



2024 INSC 1056

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 15022-15120 OF 2024

[@ SPECIAL LEAVE PETITIONS (CIVIL) NO.24338-24436 OF 2018]

M/S SRI JAYARAM ROADWAYS

...APPELLANT

VERSUS

M/S NATIONAL INSURANCE CO. LTD.

...RESPONDENT

O R D E R

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. The appellant herein has moved this Court against the common Final Judgment and Order passed by the Madurai Bench of the High Court of Madras (hereinafter referred to as the 'High Court') on 18.11.2016 (hereinafter referred to as the 'Impugned Judgment') in C.M.A. (MD) Nos.632 to 669 of 2005 and C.M.P. (MD) Nos.4264, 4266, 4268, 4274, 4276, 4278, 4282, 4288, 4290, 4296, 4300, 4302, 4304, 4306, 4308 & 2553, 4314, 4316, 4324, 4326, and 4330 of 2005 in C.M.A. (MD) Nos.634 to 635, 639 to 641, 643, 646, 647, 650, 652, 653 to 656,

659, 660, 664, 665, 666 and 667 of 2005, whereby the High Court allowed the appeal filed by the respondent no.1 under Section 173¹ of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') as also order dated 02.11.2017 (hereinafter referred to as the 'Impugned Review Judgment'), by which the review petitions viz., Rev. Appln. (MD) Nos.124 to 153 & 210 to 217 & 224 of 2017, filed by the appellant were dismissed.

BRIEF FACTS:

3. The relevant facts of the case(s) are that an accident took place at around 11:30 a.m. on 25.05.1992 in Aruppukottai – Virudhunagar Main Road, near Palanatham involving a bus which caught fire enroute. The dispute arose with regard to whether the liability to pay for the claims by the passengers, either killed or injured, would be on the insurance company or on the owner/driver and conductor due to their negligence and failure in preventing the loading of explosive materials on the bus.

4. The appellant is the owner of the bus and was providing stage carriage services to the general public.

¹ **'173. Appeals.**—(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than one lakh rupees.'

5. 39 claimants preferred petitions before the the Motor Accident Claims Tribunal (Sub-court), Virudhunagar (hereinafter referred to as the 'Tribunal') which were decided on 30.10.2002 and the driver of the bus was held to be driving in a rash and negligent manner, as even after smoke had emerged from the engine of the bus he did not bring the bus under control. However, the Tribunal further held that the loading of inflammable material by two passengers in the form of inflammable wicks and kerosene tin had resulted in the entire bus being engulfed with fire, for which the driver and the conductor as well as the said two passengers were held responsible, but there was no proof that the appellant-owner of the bus had any knowledge that such explosive material was allowed to be carried in the bus by the driver and the conductor and clearly because policy conditions were violated could not be sufficient for the respondent-insurance company to shirk its responsibility under the insurance policy. Aggrieved with what the Tribunal had held, the insurance company filed appeals before the High Court which were allowed. The High Court held that the respondent-insurance company was not liable and the appellant was directed to pay the entire amount as the driver and conductor of the bus had also perished in the accident. The review petitions against the Impugned

Judgment dated 18.11.2016 filed by the appellant were also dismissed by on 02.11.2017. The Impugned Judgment and the Impugned Review Judgment are assailed by way of the present appeals. Respondents other than the respondent no.1 were deleted on the appellant's request.²

SUBMISSIONS BY THE APPELLANT:

6. Learned counsel for the appellant submitted that the Tribunal had correctly appreciated the evidence and rightly come to the conclusion that one passenger has loaded inflammable wicks whereas the other carried kerosene tin and though, there was spark from the engine of the bus which caught fire due to the kerosene and inflammable wicks resulting in the entire bus being engulfed in flames, the Tribunal had also rightly concluded that the driver and the conductor could not have known about the material being carried by the passengers, much less the owner as he was not present at the spot. It was stated that hence, correctly, the liability to pay was on the insurance company as the vehicle had a valid insurance on the date the accident occurred. It was submitted that the High Court has taken an erroneous view which is hyper-technical that since the bus was not supposed to carry such combustible/inflammable materials, the conductor and driver had to ensure that the same was not

² See Order dated 19.11.2018 passed by the Hon'ble Judge-in-Chambers.

done. The High Court had wrongly, submitted learned counsel, that if the loading/carrying of the inflammable material has resulted in an accident, the liability would cease to be on the insurance company, and the entire onus would shift on the appellant, since driver and conductor also perished in the accident. Learned counsel prayed for our intervention to subserve the cause of justice.

SUBMISSIONS BY THE RESPONDENT:

7. *Per contra*, learned counsel for the respondent argued on the basis of and supported what has been held by the High Court. He submitted that contrary to the evidence, the Tribunal fastened the liability to pay the entire compensation amount erroneously upon the respondent-insurance company by its Award dated 30.10.2012. It was advanced that despite evidence that due to the careless, negligent and rash driving by the driver, the kerosene in the tin spilt inside the bus, leading to the tragedy and the lodging of a First Information Report (hereinafter referred to as the 'FIR') under Section 286³ of the Indian

³ **'286. Negligent conduct with respect to explosive substance.**—Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.'

Penal Code, 1860 and Section 5⁴ read with Section 9-B⁵ of The Explosives Act, 1884 as also Section 3⁶ of The Explosive Substances Act, 1908, the Tribunal had held the respondent liable to pay the compensation.

⁴ **5. Power to make rules as to licensing of the manufacture, possession, use, sale, transport, import and export of explosives.**—(1) The Central Government may for any part of India, make rules consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a licence granted as provided by those rules, the manufacture, possession, use, sale, transport, import and export of explosives or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following among other matters, that is to say—

- (a) the authority by which licences may be granted;
- (b) the fees to be charged for licences; and the other sums (if any) to be paid for expenses by applicants for licences;
- (c) the manner in which applications for licences must be made, and the matters to be specified in such applications;
- (d) the form in which, and the conditions on and subject to which, licences must be granted;
- (e) the period for which licences are to remain in force;
- (ee) the authority to which appeals may be preferred under Section 6-F, the procedure to be followed by such authority and the period within which appeals shall be preferred, the fees to be paid in respect of such appeals and the circumstances under which such fees may be refunded;
- (eea) the total quantity of explosives that a licensee can purchase in a given period of time;
- (eeb) the fees to be charged by the Chief Controller of Explosives or any officer authorised by him in this behalf, for services rendered in connection with the manufacture, transport, import or export of explosives;
- (f) the exemption absolutely or subject to conditions of any explosives or any person or class of persons from the operation of the rules.'

⁵ **9-B. Punishment for certain offences.**—(1) Whoever, in contravention of rules made under Section 5 or of the conditions of a licence granted under the said rules—

- (a) manufactures, imports or exports any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;
- (b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both; and

(c) in any other case, with fine which may extend to one thousand rupees.

(2) Whoever in contravention of a notification issued under Section 6 manufactures, possesses or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both; and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of the aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) Whoever,—

(a) manufactures, sells, transports, imports, exports or possesses any explosive in contravention of the provisions of clause (a) of Section 6-A; or

(b) sells, delivers or despatches any explosive in contravention of the provisions of clause (b) of that section, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; or

8. Learned counsel submitted that rightly the High Court by the Impugned Judgment held that the explosives were carried on the bus in violation of the policy conditions and therefore, it fixed liability upon the appellant-owner of the bus for the loss suffered by the claimants. Though the direction was to recover the compensation from the appellant-owner, the respondent had already deposited the entire compensation amount awarded in the Tribunal. It was submitted that, as such, no error warranting this Court's interference had been committed by the High Court while passing the Impugned Review Judgment on 02.11.2017.

9. On merits, it was submitted that as per the FIR instituted by a passenger travelling on the ill-fated bus, it has emerged that the driver had shouted that some persons had loaded explosive substance(s) in the bus, causing danger to the passengers. It was also alleged in the FIR that the driver of the bus had lost control only after the fire had spread in the bus.

(c) in contravention of the provisions of Section 8 fails to give notice of any accident shall be punishable,—

(i) with fine which may extend to five hundred rupees, or

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or fine or with both.’

⁶ **‘3. Punishment for causing explosion likely to endanger life or property.**—Any person who unlawfully and maliciously causes by—

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.’

10. Learned counsel submitted that the area, where the bus used to run, has a lot of cottage industries manufacturing wicks which were being regularly transported through buses and thus, it cannot be denied that the appellant-owner was unaware of the prevailing ground reality and had consented to such transportation and thus, deliberately violated the terms of the permit and also the insurance policy conditions. It was urged that no fault lay with the High Court in having held the appellant liable to pay the compensation. In this connection, learned counsel relied upon Section 72 of the Act which deals with '*Grant of stage carriage permits*', especially Section 72(2)(xii)⁷ of the Act, which stipulates the conditions subject to which goods may be carried in the stage carriage in addition to or to the exclusion of passengers. Further, it was contended that Rule 79⁸ of The Tamil Nadu Motor Vehicles Rules, 1989 (hereinafter referred

⁷ '**72. Grant of stage carriage permits.**—(1) ...

(2) *The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely—*

...

(xii) *the conditions subject to which goods may be carried in the stage carriage in addition to or to the exclusion of passengers;*

...

⁸ '**79. Conductor's duties towards passengers.**— *The conductor of a stage carriage—*

(i) *shall not allow any person to be carried in any stage carriage in excess of the seating capacity specified in the permit of the vehicle;*

(ii) *shall not, save for good and sufficient reasons, refuse to carry any person tendering the legal fare;*

(iii) *shall, where goods are carried on the vehicle in addition to passengers, take all reasonable precautions to ensure that passengers are not endangered or unduly inconvenienced by the presence of the goods;*

(iv) *shall not, save for good and sufficient reasons require any person who has paid the legal fare to alight from the vehicle before the conclusion of the journey;*

(v) *shall not cause the driver to loiter or unduly delay on any journey;*

(vi) *shall, in the event of a stage carriage being unable to proceed to its destination on account of mechanical break-down or other cause beyond the control of the driver or the conductor, arrange to convey*

to as the 'Rules') imposes a duty on the conductor of a stage carriage in sub-rule (iii) to ensure that the goods carried in the vehicle in addition to passengers are such that the passengers are not endangered or unduly inconvenienced by the presence of the goods.

11. Learned counsel summed up his arguments by submitting that there was wilful breach of terms and conditions of the insurance policy inasmuch as the driver and conductor were entirely liable and responsible for the inflammable goods being on the bus. Accordingly, he contended that the present appeals deserve to be dismissed.

ANALYSIS, REASONING & CONCLUSION:

12. Having considered the matter(s), we find that the impugned judgments need interference. It is not in dispute that the bus was covered under the insurance policy. It is also not in dispute that initially the fire started by way of a spark in the engine and was not caused by the inflammable materials. Moreover, the basic point for consideration would

passengers to their destination, in some other similar vehicle or, in unable so to arrange within a reasonable period after the failure of the vehicle, shall on demand refund to each passenger a proper proportion of the fare relating to the completion of the journey for which the passengers had paid the fare;

(vii) shall not, in the case of a stage carriage cause or allow anything to be placed in the vehicle in such a manner as to obstruct the entry or exit of passengers;

(viii) shall take all reasonable precautions to prevent luggage being miscarried or lost in the way;

(ix) shall not, while on duty, be under the influence of drink or of a drug rendering him incapable of discharging his duties properly;

(x) shall ensure that the time-table, fare-table are clearly and correctly exhibited in the vehicle and that the First Aid Box contains all the articles prescribed; and

(xi) shall, on demand by any passenger who intends to make a complaint against him, give his name, address and the authority which issued him the licence.'

be as to whether the driver and the conductor could be said to have had knowledge of what the passengers boarding are carrying with themselves. At the outset, it is not expected that the driver and conductor would do a fine check of all the belongings with the passengers to see as to what goods/materials etc. have been brought along by the passengers.

13. Thus, the conduct of the bus driver and conductor cannot be said to be lacking *bona fide*, moreso for the fact that nobody would knowingly put their own lives at risk. In the present case, we are painfully cognizant that both the conductor and driver also perished in the tragedy.

14. It was mere chance that two passengers carried material which was inflammable and spark(s) from the engine led to fire, which, in turn, was aggravated by the inflammable material resulting in the accident. Thus, not preventing the inflammable material to be carried on the bus, cannot be said to be wilful or deliberate negligence on the part of the driver and conductor. Such happenstance, in our considered opinion, would not run afoul of the insurance policy so as to enable the insurance company to avoid its liability to pay.

15. At the cost of repetition, it is reiterated that it is practically impossible that such a scrutiny can be made in a bus, to check/examine the passengers' belongings, moreso when the bus in question is a short-distance one, with passengers who hop in and hop out. Unlike a fixed long-distance journey, where tickets are booked in advance and the number of total passengers is known before the journey begins, the bus in question, as pointed out before, was functional on short-haul routes. Also, it cannot be lost sight of that ordinary diligence means how a common person would act by taking care to ensure that the conditions and requirements of safety are fulfilled so as to minimize the risk of any untoward mishap. In the case at hand, the driver and conductor stood equally exposed to risk of accident, and it would be improper for us to assume that knowing that inflammable material was on board, they proceeded with the journey, endangering not just their own lives but that of all passengers on the bus. Life is unpredictable, hence, insurance. Even Rule 79(iii) of the Rules enjoins the conductor to take '*all reasonable precautions to ensure that passengers are not endangered or unduly inconvenienced by the presence of the goods*', and hence, to our mind, it cannot be definitively ascertained that the conductor had not taken reasonable precautions to actively prevent the loading of the flammable goods onto the bus.

16. Thus, on an overall circumspection of the facts and circumstances of the case(s), we find that the Impugned Judgment and the Impugned Review Judgment cannot be sustained. Accordingly, they are set aside; consequently, the appeals are allowed and the order of the Tribunal stands restored. However, it is clarified that this Order shall not impact the criminal proceedings, if any, pending in relation to the accident.

17. No order(s) as to costs. I.A. No.123530/2018, seeking exemption from filing Official Translation(s), is formally closed in view of the appeals itself having been finally decided.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
10th DECEMBER, 2024