
(1996) 11 PAT CK 0021
In the Patna High Court
Case No : A.F.O.O. No. 363 of 1993 (R)

New India Assurance Co. Ltd.

APPELLANT

Vs

Urmila Devi and Others

RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (1998) ACJ 300 : (1997) 1 PLJR 31

Hon'ble Judges : M.Y. Eqbal, J; Loknath Prasad, J

Bench : Division Bench

Advocate : Satish Baxi and Sunil Sinha, for the Appellant; Prakash Chandra, B.V. Kumar and Binod Kumar Jha, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In the instant appeal, filed by appellant New India Assurance Co. Ltd. u/s 173 of the Motor Vehicles Act, 1988, one of the important questions involved for consideration is as to whether the insurance company would be liable to pay compensation in a case where accident did not take place in a public place? within the meaning of Section 2(24) of the Motor Vehicles Act, 1939

2. The brief facts of the case which give rise to the question may briefly be stated for correct appreciation of the question as well as the answer that we propose to give. The deceased was a contractor at Tata Yodogawa Limited, Gamharia (Tayo). While deceased was looking after his contract job in the said Tayo factory a truck bearing No. BHX 7268 which was being driven in negligent manner dashed the deceased at the Tayo factory gate as a result of which the deceased succumbed to injury. The truck belongs to D.D. Transport and was insured with the appellant New India Assurance Co. Ltd. The claimants who were the widow and minor children of the deceased Lai Babu Singh filed application for compensation impleading the owner, the driver and the insurance company as opposite parties.

3. The opposite party No. 1, the owner of the truck filed show cause contending therein that claim petition is not maintainable and the same is barred by limitation and that this opposite party has no knowledge about earning of the deceased. It was further contended that the driver of the vehicle was driving the vehicle very carefully and was not rash and negligent and the vehicle in question was insured with New India Assurance Co. Ltd. by virtue of valid insurance policy and, therefore, the liability, if any, for payment of compensation shall be borne by the insurance company.

4. The appellant insurance company who was the opposite party No. 3 before the Tribunal filed its show cause contending, inter alia, that neither the driver nor the owner of the vehicle informed the appellant about the accident and the criminal case instituted against them. It was further contended that the accident did take place at the factory premises of Tata Yodogawa. Section 2(24) of the Act defines about the public place and according to Section 95(1)(b) of the Motor Vehicles Act, 1939, the liability of the insurance company is to indemnify against any liability which may be incurred by person in respect of death or bodily injury arising out of use of vehicle in public place. It was contended by the appellant insurance company that the accident cannot be said to have occurred in public place and, therefore, the appellant insurance company has no statutory obligation to indemnify the opposite party, owner of the vehicle. However, the insurance company did not dispute that the vehicle was validly insured with it at the relevant time. The insurance company further took defence that the amount of compensation claimed is highly inflated and exaggerated which claimants shall not be entitled in view of the fact that the earning of the deceased was not so much as claimed by the claimants.

5. Learned Claims Tribunal (2nd Additional District Judge) after hearing the parties disposed of the claim application by the impugned judgment and award. The learned Tribunal altogether awarded Rs. 1,20,000/- as compensation and it was held that out of total compensation a sum of Rs. 50,000/- is payable by the appellant insurance company. Against the impugned judgment and award the appellant insurance company preferred this appeal. Learned Tribunal framed as many as six issues and while deciding issue Nos. 3 and 5 the Tribunal came to a finding that the accident took place due to rash and negligent driving of the truck. Learned Tribunal further decided issue Nos. 2 and 4 in favour of the claimants and assessed the compensation at Rs. 1,20,000/- by applying principles of multiplier. Issue No. 6 was with regard to the question of liability of insurance company, in a case, where accident takes place in a public place. Learned Tribunal came to a finding that the insurance company is liable to pay the compensation although the accident took place in the factory premises.

6. Mr. Satish Baxi, learned Counsel appearing on behalf of the appellant insurance company assailed the judgment and award of the learned Tribunal as illegal and contrary to law. The learned Counsel submitted that in view of the place of accident not being a public place as construed u/s 2(24) of the Motor

Vehicles Act, the insurance company ought not to have saddled with liability for payment of compensation. Learned counsel further submitted that in terms of the statutory provision of Section 95(1)(b) of the Act the Tribunal has committed error of law in holding that the insurance company was liable for payment of compensation. In support of the submission learned Counsel relied upon few decisions in the case of Life Insurance Corporation of India Vs. Karthiyani and Others, ; in the case of Taxi Drivers' Union and Another Vs. Kerala State Road Transport Corporation and Others, ; and in the case of Nagarathinam Vs. Murugesan and Others, .

7. Mr. Prakash Chandra, learned Counsel appearing on behalf of the claimants-respondents, on the other hand, supported the judgment and award of the Tribunal by submitting that the term "public place" as defined in Section 2(24) of the Act, should not be given a narrow construction particularly in absence of positive evidence that access of public in the factory premises was totally prohibited and restricted. Learned counsel further submitted that the definition of the "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. Learned counsel relied upon a few decisions of different High Courts, namely, Pandurang Chimaji Agale Vs. New India Life Insurance Company Ltd., ; Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others, , and Prakash Chemicals Private Ltd. Vs. Krishna Singh Sata Singh, .

8. Before we go into the moot question with regard to correctness of the finding given by the Tribunal it is necessary to refer to the relevant evidence adduced by the parties before the Tribunal.

9. The claimants have adduced evidence both oral and documentary. Altogether six witnesses have been examined. PW 1 is Bhuneshwar Roy, a crane operator in TISCO who deposed that the deceased was doing contract job in Tayo factory where the accident took place. This evidence was not controverted by the opposite parties, Kameshwar Pandey, PW 2, also deposed that the deceased Lai Babu Singh was doing contract business with Tayo Company and for that purpose he used to visit the said Tayo factory. He further deposed that he was dashed by the offending truck at the gate of the Tayo factory and as a result the deceased succumbed to injury. PW 3, the brother of the deceased, deposed in his evidence that the deceased was a contractor and he further deposed about his family background and economical condition. The most important witness is R.K. Choudhary, PW 4, an employee in Tayo Company who informed the police about the said accident. In his deposition he has stated that during the relevant time he was the employee of the said Tayo Company. While he was on duty he found that at the gate of the factory the deceased was hit by the offending vehicle. He specifically stated that the deceased was doing the contract business in the Tayo Company.

10. It is worth to be noticed that no evidence has been led on behalf of the owner of the vehicle or on behalf of the appellant insurance company in support

of their defence taken in the show cause.

11. The definition of "public place" reads as follows:

Section 2(24): "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.

12. From the definition itself it is clear that the term "public place" 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. 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.

13. In the case of Life Insurance Corporation of India Vs. Karthyani and Others, , relied upon by the appellant the fact of the case was that the deceased was going on bicycle on the left side of the road inside the Hindustan Steel Ltd. premises. At that time a jeep belonging to the said HSL came from behind at a high speed and dashed against the deceased as a result of which the deceased succumbed to injury. The evidence was laid in the case that inside the HSL factory there was no access of public and members of the public cannot go as of right inside the factory premises and visitors are permitted to go inside HSL factory premises on obtaining special permit on prior application for that purpose. In view of that evidence the Orissa High Court held that the insurance company was not liable for payment of compensation. The fact of the instant case is totally different and, therefore, that decision is of no help to the appellant. In Taxi Drivers" Union and Another Vs. Kerala State Road Transport Corporation and Others, , the fact of the case was that the taxi drivers were parking their taxis in the parking area adjacent to Cochin Aerodrome Building and the parking area is situated about one furlong away from the National Highway and both are connected by a link road. The Kerala State Road Transport Corporation decided to introduce two stage carriage services from Cochin Aerodrome to Guruvayoor. These stage carriages were to start from the parking area of the Aerodrome. Since the bus services were cheap, it was bound to affect the taxi business and, therefore, the Taxi Drivers" Union filed a writ petition for restraining the Kerala State Road Transport Corporation from operating the services. The first contention of the Union was that the parking area and the link road were "public place" within the meaning of the Act and, therefore, a permit to operate the stage carriage services was necessary u/s 42 of the Act. The learned Judge, therefore, had to decide whether the parking area and the link road were public places. Evidence on record showed that both the parking area and the link road were the property of the Government. The learned Judge held that the access to both was purely permissive, although the Civil Aviation Department or the Defence Department were obliged to grant permission to

passengers to pass through the link road. The learned Judge held that that will not mean that such passengers or members of the public have a right of access as such. On these facts the learned Judge held that it was not a "public place" within the meaning of the definition, since the public had no right of access to the link road or the parking area in the aerodrome premises. In our opinion, this decision is not at all applicable in the instant case and is of no help to the appellant.

14. As against the aforesaid authorities the following decisions and decision of the Full Bench of the Bombay High Court have taken a different view. In *Pandurang Chimaji Agale Vs. New India Life Insurance Company Ltd.*, , the question referred to the Full Bench was as to whether a private road or a public place to which the public have a permissible access would be a "public place" within the meaning of Section 2(24) as well as used in Section 95 of the Motor Vehicles Act 1939. The Full Bench after considering the definition of the word "public place" and relying upon other decisions held as under:

The first thing to remember with regard to the definition is that it is an inclusive one. Secondly, it in term makes it clear that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or set down by a stage carriage, is a public place, it shows that it is not so much concerned with the ownership of the place as with its user. Stage carriage is defined in Sub-clause (29) of Section 2 and it means a motor vehicle which is used to carry or adapted to carry more than six persons excluding the driver and which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. In short, it means a public passenger carrier. In other words, by virtue of the last part of the definition, the expression would include any place, including private, where public passenger carrier picks up or sets down passengers.

The definition of "public place" under the 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.

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 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 of use of which is restricted is a public place. Once this is borne in mind much of the controversy raised before us around the correct meaning of the expression "public place" loses its edge.

15. In *Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others*, , the court was considering the question as to whether a road inside the Government Secretariat gate where entry is regulated is a public place and the insurance company is liable if the accident occurs in such a place. Answering the said question in affirmative the learned single Judge held 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 wider interpretation. In this view of the matter, the road inside the Orissa Secretariat compound must be held to be a 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. Disagreeing with the narrow interpretation given by the learned single Judge of this Court in *Life Insurance Corporation of India Vs. Karthyani and Others*, and following the Full Bench decision of the Bombay High Court in *Pandurang Chimaji Agale Vs. New India Life Insurance Company Ltd.*, , I would hold that the road inside the Secretariat compound is also a public place within the meaning of Section 2(24) of the Act and attracts the provision of Section 95(1)(b)(i) of the said Act, inasmuch as the members of the public have a right of access to the Secretariat though a permission or pass is required for such entry. Mr. Basu's contention must, therefore, be rejected.

16. In *Prakash Chemicals Private Ltd. Vs. Krishna Singh Sata Singh*, , the question before the Division Bench of the Gujarat High Court was as to whether insurance company is liable in case of an accident on the main road of the industrial complex which is a private premises. Learned Judge held as under:

Mr. Gandhi has submitted that when the definition of the expression "public place" employs the expression "right of access", what is meant is an absolute right of public to have access to a place and once that right is, in any manner, restricted, the concerned place would not come within the purview of the expression "public place". We are not in a position to accept this submission of Mr. Gandhi. One has to remember that we are concerned with an Act, which was brought in the statute book in 1939. At that time, there must not have been, in

this country, such large complexes as IPCL, and the like, or at least there must not have been such large complexes in such large number as we find today. With the increase in industrialisation and with the increase in commercialisation in this country, such big establishments are fast coming up and, of necessity, quite a large number of members of the public are, day in and day out, required to enter the campus of such large establishments. May be, for security reason or for some other reason, establishments might regulate the entry of public into their premises. In some establishments, there might be a system of oral permission to be obtained from the security guard; in some, there might be a system of written permission. In some, even without a formal request or permission, there could be presumed permission. But the thing remains that in such large establishments, large number of the members of public, day in and day out, are, of necessity required to go. If such places are, these days, held to be not "public place" within the meaning of the expression as used in the relevant provisions of the Act, the whole object underlying the scheme of compulsory insurance under Chapter VIII of the Act would be frustrated. When we talk of entry of large number of members of public in such establishments, we include therein entry of vehicles. As could be seen from the facts of the present case and also as could be seen from the facts of the case decided by the Bombay High Court, though the premises of IPCL and TELCO may be private premises, many vehicles ply therein; roads are laid down, electric poles are laid down and large number of members of public either on foot or by means of vehicles have ingress to and egress from such premises. If, on a narrow construction of the expression "public place", such establishments or premises of such establishments are kept out of the purview of the expression "public place", in quite a large number of cases the scheme of compulsory insurance would be frustrated.

17. Besides the authorities referred to hereinabove, it is also worth to be noticed the liberal meaning and the expression of the words "public place". In Stroud's Judicial Dictionary, 5th Edn., p. 2094, "public place" has been defined as follows:

A "public place" is a place to which the public can and do have access, it does not matter whether they come at the invitation of the occupier or merely with his permission or whether some payment or the performance of some formality is required before access can be had.

18. In Black's Law Dictionary, 5th Edn., p. 1107, "public place" has been defined as under:

"Public place"?A place to which the general public has a right to resort, not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighbouring public (e.g. a part of public beach). Also a place in which the public has an interest as affecting the safety, health, morale, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and from.

19. In Law Lexicon and Legal Maxims by Venkataramaiah, the meaning that has been given to the expression "public place" is a place open to all the public in fact, whether by right or permission and does not necessarily connote that this must be as of right. In the case of *R. v. Kane* (1965) 1 All ER 705, it was held that a public place cannot be confined to a street or highway but that it means a place to which public have access. Learned Judge held that in common law, a public place is a place to which the public could and did have access and it was immaterial whether they came to that place at the invitation of the occupier or with his permission, or whether some payment or the performance of some formality.

20. Having regard to the fact that in the instant case, it was not disputed and/or controverted by the appellant by leading evidence that the deceased was not doing a contract job in the Tayo factory and at the gate of the factory the deceased was dashed by a truck which resulted in his death. The entrance or the access of the deceased in the premises of the factory cannot be said to be without permission. It has also come in evidence that the deceased used to go inside the factory for the purpose of his contract business, and, therefore, he had a right of access in the said premises.

21. Having regard to the facts and circumstances of the case and the authorities relied upon by the learned Advocates I think the views expressed by the Full Bench of the Bombay High Court are commend to me, and I hold accordingly. I, therefore, hold that the place of accident in the present case, which was in the gate of the factory complex was "public place" within the meaning of that expression as used in the relevant provisions of the Act. That being so, the place was covered with the ambit of "public place" as used in Section 95 of the Act, and consequently, u/s 96 of the Act, the insurance company would certainly be liable to satisfy the judgment and award in the present case. The finding of the Tribunal, therefore, is to be upheld, I therefore, hold that this appeal filed by the appellant insurance company has no merit and is liable to be dismissed.

22. I have also heard learned Counsel appearing on behalf of the parties on the cross-objection filed by the claimants-respondents. The learned Counsel, firstly, submitted that the expectancy of life was not properly considered by the learned Tribunal and the monthly income of the deceased was also not correctly assessed. Learned counsel further submitted that quantum of compensation assessed by the Tribunal is on a low side and it should have been on the higher side. The submission of the learned Counsel has no substance. It appears from the record that no positive evidence has been led by the claimants with regard to age and monthly income of the deceased. AW 1 deposed that monthly income of the deceased was Rs. 2,000/- while AW 3 deposed that the monthly income of the deceased was in between Rs. 2,000/- to Rs. 2,500/-. In the claim application the monthly income of the deceased was shown as Rs. 2,000/-. In absence of any material evidence with regard to income of the deceased we are of the opinion that finding of the Tribunal with regard to monthly income as also the

assessment of compensation cannot be said to be bad in law. We are further of the opinion that the amount of compensation of Rs. 1,20,000/- as assessed by the Tribunal can also not be said to be unreasonable.

23. For these reasons, we do not find any reasons to allow the cross-objection which is also, accordingly, dismissed. However, there shall be no order as to costs.