

(1987) 11 OHC CK 0020

In the Orissa High Court

Case No : Misc. Appeal No's. 110, 111, 112 and 113 of 1984

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Sanatan Pradhan and Another, Bhagaban Pradhan and
Others, Daitari Pradhan and Another and Hemanta Pasayat
and Another

RESPONDENT

Date of Decision : 13-11-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(1)

Citation : (1988) ACJ 792 : (1988) 65 CLT 461 : (1989) 65 CompCas 117

Hon'ble Judges : H.L. Agrawal, C.J

Bench : Single Bench

Advocate : S.S. Basu, for the Appellant; S.C. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Agrawal, C.J.—All these four appeals relating to motor accident claims and arising out of the same accident have been heard together and are being disposed of herewith. The question of law in all of them is also common, viz., as to whether the insurance company will be liable for the injuries sustained by a gratuitous passenger travelling in a jeep u/s 95(1)(b) of the Motor Vehicles Act, 1939 (for short "the Act").

2. On December 16, 1982, Sanatan Pradhan, Daitari Pradhan, Hemanta Pasayat (respondent No 1 in M.A. Nos. 110, 112 and 113 of 1984 respectively) and the deceased, Santosh Pradhan (the predecessor-in-interest of respondents Nos. 1 to 8 in M.A. No. 111 of 1984), who were members of a dance troupe were going to Sagarpali in the jeep bearing registration No. OSS 6341 belonging to Om Prakash Agarwalla (one of the respondents) to perform a dance in his premises. On the way, one of the tyres of the jeep is said to have burst and the jeep went out of control and dashed against a truck coming from the opposite direction. As a result, Sanatan, Daitari and Hemanta sustained injuries and Santosh died. Claim cases were filed by the injured persons and the legal representatives of the

deceased separately against the owner of the jeep and the insurance company.

3. The plea of the owner of the jeep was a complete denial of the entire story. His case was that he never asked anybody for performing a dance and that the persons in question were not going in his jeep. He also disputed the amount of compensation claimed by the claimants.

4. The stand of the insurance company, on the other hand, was that in any view of the matter, it was not liable as the jeep was insured only for being used for private purposes, and as it was used otherwise, the question of liability of the insurance company did not arise.

5. The Tribunal, on a consideration of the entire materials on record, held that the deceased and the injured persons were travelling in the jeep of Om Prakash with his permission and thus he was liable to pay compensation. The Tribunal further held that the jeep was not used for any purpose other than that for which it was insured, as at the relevant time also it was being used for a private purpose and thus the insurance company was also liable. He, accordingly, allowed Rs. 3,400, Rs. 4,200" and Rs. 8,500 respectively to the injured claimants according to the nature and extent of their injuries and Rs. 15,000 to the legal representatives of the deceased.

6. These appeals have been filed by the insurance company and Mr. Basu appearing for the insurance company submitted that in view of the provisions contained in Section 95(1)(b)(i) of the Act, the insurance company is not liable to pay any compensation. The relevant provision reads as follows:

" 95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--...

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property, of a third party caused, by or arising out of the use of the vehicle in a public place. "

7. According to this provision, the owner of a private car is not bound to insure his occupants even though they may be making any contribution towards the cost of the journey such as petrol, etc., in return for the lift (See *Chander Mohan v. D. C. Kapur* [1970] ACJ 121 (Delhi)). The insurer will, however, be liable to indemnify the person envisaged in Section 95 in respect of the liability which the policy purports to cover. Such liability of the insurer is statutory. The insurer may also be liable for any non-statutory liability with respect to which there is an express contract with the insured. Until recently, it has been clearly settled that the liability in respect of a gratuitous passenger could not be imposed on the insurance company (unless the insurance policy by an express agreement covers it) as not being a statutory liability.

8. A learned judge of this court in the case of *Prabhudayal Agarwal v. Saraswati Bai* 1975 ACJ 355 had occasion to consider such a situation. While following the earlier view of this court that Section 95 of the Act does not cover any liability which may be incurred by the owner of a car in respect of death of, or bodily injury to, any gratuitous passenger in that car unless the policy expressly stipulates to cover such a wider risk, interpreting the policy in that case, he held that the insurance policy stipulated to cover the wider risk to indemnify the insured against such claims. The same view was taken by another learned judge of this court in the case of *Sushil Kumar etc. Vs. Binodini Rath and Others*, . This is a case where the collision was between a jeep and a truck and the gratuitous passenger in the jeep died. It was found that the accident had taken place due to the contributory negligence of the truck driver. It was accordingly held that the owner of the truck and subsequently its insurer could not escape the liability to pay compensation to the passenger in the jeep being gratuitous on referring to the terms of the insurance policy where the insurer had covered wider risk by making him liable to indemnify the insured against all sums which the insured would become legally liable to pay in respect of the death of the gratuitous passenger who was travelling in the insured vehicle.

9. Strong reliance was placed by Mr. Basu on the case of *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, where interpreting the relevant provisions of the Act contained in Section 95 and after tracing the history of the legislation, it was observed (p. 1746):

"Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place..... Therefore, it is not required that a policy of insurance should cover risk to passengers who are not carried for hire or reward....."

10. As a proposition of law, the above observation cannot be disputed. In fact Mr. S. C. Sinha, appearing for the respondents, did not contest the same. He, however, pressed into service a decision of the Delhi High Court in *Sagar Chand Phool Chand Jain v. Santosh Gupta* [1985] ACJ 585 ; [1987] 62 Comp Cas 55 where, on a reference to the aforesaid Supreme Court decision, the learned judge referred to the instructions of the Tariff Advisory Committee, a statutory body, which on March 13, 1978, had issued instructions to the insurance company in regard to the liability of the insurance company in respect of the passengers carried in a private car mandatorily requiring incorporation of the following clause in the insurance contract, namely, "death of, or bodily injury to any person including occupants carried in the motor car provided that such occupants are not carried for hire or reward " and the above instructions was brought into force with effect from March 25, 1977. Referring to the above instructions it was observed that the insurance companies which are now instrumentalities of the State are bound by the instructions of the Tariff Advisory

Committee and accordingly, it was held that in view of the above instructions, the insurance company could be fastened with such liability to the occupants. It was further observed that the aforesaid instructions of the Tariff Advisory Committee had statutory force and that the insurance companies were bound by the same. I am in full agreement with the above view.

11. The accident in the cases on hand had admittedly taken place after the aforesaid instructions and, therefore, by the fiction of law, the necessary coverage to expose the insurer to wider liability will be deemed to have been included in the insurance cover in this case also. And if that be so, the inevitable conclusion that must follow is that the appellant-insurance company must be held liable for the compensation awarded in favour of the claimants against the owner.

12. All the appeals thus have no merit and they must fail. They are, accordingly, dismissed ; but in the circumstances of the case, I make no order for costs.