IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1401 OF 2009

The New India Assurance Co.,
Guru Nanak House,
Bombay Agra Road, Nashik ...Appellant
Versus
Smt. Shakuntala Digambar Bodake
And Ors. ...Respondents

Ms. Poonam Mittal for the Appellant.
Adv. K.P. Shah i/by Adv. P.B. Shah for Respondent Nos.1 & 4.

CORAM : RAJESH S. PATIL, J.

DATED : 1 NOVEMBER, 2023.

P.C.:

1. This First Appeal filed under Section 173 of the Motor Vehicles Act, challenges Judgment and Award dated 1 August, 2008, passed in MACP No.771 of 2006.

2. One Mr. Digambar Bodke while he was traveling in Tempo No.GJ-16-V-6481, carrying his vegetables viz. "cabbage", with him, unfortunately met with an accident on 2 October 2006. The legal heirs of deceased Digambar Bodke thereafter, filed Claim Petition No.771 of 2006, before MACT, Nashik. The owner and driver of the offending vehicle though served remain absent,

therefore, the Tribunal passed an *ex parte* Order against them. The Insurance Company filed their written statement and denied the Claim Application of the legal heirs of the deceased.

3. The claimants examined three witnesses, including the widow of the deceased, Gramsevak, and the owner of a transport company. The Insurance Company did not examine any witness.

4. After the evidence was closed, the Tribunal heard both the sides and by its Judgment and Award dated 1 August, 2008, partly allowed the Claim Application, thereby granting the claim to the extent of Rs.3,94,000/- inclusive of NFL, with interest at the rate of Rs.7.5% per annum from the date of registration of the Petition till realization of the amount. The Insurance Company was allowed to deposit the compensation amount and recover the same from the owner and the driver of the offending vehicle. The Insurance Company being dissatisfied with the Award, have challenged the same by way of the present First Appeal.

5. Ms. Mittal appearing for the Insurance Company submitted that her submissions are limited to the issue of gratuitous passenger traveling in the offending vehicle. She submitted that if a person is traveling in a commercial vehicle and

he being not a driver or owner of the vehicle the liability should be imposed only on the owner and the Insurance Company should not be directed to pay and thereafter, recover from the owner. She relied heavily on Judgment of Supreme Court in the case of ***The New India Assurance Co. Ltd. V/s. Asha Rani and Others***[1]

6. Mr. Shah appearing for the Original Claimant submitted that the deceased person was traveling in the commercial vehicle with his own goods, and if a owner of the goods is traveling in commercial vehicle, he would always be covered by the Insurance Policy of the offending vehicle. Mr. Shah submitted that in fact the Judgment of Supreme Court in *Asha Rani (supra)* covers the present proceedings has in the said Judgment of *Asha Rani (supra)* it has been clarified that if a person is owner of the goods and is traveling with his own goods then he will be covered by the Insurance Policy of the offending vehicle. According to Mr. Shah the earlier Judgment of *Satpal Sing* has been over ruled inthe Judgment of *Asha Rani (Supra).*

7. The only issue in the present proceedings is whether the owner of the goods traveling with his goods in a commercial vehicle is covered by the Insurance Policy of the offending vehicle.

1 2003 ACJ 1

It will be necessary to reproduce Section 147 of the Motor Vehicles Act, after its amendment in the year 1994. Section 147 after the amendment reads 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 [90][injury to any person, including owner of the goods or his authorised 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 policy;*
>
> *(ii) …*
>
> *…* *[Ephasis supplied]*

8. This Section is applicable in the present proceedings after the 1994 amendment, as the accident in the present proceedings has occurred on 2 October, 2006. The Section itself clarifies that if the owner of the goods was traveling with the goods then he is covered by the Insurance Policy of the vehicle. The said fact is also clarified in the Judgment of *Asha Rani (supra).*

9. Paragraph No.9 the Judgment of *Asha Rani (supra)* reads as under :

9. In Satpal's case, 2000 ACJ 1 (SC), 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 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 of Act 54 of 1994 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 authorised representative carried in the vehicle' the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if 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 section 46 also states 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 law 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-existed 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 <u>section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goo</u>ds 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's 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 goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."*

10. Mr. Shah has also referred the Judgment of the Supreme Court passed in ***State of Andhra Pradesh And Others V/s. B. Ranga Reddy And Others***[2]. The Judgment of the Supreme Court of *B. Ranga Reddy (supra)* verify the position that if the operative part of the Judgment is in favour of a party and if there are findings against the said party, the said party can defend himself without filing any cross-objection. Similar case the Judgment of ***S. Nazeer Ahmed V/s. State Bank of Mysore And Others***[3]**.**

11. Taking into consideration the preposition of law as laid down by the Supreme Court and considering the facts of the present case the First Appeal is dismissed and impugned Judgment and Award is hereby confirmed however, the part of the Judgment and Award dated 1 August, 2008, recording that the Insurance Company is entitled to recover the amount of compensation from Respondent Nos.1 and 2 i.e. pay and recover, is quashed and set

2 (2020) 15 SCC 681
3 (2007) 11 SCC 75

aside, the impugned Award is modified to this extent.

12. In the present proceedings New India Assurance Company has already deposited the amount and said amount is already been withdrawn by the Claimant.

13. It is also been informed that the Claimant has given a bank guarantee while withdrawing an amount deposited by the Insurance Company, as per the directions given by Order dated 4 July, 2014. Since the First Appeal of the Insurance Company is now been dismissed, the bank guarantee given by the Claimant stands cancelled.

14. Therefore, the First Appeal is accordingly disposed of.

(RAJESH S. PATIL, J.)