2025 INSC 1078

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 5177-81 of 2022

Shyam Lal

...Appellant

Versus

Shriram General Insurance Co. Ltd. and Others.

...Respondents

J U D G M E N T

K. VINOD CHANDRAN, J.

The owner of the utility vehicle involved in an accident, which gave rise to 5 claim petitions, has filed the instant appeal challenging the order of *"pay and recover"* issued by the High Court in the appeal filed by the Insurance Company. The High Court found that the utility vehicle was not entitled to carry passengers by reason of the specific restriction in the policy which is evident from *"Limitation as to Use"*. The contention was that the 4 passengers excluding the driver who were entitled to travel in the utility vehicle, are only

employees who come under the purview of Workmen's Compensation Act, 1923.

2. The learned Counsel for the appellant-owner took us through the Certificate of Registration (Annexure P1), the contract carriage permit (Annexure P2) and the package policy (Annexure P3) which indicated the seating capacity including the driver to be 4+1. It is argued that the limitation as to use insofar as carriage of goods applies only to a goods vehicle and not an utility vehicle which can carry both passengers and goods. There is no ground for ordering *"pay and recovery"* in the facts and circumstances of the case, especially when the Insurance Company had not taken a defence that the vehicle was insured as a goods vehicle. The claimants are the legal representatives of the deceased who were either travelling in the vehicle or standing/walking at the accident site.

3. The learned Counsel for the Insurance Company, however, contended that there could be no plea of goods

being carried in the vehicle because one of the deceased was a student and the others; a catering employee, a painter, an employee in the postal department and an unemployed man. The restriction squarely applies, and the passengers cannot be said to be validly covered under the policy. It is also argued that even if the passengers are said to be owners of goods or his representative, there could not have been more than four passengers in the vehicle, when the claim petitions were numbering five. There was also an allegation of nine deaths having occurred in the accident, which clearly indicates overloading.

4. The appeal was filed only on the ground of the limitation in the policy. The Tribunal found the negligence and rashness in the driving of the utility vehicle and the vehicle is covered by a valid package policy issued by the Insurance Company are established. Having gone through the records, we see that the certificate of registration indicates the class of the

offending vehicle to be an Utility Van which has a seating capacity of 5, including the driver. The permit issued as a contract carriage, also allows 5 passengers to be carried in the vehicle. A 'contract carriage' as defined under Section 2(7) of the Motor Vehicles Act, 1988 means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under an express or implied contract and includes a motor cab notwithstanding that separate fares are charged for its passengers. This is in clear distinction with a 'goods carriage' defined under Section 2(14) of the Act which is a vehicle constructed or adapted or used solely for the carriage of goods.

5. The package policy produced shows the make & model as seen from the Certificate of Registration indicating the vehicle to be manufactured by Mahindra & Mahindra, a Bolero Camper Utility DC, 2WD, BS2. The utility vehicle obviously is for carriage of passengers and goods; the passengers not being necessarily the owners

of the goods as seen from the seating capacity of 4+1 including the driver specified also in the insurance policy. In the above circumstances, it cannot be said that the vehicle was insured as a goods vehicle, which is not specified in the policy and hence 'the limitation as to the use only of carriage of goods' does not apply; the utility vehicle being the vehicle registered with a seating capacity of 5 passengers including the driver, and the permit issued being one of a contract carriage also indicating 5 passengers including the driver to be carried within it.

6. In this context, we have also gone through the evidence of the Branch Manager in charge of the Insurance Company which is produced as Annexure No.P6. In chief examination, it was stated that though the seating capacity is shown as 4+1 including the driver, the premium was taken only for the owner driver and no separate amounts were charged for the passengers; which is contrary to the recitals in the document. In cross

examination, the witness admitted that the insurance of any vehicle is issued after perusing the records of the vehicle like, registration certificate, fitness and permit validity. It was admitted that the insurance policy was issued to the owner, in accordance with the rules and looking at the registration certificate, wherein the category of the vehicle is registered as ''Utility Van''. The witness further admitted that the seating capacity in the policy is also written as 4+1 and that there is no recital in the policy document regarding the premium for passengers having not been charged. It has also been deposed, which is again a clear admission, that the utility van is a vehicle in which half portion is used for carrying of goods and half portion in front is used for carrying passengers. Hence, there can be no restriction insofar as the 'limitation as to use' as found in the policy which applies only to goods vehicles while the present vehicle as per the certificate of registration is a utility vehicle and the permit issued is of a contract carriage. The package

policy was issued by the Insurance Company after looking at the certificate of registration and the permit issued and it has been clearly specified that the vehicle is entitled to carry 4+1 passengers in addition to the goods. The Insurance Company in the above circumstance, cannot wriggle out of its liability to indemnify the owner.

7. The contention regarding 5 persons having filed claim petitions, indicating more than 4 persons having been carried in the vehicle, though is attractive has no significance on the facts as revealed from the order of the Tribunal. The Tribunal, on the basis of the evidence led, clearly found that in addition to the passengers carried in the vehicle, some pedestrians were also dragged down by the vehicle when the accident occurred. The eyewitness, PW2 who saw the accident clearly stated that just prior to the accident, he saw the vehicle coming with 4 passengers in it. There was no challenge to the said evidence in the cross examination by the Insurance

Company. The vehicle having fallen down the gorge, with the passengers as also the pedestrians, one of the claim petitions is of a pedestrian, which is not clearly demarcated for reason of the 5 persons having been extricated at the accident site from and around the vehicle. We find absolutely no reason to sustain the order of the High Court directing pay and recovery. The liability is on the Insurance Company and that has to be satisfied fully by the Insurance Company.

8. Before leaving the matter, we notice that insofar as one of the claim petitions, MACT Case No. 134 of 2014 relatable to the compensation for the death of one Jagdish Prasad Gaur, there was a contention taken in the appeal filed before the High Court by the Insurance Company that no deduction towards 1/3rd of the amount determined as compensation for loss of income, as personal expenses has been made by the Tribunal. We did not have the benefit of going through the order of the Tribunal since the same was not produced before us.

However, in the fitness of things especially since just compensation is to be awarded, we are of the opinion that in computing the income at the time of disbursing the amount, the Tribunal shall ensure that 1/3rd deduction is made from the total loss of income computed before disbursing the amounts directed in MACT Case No. 134 of 2014 relatable to Appeal No. 607 of 2016.

9. The appeals hence stand allowed with the above reservation, setting aside the judgment of the High Court and restoring the order of the Tribunal with the modification to one of the awards as mentioned above.

10. Pending applications, if any, shall stand disposed of.

..... J.
(K. VINOD CHANDRAN)

..... J.
(N. V. ANJARIA)

NEW DELHI;
SEPTEMBER 04, 2025.