IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

IN REVIEW APPLICATION STAMP NO.10371 OF 2017
IN
FIRST APPEAL NO.103 OF 2015

BALU KRISHNA CHAVAN
VERSUS
THE RELIANCE GENERAL INSURANCE COMPANY LTD,
HEAD OFFICE AT MUMBAI AND ORS
...
Advocate for Applicant : Dr. Tawshikar Swapnil D.
Advocate for Respondent 1 : Mr S G Chapalgaonkar
...
CORAM : V.K. JADHAV, J.
...
Reserved on : 20th September, 2017.
Pronounced on : 11th October, 2017.
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PER COURT :-

1. Review Petition is taken up for final hearing with the consent of applicant-original claimant and respondent No.1-insurer.

2. Brief facts, giving rise to the present review application are as follows :-

a] Applicant-original claimant had filed M.A.C.P. No.12/2009 under section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of the injuries sustained by him in the motor vehicular accident before the Motor Accident Claims Tribunal, Beed. The learned Member of the Motor Accident Claims Tribunal, Beed by judgment and order dated 11.11.2014 was pleased to allow the claim petition partly and awarded the compensation of Rs.6,21,829/- alongwith interest @ 8% p.a. Respondent No.1-insurer being aggrieved by the said judgment and award preferred First Appeal No.103 of 2015 before this Court and by judgment and order dated 15.2.2017, this Court was pleased to quash and set aside the judgment and award passed by the Member, Motor Accident Claims Tribunal, Beed to the extent of holding respondent No.1-insurance company jointly and severally liable to pay the compensation alongwith original respondent Nos.1 and 2. Since this Court exonerated the respondent no.1-insurance company to pay the compensation to the claimant and, so also this Court declined to apply pay and recover policy in the matter, the applicant-original claimant has preferred this review application.

3. Learned counsel for the applicant submits that,

the applicant failed to point out to this Court factual and legal position as to pay and recover policy adopted by this Court, as well as by the Apex Court in various judicial pronouncements. Learned counsel for the applicant submits that, inspite of the due diligence, the applicant-original claimant failed to point out that in a case of National Insurance Company Limited Vs. Baljit Kaur and others, reported in (2004) 2 SCC 1, the Apex Court has applied principle of Pay and Recover Policy. Learned counsel submits that, similar directions are required to be passed in the matter in hand. Learned counsel submits that, in a case of National Insurance Company Vs. Parvathneni and another reported in (2009) 8 SCC 785, the Apex Court vide order dated 31.8.2009 had formed a question as to correctness of pay and recovery principle and requested to refer it to the larger Bench and accordingly the questions were referred to the Larger Bench, however, Larger Bench by its order dated 17.9.2013 dismissed the petition without deciding said reference. Learned counsel submits that, as such, the law laid down by the Supreme Court regarding pay and recovery policy hold the field. This position of law was not brought to the notice of this court. Learned counsel submits that, though respondent no.1-Insurance Company may not have any liability towards the gratuitous passenger, still by applying the principle of pay and recovery policy, the amount deposited by the insurance company can be very well permitted to be withdrawn by the applicant-claimant in the interests of justice. Learned counsel submits that, applicant-original claimant was only 19 years of age at the time of his accident and his left leg came to be amputed below the knee. He has already faced great hardship throughout his life, owing to negligence of the driver of the offending truck, which was insured with respondent no.1-insurance company. Learned counsel submits that, this is a fit case to apply pay and recovery principle as held by the various judicial pronouncements referred above. Learned counsel submits that, except respondent no.1-insurance company, other respondents are formal parties for the purpose of present review petition, and no relief is claimed against them.

4. Learned counsel for the applicant-original claimant, in order to substantiate his contentions placed reliance on the following judgments :-

1. National Insurance Co. Ltd., Vs. Baljit Kaur and others reported in (2004) 2 SCC 1. MANU/SC/0009/2004.

2. National Insurance Co.Ltd., Vs. Parvatheni and another reported in (2009) 8 SCC 785. (MANU/SC/1588/2009).

3. United India Assurance Company Ltd. Vs. Smt.ManishaHarmalkar (MANU/MH/1753/2011)

4. New India Assurance Company Limited Vs. Sidhu reported in 2012 (4) Mh.L.J. 446. (MANU/MH/0437/2012)

5. Manager, National Insurance C. Ltd., Vs. Saju P. Paul and anr. Reported in (2013) 2 SCC 41 : (2013) ACC 46 (SC). (MANU/SC/0006/2013)

6. New India Assurance Co. Ltd., Vs. Himmatrao and others reported in 2015 (4) Mh.L.J. 955. (MANU/MH/0124/2015).

7. New India Assurance Co. Ltd.,Vs. Vishwanath and others reported in 2013 (6) Mh.L.J. 800. (MANU/MH/1408/2013).

8. Mannura Khatun Vs. Rajesh Singh and others reported in (2017) 4 SCC 796. (MANU/SC/0194/2017).

5. Learned counsel for respondent No.1-insurer submits that, in the instant case, the applicant-original claimant himself has approached the Tribunal with a specific pleading and also so stated in his affidavit of evidence that, he was travelling in the vehicle truck bearing registration No.MH-12/CH-4001 to learn the cleaner's work from his maternal brother Pralhad. Admittedly, said Pralhad was working as a cleaner on the said truck. Respondent No.1-insurer has also raised a specific plea that there is breach of terms and conditions of the policy on two grounds. Firstly, the vehicle alleged to be involved in the accident was not used as per the terms and conditions of the policy and said vehicle was driven by a person not holding valid and effective licence. Learned counsel submits that, it is rather an admitted position that the claimant was traveling in the said vehicle as a gratuitous passenger and said vehicle truck is a goods carriage vehicle. Learned counsel submits that, risk and liability of such a gratuitous passenger is not covered under the policy in terms of provisions of Section 147 of the Motor

Vehicles Act, 1988 and further, respondent no.1-insurer has not undertaken such an additional risk by accepting any extra premium. Learned counsel submits that, 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. Learned counsel submits that, in almost all the cases relied upon by the learned counsel for the applicant, the Apex Court has considered grey area in between the decision rendered by the Supreme Court in a case of New India Assurance Company Limited Vs.

Satpal Singh reported in AIR 2000 SC 235 : (2000) 1 SCC 237 and in the case of New India Assurance Company Ltd. Vs. Asha Rani reported in 2003 AIR (SC) 607. It was held in Asha Rani's case that previous decision in Satpal Singh's case was incorrectly rendered and that words “any person” as used in Section 147 of the Motor Vehicles Act, 1988 would not include passengers in the goods vehicle. Learned counsel submits that, keeping in view the fact of said grey period and as law was not clear so on such directions rendered in Satpal Singh's case, the Apex Court, in the case relied upon by the learned counsel for the applicant-original claimant directed the insurance Company's therein to pay the compensation and recover the same from the insured/owner of the vehicle.

6. In the instant case, admittedly, the applicant-claimant was travelling in a goods vehicle as a gratuitous passenger. This Court has, therefore, held that risk and liability of such a gratuitous passenger is not covered under the policy in terms of the provisions

of Section 147 of the Motor Vehicles Act, 1988 and, further the insurer has not undertaken such an additional risk by accepting an extra premium.

7. In a case of **National Insurance Company Ltd., Vs. Baljit Kaur and others** (supra) relied upon by the learned counsel for the applicant-original claimant, the accident had taken place on February, 1999. The claims Tribunal relying upon the decision of the Apex Court in a case of New India Assurance Company Ltd., Vs. Satpal Singh accepted the claim petition and rejected the contention of the appellant-insurance company that concerned vehicle is a goods vehicle, it would not have to incur any liability with respect to the passengers transported in the vehicle. The High Court upheld the verdict of the claims Tribunal in the appeal. It may be noticed that the judgment rendered in Satpal Singh's case (supra) has been subsequently reversed by Three Judge Bench of the Apex Court in a case of **New India Assurance Company Ltd., Vs. Asha Rani** reported in **2003 AIR (SC) 607** and, the same is

followed in the case of **Oriental Insurance Company Ltd., Vs. Devireddy Konde Reddy and others** reported in **AIR 2003 Supreme Court 1009,** the Supreme Court in the aforesaid case National Insurance Company Vs. Baljit Kaur, in paragraph Nos.11, 12, 17 and 20 has made following observations :-

> 11. Admittedly, it is incumbent upon a Court of law to eschew that interpretation of a statute that would serve to negate its true import, or to render the words of any provision as superfluous. Nonetheless, we find no merit in the above submissions proffered by the learned counsel for the respondent. The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words "any person" could be held not to include the owner of the goods or his authorized representative travelling in the goods vehicle, Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle as a medium of conveyance.
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> 12. We find ourselves unable, furthermore, to countenance the contention of the respondents that the words "any person" as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous passengers from the ambit of the same. It was observed by this Court in the case concerning New India Assurance Co. Ltd. Vs. Asha Rani (supra) that the true purport of the words "any person" is to be found in the liability of the insurer for third party risk, which was sought to be provided for by the enactment.
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> 17. By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorized

> 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 authorized 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 authorized representative besides the passengers who are gratuitous or otherwise.
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> 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.

8. However, considering the grey area in between the decision rendered in Satpal Singh's case (supra) and Asha Rani's case, in paragraph No.21 of the Judgment, the Supreme Court has made following observations :-

> 21. 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 sub-served 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. In a case United India Vs. Manisha Mahesh Harmalkar and others (supra), relied upon by the learned counsel for the applicant, this Court in the facts of the said case, though discussed various judgments of the Apex Court, directed the insurance company to pay and recover the compensation from the owner.

10. In a case New India Insurance Company Limited Vs. Sindhu, the date of accident is 20.7.1996 and this

Court upheld the judgment and award passed by the Tribunal based upon the decision of the Apex Court in a case of National Insurance Company Ltd., Vs. Baljit Kaur and ors.

11. In a case of Manager, National Insurance Company Ltd.,Vs. Saju P. Paul and another the *ratio decidendi* that the insurance Company shall not be liable to pay the compensation if gratuitous passenger travelling in a goods vehicle are not covered under the insurance policy. The Apex Court has considered peculiar facts of the case and directed the insurance company to recover the amount from the owner.

12. In a case Manuara Khatun Vs. Rajesh Kumar Singh and others having regard to the peculiar facts of the case, directed the claimant to withdraw amount of compensation alongwith accrued interest and further directed the Insurance Company to recover the amount so paid from the owner.

13. In the instant case, I do not find any peculiar facts. The applicant-original claimant has approached the Tribunal with a specific pleading that he was travelling in a vehicle goods truck as a gratuitous passenger and also lead the evidence to that effect. I do not find any reason to review the judgment and order passed by this Court dated 15.2.2017 in First Appeal No.103 of 2015. Hence, following order.

ORDER

Review Application is hereby rejected.

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(V.K. JADHAV, J.)

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