IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 8TH DAY OF NOVEMBER 2021 / 17TH KARTHIKA, 1943

MACA NO. 1224 OF 2012

AGAINST THE AWARD IN OPMV 84/2009 OF DISTRICT COURT & SESSIONS & MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD

APPELLANT/2ND RESPONDENT IN O.P(MV):

BAJAJ ALLIANZ GENERAL INSRANCE CO. LTD
FINANCIAL TOWERS, LISSIE JUNCTION, KALOOR,
ERNAKULAM.

BY ADV SRI.LAL GEORGE

RESPONDENTS/CLAIMANT AND 1ST RESPONDENT IN O.P.(MV):

1 BHEEMA `
S/O.PUTTAPPA, GUTHANAD HOUSE, GUTHAL VILLAGE,
HAVERI DISTRICT, KARNATAKA STATE.
NOW RESIDING AT RING WORKS, THALAPPADY (PO),
THALAPPADY VILLAGE, MANGALORE, D.K.DISTRICT,
KARNATAKA.674184.

2 BAIJUMON
S/O.ABDULRAHIMAN, CHVAKKAL MANZIL, THUMMINADU,
KUNJATHUR (PO), KASARAGOD TALUK,
KASARAGOD DISTRICT.671 121.

BY ADV SRI.T.B.SHAJIMON

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 28.10.2021, THE COURT ON 08.11.2021, DELIVERED THE FOLLOWING:

"CR"

JUDGMENT

Bajaj Allianz General Insurance Co. Ltd, who is the 2nd respondent in O.P.(M.V) No.84/2009 on the file of the Motor Accidents Claim Tribunal, Kasaragod, is the appellant herein. The respondents are the original petitioner as well as the original 1st respondent before the Tribunal.

2. The Insurance Company disputed liability and sought exoneration from liability raising contention that the 1st respondent/injured was a gratuitous passenger in a goods vehicle viz., Goods Autorickshaw bearing registration no.KL-14G-3792. Though the appellant sought for exoneration, the Tribunal did not allow the same.

3. Heard the learned counsel for the appellant.

4. It is argued by the learned counsel for the appellant that the Tribunal negatived the contention raised by the Insurance Company to grant full exoneration without rationale though the 1st respondent/original petitioner was travelling in the goods autorickshaw involved in the accident after sharing the seat of the driver where driver alone was permitted to travel. According to the learned counsel the finding of the Tribunal giving the 1st respondent/petitioner the status of a person accompanying the goods carried therein is unsustainable. The learned counsel for the appellant placed decision reported in ***United India Insurance Co. Ltd. v. Suresh K.K and another*** **: 2008 (12) SCC 657; 2008 KHC 4602** in support of this contention. In this decision it was held that if the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy

of the insurance. In any view of the matter in a three wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved.

5. To be on the facts of this case, in order to answer the challenge raised by the learned counsel for the appellant, on 23.01.2008 at about 14:30 hours, while the injured was travelling in a Bajaj Goods Autorickshaw bearing registration no.KL-14G-3792 along with construction goods to the work site by sitting near the driver of the vehicle and transporting the construction goods, he met with an accident when the said Autorickshaw suddenly turned by its driver. The injured being the original petitioner/1st

respondent herein claimed Rs.1,50,000/- as compensation.

6. 1st respondent, the owner-cum-driver was set ex-parte by the Tribunal.

7. The 2nd respondent - insurer/appellant filed a written statement disputing the negligence and denying liability raising specific contention that the injured/1st respondent was a gratuitous passenger in a goods vehicle. But the Tribual disowned the contention and found liability on the part of the insurer.

8. Now, the learned counsel for the appellant canvassed exoneration of liability fastened on the appellant Insurance Company.

9. In order to resolve the question, reference to Sections 147 of the Motor Vehicles Act is necessary and the same is extracted here under:

"147. Requirements of policies and

limits of liability. (1) In order to comply the requirements of this Chapter, a policy of insurance must be a policy which-

a) is issued by a person who is an authorized insurer; and

b) insures the person or classes of persons specified in the policy to extent specified in sub section (2) -

i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized 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 place;

(ii) 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:

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his

employment other than a liability arising under Workmen's Compensation Act, 1923, (8 of 1923) in respect of the death of, or bodily injury to, any such employee –

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

10. After reading Section 147 of the Motor Vehicles Act, it is necessary to have a glimpse on judicial pronouncements relevant on

this question, while interpreting Section 147 of the Motor Vehicles Act. In ***New India Assurance Co. Ltd v. Asha Rani*** : **2003 (1) KLT 165 (SC)** the question raised was whether the insurer is liable to pay compensation to the dependents of a deceased passenger while the deceased was travelling in a goods vehicle. In that case the vehicle met with an accident, on account of which the passenger died. The Supreme Court after considering the relevant issues held as under:

> *"In Satpal's case (AIR 2000 SC 235) the Court assumed that the provisions of S.95(1) of Motor Vehicles Act, 1939 are identical with S.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 authorized 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 authorized representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly S.46 of Act 6 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 authorized 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 authorized representative being carried in the vehicle. The objects and reasons of Cl.46 also states that it seeks to amend S.147 to include owner of the goods or his authorized 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 and inherent position which is there in

the statute, but a plain meaning being given to the words used 1 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 authorized 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 S.147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized 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 authorized representative on being carried in a goods vehicle when that meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.*
> *The changes made by substitution of S.147 of the Act by S.46 of the Act 54 of 1994 (w.e.f 14.11.1994) was considered by the Supreme Court in the above decision."*

11. The Apex Court in **National Insurance Co. Ltd. v. Ajit Kumar and others : AIR 2003 SC 3093** also considered the ratio in **New India Assurance Co. Ltd. v. Satpal Singh : AIR 2000 SC 235** and found that it has no application after the amendment of S.147 of the MV Act. In **National Insurance Co. Ltd. v. Chinnamma : 2004 (3) KLT 397,** three bench Judges of the Apex Court, considered the question as to whether the owner of goods travelling in a

trailer attached to the tractor was entitled to the insurance coverage before the amendment of S.147 of the MV Act. It was answered that an insurance for an owner of the goods or his authorized representative travelling in a vehicle became compulsory only with effect from 14.11.1994, i.e., from the date of coming into force of amending Act 54 of 1994. The Apex Court considered the question whether a person who hired a goods carriage would come within the purview of S.147(1) of the MV Act although no goods as such were carried in the vehicle at the time of accident. Though this Court had taken a view in this case that such a person also will be covered under S.147(1) of the Act, that decision was challenged before the Supreme Court and the Supreme Court held as stated in paragraph 4 of this judgment.

12. Again in **United India Insurance Co.**

Ltd. v. Suresh : 2008 (4) KLT 552 (SC) when the Apex Court considered the question whether a person who hired a goods vehicle would come within the purview of S.147(1) of the Act, although no goods were being carried at the time of the accident. In this decision the Apex Court reiterated the legal position as laid down in ***National Insurance Co. Ltd. v. Baljit Kaur*** **:2004 (1) KLT 938 (SC) = 2004 (2) SCC 1** that the term "any person" envisaged under S.147(1)(b)(i) shall not include any gratuitous passenger, it was held that if the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of insurance. To put it differently, no gratuitous passenger can be allowed to travel in a goods vehicle and not even the owner of the vehicle can share the seat of the driver in a goods autorickshaw.

13. Thus, law in no more *res integra* on

the point that, if the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of insurance. Further in a three wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether a passenger or as a owner of the vehicle is supposed to share the seat of the driver and any such action is violation of the policy conditions. Here, the case put up by the appellant/insurer is that, the injured was accompanying the Goods Autorickshaw along with construction goods to the work site after sharing the seat of the driver and met with an accident during this course. Ext.B1 policy would show that the seating capacity of the vehicle involved in the accident is one person and nobody is permitted to travel in the said Goods Autorickshaw, other than the driver. Dealing with similar case as discussed the

Honourable Supreme Court held that no other person whether as passenger or as owner of the vehicle is supposed to share the seat of the driver and the said action is violation of the condition of the contract of insurance.

14. In the three bench decision in ***National Insurance Co. Ltd. v. Baljit Kaur*** : **AIR 2004 SC 1340** also while summarizing the legal position, the Honourable Supreme Court 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 laws 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 ((2000) 1 SCC 237). The said decision has been overruled only in Asha Rani (2003 (1) KLT 165 (SC)). 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 S.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."

To sum up, it is held that the contention raised by the appellant urging full exoneration is to be allowed and contra decision entered into by the Tribunal stands

set aside. Resultantly, it is ordered that the Insurance Company is not liable to pay the amount and the liability is upon the owner of the vehicle. Accordingly, the pay and recovery right ordered against the appellant Insurance Company is set aside and the appellant is exonerated from liability. Thus it is held that 1st respondent, the owner of the vehicle is liable to pay the award amount granted by the Tribunal in this case.

In the result, this appeal is allowed as indicated above.

Sd/-

A.BADHARUDEEN, JUDGE.

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