FULL BENCH

Before Mehar Singh, C.J., Harbans Singh and D. K. Mahajan, JJ.

THE ORIENTAL FIRE AND GENERAL INSURANCE CO. LTD.,—*Appellant*

versus

GURDEV KAUR AND OTHERS,—*Respondents*

F. A. O. 117 of 1962

April 24, 1967

Motor Vehicles Act (IV of 1939)—Ss. 95 and 96—Public carrier taking out policy of insurance in terms of S. 95—Public carrier hired by owners of goods and the owners travelling therein with the goods —Owners dying as a result of accident—Insurer—Whether liable to satisfy the judgment of Tribunal against owner of public carrier—Defence of no liability—Whether available to insurer—Contract of employment —Meaning of—Whether refers to persons employed or the hiring of motor vehicle.

Held, that the expression 'contract of employment' in clause (ii) of the proviso to sub-section (1) of section 95 of Act 4 of 1939 refers not only to a contract of employment with the insured but also to a contract of employment of a person who is on the insured vehicle for sufficient or business reasons, and has taken a contract of employment in pursuance of which he is on the vehicle as the adequate criterion of such reasons. He need not, therefore, be under a contract of employment with the insured so long as he was on the insured vehicle by reason of or in pursuance of his contract of employment, in other words, when because of his contract of employment he was on the vehicle.

Held, that the owners of goods who had hired the truck for the carriage of their goods and travelled therein with the goods were not passengers on the truck 'by reason of or in pursuance of a contract of employment' because they were not employed by any body to go on the truck but were on it as owners of the goods carried in it. The terms of clause (ii) of the proviso to sub-section (1) of section 95 of the Act do not cover the cases of such passengers and the insurers are not liable to satisfy the judgment and decree of the Tribunal against the owner and driver of the truck in respect to the claims of the dependants of the owners of the goods who died as a result of the accident to the truck.

Held, that it is open to the insurer to prove that the deceased persons as hirers-cum-owners of the goods did not come under clause (ii) of the proviso to section 95(1)(b) of the Motor Vehicles Act and so no liability in respect to these deceased persons attached to the insurer under the policy of insurance. Such a defence is not barred under sub-section (6) of section 96 of the Act.

Held, that the normal and the ordinary meaning and scope of the expression 'a contract of employment' points to a person being employed to do something or to carry out something for another person. It has the element of rendition of some service in one shape or another for the employer. So it cannot refer to the hiring of a goods-carrier as a contract of employment or to the owner of such a carrier as the person with whom a contract of employment has been made.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan on 12th May, 1966 to a larger Bench for decision of the important question of law involved in the case, and the case was finally decided by the Full Bench consisting of the Hon'ble the Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice D. K. Mahajan, on 24th April, 1967.

First appeal from the order of Shri G. S. Gyani, Motor Accidents Claims Tribunal, Punjab (under section 110 of the Motor Vehicles Act), dated 28th June, 1962, awarding Rs 3,600 to Gurdev Kaur applicant, widow of Dalip Singh, Rs 2,400 to Kartar Kaur widow of Niranjan Singh and Rs 2,000 to Smt. Sardari widow of Mangata deceased against the respondents, No. 1, 4 and 5, i.e., the Oriental Fire and General Insurance Co. Ltd., New Delhi.

N. N. Goswamy, with L. M. Suri, R. M. Suri and Munishwar Puri, Advocates for the Appellant.

C. L. Aggarwal, V. P. Gandhi and B. R. Aggarwal with R. K. Aggarwal, Advocates, for the Respondents.

JUDGMENT OF FULL BENCH

Mehar Singh, C.J.—This judgment will dispose of three First Appeals Nos. 117, 118 and 119 of 1962 from the order, dated June 28, 1962, of the Motor Accidents Claims Tribunal. The appeals are by the Oriental Fire and General Insurance Company Limited, the insurer. The order of the learned Tribunal disposed of three claim applications arising out of one accident, in which three persons died, and the claim applications were made by their dependents. That is why the learned Tribunal disposed of all the three claim applications by one order and for the same reason the three appeals are being taken together for decision.

The findings of fact by the learned Tribunal are that on February 17, 1960, truck PNT 2749 was hired by Chhajju and Inder Singh at Rs. 90 from Benarsi Das of Samana for carriage of hides from Samana to Phillaur. Chhajju and Inder Singh each paid Rs. 30, but it is not clear who paid the remaining amount of Rs. 30. Chhajju, Inder Singh, Niranjan Singh and Mangta placed their hides in the truck at various places about Samana. Dalip Singh worked jointly with his father Indar Singh in his shop at Samana. The truck, with the

hides, left Samana at about 9 p.m. It was driven by Bachna Driver of Benarsi Das. Although Mangta was a servant and a relation of Indar Singh but he dealt in the business of hides and skins and so did Chhajju and Niranjan Singh. Dalip Singh and Niranjan Singh were the sons of Indar Singh. All those five persons were on the truck as owners of hides. Indar Singh and another person were with Bachna driver in the driver's cabin, while the remaining four were on the tool-box above that cabin. There was the cleaner of the truck on it as well. The total number of persons said to have been on the truck were more than six. At about midnight, close to Ludhiana City and near village Dhaliwal, the truck collided with another truck coming from the opposite direction, swerved and striking against a Shisham tree came to a halt. The impact of the accident threw off the truck Niranjan Singh, Dalip Singh and Mangta, of whom Dalip Singh and Mangta died on the spot and Niranjan Singh, a short while after, in the hospital at Ludhiana. The three deceased were young persons varying in age between 22 and 43 years. The learned Tribunal has found that the accident took place on account of the negligence of Bachna driver. On the applications of the dependants of the three deceased persons, the learned Tribunal awarded them compensation in varying amounts described and detailed in paragraphs 9 to 11 of its order, and it is not necessary to go into this matter because the owner of the truck and the driver have not come in appeal against the order, these appeals, as stated, being only by the insurer to escape its liability under a third party insurance policy. The finding of the Tribunal is clear that the three deceased persons travelled as hirers-cum-owners of the goods carried in the truck in question. The number of such hirers given by it is five, which includes the three deceased persons, the other two persons being Indar Singh, who was sitting in the driver's cabin, and Chhajju, who was on the tool-box; both escaped serious injuries.

The truck was insured under a policy of insurance with the insurer, covering liability in the terms of section 95 of the Motor Vehicles Act, 1939 (Act 4 of 1939), and it specifically says that the use of the vehicle was 'use only under Public Carrier's permit within the meaning of Motor Vehicles Act, 1939', and that it did not cover 'use for conveyance of passengers for hire or reward'. Another term of it, to which the learned Tribunal has made reference, reads—"Nothing in this policy or any endorsement hereon shall affect the right of any person indemnified by this policy or any other person

to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, section 96. But the insured shall repay to the Company all sums paid by the company which the company would not have been liable to pay but for the said provisions". So the truck was insured only as a public carrier. Section 95 of Act 4 of 1939 deals with requirements of policies as given in Chapter VIII of the Act and the part of this section which is material for the present purpose is this—

"95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which——

(a) * * *

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) * * * *

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injuiry to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, * * *

(2) * * * * *

(3) * * * * *

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases."

Sub-section (1) of section 96 reads thus—

> "96. (1) If, after a certificate of insurance has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has ben effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

Sub-section (2) of this section gives the defences available to the insurer. And sub-section (6) then provides—

> "(6) No insurer to whom the notice referred to in sub-section (2) or sub-section (2A) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) or sub-section (2A) otherwise than in the manner provided for in sub-section (2), or in the corresponding law of the State
> * * * * *".

In *Izzard* v. *Universal Insurance Company, Limited* (1), an insured lorry of one William Druce had been hired and engaged by certain builders to do haulage work for them and it was also put at their disposal for conveyance of workmen between certain places. Izzard was one of the workmen who were being carried on the lorry which was a commercial vehicle insured for haulage purposes when he met with an accident. The provisions of section 36 of the Road Traffic Act, 1930, are parallel to those of section 95 of Act 4 of 1939. The argument urged before the House of Lords was that while Izzard was

---

(1) (1937) A.C. 773.

in the employment of the builders, he was not in the employment of the insured and could not, therefore, be said to have been a passenger in the lorry 'by reason of or in pursuance of a contract of employment', and this is what Lord Wright, delivering the judgment of the House of Lords, observed—

> "I must now refer to section 36, sub-section 1(b) (ii), of the Road Traffic Act, 1930, the requirements of which the arbitrator holds were complied with by the policy. By section 35, sub-section 1, of the Act, it was made unlawful to use a motor vehicle on the road unless there is in force in relation to that user such a policy as the Act requires. Section 36 provides in general terms for an insurance in respect of liability for death or bodily injury to any person arising out of the use of the vehicle on the road. Then come provisos, of which (i) and (ii) are relevant in this connection. The section says by way of proviso to the general requirement that there should be a policy 'Provided that such a policy shall not be required to cover (i) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or (ii) except in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arise.' It seems clear that provisos (b) and (c) of the policy are intended to reproduce and follow the statutory terms. The former of these provisos seems calculated to exclude the necessity of covering claims which would fall within the Workmen's Compensation Acts, though it is true that these Acts would not embrace every case of death or injury to an employee arising out of or in the course of the employment. For instance, there might be such cases where the employee, by reason of the amount of his wages or salary or otherwise, was outside the provisions of the Acts. It may be that for some reason the Legislature thought that these cases were infrequent and might be disregarded. But the second proviso is on a different footing. The general purpose of that statutory provision is

to exclude from the compulsory insurance passenger risk in general with the exception in the first place of passengers carried for hire or reward. This is the form of passenger risk which, as already explained, is offered in the respondents' proposal form under the heading of passenger risk. It need not be further discussed here. But the meaning of the other head is that on which the dispute here has turned.

I cannot accept the respondents' contention that 'contract of employment' should be construed in the Act as subject to the implied limitation 'with the person insured by the policy'. Such a departure from the clear language used cannot, I think, be justified. I think the Act is dealing with persons who are on the insured vehicle for sufficient practical or business reasons, and has taken a contract of employment in pursuance of which they are on the vehicle as the adequate criterion of such reasons. But there is no sufficient ground for holding that this criterion should be limited to employees of the insured person. Such employees, if injured or killed, would ordinarily fall under exception (1), though I am not prepared to pay that there might not be in certain events an employee of the assured who could claim as a passenger. But such cases must be rare. The most probable case is where the man killed or injured was on the vehicle in pursuance of a contract not with the owner of the vehicle but with some one else, for instance, with the person whose goods were being carried on the vehicle; thus a commercial vehicle carrying a contractor's or merchant's goods would frequently and perhaps even normally have on it an employee of the goods owner to see to loading or unloading or delivering the goods or carrying for them in transit. For these purposes such a man may be carried as a passenger."

The decision in this case settled that the expression 'contract of employment' in clause (ii) of the proviso to sub-section (1) of section 95 of Act 4 of 1939 refers not only to a contract of employment with the insured but also to a contract of employment of a person who is on the insured vehicle for sufficient or business reasons, and has taken a contract of employment in pursuance of which he is on the vehicle as the adequate criterion of such reasons. He need

not, therefore, be under a contract of employment with the insured so long as he was on the insured vehicle by reason of or in pursuance of his contract of employment, in other words, when because of his contract of employment he was on the vehicle. In *Parkash Vati* v. *The Delhi Dayal Bagh Dairy Ltd.* (2), the supplier of milk himself was on the insured vehicle, and a Division Bench, consisting of Falshaw, J. (as he then was), and myself, held that the supplier of the milk could not be in the employment of himself and was, therefore, not covered by clause (ii) of the proviso to sub-section (1) of section 95 of Act 4 of 1939. Exactly similar was the view which prevailed with the Madhya Pradesh High Court in a case reported at page 65 of the same volume. *South India Insurance Co., Ltd., Indore* v. *Heerabai.* Support for this view is also available from *K. N. Patel* v. *K. L. Kasar* (3). Reliance is, therefore, placed on these decisions on the side of the appellant in support of its claim that the three deceased persons were not passengers on the truck in question 'by reason of or in pursuance of a contract of employment', because they were not employed by anybody to go on the truck, but were on it as owners of the goods carried in it. Apparently the terms of clause (ii) of the proviso to sub-section (1) of section 95 of Act 4 of 1939 do not cover the case of such passengers because on a public carrier they could not be as passengers and they were on it as owners of the goods carried in it. So they were apparently not on it 'by reason of or in pursuance of a contract of employment' for they had no contract of employment with anybody to be on the truck, and they could not possibly have a contract of employment with themselves. The cases cited support this view. There is an indirect support for this approach from the decision in *Izzard's* case as well.

There are two arguments urged on the side of the respondents (a) that in view of sub-section (6) of section 96, the insurer cannot, after the judgment and order of the Tribunal, avoid its liability to the persons entitled to the benefit of such judgment and order, otherwise than in the manner provided by sub-section (2) of section 96 of Act 4 of 1939, and as the insurer does not seek to avoid its liability under sub-section (2) of section 96, its appeals must fail, and (b) that in clause (ii) of the proviso to sub-section (1) of section 95 of the Act, in the present case, there was 'a contract of employment' either (i) of the truck or the motor vehicle as a public carrier, or

---

(2) 1967 Accidents Claims Journal 82.

(3) 1966 Accidents Claims Journal 284.

(ii) of Benarsi Das as a carrier, in the capacity of an owner of the public carrier, and the hirers were thus on the truck 'by reason of or in pursuance of a contract of employment' in that manner, thus coming squarely within the meaning and scope of clause (ii) of the proviso to sub-section (1) of section 95, and, in any case, hirers of the truck were permitted by rule 4.60(1) of the Punjab Motor Vehicles Rules, 1940, to be on that truck.

It is clear from the very terms of sub-section (1) of section 96 that the liability of the insurer to pay to the person entitled to the benefit of any decree of the Tribunal is in regard to 'judgment in respect of such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95; which clause is subject to the two provisos (i) and (ii) in sub-section (1) of that section. Apparently, if the liability is not covered by clause (b) of sub-section (1) of section 95, the question of any payment by the insurer pursuant to any judgment by the Tribunal does not arise. Sub-section (2) of section 96 refers to a sum payable by an insurer under sub-section (1) of that section, and sub-section (6) of that section debars any other defence than those mentioned in sub-section (2), But this only happens when the Judgment is in respect of liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95. Where no liability is required to be covered by that provision, it is obviously open to the insurer to prove that in a particular case the liability is not required to be covered by that provision, and, when the insurer shows that, it has no liability to pay to the person who is entitled to the benefit of the decree and Judgment of the Tribunal, in such a case the question of the other defences under sub-section (2) of section 96 never arises. On the side of the respondents reliance in this respect has been placed on *Van-guard Fire and General Insurance Company Limited* v. *Sarla Devi* (4), and *British India General Insurance Company Limited* v. *Captain Itbar Singh* (5), for the proposition that to an insurer no other defence is open except defences under sub-section (2) of section 96, but in those cases the liability was such as was required to be covered by a policy under clause (b) of sub-section (1) of section 95, and the policy in fact did so. The consideration that is urged on the side of the insurer in these appeals, therefore, did not and could not possibly

---

(4) A.I.R. 1959 Punj. 297.
(5) A.I.R. 1959 S.C. 1331.

arise in those two cases. Here the insurer's contention is that in so far as the three deceased persons as hirers-cum-owners of the goods are concerned, they did not come under clause (ii) of the proviso to section 95(1)(b). So the policy was not one that was required to cover liability under clause (b) of sub-section (1) of section 95. It is open to the insurer to prove that. This is not barred by any provision of section 96 and in fact, as stated, section 96 proceeds on the basis that such a policy under section 95(1)(b) is required. The first argument on the side of the respondents, therefore, cannot prevail.

The words in clause (ii) of the proviso to clause (b) of sub-section (1) of section 95 'are carried for hire or reward' or 'are carried by reason of or in pursuance of a contact of employment' go with the word 'passengers' and not with the word 'vehicle'. If those words were to be read with the word 'vehicle', the reading of this clause of the proviso does not make correct grammatical sense or any other sense. This is one consideration which negatives completely the second argument that in this case there was 'a contract of employment' of the truck or the motor vehicle of Benarsi Das or that there was 'a contract of employment' of Benarsi Das as a carrier. Then it has not been shown by reference to any Judicial opinion that the expression 'a contract of employment' can have reference to a contract of carriage of goods whether in relation to the carriage itself or the owner of such carriage. The normal and the ordinary meaning and scope of the expression 'a contract of employment' points to a person being employed to do something or to carry out something for another person. It has the element of rendition of some service in one shape or another for the employer. So it cannot refer to the hiring of a goods-carrier as a contract of employment or to the owner of such a carrier as the peson with whom a contract of employment has been made. On this consideration also the second argument cannot be accepted. So this argument too fails.

No doubt this is a hard case, but it is a case of a statutory omission, for in this part of the country small businessmen in protection of their goods and to do their business personally very often themselves travel on a goods carrier and that is probably the reason why rule 4.60(1) says that 'no person shall be carried in a goods carrier other than a *bona fide* employee of the owner or the hirer of the vehicle, and except in accordance with this rule'. This sub-rule recognises that the hirer of the vehicle may travel as a passenger on a goods carrier, but proviso to sub-rule (2) of this rule limits the number of such persons to a maximum of six. The learned counsel

for the respondents has pointed out that in this case the number of persons travelling on the goods carrier in question was more than that number, but that does not bring in the liability of the insurer, and it may be a factor which may operate against the owner or the driver of the vehicle for disobedience of this sub-rule. This omission in the statute, however, cannot be supplied by a strained or incorrect interpretation of the statutory provision by a Court. It can only be supplied by a legislative amendment.

In consequence, the three appeals by the insurer are accepted that the insurer has no liability in this case arising out of the judgment and decree of the Tribunal against the owner and driver of the goods carrier. There is no order, in the circumstances of these appeals, in regard to costs.

HARBANS SINGH, J.—I agree.

D. K. MAHAJAN, J.—I also agree.

B.R.T.

3238 ILR—1,000—10 7-67—Govt. Press, Chd.