Before V.K. Bali, J.

PARTAP SINGH,—*Appellant*

versus

NATIONAL INSURANCE COMPANY LTD. & OTHERS,—*Respondents*

F.A.O. NO. 1542 of 94

1st May, 1997

Motor Vehicles Act, 1988—*S.* 147—*Compensation—Deceased & injured claimants boarded truck simply for loading and unloading goods on particular day—No contract of employment in writing—Met with accident—Tribunal held owner of truck liable to pay compensation and not Insurance Company—Award challenged—Whether Insurance Company is liable to pay compensation when there is no contract of employment in writing between claimants and owner of truck—Held, they were daily wage employees-short durated contract is normally not in writing—Liability is of Insurance Company not of owner of Truck.*

Held, that in a case of this kind there could not be any writing evidencing contract of employment between the appellant and the claimants. It has been consistant case of the claimants that the deceased and the injured had boarded the truck simply for loading and unloading on a particular day. In a way, therefore, they were daily wage employees only for one day. There were only to go to the distance the goods were to reach and load and unload the same. Such a short durated contract is normally not reduced into writing and is oral. Such contracts, which are normally oral, cannot be rejected on the ground that there should have been writing of the same. The findings of the learned Tribunal that the words 'contract of employment' signify the employment of permanent or temporary post and not on *ad hoc* basis, deserves to be simply rejected.

(Para 5)

R.A. Sheoran, Advocate, *for the Appellant.*

L.M. Suri, Sr. Advocate with Deepak Suri, Advocate, *for the Respondents.*

JUDGMENT

V.K. Bali, J. (Oral)

(1) I propose to decide four connected appeals i.e. FAO Nos. 1542 to 1545 of 1994 as, but for in appeal bearing No. 1542, questions of law and fact involved are the same. Learned counsel for the parties also suggest this course thought over by the Court. It may be mentioned that the Motor Accident Claims Tribunal also decided all these claims by a common judgment. Brief facts for determining the controversy, which is in a very narrow compass, need immediate notice.

(2) On June 11, 1991 one Piare Lal boarded truck No. HR16/1927 at the behest of Partap Singh appellant, who was arrayed in the claim petition as respondent No. 1, for doing casual labour at Bhiwani. The said truck was being driven by Partap Singh and when it reached near the Giri Gas Agency Godown, near Bhiwani City at about 1.30 P.M., Partap Singh could not control it and rammed into another truck parked on the left side of the road bearing No. RNG-3053. The case of the claimants was that appellant was driving the truck No. HR16/1927 rashly and negligently and it is as a result of his carelessness that the accident occurred. Piare Lal sustained injuries along with other occupants of the truck. All the injured were taken to the hospital but one Amar Singh succumbed to his injuries. In all the claim applications, i.e. one on behalf of the dependents of Amar Singh and others by two injured, namely, Ram Kumar and Piare Lal, it was consistently stated that they had boarded the truck at the behest of the appellant to do casual labour work of loading and unloading and they were employed, even though temporarily, under an oral contract. They were to load and unload on payment of their daily wages. This accident gave rise to four petitions, one filed by dependents of Amar Singh and the two by injured, Ram Kumar and Piare Lal. Fourth petition was filed by the appellant herein as his vehicle had been extensively damaged in the accident. The claimants in all the petitions filed by them before the Tribunal asked for various amounts of compensation. The National Insurance Company, which was arrayed as party-respondent, in all the claim petitions, the truck driven by the appellant having been insured by it, contested the claim on various grounds inclusive of that the deceased and the injured were gratituious passengers and, therefore, Insurance Company was not liable to pay any compensation either because of

death of Amar Singh or on account of the injuries sustained by Ram Kumar and Piare Lal. Besides others, the Tribunal recorded following issue No. 2

> "To what amount of compensation are the petitioners entitled to and against whom?"

Under this issue, whereas it was held that the dependents of Amar Singh were entitled to an amount of Rs. 50,000 injured Ram Kumar and Piare Lal were held entitled to an amount of Rs. 20,000 each. Insofar as fourth petition filed by the appellant to recover compensation on account of damage of his vehicle is concerned, the same was dismissed as not maintainable. All these appeals have been filed by the owner of the truck, namely, Partap Singh. In the very nature of things, the limited challenge to the award of the Tribunal is with regard to the findings recorded by it on issue No. 2 as the Tribunal made the appellant liable to pay the compensation and not the Insurance Company. In the present appeals, therefore, there is no contest between the appellant and the claimants and in fact the contest is between the appellant i.e. owner of the truck and Insurer i.e. the National Insurance Company.

(3) The Tribunal, while holding that it is the appellant, who is liable to pay the entire compensation, observed that "in the instant case, there is a truck which is used for carrying goods and not passengers and, therefore, both these authorities (supra) cannot be invoked. The Insurance Company is not liable to satisfy the award as it is liable to satisfy only such award which were in respect of a liability covered by a policy. If a person sustains injuries while travelling in a truck, he was not covered nor he was required to be covered because he was not travelling in the goods vehicle by the reason or in pursuance of any contract of employment. The labourers cannot be said to be travelling in a goods vehicle in pursuance of any contract of employment. On the contention of learned counsel for the claimants that it was a case where the deceased and injured had boarded the truck in pursuance of a contract with the appellant, the tribunal came to the conclusion that only oral evidence was adduced which did not inspire confidence and inasmuch as there was no written contract *qua* the labourers who were under the employment of Partap Singh. They were hired by chance. The Tribunal further held that the words 'contract of employment' signify the employment of permanent or temporary post and not on *ad hoc* basis. For this finding, the Tribunal relied upon two judgments of this Court in

New India Insurance Company v. *Shanti Devi & Ors.*(1) and *Oriental Fire and General Insurance Co.* v. *Guru Dev Kaur* (2).

(4) Mr. Sheoran, learned counsel for the appellant vehemently contends that the findings of the Tribunal while holding the appellant liable to pay the compensation to the claimants and which findings have been reproduced above, cannot possibly sustain. Before, however, he could take the Court through the evidence led in the matter so as to show that the claimants, as a matter of fact, had boarded the truck driven by the appellant, having been engaged as labourers for loading and unloading, even though, insofar as he is concerned, the appeallant he has stated that Amar Singh was a cleaner of the truck, he has referred to the latest case law on the point with reference to Section 147 of the Motor Vehicles Act, 1988. With the help of Section 147 of the 1988 Act, the counsel has endeavoured, and in my view successfully, to project that the law that earlier held the field, in pursuance of the then provisions dealing with the situation i.e. Section 95 of the Motor Vehicles Act, 1939 no more holds the field and there being vital change in the provisions of Section 95 of the 1939 Act and Section 147 of the 1988 Act, it is now settled that Insurance Company cannot disclaim its liability in respect of particular class of persons or particular kind of vehicles and when a victim is labourer travelling in a Truck, he is covered under Section 147 and Insurance Company is liable to pay compensation. This Court does not wish to go into the details of contention raised by learned counsel as the matter is by now well settled and is no more resintegra. In a recent decision rendered by a Division Bench of Jammu & Kashmir High Court, with which this Court is in respectful agreement, in *New India Assurance Company* v. *Smt. Shakuntla Devi & Ors.*(3), it was held that "Section 147 is quite comprehensive in scope and meaning. It has to be given wider, effective and practical meaning so that the object of the legislature which was faced with divergent views of various Courts of the country giving different interpretation to the provisions of S. 95 (old) causing immense harm to many categories of persons by disentitling them from claiming compensation either from the insurer or the insured or both, in the facts and circumstances of the case. New provision, therefore, covers such kind of cases as well. 'The facts of the aforesaid case would show that on March 2, 1993

1. (1986-2) 90 PLR 106
2. 1987 ACJ 158
3. AIR 1997 J&K 40

a truck bearing registration No. JK02B-7093 turned turtle, with the result that labourer Raj Pal, travelling in the truck, died on the spot leaving behind his widow and three minor children. Claim petition filed before the Motor Accident Claims Tribunal met with success. Aggrieved, New India Insurance Company filed an appeal which was dismissed by the learned Single Judge. Still aggrieved, the Insurance Company filed a Letters Patent Appeal. The learned Judges, while deciding the matter, compared the provisions contained in Sections 147 (of the 1988 Act) and 95 (of the 1939 Act). Before that, the Division Bench, on the basis of evidence and material available on records, came to the conclusion that the deceased was accompanying the goods for their safe custody on behalf of the owner, who had hired the vehicle. The Insurance Company had not been able to prove satisfactorily that the deceased was labourer of the insured, by production of record pointing out his employment and payments to the deceased from time to time. The insured had not stated anywhere that deceased Raj Pal was his employee. It was concluded that the deceased used to be engaged by the hirers of the truck for safe consignment of their goods. The Court examined the question in two facets, namely, the liability of the appellant in the case the deceased happened to be labourer of the insured or labourer of the hirer of the vehicle, and after discussing divergent views of various High Courts on the issue, came to the conclusion that "the contention of the appellant that the policy of insurance in respect of the vehicle in question did not cover the liability of the labourer for want of payment of additional premium within the meaning of Section 147 of the Motor Vehicles Act, 1988, has hardly any substance in view of the object and intendment of amended Section 147 of the Motor Vehicles Act, 1988 statutorily covering all kinds of persons travelling by the vehicle without payment of additional premium. A bare reading of Section 147 demonstrates plainly that it is quite comprehensive in scope and meaning. It has to be given wider, effective and practical meaning so that the object of the legislature which was faced with divergent views of various Courts of the country giving different interpretation to the provisions of Section 95 (old) causing immense harm to many categories of persons by disentitling them from claiming compensation either from the insurer or the insured or both, in the facts and circumstances of the case. New provisions, therefore, covers such kinds of cases as well. The decisions referred to by the learned counsel for the appellant, turn on their own facts

and have hardly any application under the amended Section 147 of the Motor Vehicles Act, 1988 which applies to the present case since the accident took place after this Act had come into force." It was further held that "the learned Single Judge has rightly said that the legislature clearly intended that every policy of insurance statutorily required to cover the risk of liability in respect of classes of persons relating to all types of vehicles without exception and with no defence to the insurance company disclaiming the liability with respect to particular class or persons or particular kind of vehicles. Therefore, the deceased Raj Pal, being a labourer travelling in the truck, engaged by either of the parties, is covered under Section 147 of the Motor Vehicles Act, 1988 and the liability to pay the compensation has to fall on the appellant."

(5) Mr. Suri, learned counsel for the Insurance Company, with his usual ability and frankness, has not contested this issue. The only surviving question therefore is as to whether simply because there was no contract of employment in writing, the plea of claimants that they were hired by the appellant could be ignored? The Court is of the considered view that in a case of this kind there could not be any writing evidencing contract of employment between the appellant and the claimants. As mentioned above, it has been consistant case of the claimants that the deceased and the injured had boarded the truck simply for loading and unloading on a particular day. In a way, therefore, they were daily wage employees only for one day. They were only to go to the distance the goods were to reach and load and unload the same. Such a short durated contract is normally not reduced into writing and is oral. Such contracts, which are normally oral, can not be rejected on the ground that there should have been writing of the same. The findings of the learned Tribunal that the words 'contract of employment' signify the employment of permanent or temporary post and not on *ad hoc* basis, deserves to be simply rejected. It may, however, be stated that for coming to the conclusion as aforesaid, learned Tribunal relied upon two judgments of this Court in *New India Insurance Company* v. *Shanti Devi* and *Oriental Fire and General Insurance Co.* v. *Guru Dev Kaur's* cases (supra). The facts in *New India Assurance Co.* v. *Shanti Devi's* case reveal that the highers of the truck were travelling with a view to guard their goods. It was not at all a case of casual labour boarding the truck for a short duration of day or so. The facts of the case in *Oriental Fire and General*

Insurance Co. v. *Gurdev Kaur & Ors.* 1967 ACJ, 158 (not 1987 ACJ, as mentioned by the Tribunal), reveal that the deceased was travelling in a truck. He was accompanying his goods carried in the truck. On his death on account of the accident, his dependents filed an application under Section 110-A of the Motor Vehicles Act, 1939. The facts of the cases aforesaid have, thus, no parity with the facts of the case in hand and the Tribunal was not justified in placing reliance upon these two judgments to come to the conclusion as aforesaid.

(6) Insofar as appeal Nos. 1543, 1544 and 1545 are concerned, the findings of the learned Tribunal on issue No. 2 with regard to liability of the Insurance Company are reversed. It is on the other hand found and so held that even though the appellant is held liable to pay compensation but it is the Insurance Company which has to indemnify him. The three appeals, as mentioned above, are, thus, accordingly allowed.

(7) Insofar as Appeal No. 1542 of 1994 is concerned, learned counsel for the appellant states that he is unable to challenge the findings of the Tribunal that the claim petition was not competent. He, however, claims that the appellant is entitled to claim damages from the Consumer Court. He prays that he may be permitted to now file a petition with a prayer to condone the delay as the appellant had been *bona fide* contesting the matter before the Motor Accident Claims Tribunal and then this Court. There is no need at all to comment on the request of the learned counsel and suffice it to say that the appellant may move an application wherever it is competent and if he files an application either under section 5 or 19 of the Limitation Act, the same be considered sympathetically.

(8) Parties in all the appeals are left to bear their own costs.

(9) At this stage, Mr. Sheoran informs the Court that in pursuance of the award rendered by the Tribunal, appellant has already deposited an amount of Rs. 45,000. The claimants have withdrawn the said amount. Mr. Suri states that the Company shall make payment to the appellant before the Tribunal in case the amount has already been paid to the claimants.

J.S.T.