

(2011) 03 OHC CK 0048
In the Orissa High Court
Case No : MACA. No. 772 of 2004

M.K. Bhaumik

APPELLANT

Vs

Sukura Singh and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(24), 95
Motor Vehicles Act, 1988 — Section 2(34)

Citation : (2011) 1 OLR 1082 : (2011) 3 TAC 321

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Parija, J.—This appeal by the owner of the vehicle (truck) No. OSM-997, is directed against the judgment/award dated 8.10.2004 passed by the 1st Motor Accident Claims Tribunal, Baripada, in MACT Misc. Case No. 82 of 2003, awarding an amount of Rs. 91,400/- as compensation along with interest " 9% per annum, from the date of filing of the claim application, i.e. 24.3.2003 and directing the present Appellant, as the owner of the offending vehicle, to pay the same.

2. The sole contention raised by the learned Counsel for the owner-Appellant is that as the accident took place on a land, which was adjacent to the public road and was recorded as a "Nayanjori", to which, the public had easy access, learned Tribunal erred in holding that the accident took place on the private land of one Lalmohan Singh and therefore the insurer is not liable to pay the compensation amount. In this regard, it is submitted that the evidence on record clearly revealed that the deceased Bira Singh was at the work site on 9.3.2003 at about 4.30 P.M. near village Kamalasole, where digging and lifting of earth work was going on for construction of a road under "Pradhanmantri Gramya Sadak Jojana", when the offending truck No. OSM-997, which was engaged to remove the earth to the road side suddenly reversed and dashed against the deceased and thereafter the rear wheel of the offending truck ran over him, as a result of which

deceased Bira Singh died at the spot. It is submitted that as the land on which the accident took place was just adjacent to the public road having been recorded as a "Nayanjori", learned Tribunal erred in ignoring the same and proceeding to hold that as the said land stood recorded in the name of one Lalmohan Singh and inquest over the dead body of the deceased was done by the police over the said land, the accident did not take place in a "public place" and therefore, the insurer is not liable to pay the compensation amount.

3. Learned Counsel appearing for the Insurance Company-Respondent No. 3, while supporting the impugned award, submits that as there are specific findings of the learned Tribunal that the accident took place on a private land belonging to one Lalmohan Singh and not on a public road or a "public place", no liability can be fastened on the insurer to pay the compensation amount. In this regard, it is submitted that as the accident took place on a private land, to which the public have no access, which is evident from the materials on record, the impugned award cannot be faulted.

4. On a perusal of the impugned award, it is seen that in the claim application, it was pleaded that on 9.3.2003 at about 4.30 P.M. while the deceased Bira Singh was at the work site near village Kamalasole, where digging and lifting of earth work was going on for construction of road under "Pradhanmantri Gramya Sadak Jojana", the offending truck No. OSM-997 belonging to the present Appellant, which was engaged to remove the earth to the road side, suddenly came in reverse motion, being driven by the driver in a rash and negligent manner and dashed against the deceased Bira Singh and thereafter the rear wheel of the offending truck ran over him, resulting in his death at the spot. The claimants led oral evidence through P.Ws. 1 and 2 and filed documentary evidence, like police papers (Exts. 1 to 6), in support of their case. The Final Form (Ext. 2) revealed that the police after investigation filed charge sheet against the driver of the offending truck No. OSM-997 for rash and negligent driving. The Seizure List (Ext. 3 series) revealed that the police during investigation seized the offending truck and its documents and also the driving licence of the accused driver. Learned Tribunal on the basis of the evidence on record, both oral and documentary, came to hold that the driver of the offending truck was rash and negligent in causing the accident, which resulted in the death of the deceased.

5. As regard the liability to pay the compensation, the insurer took a stand before the learned Tribunal that as the accident took place on a private land belonging to one Lalmohan Singh as per the certified copy of ROR (Ext. A) and not on a public road or a "public place", the insurer is not liable to pay the compensation amount. In support of its contention, the insurer relied upon a decision of the Madras High Court in the case of Nagarathinam Vs. Murugesan and Others, wherein the learned Single Judge while interpreting Section 2(24) of the Motor Vehicles Act, 1939 (for short "1939 Act"), came to hold that the precincts of a petrol bunk, where the accident took place, was not a "public place" and therefore the insurer cannot be fastened with the liability to pay the

compensation.

6. Learned Tribunal on the basis of the materials on record has come to find that as the ROR (Ext. A) reveals that one Lalmohan Singh is the recorded tenant of the land and the evidence of P.W. 2 clearly shows that the accident took place on the private land of said Lalmohan Singh and the inquest over the dead body of the deceased was done by the police over the said land, the insurer cannot be made liable to pay the compensation amount. Accordingly, learned Tribunal has proceeded to saddle the entire liability on the present Appellant, as the owner of the offending truck.

7. The sole question which falls for consideration in the present appeal is as to whether the land in question, which stood recorded in the name of one Lalmohan Singh can be said to be a "public place" within the meaning of Section 2(34) of the Motor Vehicles Act, 1988 (for short "M.V. Act"), which reads as under:

2(34) "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. The definition of "public place" under the M.V. Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purpose.

9. It is also necessary to bear in mind the distinction between the expression "right of access" and "access as of right". The latter expression denotes a place where the members of public have a right of its use as members of public and as a matter of right, whether regulated, restricted or not. They cannot, however, be denied the said right except on legal grounds. On the other hand, where there is only a right of access, the owner of the place, if he happens to be a private owner, may deny the access to any members of the public on any ground which he chooses. In other words in the former case the right of the members of the public to use the place is restricted compared to their right to use in the latter case. The definition under the M.V. Act uses the expression "right of access" as pointed out earlier. What is, therefore, significant to note is that under the present definition even a place the right to use of which is restricted is a public place. Once this is borne in mind much of the controversy raised in this appeal around the correct meaning of the expression "public place" loses its edge.

10. If we further bear in mind the overall object of the provisions of Chapter XI of the M.V. Act which deals with compulsory insurance of the vehicle to cover risks to third parties and their property, with claims to be filed for recovering compensation, no fault liabilities and liabilities arising out of hit and run accidents, etc., the intention of the legislature is clear. It is to secure

compensation to the persons and property which are exposed to the accidents caused by the vehicles. The very nature of the motor vehicle and its use mandate these provisions. The motor vehicle in this respect can be likened to a wild animal. Whoever keeps it does so at his risk. As pointed out earlier, some of the restrictions on the use of the vehicle contained in the Act are irrespective of the nature of the place where it is used and irrespective of whether it is plied or kept stationary. The legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the legislature made the relevant provisions for compulsory insurance. It will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" in Section 2(34) of the M.V. Act. To hold otherwise would frustrate the very object of the said Chapter and the Act.

11. This question came up for consideration before the Full Bench of Bombay High Court in Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others, , wherein the Hon"ble Court after taking note of the divergent views of different High Courts with regard to the meaning and import of the term "public place", as defined u/s 2(24) of the 1939 Act (corresponding to Section 2(34) of the M.V. Act), proceeded to hold that for the purpose of Chapter VIII of the said Act, the expression "public place" will cover all places including those of private ownership where members of the public have an access whether free or controlled in any manner whatsoever.

12. The aforesaid view expressed by the Full Bench of Bombay High Court has been affirmed and reiterated by a decision of this Court in the case of Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others, , wherein the learned Single Judge while interpreting the term "public place", as defined in Section 2(24) of the 1939 Act, has come to hold as under:

Bearing in mind the fact that the provisions of Section 95 of the Act are beneficial provisions for making the insurer liable to pay compensation in a case where death or bodily injury to any person or damage to any property of a third party is caused by or arising out of the use of the vehicle in a public place, there cannot be any manner of doubt that the expression "public place" should be given a wide interpretation. In this view of the matter, the road inside the Orissa Secretariat compound must be held to be public place and if any death or injury occurs inside that compound on account of any use of vehicle, then the insurer must be held to be liable to pay the compensation. xxx

13. In a subsequent decision of the Bombay High Court in Forbes Forbes Campbel and Co. Ltd. and another Vs. Vilasrao Deshmukh The Hon"ble Minister for Revenue and Transport, State of Maharashtra and others, the ratio of earlier Full Bench decision in Pandurang Chimaji Agale (supra) has been affirmed and

applied to the Bombay Dock area and it has been held to be a "public place" within the meaning of Section 2(24) of the 1939 Act.

14. Relying on the Full Bench decision of the Bombay High Court (cited supra), a Full Bench of Madras High Court in the case of United India Insurance Co. Ltd. Vs. Parvathi Devi and Others, has held as follows:

16. The definition of "public place" is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word "public place" wherever used as a right or controlled in any manner whatsoever, would attract Section 2(24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a "public place".

17. In view of what we have discussed above, we hold that the expression "public place" for the purpose of Chapter VIII of the Motor Vehicles Act, 1939 will cover all places including those of private ownership where members of the public have an access whether free or controlled in any manner whatsoever.

15. In a near recent Division Bench decision of the Kerala High Court in the case of Rajan v. John 2009 (2) TAC 260 (Ker.), the Hon"ble Court while considering the definition of "public place" for the purpose of Section 2(34) of the M.V. Act, proceeded to hold that the term "public place" cannot be given a restricted meaning in as much as, it is not to be taken as a place where public have uncontrolled access at all times. "Public place" for the purpose of the Act has to be understood with reference to the places to which a vehicle has access. Accordingly, the Hon"ble Court proceeded to hold that the private premises of a house where goods vehicle is allowed entry, is a "public place" for the purpose of Section 2(34) of the M.V. Act and therefore the insurer is liable to pay the compensation.

16. In the present case as the evidence on record shows that the land in question was a "Nayanjori", abutting the public road, to which the public had free and easy access, the same does not cease to be a public place, merely because the land stood recorded in the name of a private individual.

17. Applying the principles of law, as discussed above, to the facts of the present case, the conclusion is irresistible that the land in question, on which the accident took place, was a "public place" within the definition of Section 2(34) of the M.V. Act and therefore, the insurer is held liable to pay the compensation amount awarded. Accordingly, the impugned findings of the learned Tribunal, directing the owner-Appellant to pay the compensation amount is set aside and the insurer-Respondent No. 3 is directed to pay the same. However, the award of interest " 9% per annum is modified and reduced to 6% per annum. Accordingly, the claimants are entitled to the awarded compensation amount of Rs. 91,400/-

along with interest " 6% per annum from the date of filing of the claim application, which is payable by the insurer-Respondent No. 3. The impugned award is accordingly modified.

18. The Insurance Company-Respondent No. 3 is directed to deposit the awarded compensation amount of Rs. 91,400/- along with interest " 6% per annum with the learned Tribunal within six weeks hence.

19. MACA is accordingly allowed.