(1987) 11 OHC CK 0013

In the Orissa High Court

Case No : Misc. Appeal No''s. 104 to 106 of 1984

New India Assurance Company Ltd. APPELLANT

Vs

Sanatan Nayak and Others RESPONDENT

Date of Decision : 17-11-1987

Acts Referred:
Motor Vehicles Act, 1939 — Section 110B, 95

Citation : (1988) ACJ 1099 : AIR 1988 Ori 197

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : P. Roy, for the Appellant; B.N. Mohanty and Sidheswar Das, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—These three appeals by the Insurer are directed against a composite award passed u/s 110-B of the Motor Vehicles Act (for short, ''the Act'') by the Tribunal in three claims cases arising out of the same accident.

2. The case of the claimants, in brief, is that a transport truck bearing registration No. ORU 1631 belonged to respondent Harbhajan Singh, who was insured with the insurer-appellant, although his wife-respondent Jasbir Kaur was named as the owner in the registration book. On 10-8-1980 the truck loaded with iron ore was proceeding towards Paradip on Daitari-Paradip Express Highway. At Phuljhar crossing while the truck was running with great speed and while giving passage to another running vehicle, it turned to the left side of the highway and as the driver could not control the vehicle, it met with an accident. As a result, the truck turned on its side and the entire iron ore fell upon Kirtan Sahu and Kulamani Nayak, two petty garment dealers, who were sitting by the side of the road waiting for a bus to carry them to their village. They met with instantaneous death. The helper of the truck Ramachandra Sahu who was inside the driver''s cabin was crushed underneath the truck near its door. The driver, it seems, escaped unhurt and remained untraced. The claimants in the three cases

are the widow and the minor children of Kirtan Sahu, the father and sister of Kulamani Nayak and the father and sister of Ramachandra Sahu. According to the claimants, the deceased persons were the earning members of the family and after their death they were deprived of their source of livelihood. The heirs of deceased Kirtan Sahu and Kulamani Naik claimed compensation of Rs. 25,000/- respectively and the heirs of deceased Ramachandra Sahu claimed compensation of Rs. 20,000/-.

3. Respondent Jasbir Kaur in her written statement averred that she was not the owner of the truck on the alleged date of accident. She became the owner of the truck subsequently, but it was not involved in any accident causing the death of the deceased persons. Therefore, she was not liable to pay compensation claimed by their heirs. The claim petitions were also barred by limitation.

4. Respondent Harbhajan Singh filed two written''s statements and stated that he was no longer the owner of the truck on 10-8-1980, the alleged date of the accident. He had made an application for transfer of his ownership along with the certificate of insurance and the insurance policy standing in his name in favour of his wife respondent Jasbir Kaur and made over the same to the local agent of the Insurer. He denied that the truck had ever met with an accident causing the death of three persons as alleged and further denied his liability to pay compensation to the heirs of the deceased.

5. The appellant in its written statement denied that the truck met with an accident on 10-8-1980 causing the death of three persons and further its liability as Insurer to pay compensation to the heirs of the deceased. It further denied that it was not the Insurer of the truck owned by Harbhajan Singh and issuance of any insurance policy in his favour. So it did not cover any risk for the vehicle and was not liable to pay compensation.

6. The Tribunal on assessment of evidence, both oral and documentary, came to hold that the claim petitions were not barred by limitation, the truck had met with an accident on account of the rash and negligent act of the driver causing the instantaneous death of the deceased person and though respondent Jasbir Kaur was the ostensible owner, yet respondent Harbhajan Singh was the real owner of the truck who had been insured by the appellant and was liable to pay compensation to the heirs of the victim of the accident. Accordingly he awarded compensation of Rs. 25,000/- each to the heirs of deceased Kirtan Sahu and Kulamani Naik and Rs. 18,000/- to the heir of deceased Ramachandra Sahu. According to him, the sister of Kulamani and Ramachandra were not legal heirs and could not share the compensation.

7. Mr. P. Roy, the learned counsel for the appellant-insurance company, assailed the awards mainly on two grounds. First, the accident did not take place in the manner alleged by the claimants and second, the real owner of the truck was respondent Jasbir Kaur and as the insurance policy covering the risk for the vehicle did not stand in her name, the insurance company is not liable for the

claims.

8. In order to determine as to the manner of the accident, it is necessary to examine the evidence adduced in the case. P.W. 1, 2 and 3 heirs of the deceased - were not present when it took place, but P.W. 4 was an eyewitness to the same. He stated that on 10-8-1980 at about 5.30 to 6.00 P.M. he was sitting in front of a tea-stall at Phuljhar crossing of Daitari-Paradip Express Highway and waiting for a bus to return home. He had gone to Sukurangi Hat to vend sweetmeats. Deceased Kulamani Naik and Kirtan Sahu who had gone to the said Hat to sell ready-madegarments were also sitting on their loads at the leftside of the road at Phuljhar crossing waiting for a bus to take them home. The road was wide at that place and all those waiting for transport were on the (northern) flank. A truck loaded with iron ore and bearing registration No. ORU 1631 came from Daitari side and was proceeding towards Paradip. At Phuljhar crossing, in order - to give passage to another truck coming from the opposite direction, the driver swerved the truck to the left, but as he could not control the running vehicle, the truck toppled on the left side of the road. As a result, the iron ore fell upon Kirtan Sahu and Kulamani Naik completely burying them. They died on the spot. The helper of the truck Ramachandra Sahu was also crushed underneath the truck near the door. The same evening he gave the sad news in the houses of the deceased Kirpan, Sahu and Kulamani Niak. O. P. W. 1 (respondent 4) was not present at the time of the accident. Nevertheless, he admitted in his evidence that another vehicle had collided with the truck and made it to topple resulting in an accident on 10-8-1980. From the aforesaid evidence it would appear that the only eyewitness to the accident was P. W. 4 and so the Tribunal was justified in accepting and believing his version thereof. Mr. P. Roy, learned counsel for the appellant, placed reliance on the certified copy of a forwarding report in Sukinda P.S. Case No. 105 of 1980 under Sections 279, 337, 338 and 304A, I.P.C. submitted by the Officer-in-charge, Sukinda P.S. in the Court of the Sub-Divisional Judicial Magistrate, Jajpur (Ext. A). It was stated in the report that on 10-8-1980 at about 6.30 p.m. accused Kanhu Charan Singh was driving the truck bearing registration No. ORU 1631 loaded with 50 to 53 passengers. Near Tamaka toll gate another vehicle was coming from the opposite direction with a good number of passengers. When over-taking the vehicle, the accused driver applied sudden brake to stop the vehicle in order to avoid collision, but as it was in great speed, it fell down by the side of the Road and turned turtle. Due to the accident, two passengers died on the spot and one died at Sukinda Primary Health Centre. Mr. Roy urged that the victims of the accident were unauthorised passengers of the truck arid as such, after they died in the accident, their heirs are not entitled to compensation. The version stated in Ext. A has not been supported by any legal evidence. The eye-witnesses who might have been examined by the Officer-in-charge of Sukinda Police Station were not examined by the appellant. Even the police officer who was investigating into the accident case was not examined. The forwarding report by itself cannot be treated as evidence. For lack of legal evidence, the appellant''s version of the accident

cannot be accepted.

On consideration of the aforesaid evidence, I uphold the finding of the Tribunal with regard to the manner the accident had taken place.

9. Ext. 1 is a certified copy of the register of motor vehicles for Cuttack district in respect of truck bearing registration No. ORU 1631. Columns 2 and 3 thereof, which are relevant for the purpose of discussion, are quoted below :-

"Registrar of Motor Vehicles Registered in the District of Cuttack.

1. X X X X X X X X X X X

2. Name of Owner :-

Harbhajan Singh, S/o Karla Singh At/P.O.- Jaipur Road. Trd. to-Jasbir Kaur D/o Harbhajan Singh, Jaipur Raod, CTC, w.e.f. 9-2-78.

3. Owner''s father Sardar Trilochan Singh, & Address :-

S/o. Kansingh Jaipur Raod, CTC w.e.f 5-11-1980."

Ext. B is the motor policy in respect of the vehicle bearing registration No. ORU 1631. The policy was valid from 26-12-1979 to 25-12-1980. The name of the insured is Mr. Harbhajan Singh who is none else than respondent Harbhajan Singh. Relying upon these two documents Mr. Roy urged that on the date of the accident the owner of the vehicle was respondent Jasbir Kaur and as she was not insured, and, on the other hand, respondent Harbhajan Singh was insured, the appellant Insurance Company is not liable to indemnify the insured for payment of damages to the heirs of the victims of the accident Mr. Sidheswar Das, learned counsel appearing for respondents Jasbir Kaur and Harbhajan Singh, urged that since the vehicle was insured in case of accidents, his clients were not liable to pay compensation to the heirs of the victims of the accident. Mr. B.N. Mohanty, learned counsel appearing for the claimants, urged that the real owner and the person responsible for management of the truck was respondent Harbhajan Singh. Respondent Jasbir Kaur was a mere name lender in the certificate of registration (Ext. 1). The alleged transfer was patently suspicious because, although respondent Jasbir Kaur is admitted to be the wife of respondent Harbhajan Singh, in column 2 of Ext. 1 she was described as his daughter. That apart, although the vehicle was alleged to have been transferred by respondent Harbhajan Singh in favour of respondent Jasbir kaur on 9-2-1978, the former insured himself in respect of the vehicle on 26-12-1979 and the appellant accepted him as the insured. Therefore, the suspicious transaction revealed by these documents was done with the ulterior motive of defrauding not only the insurance Company, but also in the event of accident for payment of compensation. When the appellant Insurance Company with eyes wide open insured respondent Harbhajan Singh in respect of the vehicle treating him as the owner, it is squarely liable for payment of compensation. The Tribunal accepted that respondent Harbhajan Singh was the real owner in management of the vehicle and as he was insured by the appellant Insurance Company, he directed payment of compensation by it so, the most important point which arises for consideration is whether the ostensible owner of the vehicle respondent Jasbir Kaur who had no privity of contract with the Insurance Company was liable to pay compensation to the claimants, or whether the appellant Insurance Company who had privity of contract with respondent Harbhajan Singh who is the real owner in management of the truck should indemnify and be liable to pay compensation to them. Before determination of this legal point it is necessary to find out from the evidence on records as to who was the real owner of the truck.

10. Columns 2 and 3 of Ext. 1 show that Harbhajan Singh was recorded to be the owner with a note that he had transferred the vehicle to Jasbir Kaur with effect from 9-2-1978. Respondent Jasbir Kaur did not examine herself nor produce transfer documents to prove that she was not only the ostensible owner, but also the real owner. As a matter of fact, except the entry referred to above, there is no other evidence to show that respondent Jasbir Kaur was the owner of the vehicle. On the other hand, in Para 4 of their written statement she categorically stated that as she '' was not the owner of the vehicle on the date of the accident namely, 10-8-1980, she was not liable to be saddled with compensation. According to her averment in para 5 of the statement, she became its owner subsequently. In the first written statement filed by respondent Harbhajan Singh he did not specifically state that he had transferred the vehicle in favour of Jasbir Kaur with effect from 9-2-1978. In the subsequent written statement filed by him he disclosed that on-10-84980 he was no longer the owner of the vehicle which was to the knowledge of the appellant Insurance Company. In his evidence (O.P.W. 1) he stated that the vehicle belonged to him. He transferred its ownership in favour of his wife on 9-2-1979 (this statement is also wrong compared to cloumn 2 of Ext. 1). He had secured the insurance policy for the vehicle in his own name from the appellant Insurance Company by the time the transfer had taken place. He intimated the fact of transfer to the local Inspector of the appellant Insurance Company, but there are no documents in proof of the aforesaid fact (this statement is also incorrect because, according to column 2 of Ext. 1 the transfer in favour of respondent Jasbir Kaur took place on 9-2-1978 whereas, the motor policy, Ext. B shows that the period was from26-12-1979 to 25-12-1980). He admitted that he was looking after the affairs of the truck and making statutory payments. People of the area recognise him as the onwer of three trucks including the one which was involved in the accident. From the aforesaid evidence, both oral and documentary, conclusion is inevitable that the real onwer of the truck was respondent Harbhajan Singh and was treated by the local people as such. That is why the appellant Insurance Company had entered into an insurance agreement with him evidenced by the motor policy (Ext. B). With some ulterior motive he managed to show in the motor vehicles register (Ext. 1) that the vehicle had been transferred to his wife. In this respect the finding of the Tribunal is correct.

11. Inl 971 Acc CJ 49 Orissa Co-operative Ins. Society Ltd v. Bhagban Sahu, B.K.

Patra, J. in the oft-quoted judgment observed that it is only the ostensible owner whose name is entered as such in the registration book who is to be considered as the owner of the motor vehicle irrespective of the fact that the ownership may be with somebody else. In that case Hansraj was the registered owner though his plea was that he had transferred the truck involved in the accident in favour of Mahendra Singh. There were, however, no documents for proof of the transfer except one which purported to be an agreement for sale. In this case there was neither any argument nor any discussion as to who was the real owner operating the vehicle. Therefore, the learned Judge had no scope to examine as to whether the ostensible owner was the real owner and for that matter the Insurance Company was liable to indemnify for payment of compensation to the claimants. Such a question partly came up for consideration in P.K. Panda Vs. Smt. Premalata Choudhury and Others, , J. notice 1971 Acc CJ 49 (Orissa) (supra) and many other decisions. He held :--

"The provisions of the Act regarding registration of vehicles have nothing to do with ownership. They only provide for regulation of the use of the motor vehicles in public places. The certificate of registration issued u/s 24(2) of the Act is not a document of title, but it is a piece of evidence to show the owner of the vehicle who is liable to pay taxes and to perform duties and obligations under the Act. There is nothing in the Act to indicate that it is the registered owner who shall be liable to pay compensation."

In that case appellant P.K. Panda was driving the motorcycle with Advocate Khetramohan Choudhary as the pilion rider. The motorcycle was involved in an accident with a truck and the advocate died. His wife was the claimant for compensation. The motor-cycle was purchased by S.S. Misra on 16-3-1978 and was registered in his name. He had taken an insurance policy from the New India Assurance Company Limited which was valid till 16-5-1974. Appellant P.K. Panda got the motor-cycle as dowry on the occasion of his marriage with the sister of S.S. Misra In view of the above facts it was held that although S.S. Misra was the registered owner and had obtained the insurance policy in his name, the real owner of the motor-cycle was appellant P.K, Panda who was liable to pay compensation to the claimants. In Northern India General Insurance Co. Ltd., Bombay Vs. Kanwarjit Singh Sobti and Others, , it was held that where the registered owner of a motor vehicle is a consenting party to its use by a person, the fact that the person so using the" vehicle is its real owner is not material in so far as the liability under the Law of Torts is concerned. If the vehicle is involved in accident due to rash and negligent act of driving, the registered owner as well as the real owner i. e. the person using the vehicle at the time of accident for his business, and the driver will be liable for the injury caused. It was further held that any person who uses the vehicle or allows any other person to use it can also get the insurance effected In Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others, , a Division Bench held that the provisions of the Act regarding registration and issue of permit have nothing to do with the ownership of the vehicle. They only provide for regulation of the use of the motor vehicles in public places and if the requirements of the Act were not fulfilled, penalties were attracted The transfer in the records of the Registering Authority is not a condition precedent to the transfer nor does it deal with the legality or validity of the transfer which must be determiend by other provisions of the law. A person though registered as owner may or may not be a real owner and for the purpose of awarding compensation it is the real owner who should be found out by the Court on the facts of each case.

12. Considering the facts of the case and the principles laid down in the aforesaid decisions, I am of the view that the real owner of the vehicle was respondent Harbhajan Singh and his wife Jasbir Kaur was a mere name lender. Respondent Harbhajan Singh i was managing and operating the vehicle. He was recognised as such not only by the people j of the locality, but also by the Insurance Company who issued the motor insurance policy (Ext. B) to him the operative period being from 26-12-1979 to 25-12-1980. The accident took place on 10-8-1980. Therefore, the appellant Insurance Company cannot escape liability for payment of compensation to the claimants.

13. Three young persons at the threshold of their lives died on account of the rash and negligent act of the driver of the vehicle which was involved in the accident. The quantum of compensation though not challenged does not appear to be high.

14. For the aforesaid reasons, I do not find any merit in the appeals which are accordingly dismissed. Advocate''s fee is assesseed at Rs. 250A in each case and is awarded to the claimants.

