IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 486 OF 2016
WITH
CIVIL APPLICATION NO. 8170 OF 2012 IN FA/486/2016
WITH
CIVIL APPLICATION NO. 622 OF 2016 IN FA/486/2016

National Insurance Co. Ltd.
Through it's Divisional Manager,
Aurangabad Divisional Office,
Hazari Chembers, Station Road,
Aurangabad. … Appellant
(Orig.Opp.No.2)

Versus

1. Panditrao Dinkarrao Gajare
Age : 48 years, Occ : Agriculture,
R/o Akole, Taluka Pathardi,
District Ahmednagar.

2. Trimbak Rambhau Palve
Age : Major, Occ : Agriculture
and Business,
R/o Mehekari, Taluka and
District Ahmednager. … Respondents
(Resp.No.1 orig.claimant and
Resp.No.2 orig. defendant No.1)

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Advocate for the appellant : Mr. A. B. Gatne
Advocate for respondent No.1 : Mr. S. L. Bhapkar
Advocate for respondent No.2 : Mr. R. K. Temkar

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CORAM : V. K. JADHAV, J.

DATED : 06th APRIL, 2016

ORDER:-

1. By consent of learned counsel for the parties, heard finally at admission stage itself.

2. Being aggrieved by the judgment and award dated 22.02.2012 passed by learned Chairman Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No. 341 of 2008, original respondent-insurer has preferred this appeal.

3. Brief facts giving rise to the present appeal are as follows :

on 10.04.2008 at about 8.00 to 8.30 p.m., the claimant was proceeding to village Agaskhand by a pick-up van bearing registration No. MH-16-AE-0146 for picking up food grain bags from his brother. On the way, driver of the said pick-up van lost his control and the vehicle turned turtle. In consequence of which, the claimant had suffered severe injury to his left hand. The injury sustained by the claimant resulted into permanent disablement. Claimant preferred claim petition bearing MACP No. 341 of 2008 for grant of compensation before learned Member, MACT, Ahmednagar. Respondent No.1 has strongly resisted the claim petition on the ground that driver of the pick-up van was not rash and negligent while driving said vehicle at the time of accident. According to respondent No.1, on the day of accident, claimant had hired said pick-up van for picking up bags containing jawar grains. Respondent No.2-insurer has resisted the claim petition on the ground that the pick-up delivery van is insured as a “goods vehicle” and as per terms and conditions of the policy, liability towards the passenger carried in said vehicle is not covered. It is contended that claimant was travelling in the said vehicle as a fare paying passenger and therefore, respondent-insurer is not liable to pay any compensation. Learned Chairman, MACT Ahmednagar, by impugned judgment and award dated 22.02.2012, held respondent Nos. 1 and 2 jointly and severally liable to pay compensation as worked out, with interest and costs. The tribunal has accordingly partly allowed the claim petition and disposed it of. Aggrieved by the same, present appeal is preferred by the respondent-insurer.

4. Learned counsel for the appellant-insurer submits that claimant was travelling in the pick-up van as a passenger and there is no evidence that he was travelling in the said vehicle along with driver or cleaner as an owner of the goods. Learned counsel submits that, in fact, at the time of accident, said van was not loaded with goods. Learned counsel submits that Section 147 of the Motor Vehicles Act, 1988 (for short “the Act of 1988”), *inter alia*, prescribes compulsory coverage against death or bodily injury to any passenger of public service vehicle. Proviso appended thereof categorically states that the compulsory coverage in respect of driver and conductor of a public service vehicle and employees carried in goods vehicle could be limited to the liability under Workmen's Compensation Act. It does

not speak of any passenger in the “goods carriage”. Learned counsel further submits that keeping in view the provisions of the Act of 1988, if no any statutory liability on the owner of the vehicle is fixed to get his vehicle insured for any passenger travelling in a goods vehicle, the insurer would not be liable therefor. Learned counsel submits that the difference in the language “goods vehicle” as appeared in the old Act, and “goods carriage” in the Act of 1988 is of significance. Learned counsel submits that bare reading of the said provision makes it clear that the legislative intention was to prohibit goods vehicle from carrying any passenger. Learned counsel submits that thus, carrying of passenger in a goods carriage is not contemplated in the Act. Learned counsel, thus, submits that the inevitable conclusion, therefore, is that the provisions of the Act do not enjoy any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods carriage, and the insurer would not be under any liability therefor.

5. Learned counsel, in the alternate, submits that even assuming that the claimant was travelling in the pick-up van for the purpose of picking and transporting of his goods, the accident occurred before reaching the destination to load the goods in the vehicle involved in the accident, and therefore, the said risk is not covered under the policy.

6. Learned counsel for the appellant-insurer, in support of his submission placed reliance on the following two cases:

1. ***National Insurance Co. Ltd. vs. Cholleti Bharatamma and others***, reported in ***AIR 2008 Supreme Court 484(1)*** and

2. ***United India Insurance Co. Ltd. vs. Suresh K.K. and another***, reported in ***AIR 2008 Supreme Court 2871***.

7. Learned counsel for the respondent-claimant submits that claimant was travelling in the said pick-up van as an owner of the goods. Claimant had hired the said vehicle for picking up goods from his brother's village and for transporting it to some other destination. Learned counsel submits that the same is also evident from the contents of the complaint Exh.3/2 which came to be lodged in the concerned Police Station on the very next day. Learned counsel submits that it is specifically reported to the Police that claimant Panditrao was proceeding to village Agaskhand for picking up bags of food grain from his cousin. Learned counsel submits that on the basis of said complaint, crime came to be registered in the concerned Police Station. Learned counsel submits that claimant was travelling in the said pick-up van alone at the time of accident, and this fact itself indicates that he was travelling in the said vehicle as an owner of the goods. Learned counsel submits that even though the accident occurred before reaching the destination, it

cannot be ignored that the vehicle was hired by the claimant for transporting the goods and he was travelling in said goods vehicle for the purpose of transporting of his goods. Learned counsel submits that claimant was neither a gratuitous passenger, nor a fare paid passenger. Learned counsel submits that in view of this, the tribunal has rightly fastened the liability on the appellant-insurer. Learned counsel submits that there is no substance in the appeal and the appeal is thus, liable to be dismissed with costs.

8. Learned counsel for the respondent-original claimant, in order to substantiate his submissions, placed reliance on the decision in the case of ***National Insurance Co. Ltd. vs. Sarojamma and others,*** reported in ***2009 ACJ 119***.

9. I have also heard learned counsel for respondent-owner.

10. Claimant Panditrao has filed his affidavit of evidence Exh.18 before the tribunal and stated in the affidavit that on 10.04.2008 at about 8.00 p.m., he was proceeding to village Agaskhand in a pick-up van bearing registration No. MH-16-AE-0146 for picking up the food grain bags from his cousin. Respondent-owner has also examined himself by filing his affidavit of evidence Exh.25 wherein he has stated that on 10.04.2008 the said pick-up van was hired by the

claimant for picking up food grain bags from village Agaskhand. He has resisted the claim petition on the ground that his driver had driven the vehicle slowly with all care and caution, however, due to the ditch on the road, unfortunately the vehicle turned turtle. There is nothing in the cross-examination to disbelieve the claimant and the owner of the vehicle so far as the fact of hiring of said pick-up van on the date of accident for transporting food grain bags is concerned. It also appears from the contents of the complaint that on the very next day of the accident, the complaint was lodged by son of the claimant stating therein that his father was proceeding to village Agaskhand in a pick-up van for picking up food grain bags from his cousin. I do not think that the claimant, in collusion with respondent-owner, brought this theory to substantiate his claim against respondent-insurer. The claimant has succeeded in proving that on the date of accident, he was travelling in the vehicle involved in the accident for picking up his goods from village Agaskhand.

11. The appellant-insurer seeks to avoid its liability on the ground that claimant was not travelling in the said vehicle along with goods. As discussed above, it is proved by the claimant that the vehicle was hired by him for transporting goods and he was travelling in said goods vehicle for the purpose of transportation of his goods. It is, thus, clear that he was neither a gratuitous passenger, nor a fare

paid passenger. The same is also evident from the fact that the claimant alone was travelling in the vehicle. I do not find much substance in the contention that he was travelling in the back portion of the pick-up van instead of sitting by the side of its driver. It is true that in a vehicle like truck, owner of goods usually sits in the cabin of the vehicle, however, in a small pick-up van, when goods were not loaded in it, owner of the goods, who was travelling in it for picking up his goods, may sit and travel in the back portion of the vehicle.

12. In a case ***New India Assurance Co. Ltd. vs. Asha Rani and others***, reported in ***(2003) 2 SCC 223***, the question, whether the insurer is liable to pay compensation to the dependents of deceased passenger, while the deceased passenger was travelling in a goods vehicle and that vehicle met with an accident and the passenger died or suffered bodily injury, is dealt with. It is observed by the Supreme Court in paragraph No.2 of the judgment that all the appeals before the Supreme Court fall in three categories – category (i) being those cases which are covered by the provisions of the Motor Vehicles Act, 1939; category (ii) are the cases which are covered by the Motor Vehicles Act, 1988, prior to the amendment of 1994; and category (iii) are those cases which fall after the amendment of 1994. So far as the cases falling under category (ii) are concerned, it was felt that the decision of the Court in ***Satpal Singh*** case requires

reconsideration by a larger Bench, and accordingly, the said appeals were placed before a three-Judge Bench. In paragraph No.9 of the judgment, the Supreme Court has made the following observations:

> *"9. In **Satpal** case the Court assumed that the provisions of Section 95(1) of the 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 authorised 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 authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the 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 authorised 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 authorised representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised 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 lay by way of amplification and clarification of an 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 authorised representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing 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 authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the 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 authorised 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."*

13. In a case ***National Insurance Co. Ltd vs. Baljit Kaur and***

Others, reported in ***(2004) 2 SCC 1***, in paragraph Nos. 17, 18, 19 and 20, the Supreme Court has made the following observations:

“17. By reason of the 1994 amendment what was added is “including 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 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 Parliament to carry out an amendment inasmuch as the expression “any person” contained in sub-clause (i) 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 to which one of us, Sinha,J., was a party, however, bear repetition; (SCC p.235, para 26)*

“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 travelling in a goods vehicle, the insurers would not be liable therefor."

19. *In* ***Asha Rani*** *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 was any premium paid to the extent of the benefit of insurance to*

such category of people."

14. In the case of ***National Insurance Co. Ltd. vs. Bommithi Subbhayamma and Others,*** reported in ***(2015) 12 SCC 243***, the Supreme Court has made similar observations by relying upon ***Baljit Kaur***'s case (*supra*).

15. In the case of ***National Insurance Co. Ltd. vs. Cholleti Bharatamma and others*** (*supra*), relied upon by learned counsel for the appellant, the Supreme Court, by referring the above cases with some other cases, made the similar observations.

16. It is thus, clear that by reason of the 1994 amendment, what was added is "including owner of the goods or his authorized representative carried in the vehicle". Thus, by reason of the aforementioned amendment, only the owner of the goods or his authorized representative carried in the vehicle is included besides the third parties. In view of the provisions of sub-clause (i) of clause (b) of sub-section (1) of Section 147 of the Act of 1988, 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 public place. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorized 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. The owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle. Obviously, 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 was any premium paid to the extent of the benefit of insurance to such category of people. In view of this, I do not find any substance in the defence raised by the appellant-insurer.

17. Learned counsel for the respondent-original claimant has rightly placed reliance on the decision in the case of ***National Insurance Co. Ltd. vs. Sarojamma and others*** (*supra*). In paragraph No. 12 of the judgment, the Karnataka High Court has made the following observations:

> *"12. In the instant case, it is the specific case of the claimants that the deceased Kalaiah by hiring the vehicle in question was travelling in the vehicle in order to bring vegetables to his shop from a village and the evidence of PW1 clearly*

reveals that her husband was travelling in the goods vehicle only to secure vegetables for his shop. The evidence of PW1 or the pleadings of claimants are not challenged by the insurance company. In other words, hiring of the vehicle by the deceased for transportation of vegetables only and that deceased was travelling in the goods vehicle, in order to transport the vegetables and that he was not travelling as a gratuitous passenger or a fare-paid passenger. Insurance policy, Exh. R1, covers the risk of a person who was travelling either as a owner of the goods or an authorised representative of the owner of the goods. Admittedly, deceased was not travelling in the vehicle as a fare-paid passenger or a gratuitous passenger. Accident has occurred before reaching the destination to load the goods during the course of such journey. When a person by hiring the vehicle was proceeding to the place of goods with an intention to bring those goods back to Bangalore, if such vehicle met with an accident, it has to be deemed that the vehicle was hired by the deceased only for transporting the goods and that he was travelling in the goods vehicle for the purpose of transportation of his goods. Therefore, it is clear that even though goods were not in the vehicle when the vehicle met with accident since vehicle was proceeding to reach the place of goods for the purpose of transportation, we have to hold that the risk of such passenger is covered as he was neither a gratuitous passenger nor a fare-paid passenger.”

18. Learned counsel for the appellant has not made any

submissions about the quantum. Otherwise also, I do not find any fault in the impugned judgment and award. Learned Chairman, MACT, Ahmednagar has awarded just and reasonable compensation by considering the age, income and nature of permanent disablement sustained by the claimant. The impugned judgment and award, thus, calls for no interference. In view of this, I proceed to pass the following order :

O R D E R

I. The First Appeal is hereby dismissed with costs.

II. Respondent No.1-original claimant is hereby permitted to withdraw entire amount deposited by the appellant-insurer before this Court.

II. In view of dismissal of First Appeal, pending Civil Applications also stand disposed of.

(V. K. JADHAV, J.)

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