
(1999) 08 OHC CK 0028
In the Orissa High Court
Case No : M.A. No. 612 of 1996

Branch Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Jhunu Rani Patra and Another

RESPONDENT

Date of Decision : 05-08-1999

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2000) 2 ACC 274 : (2001) ACJ 1856 : (2000) 89 CLT 363 : (2000) 3 LLJ 1448

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The Insurer has filed this appeal u/s 30 of the Workmen's Compensation Act (in short, the "Act").

2. Claimant-respondent No. 1 is the widow of deceased Surendra Patra. It is alleged that the deceased was engaged for the purpose of driving the bus bearing number O.S.G. 9595 belonging to respondent No. 2. It is further alleged that while the bus was coming from Surat to Berhampur, it met with an accident as a result of which the deceased died. It was stated that the deceased was 32 years old at the time of death and was earning Rs. 2,000/- per month. Compensation accordingly was claimed by the widow.

3. The owner denied about the employment of the deceased under him. It was further stated that since the bus had been insured, the liability, if any, should be borne by the Insurance Company.

4. The Insurance Company in its written statement generally denied the allegations made in the claim application. It called upon the claimant to prove the driving licence of the deceased.

5. The Commissioner for Workmen's Compensation, Ganjam, Berhampur (in short, the "Commissioner") found that the deceased had been engaged as a

driver along with one Purna Chandra Pattnaik (deceased husband of claimant in connected Misc. Appeal No. 613/1996). It was further found that though the bus was being actually driven by aforesaid Purna Chandra Pattnaik, the deceased was also engaged as a driver as the bus was coming in a long route from Surat to Berhampur, Fixing the monthly wages at Rs. 1,000/-, the Commissioner directed for payment of Rs. 78,824/- to the claimant by the Insurance Company. Hence, the present appeal.

6. The Insurance Company has challenged the findings of the Commissioner relating to merits of the case, that is to say, on the question as to whether the deceased a workman and as to whether he died in an accident arising out of and in course of employment and also on the question of quantum. It has been contended that the owner himself had denied about the employment of the deceased and as such, the finding that the deceased was a workman cannot be sustained.

7. The findings of the Commissioner on these aspects are based on discussion of relevant evidence on record. From the evidence on record, it appears that the deceased had to take the place of p. w. 3, who was driver under the owner, as p.w. 3 was ailing. There is no contrary evidence to contradict such evidence of p.w. 3. An appeal u/s 30 of the Act can be filed on the basis of substantial question of law. The finding as to whether the deceased was working under the owner is essentially a finding of fact not available to be challenged u/s 30 of the Act. The finding is based on analysis of relevant materials on record and cannot be characterized as perverse by any stretch of imagination. Thus, the finding that the deceased was a workman is confirmed.

8. There is no dispute that the accident arose out of and in course of employment, as admittedly the bus was coming from Surat to Berhampur in connection with the transport business of the owner. The findings relating to age and salary of the deceased are also essentially findings of fact and are based on discussion of relevant materials on record. Such findings are also liable to be challenged in an appeal u/s 30.

9. The main question raised by the counsel for the Insurance Company relates to an interesting question of law. It is contended that as per the finding, the bus was being driven by deceased Purna Chandra Pattnaik and as such, the husband of the claimant in the present appeal was "not engaged in driving the vehicle". Relying upon an unreported decision of this Court in Divisional Manager, New India Assurance Co. Ltd., Cuttack v. Gyana Singh Babaji and Anr., Misc. Appeal No. 308 of 1992 dated December 22, 1995 it is contended by the counsel for the appellant that the Insurance Company is only required to cover the liability of the driver "engaged in driving the vehicle at the time of accident". As the co-driver was actually driving the vehicle, it is contended that the Insurance Company is not liable to pay the amount and the amount, if any should be paid by the owner. Such a contention gets clear support from the aforesaid decision of this Court.

10. The counsel for claimant-respondent No. 1 contended that the earlier decision of this Court in Misc. Appeal No. 303/1992, having not been reported, cannot be considered to be a binding precedent. For the aforesaid purpose, the learned counsel has relied upon the decision reported in Makbul Ahmed and Ors. v. Rakhaj, Das Hazra, Vol. IV, The Calcutta Weekly Notes, page 732 wherein it was observed as follows:

".....It is true that the view which the learned pleader supports in this case is warranted by the decision in the above cited case of Jagabandhu Chattopadhyaya v. Deenu Pal. But we are unable to agree with the ruling in that case; and that ruling is not reported, we are not bound u/s 3 of Act XVIII of 1875, to follow it and to treat it as an authority binding upon us....."

I am unable to accept such a submission. The precedent value of an earlier decision of a Court does not depend upon the accidental fact as to whether it is reported in some journal or not. Once a decision of the Court, whether reported or unreported, is brought to the notice of a Judge subsequently deciding a similar case, the Court is either bound to follow the decision or if the Judge does not agree with the principle decided, the matter is to be referred to a larger Bench. The Judge subsequently deciding a case cannot ignore an earlier decision on the ground that the earlier decision has not been reported.

11. Learned counsel appearing for claimant-respondent No. 1 submitted that such a question raised for the first time in appeal should not be entertained. At the fag end of the argument in the present case, the counsel for the appellant has filed an application under Order 41, Rule 27, CPC (in short, the "C.P.C.") to admit the policy as an additional evidence in the present case. On a persual of the written statement, it appears that this question had not been specifically raised by the Insurance Company. Even assuming that under the Motor Vehicles Act, the Insurance Company is not required to cover the liability of a second driver going in the vehicle, there is no bar for the Insurance Company to cover such wider liability. Since the Insurance Company had not raised a specific point on this aspect, in normal course, it should not be permitted to raise such a question in an appeal u/s 30 of the Act, as the question raised is a mixed question of fact and law. Even the application filed under Order 41, Rule 27, C.P.C does not explain as to why the document in question could not be produced before the Commissioner. Moreover, the Insurance Company has not produced the entire policy along with all endorsements, but has produced only the first page of the purported policy. Since the question had not been raised before the Commissioner initially and since sufficient ground has not been shown for adducing any additional evidence, I am inclined to reject the petition for additional evidence.

12. Apart from the aforesaid aspect, the liability of the Insurance Company can be founded on their provisions contained in the Motor Vehicles Act. There is no dispute that the deceased was one of the two drivers employed for the purpose of driving the bus from Surat to Berhampur. Even if the deceased was not

actually engaged in the driving of the vehicle at the time of accident, the deceased was travelling in the bus, obviously pursuant to a contract of employment with the owner. Though technically speaking he cannot be characterized as the driver engaged in driving the vehicle at the time of accident", he can be taken to be a passenger of the public service vehicle. As such, the liability in respect of such a passenger can be said to be covered u/s 147(1)(b)(ii) of the Motor Vehicles Act. It is, of course, true that for enforcing such a liability, claim application has to be filed under the provisions of the Motor Vehicles Act. However, in the present case, it is the admitted case of the owner as well as the Insurance Company that the driver of the bus who was driving the vehicle was negligent. The matter is pending since 1991 and since the negligent driving of the driver of the bus is admitted by persons likely to be affected, that is to say, the owner and the Insurance Company, there would be no point in driving the claimant to pursue the remedy under the Motor Vehicles Act.

13. For the aforesaid reasons. I do not find any merit in this appeal which is accordingly dismissed. It appears that the awarded amount has been deposited in this Court and kept in fixed deposit and out of the said amount certain amount has been paid to claimant- respondent No 1. The balance amount along with the entire accrued interest be paid to claimant-respondent No. 1 by account payee cheque/pay order within three weeks. There will be no order as to costs.