

(1983) 02 AP CK 0001

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 390 of 1980

Lanka Saramma

APPELLANT

Vs

Rajendra Singh and Others

RESPONDENT

Date of Decision : 22-02-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(24), 95, 95(1)

Citation : (1986) 60 CompCas 48

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Judgement

1. This appeal is filed by the claimant in O.P. No. 346 of 1978 on the file of the Motor Accidents Claims Tribunal, Rajahmundry, complaining against an order of compensation passed by it limiting the liability only to respondents 1 and 2, who are the driver and the owner, respectively, of the lorry and holding the third respondent, the Oriental Fire and General Insurance Company Limited, Hyderabad, free from the obligation to meet the claim under the award.

2. One Lanka Viswanatham, aged 18 years, was working as a coolie earning Rs. 10 to Rs. 12 per day. The said Viswanatham met his premature death on December 28, 1976, while working as a cooly on the lorry AAT 2338 owned by the second respondent herein. On December 28, 1976, the said Viswanatham was hired along with other coolies for the purpose of loading and unloading stones from the Hindustan Quarry to the coffer dam on the Godavari at Dowleswaram. While the lorry was proceeding to the coffer dam site, it turned turtle due to rash and negligent driving, killing Viswanatham. Viswanatham's mother had filed the above O.P. No. 346 of 1978 claiming compensation of Rs. 30,000 against the lorry driver as well as the owner and the insurance company. The driver and the owner remained ex parte and did not contest the claim. The third respondent, insurance company, which contested the claim of the mother of the deceased, had raised various pleas opposing the mother's claim. But one plea of the insurance company, which found acceptance with the lower tribunal

and against which this present appeal has been filed, is the plea that the insurance company is not liable on the ground that the accident did not occur in a "public place". The lower court accepting that plea said, "the alleged accident has taken place beyond carriage way at coffer dam, which is the property of the Godavari barrage, a private premises and as per the provisions of the Motor Vehicles Act, 1939, third party insurance cover did not cover such an accident."

3. u/s 95 of the Motor Vehicles Act, taking of a policy of insurance covering third party risk is compulsory. That policy is statutorily required to cover any liability which may be incurred by the insured in respect of the death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in "a public place". This section has been interpreted by the lower tribunal as excluding the liability of the insurance company in this case, on the reasoning that the death was not caused by the use of the vehicle in a "public place".

4. The insurance company contends that the insurance cover required to be taken by section 95(1)(b)(i) of the Motor Vehicles Act cannot be spread to cover the liability arising out of an accident in the course of the use of a motor vehicle in any place other than a public place. Section 95(1)(b)(i) of the Motor Vehicles Act which is to be found in Chapter VIII of that Act reads thus :

"against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."

5. It is clear that section 95 of the Act limits the liability to an accident in the course of the use of the motor vehicle in a public place. What then is meant by the statute when it speaks of a "public place". According to the insurance company, a public place is one to which the public as such have a right of access. The argument of the insurance company is that a private place to which the general public is not admitted as a matter of right cannot be called a public place and there can be no insurance liability fastened on the insurance policy under the Act with respect to an accident that occurred in such a private place.

6. The significance of these submission made by the insurance company cannot be exaggerated. These submissions amount to saying that the third party insurance made compulsory by a parliamentary law should fail to benefit a large class of people, like coolies who most need such protection. It is, therefore, necessary to carefully examine these contentions advanced by the insurance company. The entire submission of the insurance company is based upon the premise that a place to which the public have not right of access cannot be called a public place. In support of this contention, the insurance company places reliance on the definition given to the words "public place" in section 2(24) in Chapter I of the Act. The insurance company argues that those words bear the same meaning in section 95 also. Basing upon that argument, it is argued, that a place which is owned by and belongs to a private party, like a factory premises,

or workspot or a coffer dam and to which there is no right of access to the public as such, cannot be called a public place. The upshot of this argument would be that motor vehicle accidents which take place only in public places, like public highways, alone need statutorily be covered by third party insurance policy and motor vehicle accidents that frequently take place at workspots or factory premises of the employers need not be covered by any third party insurance policy u/s 95 of the Act.

7. It appears to me rather difficult to agree with the contention of the insurance company which is fraught with such serious social consequences to a section of our society who most need the protection of the insurance policy. The definition of "public place" contained in section 2(24) of the Act reads thus :

""public place" means, a road, street, way or other place whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage."

8. In my opinion, that definition does not support the two fundamental assumptions underlying the submissions of the insurance company. The definition does require the public to have right of access. But it does not say that a section of the public like workmen cannot be called "public". Now, the word "public" is capable of referring to the entire public or even a portion or a part of that public. If a portion of the public can rightly be called as "public" as I hold it can be, the workmen will have to be regarded as "public". Then the only question is whether this public have a right of access to the factory premises or a coffer dam privately owned. These workmen constituting the public have, by reason of their employment, been granted by the occupier or the owner of the place such right of access. There is nothing in section 2(24) of the Act requiring that such access to a place cannot be gained by an individual grant or permission of the owner of the place. In other words, access to such a place need not be by general grant or parliamentary law. In *Rex v. Kane* [1965] 1 All ER 705, 709, Barry J. observed :

"At common law, a "public place" is a place to which the public can, and do, have access. I direct you as a matter of law that it matters not whether they come to that place at the invitation of the occupier or whether they come to it merely with his permission or, indeed, the performance of some small formality such as the signing of a visitors" book, is required before they are allowed access."

9. The observations in *Ward v. Marsh* [1958] ALR 724, also emphasised this facet of law by laying down that access to a place may be gained even by a grant made by the occupier of the place. In that case, it was observed :

"It is also immaterial how the right of the public to go to such a place arises. It may for instance arise from an Act of Parliament or a provision of any other competent law making authority. It may arise from dedication to the public by the owner of the land. It may arise from prescription. It may arise from the invitation or licence of the owner. All that is necessary is that at the time in

question members of the public may, because they are members of the public, go to the place if they choose ..."

10. Accordingly, I hold that the second assumption of the argument is also not correct. A private place to which access is gained by the public is also comprehended within the definitional meaning of the words, "public place." The fact that the words "public place" refer even to a place which is not a part of thoroughfare shows that private place also is comprehended by that definition. The words "public place" refer to road, street, way or even any other place which is not a thoroughfare to which public have a right of access. The words "other place which is not a thoroughfare" cannot be interpreted according to ejusdem generis rule, because they are negative in nature. A place over which a vehicle can pass and which is yet not a thoroughfare can only refer to a private place made fit for plying of the motor vehicle. Therefore, it appears to me that the contention of the insurance company that a private place cannot, under any circumstances, be called a public place, within the meaning of section 2(24) of the Act, cannot be accepted. In this case, the place where the accident was found to have taken place was a place belonging to the Public Works Department to which access had been granted to the workmen engaged in the construction of a bridge or a dam. I am therefore of the opinion that the workmen are "public" and the place is a "public place" within the meaning of section 2(24) of the Act. I accordingly hold that the lower tribunal is wrong in holding that such a place cannot be called a public place.

11. There is also another reason why I should reject the argument of the insurance company. A reading of section 95 of the Act would clearly show that it is within the contemplation of the statute that a third party insurance should cover a liability that might arise out of the Workmen's Compensation Act. A judgment of the Orissa High Court reported in *Orissa Co-op. Ins. Ltd. v. S. C. Champaty* [1976] Lab IC 371, clearly held so. Under the Workmen's Compensation Act, a liability might arise even though the accident took place in a so called private place so long that accident took place in the course of employment. This part of section 95 clearly shows that it would not be a correct interpretation of section 95 of the Act to hold third party compulsory insurance need not cover an accident that occurred on a factory premises. This clear implication of an express provision of law cannot be denied by reference to the Explanation appended to section 95 of the Act. The purpose of a legal explanation is not to enact but to explain. It is merely clarificatory of the provision.

12. But it must be admitted that this very argument which is now advanced before me by the insurance company and which was accepted by the lower tribunal found acceptance by a series of judgments of the Madras, Orissa and Gujarat High Courts. In *Rajammal Vs. Associated Transport Company and Another*, , a lorry belonging to one M/s. Associated Transport Company and insured with the Motor Owners' Insurance Company met with an accident killing

the claimant's husband. The widow sued for compensation from the employer, the transport company and the insurance company. The Madras High Court, rejecting the claim for compensation made by the widow, ruled that the place where the lorry met with an accident was not a public place. The place where the accident took place in that case was within the area of Huzur Gardens which was part of a private firm. The Madras judgment, therefore, reasoned that the place of accident cannot be called a public place, because public have no right of access to that private place. The judgment relied upon the language of section 2(24) of the Act. This judgment of the Madras High Court was accepted by the Orissa High Court in *Life Insurance Corporation of India Vs. Karthyani and Others*, . In the Orissa case, the accident occurred inside the premises of Hindustan Steel Limited, Rourkela. When the deceased was going on his bicycle, a jeep belonging to the Hindustan Steel Limited, Rourkela, came from behind, dashed against the deceased and killed him. The claim of the dependents of the deceased for compensation was negatived by a learned single judge of the Orissa High Court on the ground that the place where the accident took place was not a public place. The learned judge reasoned that a factory premises is not a public place, because public as such have no right of access except with permission. In *Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja*, , the Gujarat High Court also took a similar view. In that case, the accident was caused by a goods truck in the compound of the Western India Tiles Company. On the basis of the reasoning that the place of accident was not a public place, the Gujarat High Court denied compensation to the dependents of the (victim of the) motor vehicle accident.

13. For the reasons which I have mentioned above, I am unable to agree with the above judgments of the Madras, Orissa and Gujarat High Courts. In my respectful opinion, these judgments did not take into account the legal possibility that workmen can be part of the public and that right of access to the place of their work can be gained by them not necessarily by dedication or by any parliamentary statute, but also by a private act of grant of an owner or an occupier of the place. In my opinion, the words in the definition of section 2(24) of the Act, "thoroughfare or not" point to this meaning only. These judgments did not also consider the implications arising out of the reference to the Workmen's Compensation Act, made by section 95 of the Motor Vehicle Act. That would clearly indicate that claims for compensation made against the insurance companies by the dependents of the workmen killed or injured within the premises of a factory, cannot be defeated by the insurance companies on the ground that the general public have no right of access to such factory premises.

14. I would require the support of much clearer statutory language to be able to attribute to Parliament an intention not to cover the ordinary workmen with the benefits of a compulsory insurance policy.

15. For the above mentioned reasons, I disagree with respect with the judgments of the Madras, Orissa and Gujarat High Courts referred to above and hold that

the insurance company, in this case, is liable to pay damages to the claimant. I accordingly reverse the judgment of the lower tribunal of this point.

16. The lower tribunal appears to have gone wrong even in the matter of fixing the quantum of compensation. The lower tribunal accepted Rs. 270 per month as the probable earning capacity of the deceased, out of which it estimated that the deceased must have been spending at least half on his mother. Accordingly, it arrived at a figure of only Rs. 1,620 per year. It multiplied it by 10, estimating the mother's longevity to be only 60 years. The lower tribunal accordingly arrived at Rs. 16,200 as proper compensation to be paid. But, it deducted out of the said amount 1/6th for the so called lump sum payment. The lower tribunal has clearly erred in estimating the longevity of the mother at 60 years. Our courts have now estimated the longevity of an over-age person to extend up to 70 to 75 years. (see Smt. Nand Kaur and others Vs. Sukh Raj and others, . In a recent decision, a Division Bench of this court held that deductions from the compensation payable should not be made on the ground of lump sum payment because of the rapidly falling rate of value of the rupee (see United India Fire & Genl. Ins. Company Ltd. v. K. Anuradha [1980] 1 APLJ 34.)

17. Further, under Schedule 4 to the Workmen's Compensation Act, the death of a workmen should be compensated by a fixed sum of Rs. 18,000. In these circumstances, I increase the amount of compensation awarded from Rs. 16,200 to Rs. 18,000 and accordingly allow this appeal with costs. Advocate's fees Rs. 250.