



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 479 OF 2004

The New India Assurance Company Ltd
having its Head and Registered office at
New India Assurance Building, 87,M.G.Road,
Fort, Mumbai-1 and having Branch office at
Parbhani, Divisional office
at Aurangabad.

Appellant.
(Ori.Respondent No.2)

Versus

1. Prabhakar s/o Mohanappa Tamshete,
Age : 57 years, Occ: Business,
R/o Charthana, Tq :- Jintur,
Dist :- Parbhani (Ori.Claimant)
2. Laxman Kashram Gajmal,
Age : 58 years, Occ: Business
R/o Charthana, Tq :- Jintur,
Dist :- Parbhani (Ori.Resp. No. 2)
Respondents

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Mr. M. R. Deshmukh Advocate for appellant.
Mr. J. G. Toshniwal Advocate for respondent no. 1

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AND

FIRST APPEAL NO.1145 OF 2004

The New India Assurance Company Ltd
having it's Head and Registered office at
New India Assurance Building, 87,M.G.Road,
Fort, Mumbai-1 and having Branch office at
Parbhani, Divisional office,
at Aurangabad.

Appellant.
(Ori.Respondent No.2)

Versus

1. Shaikh Mustafa s/o Shaikh Aziz,
Age : 32 years, Occ: Business,

R/o Charthana, Tq :- Jintur,
Dist :- Parbhani (Ori.Claimant)

2. Laxman Kashram Gajmal,
Age : 58 years, Occ: Business,
R/o Charthana, Tq :- Jintur,
Dist :- Parbhani (Ori.Resp. No. 2)

3. Vyankat s/o Ganpatrao Nagre
Age : 32 years, Occ : Driver
R/o Pimpri Khurd,
Tq. Jintur, Dist. Parbhani ..Deleted..
Respondents.

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Mr. M. R. Deshmukh Advocate for appellant.
Mr. J. G. Tonshiwal Advocate for respondent no. 1
Respondent no. 2 served – absent.

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AND

FIRST APPEAL NO.1146 OF 2004

The New India Assurance Company Ltd
having it's Head and Registered office at
New India Assurance Building, 87, M.G.Road,
Fort, Mumbai-1 and having Branch office at
Parbhani, Divisional
office at Aurangabad.

Appellant.
(Ori.Respondent No.2)

Versus

1. Syed Jamal s/o Syed Abbas,
Age : 31 years, Occ: Business,
R/o Charthana, Tq :- Jintur,
Dist :- Parbhani (Ori. Claimant)

2. Laxman Kashram Gajmal,
Age : 58 years, Occ: Business,
R/o Charthana, Tq :- Jintur,
Dist :- Parbhani (Ori. Resp. No. 2)
Respondents.

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Mr. M. R. Deshmukh, Advocate for appellant.
Mr. J. G. Tonshiwal, Advocate for respondent no. 1
Respondent no. 2 served.

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CORAM : S. G. CHAPALGAONKAR, J.

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Reserved on : 13th February, 2024.

Pronounced on : 21st February, 2024.

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COMMON JUDGMENT :-

1. The appellants/original respondent no.2-Insurer approaches this Court under section 173 of the Motor Vehicles Act, thereby impugning the common judgment dated 5th July, 2003 in MACP No.261 of 1996, 51 of 1997 and 336 of 1997. (For the sake of brevity, Parties hereinafter are referred to as per their original status).

2. Respondents no.1/original claimants in respective claim petitions had approached the Tribunal under section 166 of the Motor Vehicles Act, 1988 thereby raising claim for compensation towards injuries suffered in motor vehicular accident dated 23.10.1996. The claimants contend that, on the fateful day, they were traveling in a Matador bearing registration No.MH-22/355 from village Charthana to village Waghi for attending the Bazar. Driver of Matador lost his control over the vehicle. Resultantly, it toppled in the vicinity of village Pimpri (khurd). The claimants who were occupying seat in the matador suffered severe injuries. According to the claimants, driver of the Matador was negligent. The offending Matador was owned by respondent no.1. It was driven by

respondent no.2 (Now deleted) and insured with respondent no.3 (present appellant). As such, respondents are jointly and severally liable to pay the compensation.

3. The Claim was contested by the appellant-insurer by filing written statement on the ground of breach of terms and conditions of the insurance policy. The claimants recorded respective evidence and relied upon the police papers. Insurance company recorded evidence of Mr. Takalkar, Branch Manager of the company, who placed on record copy of the insurance policy. The Tribunal, after hearing the parties, allowed the claim petition and directed respondent nos.1 to 3 to jointly and severally pay compensation to the claimants as quantified in respective claims. Aggrieved by the common decision of the Tribunal, insurer filed present group of appeals.

4. Mr. M.R. Deshmukh, learned advocate appearing for the appellant submits that admittedly, offending vehicle is registered and insured as a 'good carriage' and not supposed to carry any passenger. However, as discernible from the contents of the FIR, spot panchnama, vehicle was predominantly used for carrying passengers. As many as 31 passengers were occupying the seat in offending Matador at the time of accident and suffered injuries. The group of 15 appeals arising from the same accident is before this Court. He would further invite attention of this Court to the RTO particulars and copy of the insurance policy, which is admitted in evidence to contend that permitted sitting capacity of the vehicle is only two including the driver and class of the Motor vehicle is specified as LCV,

D.Van (Light Commercial Vehicle Delivery Van). He would therefore submit that the Tribunal failed in grave error of law while holding the insurer liable to pay the compensation to the claimants.

5. Per contra, learned advocate Mr. Toshnival appearing for respondent no.1 vehemently submits that all the persons occupying seat in the vehicle at the time of the accident had loaded goods of the business and proceeding to attend the Bazar at village Waghi. There is no prohibition for transportation of owner of goods in the goods carriage. The amendment of 1994 in section 147 of the Motor Vehicle Act mandates statutory cover for owner of the goods, being carried in the goods carriage. The Tribunal has rightly appreciated the aforesaid aspects and passed an award holding the owner of the offending vehicle and insurer jointly and severally liable to pay the compensation.

6. Although, the owner of the vehicle (respondent no.2) has been served with the notice of the appeal, failed to cause his appearance.

7. Having considered the submissions advanced, the question that falls for consideration in the present appeals is as to “*whether the claimants were travelling in goods carriage as a ‘gratuitous passenger’ or they would fall within the meaning of ‘owner of goods’ occupying seat in the goods vehicle so as to extend benefit of statutory cover in terms of section 147 of the Motor Vehicles Act?*” To find out answer to the aforesaid controversy, it is necessary to delve into the pleadings and

evidence that has been led before the Tribunal on behalf of the respective parties.

8. The claimants have pleaded in the petition that they had boarded in the vehicle alongwith goods of business for the purpose of attending the bazar at village Waghi. The claimants have also deposed before the Tribunal in the same line. However, no specifications as regards to the goods those were loaded and carried have been mentioned in the pleadings so also the evidence. At this stage, reference can be given to the definitions of goods as indicated in **Sub-clause 13 of Section 2, reads thus :-**

“Goods includes livestock and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in the motor car or in a trailer attached to a motor car or personal luggage of passengers travelling in the vehicle”.

9. Looking to the definition of goods, it can be observed that the personal luggage of persons cannot be treated as “Goods” within the meaning of Motor Vehicles Act. In the present case, the vehicle in question is a goods carriage, further, as can be noted from contents of registration particulars of the vehicle and insurance policy, it is crystal clear that the vehicle in question is registered and insured as a goods carriage. The definition of goods carriage is also specified. **Sub-clause 14 of section 2 reads thus :-**

“Goods carriage means any motor vehicle constructed or adopted for use solely for the carriage of goods, or any motor vehicle not so

constructed for when used for carriage of goods.”

10. The registration of the vehicle in question depicts that it has been described as a Delivery Van [light goods carriage delivery van] having carrying capacity of Two persons including the driver. From the very nature of the registration of vehicle, it is a goods carriage and does not suppose to carry any passenger. Turning to the contents of the FIR and spot panchnama, it can be seen that as many as 31 persons had boarded in the vehicle at the time of the accident and they suffered injuries. Fortunately, none of them was fatal in nature. It is therefore clear that vehicle was used predominantly for carrying passengers.

11. Although, claimants have pleaded that they boarded in the vehicle as owner of the goods and suffered injuries while travelling in the capacity of owner of the goods, it can be gathered from contents of the FIR and spot panchnama that vehicle was completely occupied by the crowd of 31 persons although having carrying capacity of only two persons in the cabin, which includes the driver and at the most cleaner or co-driver. There is no room to carry any other person. Further the spot panchnama nowhere depict that any goods were found to be loaded in the vehicle or laying scattered at the place of accident. Apparently, when 31 persons had boarded in a light goods carriage, there cannot be any space for carriage of goods. Hence case of claimants that they were traveling along with goods is not acceptable.

12. If we look to the basic intent behind introduction of the amendment of 1994 in section 147 of the Motor Vehicles Act, it is evident that person who hires goods carriage for transportation of his goods and occupy the vehicle along with his goods is sought to be covered by incorporating the words as “owner of goods or his authorized representative carried in the motor vehicle” in original section. Therefore, if any person boarded in the vehicle with small baggage, for which hiring of services of goods carriage would not be required, such person cannot be termed as owner of goods or authorized representative of owner of goods for the purpose of bringing him under the umbrella of statutory insurance cover intended to be extended in view of the amendment of 1994.

13. The effect of aforesaid amended provisions of section 147 of the Motor Vehicles Act introduced in 1994 has been considered in great detail by the Supreme Court of India in case of **New India Assurance Company Ltd. Vs. Asha Rani and others reported in (2003) 2 SCC 223**, which is the decision by the larger Bench constituted to resolve the controversy raised after pronouncement of Judgment in case of Satpal Singh, in which the view was expressed that after amendment of 1994, any person traveling in vehicle would be covered under statutory scheme of compulsory insurance cover for third parties. However, the larger Bench of the Supreme Court of India while delivering the judgment in case of Asha Rani overruled interpretation adopted in case of Satpal Singh (supra).

14. The view taken in case of Asha Rani above has been consistently followed till this date.

15. Perusal of the reasoning adopted by the Tribunal depict misconception/misinterpretation of the law laid down in case of Asha Rani. The Tribunal erroneously observed that the law laid down in case of Asha Rani cover cases prior to amendment of 1994 and not cases arising out of the accidents after 1996. The observations of the Tribunal are fallacious and liable to be discarded. In fact, reference in Asha Rani's case was divided in three parts and second part specifically deals with position of law falling from amended provision of Section 147 of the Motor Vehicles Act post 1994 amendment.

16. Next submissions advanced on behalf of the respondents/original claimants is that, although the claimants may not fall within the meaning of third party, the insurer can be directed to satisfy the award and recover the compensation amount from the owner of the vehicle. The aforesaid arguments cannot be accepted in facts of the present case when large number of passengers were carried in the goods carriage. All such passengers cannot be treated as third party within the meaning of section 147 of the Motor Vehicles act. As such does not fit within the statutory umbrella of the insurance cover. Once insurance cover is not available to the victim of the accident, either under statutory scheme or by extended insurance contract, the insurer cannot be directed to satisfy the award. The Mechanism of passing the award in the nature of pay and recover has been evolved by the Supreme Court of

India for the cases where victim of the accident is compulsory covered under the policy of insurance issued in terms of section 147 of Act, but owing to default in observance of terms of contract, insurer is entitled to avoid liability in terms of defense provided under section 149 of Motor Vehicles Act 1988.

17. Although, Supreme Court of India in cases of 1] **Manuara Khatun and others Vs. Rajesh Kumar Singh and others**, reported in (2017) 4 SCC 796, 2]-**Sanju P. Paul Vs. National Insurance Company** reported 2012 ACJ 1852 and 3] **Anu Bhanvara and others Vs. Iffco Tokio General Insurance Company Limited and others** reported in (2020) 20 Supreme Court Cases 632 directed the insurer to satisfy the award at first instances and recover the compensation amount from the insured/owner of the vehicle, minute reading of such judgments would depict that such directions are given in exercise of plenary powers under Article 142 of the Constitution of India. So far as claims pertaining to large number of passengers carried in the goods carriages, there is consistent view that insurer has no liability to pay the compensation. As indicated above, a three Judge Bench of the Supreme Court of India in case of **New India Assurance Company Ltd., Vs. Asha Rani and others** reported in (2003) 2 SCC 223 observed thus :-

“in view of the change in relevant provisions in the 1988 Act vis-a-vis 1939 Act we are of the opinion that meaning of words “any person” must be attributed having regard to context in which they have been used i.e. “a third party”. Keeping in view the provisions

of 1988 Act, we are of the view that the provisions thereof do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, insured would not be liable therefor.

18. In subsequent judgments, again a three Judge Bench of the Supreme Court in case of **National Insurance Company Vs. V. Chinnamma and others reported in (2004) 8 SCC 697** relying upon the judgment in case of Asha Rani, reiterated the aforesaid legal position. There is no deviation from aforesaid proposition of law till this date. Therefore, the impugned award passed by the Tribunal to the extent it hold the liability of insurer jointly and severally with the insured-owner of the vehicle cannot be sustained in law. Resultantly, the appeals succeed. Hence, following order.

ORDER

- i. First appeal nos.479 of 2004, 1145 of 2004 and 1146 of 2004 are hereby partly allowed.
- ii. The Judgment and award passed by the Ex-officio Member, Motor Accident Claims Tribunal, Parbhani dated 5.7.2003 in MACP Nos.261 of 1996, 336 of 1997 and 51 of 1997 are hereby quashed and set aside to the extent of the appellant/insurer.
- iii. Any amount deposited by the insurer in this Court in pursuance of the impugned award be refunded.
- iv. First appeals are accordingly disposed off. Pending civil applications, if any, also stand disposed off.

- v. Award be drawn up accordingly. No costs.

(S.G. CHAPALGAONKAR)
JUDGE.

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