
(1984) 01 OHC CK 0013

In the Orissa High Court

Case No : Miscellaneous Appeal No. 72 of 1980

National Insurance Co. Ltd.

APPELLANT

Vs

Laxmi Devi and Others

RESPONDENT

Date of Decision : 24-01-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95(1), 95(2)

Citation : (1986) 60 CompCas 236 : (1984) 1 OLR 310

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : S.S. Basu, for the Appellant; P.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The insurance company is the appellant challenging the award of the Second Motor Accidents Claims Tribunal.

2. On April 30, 1973, at 12.30 a.m., a truck bearing registration No. ORB 1427 met with an accident at a place called Jhargadia on the Sambalpur-Cuttack road due to rash and negligent driving of the said truck. The truck was engaged in carrying goods of the Munsif, Bhadrak, who had been transferred to Angul. The deceased was the night watchman of Bhadrak Civil Court and was going in the truck to keep watch over the goods. On account of the said accident, death having occurred, the claimants who are the wife and children of the deceased filed an application u/s 110A of the Motor Vehicles Act, 1939, claiming compensation to the tune of Rs. 50,000.

3. The insurance company filed objection before the Tribunal denying the rashness and negligence of the driver of the truck and further it was stated that the deceased was a passenger on the truck and was being carried therein by the driver at his own risk and was not a third party and, therefore, his heirs, the claimants, were not entitled to receive any compensation from the insurance company.

4. On the pleadings of the parties, the learned Tribunal on consideration of the evidence on record held that the truck in question was being driven rashly and negligently in consequence of which the accident occurred. On the evidence of P.W.-2, the clerk of the Munsif's Court, Bhadrak, he found that the deceased was earning Rs. 141 per month and on the basis of his date of birth as September 18, 1947, found that he would have continued in service till his sixtieth year. Thereafter, on calculation, the Tribunal found that the deceased would have earned Rs. 1,17,258 before retirement had he not died in the accident. Half of the said amount having been deducted for personal maintenance expenses in accordance with the decision of the Supreme Court in the case of Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, the Tribunal found the gross contribution towards maintenance of the claimants to be Rs. 58,629 and thereafter deducting one-eighth of the said contribution on account of benefits received by the claimants on the death of the deceased and further one-sixth on account of uncertainties of life since compensation was being given on lump sum basis, fixed the net compensation payable at Rs. 41,529. On the evidence of the concerned officer whose goods were being carried, the Tribunal found that the deceased was accompanying the goods on behalf of the owner of the goods and, therefore, the insurance company must be held responsible to make the necessary payments. On these findings, the Tribunal awarded Rs. 41,529 with interest at six per cent per annum and further directed that if the amount be not paid within three months, then the rate of interest would be ten per cent.

5. Mr. Basu appearing for the insurance company challenged the direction of the Tribunal regarding higher rate of interest if the amount was not paid within three months on the ground that since an appeal was provided for and could be filed within three months, the Tribunal was not competent to enhance the rate of interest if the amount was not paid within three months. He argued only on first principle and was not in a position to cite any authority in support of the proposition. In my view, the Tribunal was well within his jurisdiction to direct that if the amount be not paid within three months, then the amount should carry a higher rate of interest, i.e., at 10 per cent. The provisions under the Motor Vehicles Act awarding compensation in favour of the legal representatives of a deceased or injured are ameliorative measures and the object of such legislation is to save the destitutes from the vagaries of life, they having lost their sources of income must get something to fall back upon. Award of higher rate of interest if the compensation is not paid within three months may act in some cases, preventing the owners of the vehicles or the insurance companies from pursuing unsuccessful appeals and saving the poor claimants from unnecessary harassment, I am, therefore, of the opinion that the order of the Tribunal granting higher rate of interest if compensation be not paid within three months is not illegal in any manner and the contention of Mr. Basu must, therefore, be rejected.

6. Mr. Basu then seriously urged that the deceased not being the owner of the goods nor was there on the truck in the course of his employment, the claimants

were not entitled to any compensation and even if compensation was awarded, it could not be more than what the claimants were entitled to under the provisions of the Workmen's Compensation Act, as contemplated in proviso (i) to Section 95(1)(b) of the Motor Vehicles Act. Mr. Misra, the learned counsel for the claimants-respondents, on the other hand, submitted that Section 95(1)(b), proviso (ii), squarely governed this case and, therefore, the claimants were entitled to receive the compensation from the insurance company. The correctness of the rival contentions depends upon the interpretation of the provisions of Section 95 of the Motor Vehicles Act.

7. Chapter VIII of the Motor Vehicles Act deals with insurance of motor vehicles against third party risks and makes provisions for compulsory insurance in respect of third party risks. This was found necessary because of frequent occurrence of accidents on roads and dependants of those injured or killed found it difficult to realise damages or compensation. Section 95 of the Motor Vehicles Act deals with policies and limits of liability. Under proviso (ii) to Section 95(1)(b), if a person is carried in a goods vehicle by reason of a contract of employment, then he is entitled to the protection of compulsory insurance u/s 95(1)(b). The term "contract of employment" cannot be given a restricted meaning to cover a contract of employment with the owner of the insured vehicle alone, but must be given a wider meaning so as to cover persons on the vehicle in pursuance of a contract of employment with the owner of the goods carried in the vehicle. It has been held by the Madras High Court in the case of Vanguard Insurance Co. Ltd. v. Chinnammal [1969] ACJ 226 AIR 1970 Mad 236 that if for sufficient practical or business reasons, the person must be on the vehicle in pursuance of a contract of employment and such person is injured, then he would come within the purview of Section 95 and would be entitled to receive compensation. The aforesaid Madras view gets support from the decision of the Punjab High Court in the case of Oriental Fire and General Insurance Co. Ltd. v. Gurdev Kaur [1967] 37 CompCas 577 [1967] ACJ 153 AIR 1967 Punj 486. In the case of Hukam Chand Insurance Co. Ltd. v. Badruddin [1980] ACJ 164 [1982] 52 CompCas 394 a learned single judge of the Madhya Pradesh High Court followed the Madras and Punjab High Courts, referred to earlier, and held (at p. 397 of 52 Comp Cas) :

" I, therefore, hold that the risk of the servants of the owner of the goats which were being transported in the vehicle was covered u/s 95(1)(b), proviso (ii), and, hence the appellant-insurance company is liable to pay the compensation."

8. In view of the aforesaid legal position, the deceased being sent by P.W.-4, who had hired the vehicle in question, to accompany his goods, is entitled to protection of his risk being covered u/s 95(1)(b), proviso (ii), and, accordingly, Mr. Basu's contention is liable to be rejected.

9. The next submission of Mr. Basu is that the claimants are entitled only to the maximum compensation awardable under the provisions of the Workmen's Compensation Act, 1923, as provided under the proviso (i) to Section 95(1)(b) of

the Motor Vehicles Act. In support of this contention, reliance has been placed on the decision of this court in the case of Orissa Co-operative Insurance Society Ltd. v. Sarat Chandra Champati [1975] ACJ 196 and the decision of the Madras High Court in the case of Venkataraman v. Abdul Munaf Sahib [1971] ACJ 77 .

10. In the Orissa case referred to above, the point of controversy was whether the insurer was liable to pay compensation where the policy of insurance was a third party one taken u/s 95(1) of the Motor Vehicles Act in respect of persons not expressly mentioned in Chapter II. In that case, the contention of the insurance company that a proceeding under the Motor Vehicles Act would not be maintainable since the deceased was entitled to receive compensation under the Workmen's Compensation Act, was negatived. In my view, therefore, the aforesaid decision has no application to the present case.

11. The Madras case on which the learned counsel for the appellant placed reliance was on the issue as to whether the legal representatives of the deceased workman were entitled to take recourse to the provisions u/s 110A of the Motor Vehicles Act in view of their entitlement to get compensation under the Workmen's Compensation Act and the court answered in the affirmative. I am not concerned with that problem in the present case. The deceased in this case was not a workman under the owner of the vehicle and, therefore, his legal representatives are not entitled to claim compensation under the Workmen's Compensation Act. The deceased was a third party who was travelling in the truck under a contract of employment with the owner of the goods which were being transported for which the vehicle had been hired. Accordingly, the extent of liability of the owner of the truck as well as that of the insurance company is governed by the provisions of the Motor Vehicles Act and is not in any way limited by Section 95(2)(a) or the provisions of the Workmen's Compensation Act. Consequently, the contention of Mr. Basu, the learned counsel for the appellant, is devoid of any force.

12. In the result, therefore, I do not find any merit in this appeal which is accordingly dismissed with costs.