

(1987) 11 OHC CK 0015

In the Orissa High Court

Case No : Misc. Appeal No's. 40 and 41 of 1984

Dhaniraj Agarwalla

APPELLANT

Vs

Manorama Bal and Another

RESPONDENT

Date of Decision : 11-11-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : AIR 1988 Ori 254 : (1989) 66 CompCas 303

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : A.K. Bose and G.S. Rath, for the Appellant; J.K. Misra, N.C. Misra and S.S. Basu, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Owner is the appellant in these two appeals u/s 110-D of the Motor Vehicles Act, 1939 (for short "the Act").

2. ORU 1785, a truck, was involved in an accident on 30th Aug., 1979. Sriram Sharma and Sesh Mohan Dash were occupants in the vehicle at the time of accident and sustained fatal injuries on that account. Dependants of deceased Sriram Sharma filed one claim petition and the dependants of deceased Sesh Mohan Dash filed another claim petition. Both the claim petitions were heard together and the tribunal has found that the accident was on account of negligent driving of the vehicle as a result of which both the two deceased persons sustained fatal injuries to succumb at the spot. Just compensation to the dependants of deceased Sesh Mohan Dash was determined at Rs. 60,000/- and the same in respect of dependants of deceased Sriram Sharma was Rs. 35,000/-. In both the cases the insurer was made liable up to the statutory limit.

3. Mr. A. K. Bose, the learned counsel for the appellant, submitted that the award of Rs. 60,000/- to the dependants of deceased Seshmohan Dash by applying the principle of 15 times multiplier of purchaser is unjust since the deceased aged

about 46 years was a Sub-Inspector of Police getting a monthly salary of Rs. 800/- and his dependants are getting family pension under the State Government Rules. Tribunal adopting the method of multiplier of years" purchase has come to the conclusion that the dependants are entitled to a compensation of Rs. 90,000.00. However, on account of benefits available, hereduced it to Rs. 60,000/-which he determined as the just compensation. Application of the method of multiplier is a well accepted principle. If at all the claimants could have made a grievance owner in this case should not be permitted to make a grievance of the same. While , considering the actual loss of dependency, the normal longevity of a person at Seventy years is to be kept in mind. The family pension as per the rules is also reducible. A Sub-Inspector of Police had chance of promotion and there was also chance of escalation of pay and allowances during his service career. His liability would have continued till his death in respect of some of the claimants. In such circumstances, I am not inclined to interfere with the determination of the just compensation.

4. While not challenging the just compensation payable to the dependants of deceased Sriram Sharma, Mr. Bose, the learned counsel for the appellant submitted that the Tribunal should have given specific direction relating to the liability of the insurer. Mr. Bose is justified in that regard. Where two independent set of claimants claim separately and the statute limits the liability of the insurer, clear direction should have been given by the Tribunal.

5. Mr. S. S. Basu, the learned counsel for the insurer submitted that the accident being one, the liability of the insurer is to the extent of Rs. 50,000/- only and not more. Mr. Bose, the learned counsel for the appellant relied upon the decision reported in Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, and submitted that the principle is applicable in the present case also and in case of each death, the insurer is liable to the extent of Rs. 50,000/-.

6. Section95 provides for the requirement of policies of insurance and the limits of the liability of an insurer as provided in Sub-section (2) thereof. Sub-section (2)(a) reads as follows : --

"Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely : --

(a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen"s Compensation Act, 1923 (8 of, 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle."

This clause was interpreted by the Supreme Court. Considering the expression "any one accident" it was observed :

"The expression "any one accident" is susceptible of two equally reasonable meanings or interpretations. If a collision occurs between a car and a truck

resulting in injuries to five persons, it is as much plausible to say that five persons were injured in one accident as it is to say that each of the five persons met with an accident. A bystander looking at the occurrence objectively will be right in saying that the truck and the car met with an accident or that they were concerned in one accident. On the other hand, a person looking at the occurrence subjectively, like the one who is injured in the collision, will say that he met with an accident. And so will each of the five persons who were injured. From their point of view, which is the relevant point of view, "any one accident" means "accident to any one". In matters involving third party risks, it is subjective considerations which must prevail and the occurrence has to be looked at from the point of view of those who are immediately affected by it. If the matter is looked at from an objective point of view, the insurer's liability will be limited to Rs. 20,000/- in respect of injuries caused to all the five persons considered en bloc as a single entity, since they were injured as a result of one single collision. On the other hand, if the matter is looked at subjectively as it ought to be, the insurer's liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each one of the five persons, since each met with an accident, though during the course of the same transaction. A consideration of preponderating importance in a matter of this nature is not whether there was any one transaction which resulted in injuries to many but whether more than one person was injured, giving rise to more than one claim or cause of action, even if the injuries were caused in the course of one single transaction. If more than one person is injured during the course of the same transaction, each one of the persons has met with an accident."

When the difficulty of interpreting the expression, "in all", was brought to the notice of the Court, it was observed :--

".....It is true that u/s 95(2)(a), the liability of the insured and therefore the insurer's indemnity includes the liability of the aforesaid description under the Act of 1923. But that is a matter of apportionment which may require a rateable deduction to be made from the compensation payable to each victim, depending upon the quantum of compensation payable under the Act of 1923 to employees carried in the goods vehicle."

In the aforesaid decision of the Supreme Court, a decision of the Orissa High Court reported in ILR (1975) Cut 1195 (Construction India v. Mahindra Pal Singh Ahluwalia) was Considered and overruled. In the Orissa, decision it was observed : --

"Mr. Basu, the learned counsel for the insurer, at last contended that the order of the Court below directing the owner of the truck and the Insurance Company to jointly and severally pay the total compensation amount to the claimant in each case was illegal, as according to Section 95(2)(a) of the Act, as it stood before its amendment given effect to in March, 1970, the total liability of the insurer for this accident was limited only to Rs. 20,000 and the insurer could not be made jointly or severally liable to pay any amount more than its total liability to the

above extent. There is force and substance in the above contention. The accident took place on the 29th Feb., 1968 and so the liability of the insurer in this accident is only up to the extent of Rs. 20,000/- as provided in Section 95(2)(a) as it stood before its amendment in 1970. As the total compensation to be paid in both the abovementioned two cases exceeds Rs. 20,000/- the insurer has only to pay Rs. 20,000/- in all, and that amount is to be distributed between the two claimants in the approximate proportion of the lump sum amounts now assessed to be paid in the two cases....."

Supreme Court observed : --

".....In the case before the Orissa High Court in *Construction India* 1975 ACJ 177 two children travelling in a school bus belonging to the Orissa Government died in a collision between the bus and a goods vehicle. Section 95(2)(a) was held attracted and since more than one person were injured as a result of a single occurrence, the same question arose as before us. The Orissa High Court held that since the total compensation exceeds rupees twenty thousand, the liability of the insurer was limited to rupees twenty thousand, in all and that the amount payable to the heirs of the deceased children was liable to be apportioned. This decision also cannot be considered as laying down the correct law and there too, as in *Sanjiva Shetty*, no argument was advanced before the High Court on the construction of Clause (e), particularly in reference to the words "any one accident" which occur in Section 95(2)."

7. Mr. Basu, the learned counsel for the insurer submitted that the decision of the Supreme Court was rendered in case of collision of the goods vehicle with a car and inmates of the car suffered injuries. They were third parties. Where there is no collision between two vehicles but the occupants of | the goods vehicle which was the illfated vehicle facing accident sustained injuries, the principle laid down by the Supreme Court would have no application since the occupants are not third parties and with the knowledge of the limited liability of the owner of the goods vehicle, they boarded the vehicle. I am not inclined to accept such a limited construction in the benevolent provision without specific language to that effect Third party has not been defined under the Act. Insurance is a contract between the insurer and the owner of the vehicle. They being the two parties to the contract any other person is a third party. The driver and other persons employed in the vehicle are also third parties. A third party would not be confined to person other than the occupants of the vehicle.

8. In view of the aforesaid discussion insurer is liable to the extent of Rs. 50,000/-subject to rateable distribution in respect of compensation to be awarded under Workmen's Compensation Act, in respect of each person involved in the accident.

9. In conclusion, insurer is liable to pay the compensation of Rs, 35,000/- as per the direction of the Tribunal with interest to the claimants in respect of death of Sriram Sharma and Rs. 50,000/- with interest to the claimants in respect of

death of Sesh Mohan Dash as per direction given in the order of the Tribunal

10. In the result, the appeals are allowed to the extent indicated above. There shall be no order as to costs.