(1988) 07 OHC CK 0010

In the Orissa High Court

Case No : M.A. No. 452 of 1983 & Miscellaneous Appeal No. 452 of 1983

New India Assurance Company Ltd. APPELLANT

Vs

Bata Mallick and Another RESPONDENT

Date of Decision : 20-07-1988

Acts Referred:
Motor Vehicles Act, 1988 — Section 110A, 95(2)

Citation : (1989) ACJ 692

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

Bench : Single Bench

Advocate : P. Roy, for the Appellant; R.N. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—This appeal by the New India Assurance Company Ltd. raises an interesting question of law with regard to interpretation of Sub-section (2)(a) of Section 95 of the Motor Vehicles Act. In order to appreciate the said point, it is necessary to state some brief facts. A goods vehicle bearing registration number OSC 8692 was carrying certain employees who were engaged in loading and unloading of boulders. On 26.1.1980 at 8.00 a.m. while the vehicle was moving with the employees on it, on Darpani-Kolasing road, due to rash and negligent driving, the vehicle capsized and the employees who were on the vehicle fell down and the boulders in the truck also fell upon them. On account of the said accident, the employees on the vehicle got injured and they filed petitions for compensation before the Tribunal u/s 110-A of the Motor Vehicles Act. The Tribunal on consideration of the materials before him having awarded compensation in respect of four of the employees and having further directed that in respect of those four employees it is the insurance company which would be liable to reimburse the amount and in respect of other claimants the direction being that the owner would be liable to pay, the insurance company has assailed that order in respect of one claimant only. It is admitted that on the vehicle, there were only seven coolies excluding the driver and therefore, seven claim applications had been filed. Out of those seven cases, one was dismissed and from out of the rest six cases, the Tribunal directed that compensation in respect of first four cases be paid by the insurance company and in the other two cases, owner of the vehicle was directed to pay.

2. Mr. Roy, the Learned Counsel appearing for the Appellant, contends that in view of Sub-section (2)(a) of Section 95, there being a limit in respect of the number of persons who would be on the vehicle so as to make the insurer liable for paying compensation and the moment that limit is exceeded, the insurance company must be absolved from the liability to pay the compensation in question. He further urges that even if it is held that the liability of the insurance company is restricted to the number provided in Sub-section (2)(a), yet there is no basis for indication as to how the Tribunal will pick and choose and in which six cases the Tribunal will issue direction to the insurance company to pay the compensation. According to the Learned Counsel, such conferment of power on the Tribunal is capable of being arbitrarily exercised and therefore, such an interpretation cannot be sustained.

3. Mr. Mohanty, the Learned Counsel appearing for the claimant-Respondent No. 1, on the other hand, contends that Sub-section (2)(a) of Section 95 merely restricts the liability of the insurer to the extent provided therein and in that view of the matter, the order of the Tribunal in the present case cannot be interfered with.

4. Thus the sole question for consideration is as to what is the true meaning of Section 95(2)(a) of the Motor Vehicles Act. It is profitable at this stage to extract Section 95(2)(a) of the Act:

95. Requirements of policy and limits of liability.--

(1) xxx xxx xxx

(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely--

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liability, if any arising under the Workmen''s Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle.

Sub-section (2) of Section 95 is clear and unambiguous and it is too well settled that when the meaning of a statute is clear, the courts will not add anything to it so as to give some other meaning than the one which is available on a plain reading of the same. In other words, in the absence of any ambiguity in the language, the words used in the statute must be literally construed and the meaning thereby obtained must be adhered to. Applying the said principle to Section 95(2)(a) of the Act, it transpires that Sub-section (2) merely restricts the liability of the insurer to the extent provided therein. In other words, excluding the driver, the liability of the insurance company would extend for payment of compensation in respect of six persons being carried in the vehicle. Sub-section (2) of Section 95 has been engrafted in the statute to safeguard the interests of the insurer. Clause (a) thus prescribed the limits in respect of compulsory insurable risks. Therefore, whatever be the number of persons employed and whatever be the number of persons who have actually suffered death or bodily injury, the liability of the insurer in respect of death or bodily injury will not extend beyond six persons. This, in my view, is the true import and meaning of Section 95(2)(a) of the Act. The aforesaid interpretation of mine gets support from the observations of the Bombay High Court in the case of British India General Insurance Co. Ltd. Vs. Sabanna Sabanna and Others, Though this point did not arise directly for consideration, yet Section 95(2)(a) of the Act has been construed and the observations made by the learned Judge in that case is in full conformity with what has been found by me earlier. In this view of the matter and in the present case the Tribunal having made the insurer liable only in respect of four claimants, there is no infirmity in the said order so as to be interfered with by this Court.

5. So far as the second contention of Mr. Roy, the Learned Counsel for the Appellant, is concerned, I find there may be some substance in what the Learned Counsel argues. But it is not necessary for me to deal with that aspect particularly when Sub-section (2)(a) of Section 95 is intended to restrict the liability of the insurer and so long as that restriction provided under the statute is followed, the insurer cannot have any grievance as to the manner in which the Tribunal chooses the number of persons from out of the claimants and confers benefit on them. At any rate, so far as the present case is concerned, that question does not arise for consideration and the Tribunal in the present case having followed a principle that the first four persons who had approached the Tribunal would be covered u/s 95(2)(a), the said principle must be held to be a valid one. In the circumstances, I am unable to accept the second submission of Mr. Roy, the Learned Counsel for the Appellant.

6. Both the contentions having failed, this appeal is devoid of merit and is accordingly dismissed, but in the circumstances, there will be no order as to costs.

