(1998) 08 OHC CK 0013

In the Orissa High Court

National Insurance Co. Ltd. APPELLANT

Vs

Asha Lata Rout and Others RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:
Motor Vehicles Act, 1939 — Section 95(2)(b)(ii)

Citation : (2001) 2 ACC 646

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Judgement

A. Pasayat, J.—These two appeals under the Letters Patent are directed against the judgment of a learned Single Judge of this Court and involve an interesting question-''Who is a passenger?''-For the purpose of Motor Vehicles Act, 1939 (in short, the ''old Act'').

2. A brief reference to factual aspects would suffice.

On 6.8.1987 at Kandarpur Level Crossing, a bus bearing registration No. OSC 595 collided against a train. The bus driver tried to pass through the level crossing, broke open the level crossing iron bar, but in the process stopped on the railway track while a goods train was approaching. The train dashed against the bus. There was no time for the passengers/occupants to come out of the bus. The bus was dragged up to some distance and fell into a roadside ditch. Many passengers received personal bodily injuries and some of them succumbed. One Maheswar Rout (hereinafter referred to as ''the deceased'') lost his life in the accident. His legal representatives respondent Nos. 1 to 6 in these appeals, filed a claim case, i.e. Misc. Case No. 529 of 1987 for grant of compensation of Rs. 1,40,000/- in respect of death of Maheswar. It was their stand that deceased left the bus and was trying to run away apprehending the accident. As per the evidence led, deceased was aged about 45 years and was working as a helper under the Orissa State Electricity Board and was getting a monthly salary of Rs. 1,205/-. The Second M.A.C.T., Cuttack (in short ''the Tribunal'') came to hold that apprehending danger of collision the deceased came out of the bus, and as such was not a passenger and his status being that of a third party the insurer is liable to pay the entire compensation of Rs. 75,000/- by way of indemnification. The compensation was quantified by taking the monthly loss of dependency to be Rs. 500/- and adopting a multiplier of 15. Oral evidence was led by the claimants to show that the deceased on seeing the approaching train and apprehending collision, got down from the bus and as the bus was hit and dragged, it fell on the deceased who was then in the process of running to safety. Their plea as indicated above was that since the deceased had already got down from the bus, he was no more a passenger and his status was that of a third party. The insurer preferred appeal challenging the award of the Tribunal and the appeal was registered as M.A. No. 19 of 1991. The claimants filed cross-appeal for enhancement of the award. Both the appeal and cross-appeal were heard by the learned Single Judge and by order dated 1.10.1993 the insurer''s appeal was dismissed, but the cross-appeal was allowed and the compensation was enhanced to Rs. 1,32,000/-. It was directed that the enhanced amount of Rs. 67,000/- shall carry interest at the rate of 6 per cent.

3. In the present appeals, the insurer has assailed correctness of the award. It has taken the stand that the fact situation as presented is twisted and manipulated one which varies from the version given in the F.I.R. In order to make easy gain from the Insurance Company, the facts have been twisted and status of the deceased was pleaded to be a third party. The fact that the bus fell on the deceased makes the story more improbable inasmuch as the bus after being dragged fell into a ditch and not on any pedestrian. It is highly improbable even to conceive that the passengers apprehending danger came out of the bus and were running away when the bus fell over the deceased and others. Even if the deceased had come out apprehending danger, his status continued to be a passenger so long as he did not reach the destination. The quantum as fixed by learned Single Judge has been challenged.

4. It is interesting to note that the old Act and the Motor Vehicles Act, 1988 (in short, the ''new Act'') do not define the expression ''passenger''. The meaning of the word ''passenger'', as given in Black''s Law Dictionary is ''a person whom a common carrier has contracted to carry from one place to another''.

In American Jurisprudence, Vol. 14, para 740, the American Law stated is:

In accordance with the principles discussed in the preceding section, a ''passenger'' in the present connection and in the legal sense of the term, has been defined generally as one who travels in a public conveyance by virtue of a contract, express or implied, with the carrier as to the payment of fare, or that which is accepted as an equivalent thereof. A ''passenger'' has also been defined as a person whom a common carrier has contracted to carry from one place to another and who, in the course of the performance of that contract, has been received by the carrier under its care, either upon the means of conveyance, or at the point of departure of that means of conveyance. Hence, the two main elements in the legal definition of a ''passenger'', so far as a carrier is concerned, are an undertaking on the part of a person to travel in the conveyance provided by the carrier, and an acceptance by the carrier of the person as a passenger.

5. According to the Oxford English Dictionary, 2nd Edition, Vol. II, it means a passer-by, a sojourner, a passenger on a ship, a passer-by or through, a traveler (usually on foot), a way farer, one who travels or is carried in some vessel or vehicle, esp. on board ship or in a ferry or passage boat, latter applied also to travellers by coach, and by railway, tramway, or the like; now always with the implication of a public conveyance entered by fare or contract.

According to Law Lexicon by Venkataramaiya, the word ''passenger'' used in various sections of the Act means a person who is a ticket holder is regarded as ''passenger'' even before he has actually boarded the train. See Hari Sarup v. Emperor 7 IC 355.

According to Encyclopaedia Law Dictionary by Dr. A.R. Biswas, ''passenger'' means any person travelling on board an aircraft on an inland journey on payment of his fare whether at full rates or concessional rates.

According to Wharton''s Law Lexicon, 13th Edn. at p. 633, a passenger is not, however, bound to remain on board ship in the hour of danger, but may quit it if he has an opportunity; and he is not required to take upon himself any responsibility as to the conduct of the ship; if he incurs any responsibility and perform extraordinary services in relieving a vessel in distress, he is entitled to a corresponding reward. The goods passengers contribute to general average.

6. The wife and father-in-law of a captain of a vessel, who were on the vessel and being carried by it to a place to which they wished to go, but who were being so carried by the captain''s invitation without the knowledge of the owners were held not to be ''passengers'' within the Merchant Shipping Act, 1854 (Clause 194), Sections 354, 379. The Lion LR 2 PC 525. From the judgment of the Privy Council in that case it would seem that payment of a fare is not an absolutely necessary test of such a ''passenger'', any one (other than the officers and crew) being carried by a ship, and towards whom the owners have, in respect of the voyage, any obligation or duty, would probably have been such a ''passenger''. In the Court below, Sir P. Phillimore said; "The payment of fare would appear to be a necessary incident, for the constitution of a ''passenger'', in the legal sense of the term, both as to his rights and duties". LR 2 A&E 105 a proposition adopted in Mauda and P 277a, on the authority of The Lion (supra) and The Hanna LR 1 A&E 283. But in neither of those cases was so absolute a proposition needful. An ordinary payment of fare would, of course, be clear proof that a voyager was a passenger; but it is submitted that a voyager (other than the officers and crew) is a passenger, though he pays no fare, if the owners of the ship carry him in pursuance of an obligation or duty [Judgment of Privy Council in The Lion (supra).

7. In some respects, passengers by ship may be considered as a portion of the crew. They may be called on by the master or commander of the ship, in case of imminent danger, either from tempest or enemies, to lend their assistance for

the general safety; and in the event of their declining; may be punished for disobedience. As the authority arises out of the necessity of the case, it must be exercised strictly within the limits of that necessity. See Boyee v. Baylife (1807) 1 Camp 58, referred to in Jowitt''s Dictionary of English Law 2nd Edn., p. 1328, in the context of the Merchant Shipping Act, 1854.

8. A person is called a ''passenger'' when he buys a ticket of the bus from the boarding point to the point of destination and actually travels in the bus. He is a passenger by virtue of a contract between him and the owner of the bus, consideration being payment of the bus fare and obligation on the part of the owner of the bus to carry the person from the boarding point to the point of destination. A ''passenger'' in the legal sense of the word, is one who travels in some public conveyance by virtue of a contract, express or implied, with the carrier, as the payment of fare, or that which is accepted as an equivalent therefor.

9. At this juncture, it is necessary to take note of Section 95(1)(b)(ii), proviso (ii) and Section 95(2)(b)(ii) of the old Act. They read as follows:

95. Requirements of policies and limits of liability-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

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(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-

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(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) xxx xxx xxx xxx xxx xxx (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

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(2) 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-

xxx xxx xxx xxx xxx xxx (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason or or in pursuance of a contract of employment-xxx xxx xxx xxx xxx xxx (1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers, and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;

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10. Section 95(1)(b) makes it clear that a policy of insurance shall not be required to cover liability in respect of death of or bodily injury to persons boarding or alighting from a motor vehicle but Clause (ii) of the proviso thereto engrafts an exception and says that where the vehicle is one in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, it shall be necessary to cover liability in relation to persons carried in or upon such vehicle which would include cases of death or bodily injury caused while entering or mounting or alighting from such vehicle. The words ''alighting from the vehicle'' are plain and simple and clearly mean ''while getting down from the vehicle''. The Legislature intended that such persons, viz., passengers who are in the process of alighting from a public service vehicle, should be covered by the policy of insurance, which requirement is mandatory u/s 95(1)(b)(ii) of the Act. Further, once such persons, viz., those who are entering or alighting from the vehicle are treated as passengers, the limit of liability of the Insurance Company has to be located in Clause (ii) of Section 95(2)(b) of the old Act. The limit at the relevant time was Rs. 10,000/-. Therefore, if a person is still in the process of boarding or alighting from the vehicle, such person would be entitled to the coverage, no doubt within the limit of liability fixed under the Statute at the relevant point of time. This was a beneficial provision engrafted by way of an exception to provide an insurance cover to passengers. However, in the new Act, proviso (ii) to Section 95(1)(b) of the old Act on which the present interpretation rests has been omitted. This aspect was highlighted by the Apex Court in Noorjahan (Tmt) Vs. Sultan Rajia Tmt alias Thaju and Others, 11. As a bare reading of the provisions indicates, the persons who are in the bus or alighting from or entering into the vehicle are treated as passengers in the relevant time in terms of Section 95(2)(b)(ii). An interesting question, however, arises-can a person who has purchased ticket to travel by the vehicle decide not to travel up to the original destination and discontinue the journey? It would all depend on facts of each case as to whether there was any intention to discontinue the journey. In a given case supposing a person, as claimed in the present case, runs from the vehicle which is on the verge of meeting an accident-Is he still a passenger? Obviously, his intention is to discontinue the journey and

not to travel in the vehicle. In such a case, he would cease to be a passenger. But as indicated above, it has to be shown that there was definite intention to discontinue the journey and for this purpose material evidence is to be brought on record. In the case at hand, the Tribunal and the learned Single Judge have found that the intention was to discontinue the journey by running away from the vehicle which was about to meet with the accident. Rightly, no reliance has been placed on the F.I.R.: firstly because the person who lodged the information has not been examined and secondly because he has given broad picture of the happenings and not about any individual including the deceased. On the facts situation as found by the learned Tribunal, and the learned Single Judge, it is crystal clear that the deceased did not intend to continue as a passenger and, therefore, was not a passenger. The conclusions of the learned Tribunal and the learned Single Judge are irreversible. The appeal on that aspect filed by the insurer, i.e., A.H.O. No. 133 of 1998 fails and is dismissed.

12. The other question relates to quantum. As indicated above, the Tribunal had quantified the amount at Rs. 75,000/-. It is to be noted that multiplier of 15 was adopted on a monthly dependency of Rs. 500/-. The quantum was estimated at Rs. 90,000/- but a sum of Rs. 15,000/- was deducted for lump sum payment. The learned Single Judge had enhanced the compensation to Rs. 1,32,000/- by adopting the multiplier of 22 holding that the deceased was aged 38 years at the time of death and observing that he would have continued for 22 years more in service. Appropriate multiplier to be adopted in different cases has been elaborately discussed by the Apex Court in General Manager Kerala State Road Trans. Corpn. v. Susamma Thomas I (1994) ACC 346 (SC) : 1994 ACJT (SC) and in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, . It is to be noted that while directing payment of interest, the learned Single Judge has directed payment of interest at 6 per cent on Rs. 67,000/-. This amount was stated to be the difference between the amount awarded by the Tribunal, and as fixed by the learned Single Judge. The difference between Rs. 1,32,000/- as fixed by the learned Single Judge and Rs. 75,000/- as fixed by the Tribunal, comes to Rs. 57,000/ - and not Rs. 67,000/- which apparently is a mistake. Of the six claimants, five were minors and only the widow was major at the time of accident. Considering that factor, the monthly contribution should be higher than the sum fixed by the Tribunal and affirmed by the learned Single Judge. It is taken to be Rs. 1,000/- per month.

13. The appropriate multiplier considering the age of the deceased would be 9. Worked out on that basis, the quantum is fixed at Rs. 1,08,000/-. The amount now fixed is higher than the amount fixed by the Tribunal by Rs. 33,000/- and is less by Rs. 24,000/- from the quantum as fixed by learned Single Judge. The said amount of Rs. 33,000/- shall carry interest at the rate of 6 per cent per annum. Eighty per cent of the amount awarded with interest shall be kept in fixed deposit in any nationalised Bank, and the balance amount shall be paid to the widow and the children.

A.H.O. No. 134 of 1993 is allowed to the extent indicated above.

