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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 994 of 2007

United India Insurance Company Limited, Through Branch Manager, T.P. Nagar, Korba, Tahsil & District Korba, Chhattisgarh

----Appellant

Versus

1. Keshav Prasad Sahu, S/o Nankiram Sahu, aged 23 years.
2. Hemant Kumar Sahu, S/o Nankiram Sahu, aged 29 years

   Both are R/o Rajgamar, Ompur Colony, Korba, Tahsil & District Korba, Chhattisgarh.
3. Nankiram Sahu, S/o Lodhiram Sahu, aged 58 years, R/o Qr.No.514, Ompur Colony, Korba, Tahsil & District Korba, Chhattisgarh.

----Respondents.

For Appellant/ Insurance Company : Shri Dashrath Gupta, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

03/02/2017

1. The sole question involved in this appeal is whether the Insurance Company could be held liable to pay compensation in respect of the death of pillion-rider who died as a result of the motor vehicle accident. This defence was raised before the Tribunal, however the Tribunal held that the pillion-rider was a third party and therefore, the Insurance Company was liable to pay the compensation.

2. The law in this regard has been settled by the Apex Court in *United India Insurance Company Limited, Shimla vs. Tilak Singh and others {2006 (2) TAC 312 (SC)}* wherein the Apex Court held as follows:

"19. The argument that the risk pertaining to a third party would extend to a person other than the parties to the insurance contract was raised in New India Assurance Company v. Satpal Singh and Ors., [2000] 1 SCC 237 where after contrasting the language of section 95 (1) of the 1939 Act with the provisions of section 147 (1) of the 1988 Act this Court held:

> "The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratutious passengers in a vehicles, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

20. The view expressed in Satpal Singh's case (supra) however, has been specifically overruled in the subsequent judgment of a Bench of three judges in New India Assurance Company v. Asha Rani and Ors., JT 2002 (10) SC 162 : 2003 (1) TAC 1. In that case the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of section 147 of the 1988 Act, as contrasted with section 95 of the 1939 Act, held that the judgment in Satpal Singh's case (supra) had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed:

> "25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a `goods carriage'.
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> 27. Furthermore, sub-clauses (i) of Clause (b) of sub-section (1) of Section 147 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 caused by or arising out of the use of the vehicle in a public place. Whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service caused by or arising out of the use of the vehicle in a public place."

> 21. In our view, although the observation made in Asha Rani's case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that it owed no liability toward the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger. "

3. The aforesaid view has been reiterated in *General Manager, United India Insurance Company Limited vs. M. Laxmi and others { 2009 (1) TAC 6 (SC)}*, wherein the Apex Court held as follows:

> "7. xxx xxx xxx
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> In view of the changes in the relevant provisions in the 1988 Act vis-`-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.
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> Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 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, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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."

4. The only issue is whether the insurance policy covers the liability for a pillion-rider or not. There is nothing which prevents the Insurance Company for granting wider liability than it is mandatorily required to cover under the terms of the Motor Vehicles Act. I have gone through the insurance policy- Ex D/1. This policy is an act only policy covering the liability only under the Motor Vehicles Act, 1988. It does not cover any liability other than that which it was mandatorily

required to cover under the Motor Vehicles Act, 1988. Therefore, in view of the aforesaid judgments of the Apex Court, it is clear that the Insurance Company was wrongly held liable to pay the compensation.

5. In view of the above discussion, the appeal is allowed. The Insurance Company is exonerated of its liability to pay the amount of compensation. The entire liability to pay the compensation shall be of the owner of the offending vehicle. In case, out of the amount deposited by the Insurance Company any amount has been paid to the Claimants, the Insurance Company will not be entitled to recover the same from the Claimants, but will recover it from the owner of the vehicle by filing certificate proceedings under Section 174 of the Motor Vehicles Act and it shall not be required to file a separate suit or any other proceedings for the same. As far as the amount lying in deposit or which has not been paid to the Claimants is concerned, the same shall be refunded to the Insurance Company.

6. Send down the lower Court records forthwith.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

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