(2004) 11 JH CK 0030

In the Jharkhand High Court

Case No : A.F.O.D. No''s. 399 of 1999 and 292 of 2003

Giriraj Prasad Agrawal APPELLANT

Vs

Parwati Devi and Others and Kali Paharin and Others RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 123

Citation : (2005) 1 BLJR 399 : (2005) 1 JCR 258b

Hon'ble Judges : Vishnudeo Narayan, J;M.Y. Eqbal, J

Bench : Division Bench

Judgement

M.Y. Eqbal, J.—Since in both the appeals filed by the owners of the bus, common question of law and facts are involved, the same are being heard and disposed of by this common judgment.

2. M.A. No. 292 of 2003 is directed against the judgment and award passed by the Claims Tribunal, Dumka in Title (Claims) Suit No. 3 of 1992 whereby a sum of Rs. 50,000/- has been awarded.

3. The facts of this case are that the deceased along with other persons were travelling by bus on 19.2.1992. The deceased was sitting on the roof of the bus. When the bus reached near Jaruadih More, several Mango tree branches were spread towards road and the deceased, who was on the roof of the bus, sustained several grievous head injuries. The deceased was taken to hospital and subsequently he died.

4. M.A. No. 399 of 1999 is directed against the judgment and award passed by the Claims Tribunal, Pakur in Claim Case No. 5 of 1997 whereby a sum of Rs. 58,850/- was awarded to the claimants on account of death of the deceased who was also travelling on the roof of the bus.

5. The appellant who is the owner of the bus contested the case on the ground, Later alia, that the vehicle never met with an accident. In the alternative it was pleaded that bus was insured with United India Insurance Company Limited and

the same was valid on the date of the accident. The compensation amount, if any, is payable by the Insurance Company. Similar defence was taken by the appellant in Title (Claim) Suit No. 5 of 1997.

6. The Insurance Company on the other hand took specific defence that insurer is not liable to pay any amount of compensation since there is breach of specific condition of policy. It is stated that persons travelling on the roof of the bus are not covered under the Insurance Policy and, therefore, entire amount is payable by the owner of the vehicle.

7. The Tribunal, after considering the evidence adduced by the parties, came to the conclusion that the vehicle was validly insured but for carrying only 52 passengers excluding the driver and conductor. The Tribunal further recorded a finding that the driver and the conductor allowed the passengers to travel on the roof of the bus in violation of the terms and conditions of the policy contract. The Tribunal, therefore, held that since there was violation of the policy contract and condition of permit by carrying more than 52 passengers, the Insurance Company has no liability for payment of compensation. The entire liability, therefore, rests with the appellant who is the owner of the vehicle.

8. Mr. S.N. Lal, learned Counsel appearing on behalf of the appellant assailed the impugned finding as being wholly illegal and wholly without jurisdiction. Learned counsel firstly submitted that the respondent-Insurance Company has not proved any established breach of any of the specific conditions of the Insurance Policy on the part of the insured-appellant to invoke exclusion clause of the policy. According to the learned counsel even if there was violation of the conditions of permit or violation of the policy condition, that shall not exonerate the Insurance Company from payment of compensation to the persons who died or sustained injuries while travelling in a motor vehicle. Learned counsel put reliance on the decisions of various High Courts on this point. Reference may be made to the decisions of the Bombay High Court in the case of New India Assurance Co. Ltd. and Another Vs. Kamalabai and Others, in the case of Manjit Kaur and Others Vs. Pepsu Road Trans. Corpn. and Others, and in the case of United India Insurance Company Ltd. v. Doddapapaiah and another 2000 ACC 373.

9. Mr. Alok Lal, learned counsel appearing on behalf of the Insurance Company, on the other hand, drawn our attention to Section 123 of the Motor Vehicle Act, 1988 and submitted that under the Policy the Insurance company is liable only to the passengers sitting inside the bus and no compensation is payable in respect of death or injury to a person travelling on the top of the bus.

10. The only question that falls for consideration is whether the Insurance Company can disown its liability for payment of compensation merely because the deceased was travelling on the roof of the bus.

11. Before deciding the issue I would like to refer some of the decisions of this Court. In the case of Oriental Insurance Company Ltd. v. Jashmani Kongari and Ors. 2001 (1) JLJR 178 a single Judge of this Court (Hon''ble Mr. Justice

Gurusharan Sharma), while deciding the same issue, held that in a case of death or injury to a person travelling on the roof of the Bus the Insurance Company cannot have liability.

12. Considering the same issue a Division Bench of this Court in the case of Bhola Nath Yadav v. Hemwati and Ors. 2002 JLJR 411, decided the same issue otherwise holding that the Insurance Company shall have liability for payment of compensation. Another single Bench of this Court, in the case of Smt. Urmila Devi and Ors. v. Oriental Insurance Company and Anr., (M.A. No. 69/89 and analogous cases) took a different view.

13. In view of the conflicting decisions of this Court and also other High Courts we are of the view that the issue needs full consideration and decision by a larger Bench. We, therefore, refer the matter to a larger Bench for deciding the issue and for setting the correct proposition of law.

Vishnudeo Narayan, J.

14. I agree.