
(1983) 09 PAT CK 0022
In the Patna High Court
Case No : A.F.O.O. No. 305 of 1976

Om Prakash Dalmia

APPELLANT

Vs

Smt. Bina Saha and Others

RESPONDENT

Date of Decision : 30-09-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 20
Motor Vehicles Act, 1939 — Section 110B, 2(19)

Citation : (1984) 1 ACC 174 : (1984) ACJ 224 : AIR 1984 Patna 77 : (1984) PLJR 336

Hon'ble Judges : Birendra Prasad Sinha, J; B.P. Griyaghey, J

Bench : Division Bench

Advocate : Narbadeshwar Prasad Singh and Madan Prasad Singh, No. 2, for the Appellant; Amla Kanta Choudhury and Santosh Singh, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Sinha, J.—This is an appeal by opposite party No. 2 (defendant) against whom a claim for Rs. 50,000/- under the Motor Vehicles Act (hereinafter referred to as the Act) has been decreed by the District Judge, Bhagalpur, acting as the Motor Accident Claims Tribunal.

2. Bishwa Nath Prasad Saha who was a teacher in the Government Silk Institute, Nathnagar, Bhagalpur was crushed to death under the wheels of a jeep bearing number BRO 509 on Bhagalpur-Nathnagar road on 5-3-1974 at about 10 A. M. He was aged about 32 years at the time he met the fatal accident. At the time he was drawing a sum of Rupees 492/- per month in the scale of Rupees 335-555. He was due to retire at the age of 58 and had, therefore, still 26 years of service. The post was pensionable. His wife Smt. Bina Saha and three minor daughters who are respondents 1 to 4 in this appeal filed an application u/s Ho of the Act in the Court of Motor Accident Claims Tribunal, District Judge, Bhagalpur claiming a sum of Rs. 1,53,000/- as compensation. The Oriental Fire and Insurance Company was impleaded as opposite party No. 1 (defendant No. 1) and the

appellant Om Prakash Dalmia was impleaded, as the owner of the jeep, as opposite party No. 2. The driver of the jeep whose name was not known to the petitioners was impleaded as opposite party No. 3. The appellant Om Prakash Dalmia did not appear before the Claims Tribunal. The Insurance Co. (opposite party No. 1) Respondent No. 5 filed a written statement stating inter alia, that the jeep BRO 509 stood in the name of one Prabesh Chandra Gupta, who was later on added as opposite party No. 4. The case was mainly contested by opposite party No. 1 (Resp. No. 5) the Insurance Company. It was stated on their behalf that the jeep belonged to one Prabesh Chandra Gupta in whose name the jeep had been insured with the Company. According to the Insurance Company if the jeep belonged to Om Prakash Dalmia the appellant (Opposite party No. 2) then there was no contractual relationship between Om Prakash Dalmia and the Insurance Company and, therefore, there was no liability on the Insurance Company to pay any compensation. Prabesh Chandra Gupta (Opposite Party No. 4) Resp. 7 in his written statement has stated that he has no concern with the jeep and, therefore, was not liable to pay any compensation.

3. Witnesses were examined on behalf of the claimants as also on behalf of opposite party Nos. 1 and 4. During the trial it transpired that the jeep was registered in the name of Om Prakash Dalmia in the office of the District Transport Authority, Bhagalpur. It was, however, insured with the Insurance Company by Prabesh Chandra Gupta. Opposite party No. 4 Respondent 7 on the basis of a proposal said to have been signed by Prabesh Chandra Gupta on 29-9-1973. On a consideration of the evidence adduced by the parties the learned Claims Tribunal came to the conclusion that opposite party No. 2 Om Prakash Dalmia, the appellant, was the owner of the vehicle and was, therefore, alone liable to pay the compensation to the petitioners-respondent numbers 1 to 4. The learned Claims Tribunal awarded a compensation of Rupees 50,000/- in the facts and circumstances of the case. Om Prakash Dalmia has filed the present appeal against the decree passed against him by the Claims Tribunal.

4. The petitioners-respondent Nos. 1 to 4 have also filed a cross-objection claiming a sum of 1,30,000/- more.

5. Mr. Narbadeshwar Prasad Singh appearing for the appellant submitted that the appellant was not the owner of the jeep No. BRO 509 on 5-3-1974. on the date of accident, and was therefore, not liable to pay any compensation. He referred to the definition of the word "owner" given in Section 2(19) of the Act which reads as under :

" "owner" means, where the person in possession of the motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject matter of a hire purchase agreement the person in possession of the vehicle under that agreement."

It was submitted by the learned Counsel that the appellant was not in possession of the vehicle in question on the date of the accident and, therefore, cannot be

saddled with any liability. This argument seems to have been made only to be rejected. The definition of the word "owner" given in the Act is not exhaustive. Owner generally means a person in whom the title vests. The definition, however, of the word "owner" given in the Act is only to include two other classes of persons also as owners, namely, the guardian of a minor if the minor is in possession of the motor vehicle and in the cast of a hire-purchase agreement, the persons in possession of the vehicle under that agreement. It does not exclude the person in whose name the vehicle is registered and in whom title vests. The two classes of persons mentioned in the above definition seem to have been included in the definition of owner for the purpose of the Act. In the case of Uma Shanker Tewary and Another Vs. Rex, to which our attention was drawn by the learned counsel for the appellant, it was held that the definition in Section 2(19) does not exhaustively define the word "owner". The word "owner" must be taken to mean what it ordinarily means, namely, a person in whom the proprietary title vests. This view finds support from a decision of the Andhra Pradesh High Court in J.C. Chennarayudu Vs. N. Lakshamma and Others, wherein it was observed that the person, in whose name the "C" certificate and the road permit was standing shall be deemed to be the owner of the vehicle. The case would be different if the vehicle is entrusted to an independent person under some agreement and it is in complete control of that independent person. In that case even if the registration is in the name of some one else, he cannot be made liable for any compensation. That is what was held in the case of State of Madhya Pradesh Vs. Premabai and Others, on which reliance was placed by the learned counsel for the appellant. Section 24 of the Act provides that an application by or on behalf of the owner of a motor vehicle has to be filed in form "E" for registration and the registering authority shall issue to the owner of the motor vehicle a certificate of registration in form "C" and shall enter in a record to be kept by it. Section 31 provides that where the ownership of any motor vehicle registered under this chapter is transferred the transferor shall within fourteen days of the transfer, report the transfer to the registering authority within whose jurisdiction the transfer is effected and shall simultaneously send a copy of the said report to the transferee and transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides. It further provides that the registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority. Reading all these provisions together it is clear that the person in whose name the vehicle is registered by the registering authority shall be deemed to be the owner of the vehicle. There is nothing to show in this case that the vehicle was transferred by the appellant to any other person or that there was any agreement between the appellant and any one else to ply the vehicle independently. That being so, it has to be held that the appellant was the owner of the vehicle at the relevant time and it cannot be urged that he was not the owner merely because the Insurance Company had insured the vehicle in somebody else's name. There is nothing to show how and under what circumstance the vehicle was insured in the name of

Prabesh Chandra Gupta opposite Party No. 4-respondent No. 7. Prabesh Chandra Gupta has no doubt denied that he had ever signed the proposal for insurance. Be that as it may, we are concerned only with the owner of the vehicle and when the vehicle was registered in the name of the appellant on the relevant date, it is he who must be held to be the owner.

6. Mr. Singh next contended that the appellant had not been served with a notice of the case and, therefore could not appear and contest the claim of the claimant-respondents. Notice was sent to the appellant Om Prakash Dalmia and the process server report on 17-2-1975 as follows :--

rk- 17&75 dks ldqur ij eqnkyge ds x;s rykl fd;k eqykdkr ugha gqvk nj;k?r
ls ekyqe gqvk ds ;g yksx vkt dy iVuk esa fctusl djrs gS vkSj us muds fdlh
fjLrnsnkj ;k dksbZ djijnkt uksfVI ysusokys dgha ugha ik; x;s blfy;s nks ikVZ uksfVI
eS uDy nj[kkLr edku iks[krk o:[k iqjc esa yVdk fn;k A

vCnqy jtkd**

It was submitted by the learned counsel that this was not a valid service because only in the event of refusal by the appellant the notice could be hung on any conspicuous place of the house. It will appear that this service of notice was not accepted as valid by the court below. On 19-4-1975 an application was filed on behalf of the applicants (respondents) along with a deposit of Rs. 20/-stating, inter alia, that notices were not being served on defendants 2 and 3 and, therefore, the same may be published in the Gazette. The Court ordered that the notice be published in the Gazette and the same was published. There is no controversy on the point that there was no publication in the Gazette. Learned counsel, however, contended that Gazette publication is of no consequence as this mode is not prescribed in the Civil Procedure Code. According to him the substituted service has to be effected in a different way either by affixing a copy of the summons in some conspicuous place in the Court-house or upon some conspicuous part of the house in which the defendant is known to have last resided or carried on business etc., according to old Code or by publication in the Newspapers as provided in the new Code. There is no substance in this submission as well. Publication of notice in the Gazette is a well established mode of substituted service. In view of the publication of the notice in the Gazette it cannot be urged on behalf of the appellant that the appellant had no notice of the case. If the appellant did not appear to contest the claim he has only to thank himself.

7. On merits the learned counsel contended that compensation awarded is excessive and arbitrary. Mr. Amala Kanta Choudhury appearing for the claimants respondents drew our attention to a decision of the Supreme Court in the case of Madhya Pradesh State Road Transport Corporation v. Sudhakar AIR 1977 SC 1189. In that case Mrs. Usha Kotasthane who was employed as a Physical Instructress in a school was getting a salary of Rs. 190/- per month in the grade of Rs. 150-10-250. The claimant's loss was worked out to Rs. 50/- a month and

taking 20 as the suitable multiplier the compensation was worked out at Rs. 12,000/-. At the time of her death she was only 23 years old and had still to serve for 35 years. According to Mr. Choudhury the same method of 20 years' multiplier should be adopted in the present case also. In the present case the deceased Bishwanath Prasad Saha was 32 years old and was still to work for another 26 years. It is obvious that in the present case 20 cannot be taken as a suitable multiplier as in the case of Madhya Pradesh State Road Transport Corporation (supra) where the deceased had yet to serve for another 35 years. Taking into consideration the facts and circumstances of this case 15 can reasonably be taken to be the suitable multiplier. In the present case the deceased Bishwanath Prasad Saha was drawing a sum of Rs. 492/- at the time of his death in scale of Rs. 335-555 and as has been stated, there was a reasonable chance of his promotion to the higher grade. His widow and three minor daughters were completely dependent upon him. Reasonably the loss to the family namely to the petitioners, can be worked out to Rs. 250/- per month i.e., a sum of Rs. 3000/- per year. Multiplying this amount by 15 the figure would work out to Rs. 45,000/-. The Tribunal of course adopted a different method and has awarded a sum of Rs. 50,000/- which cannot be said to be excessive. It was expected that the deceased could have contributed more for the marriage of his daughters, if alive. In the circumstances, therefore, I do not think that the compensation of Rs. 50,000/- can be said to be excessive or arbitrary.

8. No other point was urged before us in support of the appeal.

9. Mr. Amala Kanta Choudhury did not press his cross-objection with any seriousness. He, however, submitted that interest should be allowed from the date of claim. The Tribunal has allowed interest at the rate of 6 per cent per annum, if the claim money was not paid within three months from the date of the judgment. Section 110-CC of the Act provides that where any Court or Claims Tribunal allows a claim for compensation made under this chapter such Court or Tribunal may direct that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. It has been the usual practice of the Courts to allow interest on the amount of compensation awarded from the date of making the claim. Bishwanath Prasad Saha died on 5-3-1974 and the order was passed by the Tribunal on 27-8-1976. Had the money been paid to the claimants they would have earned interest and utilised the money. In my opinion, Mr. Choudhury is right in his submission that the claimants are entitled to interest from the date of making the claim. I, accordingly, hold that the claimant-respondents are entitled to interest at the rate of 6 per cent per annum on the amount of compensation awarded from the date of making of the claim until the payment is made.

10. In the result the appeal fails and is dismissed. The cross-objection filed by the claimant-respondents is allowed only in respect of interest as stated above. The parties will bear their own costs.

B.P. Griyaghey, J.

11. I agree.