REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3047 OF 2017
(ARISING OUT OF SLP (C) No.5805/2013)

Manuara Khatun & Ors. ...Appellant(s)

VERSUS

Rajesh Kr. Singh & Ors. ...Respondent(s)

WITH

CIVIL APPEAL No. 3065 OF 2017
(ARISING OUT OF SLP (C) No.791/2013)

Mamoni Saikia Mohanty & Ors. ...Appellant(s)

VERSUS

Rajesh Kr. Singh & Ors. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) Leave granted.

2) These appeals are filed against the common final judgment and order dated 22.06.2012 passed

by the High Court of Gauhati at Guwahati in MACA Nos. 7 and 8 of 2009 whereby the High Court dismissed the appeals filed by the appellants herein for enhancement of the compensation amount awarded by the Motor Accident Claims Tribunal, Nagaon by order dated 05.09.2008 in MAC Case Nos. 653 and 652 of 2001.

3) We herein set out the facts, in brief, to appreciate the issue involved in these appeals.

4) On 03.07.2001, Ismail Hussain, husband of Manuara Khatun and Nirod Prasad Mohanty, husband of Mamoni Saikia Mohanty along with some other passengers were proceeding towards Guwahati from Nagoan in Tata Sumo bearing Registration No. AR-09-3997, when they arrived near Jorabat, there was a head-on-collusion between the Tata Sumo and a Truck bearing Registration No. AS-01-H-2598 coming from the opposite direction as a result of which Ismail

Hussain and Nirod Prasad Mohanty died on the spot and some other passengers sustained injuries.

5) Manuara Khatun, wife of the Ismail Hussain and her 5 minor children filed Claim petition bearing MAC Case No. 653 of 2001 claiming total compensation of Rs.55,20,400/- and Mamoni Saikia Mohanty, wife of Nirod Prasad Mohanty and her 3 minor children preferred claim petition bearing MAC No. 652 of 2001 claiming total compensation of Rs.54,62,500/- before the Motor Accident Claims Tribunal, Nagaon against Rajesh Kumar Singh, owner of the Tata Sumo(respondent No.1), Bhadra Kt. Das, owner of the Truck(respondent No.2), the insurer of the Tata Sumo-United India Insurance Co. Ltd.(respondent No.3) and New India Assurance Company Ltd., Insurer of the Truck(respondent No.4). The claim petitions were contested only by the Insurance Companies. So far as the owners of the vehicles were concerned, they remained *ex parte*.

6) The Tribunal, vide award dated 05.08.2008, partly allowed both the claim petitions and awarded a sum of Rs.24,89,500/- to Manuara Khatun, wife of Ismail Khatun and Rs.24,09,500/- to Mamoni Saikia Mohanty, wife of Nirod Prasad Mohanty with interest @ 7.5% p.a. from the date of filing of case till payment. The Tribunal held that Tata Sumo was a private car driven by the driver in a rash and negligent manner and at a high speed, which resulted in the accident. It was also held that the driver of the Truck was not negligent in driving the Truck. The Tribunal further held that all the passengers including the two deceased were traveling in Tata Sumo for hire and hence they were held to be "gratuitous passengers". It was held that due to this reason, United India Insurance Company Ltd., the insurer of Tata Sumo(offending vehicle) was not liable. Accordingly, the Insurance Company was exonerated from the liability and the award was passed only against the owner of Tata

Sumo (respondent No.1) in both the claim cases. So far as the owner of the Truck(respondent No.2) and the New India Assurance Co. Ltd.-Insurer of the Truck(respondent No.4) were concerned, both were held not liable in any manner because, as mentioned above, the driver of the Truck was not found negligent in driving the Truck.

7) Dissatisfied with the award, appeals bearing MAC Appeal No.7 of 2009 and MAC Appeal No. 8 of 2009 under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as "the Act") were filed before the High Court by the claimants for enhancement of the compensation amounts awarded by the Tribunal. The other ground raised before the High Court was that it was the liability of the Insurance Company of the offending vehicle to compensate the claimants jointly and severally with the owner of the Tata Sumo and in any event, the direction to pay the compensation by the insurer of offending vehicle and then to recover from its

insured should have been passed against the Insurer(respondent No.3).

8) By impugned judgment, the High Court dismissed the appeals filed by the claimants and held that the insurer was not liable because the passengers or occupants were being carried in a private vehicle as “gratuitous passengers”.

9) Aggrieved by the said judgment, the claimants have filed these appeals by way of special leave petitions before this Court.

10) Heard Mr. M.L. Lahoty, learned counsel for the appellants, Mr. Ravi Bakshi, learned counsel for respondent No.3 and Mr. S.L. Gupta, learned counsel for respondent No.4.

11) Learned counsel for the appellants while assailing the impugned order argued only one point. According to him, both the Courts below erred in not applying the principle of "*pay and recover*" against the United India Insurance Company Ltd. (insurer of the offending vehicle-Tata

Sumo)-Respondent No. 3 herein. It was his submission that when admittedly the driver of the Tata Sumo was held negligent in his driving, which caused the accident, the insurer of the offending vehicle-respondent No. 3 should have been made liable to pay the awarded sum or in any event, according to learned counsel, a direction to pay and recover the awarded sum ought to have been issued against the Insurer of the offending vehicle. Learned counsel placed reliance on the judgments of this Court in **Oriental Insurance Co. Ltd. vs. Nanjappan & Ors.**, (2004) 13 SCC 224, **Bhagyalakshmi & Ors. vs. United Insurance Company Ltd. & Anr.**, (2009) 7 SCC 148 and **Manager, National Insurance Company Limited vs. Saju P. Paul & Anr.**, (2013) 2 SCC 41 in support of this submission.

12) In reply, learned counsel for the respondents (Insurance Companies) supported the impugned order and contended that no case is made out to

interfere in the impugned judgment. It was his submission that once it is held and rightly that the Insurance Company is not liable because the victims were travelling in the offending vehicle as "gratuitous passengers", there did not arise any occasion to pay the awarded sum to the claimants by the Insurance Company and nor the principle *"pay and recover"* could be applied against the Insurance Company in such circumstances thereby making them liable to pay the awarded sum to the claimants.

13) Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submission of the learned counsel for the appellants (claimants).

14) The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No. 3) to pay the awarded sum to the appellants and

then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.

15) The aforesaid question, in our opinion, remains no more *res integra.* As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., **National Insurance Co. Ltd. vs. Baljit Kaur & Ors.**, (2004) 2 SCC 1, **National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors.,** (2004) 8 SCC 517, **National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors.**, (2008) 8 SCC 246, **National Insurance Co. Ltd. vs. Roshan Lal,** [Order dated 19.1.2007 in SLP© No. 5699 of 2006], and **National Insurance Co. Ltd. vs. Parvathneni & Anr.**, (2009) 8 SCC 785.

16) This question also fell for consideration recently in **Manager, National Insurance Company Limited vs. Saju P. Paul & Anr.**, (supra) wherein this Court took note of entire previous case law on

the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "*pay and recover*".

17) Justice R.M. Lodha (as His Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under:

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur, (2004) 2 SCC 1* and *Challa Upendra Rao, (2004) 8 SCC 517* should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. vs. Saju P. Paul, SLP© No. 20127 of 2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in *Challa Upendra Rao(supra).*"

18) The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found travelling as "gratuitous passengers" in the offending vehicle and it was for this reason, the insurance companies were exonerated. In **Saju P. Paul's case** (supra) also having held that the victim was "gratuitous passenger", this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings.

19) Learned counsel for respondent No. 3 (United India Insurance Company Ltd.), however, contended that the facts of the case at hand are not identical to the one involved in the case of **Saju P. Paul** (supra) and hence the law laid down therein cannot be applied to the facts of the case at hand. Learned counsel pointed out that firstly, the awarded compensation in this case is quite substantial and

secondly, it is not yet paid to the claimants. Learned counsel also submitted that since the question involved herein is referred to a larger Bench and hence this Court should not give such directions, as prayed by the appellants, against the Insurance Company.

20) We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in **Saju P. Paul's Case** (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in **Saju P. Paul's Case** (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in **Saju P. Paul's case**

(supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

21) It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

22) In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata

Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of **Saju P. Paul's case** quoted supra.

23) Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured.

.....J.
[J. CHELAMESWAR]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
February 21, 2017