
(1990) 02 GAU CK 0010
In the Gauhati High Court
Case No : M.A. (F) No. 46 of 1988

Nagaraj Chhajar

APPELLANT

Vs

Soma Priya Ghosh and Others

RESPONDENT

Date of Decision : 09-02-1990

Acts Referred:

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

Citation : (1991) ACJ 1041

Hon'ble Judges : S.N. Phukan, J;Meera Sharma, J

Bench : Division Bench

Advocate : J. Singh and Ahmed, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—This appeal has been filed by the owner of the truck bearing registration No. ASG 2137 which was involved in the accident. The appeal has been filed against the claimant (respondent No. 1) and the insurance company (respondent No. 2).

2. The claim petition was filed by the mother of deceased Nani Gopal Ghosh who was aged 23 years on the date of accident, i.e., 28.12.1984 at Bilasipara. The deceased was a handyman of the truck. The truck was returning with loaded jute to the house of the owner in the evening and while it was about to enter into the godown, the accident took place as a result of which the deceased died.

3. The learned Motor Accidents Claims Tribunal, Dhubri in Case No. MAC 10 of 1985 by the impugned award dated 25.1.1988 awarded a sum of Rs. 15,000/- to be paid by the owner of the vehicle, namely, the present appellant. The learned Tribunal also awarded interest at the rate of 10 percent. The owner of vehicle has filed the present appeal as he was made liable and not the insurance company for the claim. The claimant has also filed a counter objection. The original claim before the learned Tribunal was for Rs. 75,000/-. The present dispute is mainly between the insurance company and the claimant, i.e., the respondent Nos. 1

and 2.

4. We have heard Mr. J. Singh, learned counsel for respondent No. 1 and Mr. Ahmed, learned counsel for respondent No. 2.

5. The first point that needs our consideration is whether the accident took place in a private place or in a public place. This point was raised by the respondent No. 2 in view of the provisions of Motor Vehicles Act, 1939 (for short "the Act"). In view of Section 95 of the Act, an insurance company is not liable to pay compensation if any accident takes place in a private place.

6. We have been taken through the records and also the award. We find from the evidence of PW 3 who was present at the time the accident took place that the truck stopped in front of the house of the owner of the vehicle and when it was about to enter into the godown of the owner he heard hullah as the handyman of the truck was run over by the truck. In cross-examination this witness has stated that the dead body of the deceased was found on the national highway. PW 4, Giasuddin, an employee of the owner of the vehicle, has also deposed that when the vehicle was about to enter into the godown there was failure of electricity which resulted in darkness and the truck proceeded and ran over the deceased who died on the spot. From the evidence of these two eye-witnesses we are constrained to hold that the occurrence took place at a time when the truck was about to enter into the compound of the owner from the national highway and in other words, the accident took place in a public place and not in a private place as urged by Mr. Ahmed, learned counsel for the respondent No. 2.

7. Mr. Ahmed has taken us through the evidence of driver of the vehicle who was examined as DW. But we are unable to accept his evidence as he has given a very peculiar story. He stated that he took the vehicle loaded with jute to the godown and at that time there was failure of electricity and he left the place to take his meal and after his return to the place of occurrence he came to know about the death. Such a story is extremely unbelievable. Of course, the claimant has stated that the accident took place in the godown, but her evidence has no value as she was not an eye-witness to the occurrence. We are, therefore, satisfied that the occurrence took place, as stated above, on the national highway, a public place.

8. Mr. Ahmed has urged that it was the duty of the owner to prove that the truck was driven by a person with a valid licence and that if this is proved only then the onus would shift to the respondent No. 2 to prove that it was not so driven. Such a plea was not taken at the time of trial. That apart, the driver was examined and this was not put to him that he had no valid licence. We are, therefore, unable to accept the contention of Mr. Ahmed.

9. At the Bar various contentions have been raised and decisions have been cited regarding definition of "public place" under the Act. In view of our above findings that the accident took place at a public place, it is not necessary to go into this aspect of the matter. However, we would like to deal with the submissions of the

learned counsel.

10. Mr. Ahmed has drawn our attention to two decisions, namely, L.I.C. of India v. Karthyani 1975 ACJ 226 (Orissa) and Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja, In L.I.C. of India's case (supra), it was held that:

If members of the public do not, as of right, have access to a particular place that place cannot be said to be a public place as per the said definition of the Act.

In Oriental Fire & Genl. Ins. Co. Ltd.'s case, (supra), the learned single Judge held that:

A place to be a public place, it must be proved that public have a right of access.

Mr. Singh has placed reliance on a Full Bench decision of the Bombay High Court in Pandurang Chimaji Agale v. New India Life Insurance Co. Ltd. 1988 ACJ 674 (Bombay). Before we consider the ratio laid down by the Bombay High Court, the definition of "public place" as defined in Section 2 (24) of the Act is stated below:

"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.

11. The above definition is conclusive one and it clearly lays down that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purpose of the Act. The only condition being that the public should have a right of access to it. The Full Bench of the Bombay High Court after considering various decisions of different High Courts held that the above definition of "public place" under the Act is 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. It was further laid down that the use may be restricted generally or for particular purpose or purposes and that 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. In the opinion of their Lordships all places where the members of the 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 that case the accident took place within the compound of the factory of the Tata Engineering and Locomotive Co. Ltd. and it was held that the said premises was a public place. The Full Bench also considered the two decisions cited by Mr. Ahmed and did not accept the ratio laid down therein. Since this piece of legislation is a welfare legislation, we are in respectful agreement with the law laid down by the Bombay High Court as stated above.

12. Now the next question is the amount of compensation that may be awarded to the claimant. From the records we find that at the time of death the deceased was aged 23 years and he was getting a salary of Rs. 350/- per month.

Deducting one-third of the above salary for his personal use we are of the opinion that the deceased contributed a sum of Rs. 175/- (Sic. Rs. 233/-) per month to the family and thus the yearly contribution was Rs. 2,100/-. Taking life expectancy as 65 years the deceased would have contributed the amount for another period of 42 years. Thus he would have contributed a sum of Rs. 88,200/-. As the amount will be paid to the family at a time we deduct 30 per cent from the above amount. Thus the total amount to be awarded comes to Rs. 62,740/- (Sic. Rs. 61,740/-).

13. Mr. Ahmed has urged that in view of the Workmen's Compensation Act 1923 the family of the deceased would be entitled to get compensation under that Act. We are unable to accept his contention in view of the provision of Sub-section (2) of Section 95 of the Act.

In the result we modify award and direct the insurance company, respondent No. 2, to pay compensation of Rs. 62,740/- (Sic. Rs. 61,740/-) to the claimant-respondent No. 1 and this amount shall carry interest at the rate of 12 per cent per annum from the date of filing of the claim petition. Any amount already paid including the amount paid by the owner, i.e., the appellant shall be adjusted.

With the above modification of the award both the appeal and cross-objection are disposed of.