

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CMAM No.179/2012

Reserved on: **12.08.2022**
Pronounced on: **01.09.2022**

New India Assurance Company Ltd.

...Appellant(s)

Through: Mr. Manzoor Ahmad Dar, Advocate.

Vs.

Mehra Begum & Ors.

...Respondent(s)

Through: Mr. Mohammad Amin Tibetbakal, Advocate for R- 6 & 7.

CORAM:

HON'BLE MR. JUSTICE MD. AKRAM CHOWDHARY, JUDGE

JUDGMENT

1. The appellant-Insurance Company has challenged the Award dated **30.07.2012** (for short 'impugned judgment) passed by the learned MACT Srinagar in a Claim Petition titled **Mehra Begum & Ors. Vs. Gh. Mohi u din Rafique & Ors.**, whereby the amount of ₹3,27,864/- together with interest @ 6% P.A from the date of institution of the Claim Petition, has been granted as compensation in favour of claimants /respondents 1 to 5 payable by the appellant Company.
2. The impugned judgment has been assailed on the following grounds:-

“a) That on account of the admitted factual position as recorded in the pleadings the subject vehicle was an oil tanker not authorized to ferry passengers and the deceased admittedly had stopped the oil tanker and boarded the same for travelling from Srinagar to Jammu. In that view of the matter, the deceased could under no circumstances be regarded as a third party on the strength of which the claimants could seek

indemnification from the appellant company. In view of the settled legal position, the liability on all counts arising out of the said accident has to be squarely borne by the owner of the vehicle and insurance company could not be held liable to pay compensation to the claimants.

b) That the perusal of the award would reveal that the Tribunal has tried to carve out a case for bracketing the deceased as third party which fact is contrary to the pleadings which were available before the trial Tribunal.

c) That the trial Tribunal has also ignored the evidence led by the company in terms whereof it was positively established that the subject vehicle was an oil tanker and there was no question of ferrying passengers in it. This aspect of the matter has been totally ignored by the trial Tribunal and the trial Tribunal has illegally and improperly imposed the liability upon the appellant company.

d) That the grant of interest in view of the facts and circumstances of the case, is not inconsonance with law and justice keeping in view the fact that the award passed earlier by the Motor Accident Claims Tribunal, Udhampur was restricted to ₹2,17,000/- and that too without payment of interest because of the delay caused by the claimants in approaching the Tribunal for seeking payment of compensation.”

3. Heard and considered.

4. Learned counsel for the appellants has argued that the appellant Company has been saddled with the liability of payment of compensation to the claimants, though it was not liable to pay the same, as the deceased, for whom the compensation had been awarded, was the gratuitous passenger travelling in the Oil Tanker owned by respondents 6 & 7 and insured with the appellant Company. He has further argued

that the offending vehicle was not a passenger vehicle and the deceased who was stated to be a police official had travelled by the said vehicle driven by Rajeet Singh-respondent No.8 as a gratuitous passenger from Srinagar to Jammu, which met with an accident on the way, the passenger Habib-ullah Bhat got injured and as a result succumbed to his injuries. He has further submitted that the legal heirs/claimants of the deceased filed the Claim Petition before the MACT Udhampur in the year 1997 which held that the deceased had travelled by the offending vehicle as the gratuitous passenger, as such, the appellant Company was not liable to indemnify the insured.

5. He next argued that the owner of the offending vehicle filed the appeal before the High Court, and the Single Bench of this Court maintained the order passed by the Udhampur Tribunal and confirmed the liability of compensation to be paid by the owner. Thereafter, LPA was preferred by the owner before the Division Bench of this Court on the plea that he was served of notice as party respondent during the pendency of the Claim Petition and was not granted an opportunity to lead evidence in the matter. Division Bench, considering this aspect of the matter, was pleased to set aside the order passed by the Tribunal and *de novo* trial was directed to be conducted and simultaneously the matter was also transferred to MACT Srinagar.
6. He further argued that during the pendency of the Claim Petition, the respondent-owner filed an application seeking amendment in the written statement by incorporating the plea that the deceased was wearing police uniform and he had stopped the offending vehicle, and it is in that view of the matter that he had boarded the Oil Tanker; that after providing the opportunity to the parties to lead evidence, the Srinagar

Tribunal proceeded to pass the award directing payment of ₹ 3,27,864/- together with simple interest @ 6% P.A from the date of institution of the Claim Petition.

7. Mr. Dar, learned counsel for the appellants vehemently argued that there was neither any pleadings nor any evidence was led by the respondent-owner to prove that the deceased was the gratuitous passenger and had travelled by the offending vehicle insured with the appellant Company after paying anything, rather they had taken the plea that the deceased as a Policeman was the gratuitous passenger. Mr. Dar further argued that without pleadings no fact can be proved, as such, the deceased had to be treated as gratuitous passenger and in view of the breach of the terms of the contract/insurance policy, the appellant Company was not liable to indemnify the insured of his liability to pay compensation to the claimants. He has further argued that the learned Presiding Officer of the Tribunal had read the evidence in isolation of the pleadings which was not permissible and that the appellant Company which had deposited the awarded amount, be held entitled to recover the same from the respondent owners of the offending vehicle. Following Rulings were relied upon by Mr. Dar, to buttress his arguments:

(2000) 1 SCC 237, New India Assurance Co. Vs. Satpal Singh & Ors.

(2003) 2 SCC 223, New India Assurance Co. Ltd. Vs. Asha Rani & Ors.

(2003) 2 SCC 339, Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy & Ors.

(2008) 1 SCC 432, National Insurance Co. Ltd. Vs. Cholleti Bharatamma & Ors.

(2013) 2 SCR 1, Manager National Insurance Co.Ltd. Vs. Saju P.Paul & Ors.

8. Mr. Tibetbakal, learned counsel for the contesting respondents 6 & 7 - owners of the offending vehicle, on the other hand, argued that before

the amendment of 1994 in the Motor Vehicles Act, the gratuitous passengers were also entitled to compensation as was held by the High Court of Himachal Pradesh in the case titled **New India Assurance Co. Ltd. Vs. Veena Devi & Ors.** reported as '2007 ACJ 460' and by the Hon'ble Supreme Court in the case titled **New India Assurance Co. Vs. Satpal Singh & Ors.** reported as (2000) 1 SCC 237. He has argued that the accident, wherein the deceased had died, had taken place on 22.07.1990, when the amendment was not there. He has further argued that the plea of the learned counsel for the appellant to the extent that the evidence cannot be read without pleadings, is untenable, in view of the fact, that the claim proceedings before the MACT is not like a regular suit before the Civil Court but it is an enquiry to be conducted by the Tribunal even without pleadings, therefore, the strict rules of the Civil Procedure Code are not required to be applied before the Tribunal. Learned counsel further pleaded that the son of the deceased had stated before the Tribunal that he was with his father when he had boarded the offending vehicle after negotiating the fare to be paid by him with the driver, as such, the deceased had travelled after making payment of fare, therefore, he cannot be stated to be the gratuitous passenger. It was finally prayed by him that the appeal filed by the appellant Company be dismissed and the award passed by the learned Tribunal be maintained.

9. The moot question to be decided in this Appeal is that whether the Appellant Company, as insurer, was not liable to indemnify the insured owners of the offending vehicle to make payment of compensation to the claimants. The accident, wherein deceased had died, had taken place on 22.07.1990 when the Motor Vehicles Act 1988 was in force.

10. Learned counsel for respondents 6 & 7 - owners of the offending vehicle submitted that since the accident had taken place in the year 1990, therefore, the law laid down by the Apex Court in a case titled **New India Assurance Co. Ltd. Vs. Satpal Singh & Ors.**, reported as (2000) 1 SCC 237, has to be made applicable in this case also, wherein it has been held that the gratuitous or non-gratuitous passenger of a goods vehicle was also entitled to be compensated and the compensation was to be indemnified by the insurer. The Apex Court in this case had proceeded on the assumption that the provisions of 1939 Act and the provisions of 1988 Act are in *pari materia*. While interpreting the provisions contained in Sections 147 and 149 of the Motor Vehicles Act, it was held that under the 1988 Act, the insurance policy covering 3rd party risk is not required to exclude a gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class.

11. The matter again came up before the larger Bench of three Judges of Supreme Court in a case titled **New India Assurance Company Ltd. Vs. Asha Rani & Ors.** reported as (2003) 2 SCC 223, and the correctness of the decision in **Satpal Singh's** case (*supra*) was also considered. Hon'ble Apex Court in **Asha Rani's** case held as under:-

"23. The applicability of decision of this Court in Mallawwa (Smt.) & Ors. v. Oriental Insurance Company Ltd. & Ors. [(1999) 1 SCC 403] in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in

1988 Act is significant. By reason of the change in the definitions of the terminology, the Legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in 1939 Act were omitted...."

12. Hon'ble Supreme Court again in a case titled **National Insurance Co. Ltd. Vs. Baljit Kaur & Ors., reported as (2004) 2 SCC 1, speaking through the three Judge Bench in Para 21 held as under:-**

"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 decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved 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.”

- 13.** In a case titled **National Insurance Co. Ltd. Vs. Cholleti Bharatamma & Ors.**, reported as **(2008) 1 SCC 432**, the Apex Court also held that inevitable conclusion is that the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.
- 14.** Hon'ble Supreme Court in a case titled **Manager National Insurance Co. Ltd. Vs. Saju P. Paul & Anr.**, reported as **(2013) 2 SCR 1**, after discussing all the cases right from **Satpal Singh** case (supra) observed that Section 147 as originally existed in 1988 Act being applicable and accordingly, judgment of the Supreme Court in **Asha Rani** case was fully attracted. It was further observed that the High Court committed grave error in holding that Section 147(1)(b)(i) takes within its fold any liability which may be incurred by the insurer in respect of the death or bodily injury to any person. This view had been taken in a case where the claimant was travelling in a vehicle in the course of his employment being a spare driver of the Firm, though he was not driving the vehicle at the relevant time and had been directed to go to worksite by his employer.
- 15.** The claimants initially had preferred the Claim Petition before the MACT Udhampur which had granted compensation of ₹ 2.17 lac for the death of one Habibullah Bhat S/O Mohammad Usman Bhat, while

travelling as off-duty Policeman from Srinagar to Jammu in a vehicle bearing registration No.JKD 4199 (Oil Tanker) had met with an accident in Udhampur district on 22.07.1990. The Award, challenged before the Single Bench of this Court, was upheld and the liability fixed by the Tribunal on the owners of the offending vehicle was confirmed, however, in an LPA filed by the owners of the offending vehicle, the Division Bench of this Court had set aside the order of Single Bench for the reason that the owners had not been served by the Tribunal before passing of the Award and the Petition was also transferred to the MACT Srinagar. The Srinagar Tribunal vide judgment dated 30.07.2012, on the basis of the statement of one Mehraj ud din (son of the deceased), that the deceased before boarding the offending vehicle had negotiated with regard to the fare to be paid for travelling to Jammu and that his father was in the Police Uniform, therefore, the deceased cannot be stated to be a gratuitous passenger, as such, the Insurance Company, as insurer, was liable to indemnify the liability of the owners of the offending vehicle.

16. In view of the law discussed hereinabove, as interpreted by the Hon'ble Apex Court, the Tribunal had misdirected itself to hold that in view of the deceased being non-gratuitous passenger on payment of fare, the insurer was liable to indemnify the insured. This could have been possible, had the law laid down by the Apex Court in **Satpal Singh's** case (supra) would not have been overruled. However, the judgment had been overruled by the Hon'ble Apex Court in the later judgments as discussed hereinabove. The liability of the insurer could not be there even if the deceased would have been non-gratuitous passenger in a carriage vehicle as decided by the Tribunal in view of the law laid down

by Hon'ble Apex Court in all the judgments after **Satpal Singh's** case (supra).

- 17.** In a claim with regard to death or disability of a person travelling by a goods vehicle /goods carriage, as gratuitous or non-gratuitous does not, by the application of statutory provisions of Motor Vehicles Act, fasten the liability on the insurer, except an owner of the load /goods travelling in the vehicle having such load /goods. In the aforesaid backdrop of the case, the judgment impugned requires to be interfered with to the extent of liability on the appellant-insurer. The impugned judgment is ordered to be modified holding that the appellant –insurer was not liable to indemnify the liability of the insured-owners of the offending vehicle.
- 18.** In this backdrop, it is directed that the awarded amount along-with simple interest @ 6% P.A. shall be satisfied by the appellant-insurer payable to the claimants and the appellant shall have the right of recovery from the owners of the offending vehicle- respondents 6 & 7, in accordance with law.
- 19.** Appeal is, accordingly, disposed of in terms of the above, with no order as to costs. Record of the Tribunal be sent back along-with a copy of this judgment, for information and compliance.

(MD. AKRAM CHOWDHARY)

JUDGE

Srinagar
01.09.2022
Muzammil. Q

Whether the order is reportable: Yes / No