
(1985) 02 RAJ CK 0041
In the Rajasthan High Court

National Insurance Company

APPELLANT

Vs

Shanti and Others

RESPONDENT

Date of Decision : 23-02-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1985) 2 ACC 39 : (1987) ACJ 588

Hon'ble Judges : Shyam Sunder Byas, J

Bench : Single Bench

Judgement

S.B. Byas, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter to be referred to as "the Act") has been preferred against an award of the Claims Tribunal, Jodhpur, dated April 30, 1979, by which the appellant and respondents Chimne Ram, Labu Ram and Bhiya Ram were directed to pay a sum of Rs. 15,860/- as compensation to the legal representatives of the deceased Rawat Ram.

2. Briefly recalled" the facts giving rise to this appeal is that Bhiya Ram, Chimne Ram and Labu Ram were the owners of Tractor bearing No. R.S.Q. 4879. Rawat Ram was their real brother whom they had employed as a driver on the said tractor. Thus, Rewat Ram was a paid driver of Bhiya Ram and Labu Ram on the tractor which was insured with the appellant Insurance Company. Rewat Ram was driving the tractor on 22-5-1976 and when it reached somewhere in between villages Devapada and Bhundana it capsized. As a result Rawat Ram fell down and came under the tractor. He sustained multiple injuries as a result of which he died on the spot. He is survived by his widow Mst. Shanti and three minor children. The widow and the minors through her presented an application before the Tribunal u/s 110-A of the Act against the owners, the Insurance Company and the United Commercial Bank claiming a sum of Rs. 1,10,000/- as compensation. It was alleged that Rewat Ram died while he was in the employment of the owners of the tractor and was driving it in the course of his employment. The United Commercial Bank was impleaded as a party because it

had lent money to the owners in purchasing the tractor. The application for compensation was contested by the Insurance Company. It was stated by the Insurance Company in its written statement that the claim is not genuine. Rewat Ram himself was an owner of the tractor along with his brothers. The application for compensation was not maintainable as he died on account of his own rashness and negligence in driving the tractor. Bhiya Ram who is one of the co-owners of the tractor submitted the written statement admitting the entire claim therein. The other persons did not put in appearance despite service of notice on them. As such, the application was tried ex-parte against them. The Tribunal raised necessary issues and recorded the evidence of the parties. On the conclusion of the trial the Tribunal held that Rawat Ram died while he was driving the tractor. He was employed as a driver on the tractor by its owner and that the claimants being his legal representatives, are entitled to recover a sum of Rs. 15,360/- as compensation from the owners and the Insurer of the tractor. An award was, accordingly, made by the Tribunal. Aggrieved against the said order, the National Insurance Company has come up in appeal.

3. I have heard the learned Counsel appearing for the parties and perused the record carefully.

4. Mr. A.K. Mathur, learned Counsel appearing for the appellant- Insurance Company, vehemently contended that the claims Tribunal had no 2. Jurisdiction to entertain the application for compensation. It was argued that Rewat Ram was driving the tractor RSQ 4879 and he died on account of his own rash and negligent driving of the tractor. As such no application for compensation by his legal representatives was maintainable in the Claims Tribunal. It was argued that nobody can reap an advantage of his own wrong. Since the Claims Tribunal had no jurisdiction to entertain the application for compensation under the Act it could not pass any order directing the appellant and the owners of the tractor to pay compensation.

5. Reliance in support of the contention was placed on D. Jayamma and Another Vs. S. Govindaswamy and Others, B. Prabhakar and Another Vs. Bachima, and Smt. Hansibai and Ors. v. The National Insurance Co. and Ors. (S.B. Civil Misc. Appeal No. 78/1977 decided by this Court on 12-12-1984.

6. Mr. Parihar, learned Counsel appearing for the claimants strived his best to support the finding of the Tribunal and contended that since Rewat Ram was employed as a driver by the owners of the tractor, compensation could be recovered also under the Workmen's Compensation Act. Section 110AA of the Act gives an option to the claimant to file an application for compensation either before the Claims Tribunal or before the authority under the Workmen's Compensation Act. The choice is with the claimants and since the claimants made a choice to file the claim application before the Claims Tribunal, that option or choice cannot be challenged by the Insurance Company. Mr. Parihar, however, could not quote any authority in support of this stand taken by him.

7. Section 110-AA of the Act renders no help to the claimants. This section was recently noticed in B. Prabhakar's case (supra) by a Division Bench of the Karnataka High Court. It was observed therein:

4. Analysing the section, it becomes clear that before an application could be entertained by the Accidents Claims Tribunal u/s 110 of the Motor Vehicles Act, the cause of action should be such as could be entertained by the Claims Tribunal. It must give rise to a claim for compensation u/s 110 of the Motor Vehicles Act. In other words, the accident must have occurred due to actionable negligence of the owner or the driver of the vehicle, causing injury or death of third party. When the accident occurred due to actionable negligence of the deceased himself being the driver, no claim by his legal representatives can be entertained by the Claims Tribunal u/s 110 of the Motor Vehicles Act. That being so Section 110-A of the Act would not come into play at all. For the Claims Tribunal has no jurisdiction to entertain such an application and it has, therefore, rejected the same. (Vide: D. Jayamma v. G. Govindaswamy).

8. In the case of D. Jayamma case (supra) on which reliance was placed in the latter case of B. Prabhakar it was observed:

10. To make a claim under the provisions of the Motor Vehicles Act, it is necessary to plead and prove that the accident was the result of rash and negligent driving of the vehicle in question by its driver resulting in the accident, the claim being for injury or death of a third party. Without proving such actionable negligence, compensation under the Motor Vehicles Act is not maintainable. The point is settled by a decision of the Supreme Court of India in the case of Minu B. Mehta v. Balkrishna Ramachandra Nayan and Anr. Therefore, if the accident, as is in the present case, has occurred due to the rash and negligent driving of the lorry by the deceased derive himself, the petition for compensation cannot lie u/s 110-A of the Motor Vehicles Act by his legal representatives. The reason is obvious. A person cannot claim advantage of his own wrong. If he proves, however, that the negligence was in the maintenance of the lorry by the owner and not in the driving of the vehicle, no doubt an application can lie u/s 110-A of the Motor Vehicles Act. There is no such pleading in the petition and the respondent has specifically averred that there was no negligence in the maintenance of the lorry.

11. The facts of the case would attract the doctrine or *res ipsa loquitur* (the thing speaks for itself). While negotiating the curve the lorry which was under the control of its driver, namely, the deceased Ramalingam, left the road and fell into addition. Without more, therefore, it is to be presumed that the accident was the result of rash and negligent driving of the lorry by its driver, namely, the deceased Ramalingam. Therefore, it is obvious, that his legal representatives cannot claim compensation u/s 110-A of the Motor Vehicles Act.

12. If the person injured in the accident in this case was an employee, for example, a cleaner in the lorry or a person employed for the purposes of loading

and unloading then there would be an option for his either to claim higher compensation u/s 110-A of the Motor Vehicles Act proving actionable negligence on the part of the driver. It is in such contingencies that Section 110-A of the Motor Vehicles Act is attracted. But, where the accident is entirely due to the rash and negligent driving of the lorry by the deceased himself, his legal representatives cannot claim compensation u/s 110-AA of the Motor Vehicles Act as it is not attracted.

13. In the circumstances, therefore, it is obvious, that the petition for compensation u/s 110-A of the Motor Vehicles Act is misconceived. It should be an application under the Workmen's Compensation Act, if at all, before the concerned authority.

9. In Hansi Bai's case a learned Single Judge of this Court took the same view which was taken in these two authorities by the Karnataka High Court. It was observed:

The applicants (heirs of Chunnilal have no cause of action as the person negligent is deceased Chunnilal. The Tribunal was, thus right in holding that no cause of action has arisen against the non-applicants and the application for compensation filed by the heirs of the Driver Chunnilal who was driving the vehicle at the time of the accident is not maintainable. Issue no. 3 was rightly decided by the Tribunal and the application for compensation was also correctly rejected.

10. Here in the instant case Rewat Ram died on account of his own rash and negligent driving of the tractor. His legal representatives, therefore, cannot maintain an application u/s 110-A of the Act for compensation against the employers or the Insurance Company. The proper forum for them was to approach the authority under the Workmen's Compensation Act. That is the proper forum for them to decide the claim arising out of the death of Rewat Ram.

11. At the fag end of the arguments, Mr. Parihar made a request that the legal representatives of the deceased Rewat Ram i.e., the claimants may be allowed to approach the authority under the Workmen's Compensation Act for compensation. It will be open to them to approach the authority under the Workmen's Compensation Act, if advised so.

12. In the result, the appeal is allowed and the award of the Claims Tribunal, Jodhpur, dated April 30, 1977, is set aside. The application of the claimants for compensation will, consequently, stand dismissed.

13. Looking to the circumstances of the case, the parties will bear their own costs through out.