(1978) 12 OHC CK 0013

In the Orissa High Court

Case No : Miscellaneous Appeal No. 152 of 1976

Oriental Fire and General Insurance Company — APPELLANT

Vs

Ankurada Mahalaxmi and Others — RESPONDENT

Date of Decision : 14-12-1978

Acts Referred:
Motor Vehicles Act, 1988 — Section 110A, 110D

Citation : (1978) 45 CLT 623

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : S.S. Basu, for the Appellant; A. Mohanty and U.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—This appeal u/s 110-D of the Motor Vehicles Act (hereinafter referred to as "the Act") is by the insurer against the decision of the Second Motor Accident Claims Tribunal of Ganjam-Boudh at Berhampur awarding compensation of Rs. 10,000/- and fixing the liability on the insurer for the payment thereof.

2. O.R.G. 1731 is a Tata Mercedez Benz truck with a public carrier permit. It was purchased by one S. Raja Rao (Respondent No. 5) under hire purchase arrangement with the financier M/s. Sisodia and Co. of Madras and Raja Rao got this vehicle insured with the Oriental Fire and General Insurance Company Ltd. for a period of one year commencing from 26th of November, 1970. On 20th of June, 1971, as per Ext. A this vehicle was agreed to be sold to Bhagirathi Padhi, Respondent No. 6, for a sum of Rs. 20,021/., out of which Rs. 13.721/. was to be paid in case to Raja Rao and the balance sum of Rs. 6,300/- was to be paid by Bhagirathi direct to the financier against six monthly installments which were outstanding. It was stipulated therein that Raja Rao would allow the vehicle to ply under his name and style till Bhagirathi cleared up the dues of the financier, but Bhagirathi was entitled to enjoy the proceeds from the vehicle from the date

of the agreement and was liable to arrears of taxes, police prosecutions and other penalties from that date. The ownership was to be transferred after the installments of the financier were cleared. Bhagirathi started plying the vehicle on his own account and on 7-9-1971. while it was plying on the Badakhemundi-Berhampur road, near village Anangapur, it ran over one Bhima Reddi, an electrical linesman, who succumbed to the injuries instantaneously. His dependents thereupon filed a claim u/s 110-A of the Act asking for compensation of Rs. 30,000/-. They alleged that the vehicle was being run in a rash and negligent manner.

3. Raja Rao who had been impleaded as the owner of the truck maintained that he had transferred the ownership of the truck in favour of Bhagirathi on 20th of June, 1971, and Bhagirathi was plying the truck on the date of the alleged accident on his own account and, therefore, Raja Rao had no liability to compensate on account of the accident.

On the basis of Raja Rao''s written statement, the claimants added Bhagirathi as an opposite party and he took the stand that he was not the registered or otherwise owner of the vehicle and there was no justification to implead him. He also disputed the quantum of claim and maintained that there was no rash or negligent driving. The insurer (the present Appellant) admitted that Raja Rao had insured the vehicle with it but maintained that Raja Rao having transferred the vehicle under the policy on 20th of June, 1971, to Bhagirathi and the accident having occurred after the transfer, the Insurance Policy was no more alive to cover the risk arising out of the accident.

4. On the basis of the evidence before the Tribunal, it came to hold that the vehicle was being driven rashly and negligently and, therefore, the claimants were entitled to compensation. The total amount of compensation payable was found to be Rs. 10,000/-. It recorded a finding that on the date of the accident Raja Rao continued to be the owner and, therefore, the liability under the policy was subsisting and the insurer would accordingly be liable under the provisions of the Act read with the terms of the policy to bear the burden of compensation on behalf of the insured. 1 he Insurance Company has carried this appeal against the decision of the Tribunal.

5. Mr. Basu, for the insurer relying upon the evidence of O.P.W. 1, a motor parts dealer of Berhampur, and of Raja Rao himself, O.P.W. 2, contends that there had been a transfer of the vehicle on the 20th of June, 1971, and the Tribunal went wrong in recording a finding to the effect that there had been no transfer. If a finding is reached that there had been a transfer, the liability under the policy (Ext. C) would come to an end because the policy was not transferable. Reliance is placed on Clause (4) of the General Exceptions in the Policy which provides:

Any accident, loss damage and/or liability caused, sustained or incurred after any variation in or termination of the insured''s interest in the Motor Vehicle.

6. The main question for consideration therefore, is as to whether there had been

termination of insured''s interest by the date of the accident.

Mr. Basu mainly relies upon a few decisions of the Supreme Court where dealing with vicarious liability of the master for the negligence of the servant, the doctrine of control had been dealt with. In the case of Qamar Shaffi Tyabji Vs. The Commissioner, Excess Profits Tax, Hyderabad, , the Court observed:

....A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given in the course of his work. An agent though bound to exercise his authority in accordance with all lawful instructions which may be give n to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal....

The Court in that case was called upon to answer a reference under the Hyderabad Excess Profits Tax Act as to whether the Excess Profits Tax Department was right in treating the income of the Assessee or the Industrial Trust Fund as income from business. The ratio in that decision has indeed no bearing on the point in this case. Mr. Basu relies next on the case of Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt, , where the tortious liability of the master for an accident arising out of the use of the vehicle when it had been entrusted to his servant arose for consideration. The facts of the case were that the Defendant (owner) had entrusted his car to one M for plying the same as taxi. M was not merely the driver but was in entire charge of playing the taxi. M trained C to drive the car and took him to Road Transport Office for obtaining a driving licence. In course of the test of C, C without giving signal took a sudden turn and injured the Plaintiffs leg. Majority of the learned Judges found that the evidence showed that M was either a servant or an agent of the Defendant. In either view since the acts of M and C viewed separately or collectively were not within the scope of their respective or even joint employment, the owner-Defendant was not liable. C had borrowed the taxi for the work of his own and M in lending it was not acting in the master''s business. M was not present in the taxi so that he could be said to be in control on behalf of the employer when the taxi was driven. The presumption that a vehicle is driven on the master''s business was negatived because the vehicle was proved to be driven by an unauthorised person and on his own business. The de facto driver was not the driver or the agent of the owner but one who had obtained the car for his own business not even from the master but from a servant of the master. The point that was being examined by the Supreme Court in this case was also very different from what arises for determination in the present case. The next case relied upon by Mr. Basu on this score is that of Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , where master''s liability for the servant''s negligence on the basis of the doctrine of employment and control fall for consideration. Here again, the facts were different and the angle from which the question came for consideration does not arise in the present case.

7. The short point which would clinch the issue in the appeal is as to whether the

insurer''s liability under the policy came to an end on account of the terms in the policy (Ext. C). Two clauses are relevant. Clause (1) of the General Exceptions which has already been referred to and may be reiterated here is that the insurer shall not be liable under the policy in respect of any accident caused after the termination of the insured''s interest in the motor vehicle. The provision as to limits of liability occurring in the schedule to the Policy where in regard to the driver, it was been indicated that the insured or any other person who is driving on the insured''s order or with his permission would be covered. The Tribunal on an analysis of the terms of the agreement (Ext. A) has come to hold that the interest of the insured had not ceased in the vehicle on the date of the accident. Clauses (3) and (5) of the agreement provides:

(3) The first party (i. e. the insured) allowed to ply the Lorry ORG: 1731 under his name and style till the 2nd party (the buyer) cleared up the hire purchase dues.

(5) The 1st party has also agreed to transfer the ownership of the Lorry in favour of the 2nd party soon after the Hire-purchase dues cleared....

These terms indisputably show that the interest of the owner in the vehicle continued and he had not lost his title in the vehicle until the contingency stipulated materialised. The consent of the insured to the plying of the vehicle by the person in whose favour the vehicle had been agreed to be transferred was also stipulated in the agreement. In these circumstances, neither contingency in the policy bond by which the insurer''s liability could and had happened. I am, therefore, inclined to agree with the Tribunal that the statutory liability of the insurer had not terminated.

8. There is no merit in this appeal and it must accordingly fail. At the hearing, the claimants who have really nothing to contest in the matter regarding mutual labilities of their adversaries to meet the liability of compensation alone appeared and the other counsel did not participate in the hearing. In the circumstances, I make no direction for costs.

Appeal dismissed.

