.

5. With the assistance of learned counsel I have gone through the record and the judgment delivered by the tribunal.

6. The factum of the deceased Omprakash being owner of the vehicle so also travelling in the said vehicle is not disputed. It is also not disputed that the vehicle in question is a goods vehicle. The Apex Court, in case of **India Assurance Co. Ltd. Vs. Asha Rani** referred Supra, has held that the judgment in **Satpal's case** does not lay down the correct law. It has been observed by the apex Court as under:

"9. In Satpal's case (supra) the Court assumed that the provisions

of Section 95(1) of Motor Vehicles Act, 1939 are identical with Section 147 (1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994, it was not necessary for the insurer to insure against the owner of the goods or his authorized representative being carried in a goods vehicle. On an erroneous impression, this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorized representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicle Amended Act of 1994 is examined, particularly Section 46 of the Act 6 of 1991 by which expression, "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorized representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorized representative being carried in the vehicle. The object and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorized representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of the inherent position which is there in the statute, but a plain meaning being given to the words used in the statute as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorized representative carried in the vehicle" which was

> *added in the preexisting expression "injury to any person" is either clarificatory or amplification of the preexisting statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle meet with an accident and the owner of goods or his representative either dies or suffers bodily injury. the judgment of this Court in Satpal case therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury."*

Considering the above, the judgment of the tribunal to the extent of present appellant cannot be sustained.

7. In the light of of above, the impugned judgment and order, to the extent making the present appellant insurance company liable to pay compensation amount is quashed and set aside. The amount deposited by the appellant is allowed to be withdrawn by the appellant. The first appeal is accordingly disposed of. No order as to costs. Civil application also stands disposed of.

(S. V. GANGAPURWALA, J.)

JPC