
(2005) 08 AHC CK 0277
In the Allahabad High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Anita and Others		RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 165, 167

Citation : (2006) 2 ACC 528 : (2007) ACJ 1357

Hon'ble Judges : U.K. Dhaon, J;J.M. Paliwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

U.K. Dhaon, J.—This appeal has been filed by Oriental Insurance Co. Ltd. against the judgment and order dated 31.3.2003 passed by the Motor Accidents Claims Tribunal, Gonda.

2. The brief facts of the case are that Mahindra jeep (taxi) old No. UP 32-Z 1966 was owned by Munna Prasad and Om Prakash was the driver. This vehicle was insured by appellant, i.e., Oriental Insurance Co. Ltd. On 24.12.1999, one person came to the driver Om Prakash and introduced himself as Arjun and booked the jeep for Bahraich. The four associates of Arjun also joined his company. Om Prakash, the driver of the jeep also allowed Amar Deep alias Jugunoo and Ram Pragat to travel as passengers.

3. When the said vehicle reached at Gopalpur near Indira Canal, Arjun and his four associates requested the driver to stop the vehicle pretending that they wanted to go for call of nature and at about 7.15 p.m. when the vehicle was stopped by the driver, Arjun and his four associates dragged out the driver Om Prakash and Amar Deep alias Jugunoo, one of the passengers, with the intention to commit loot of the said vehicle and they tied the hands and feet of both with cord and threw them into the canal. In the meantime, the other passenger Ram Pragat got down from the jeep and ran away. After throwing the driver Om Prakash and the passenger Amar Deep alias Jugunoo into the canal all the

culprits drove away the vehicle and disappeared. Anyhow, the driver Om Prakash untied the cord and saved himself. On the other hand, Amar Deep alias Jugunoo drowned in the canal and his dead body was recovered later on.

4. Deceased Amar Deep alias Jugunoo was the resident of village Majhgawan, District Gonda. He was employed as an electrician in Krishi Nideshalaya, Lucknow. His legal heirs, the respondent Nos. 1 to 4 filed claim petition before the Motor Accidents Claims Tribunal, Gonda and after hearing the parties, the said claim petition was allowed by Claims Tribunal and Oriental Insurance Co. Ltd. has been directed to pay a sum of Rs. 1,44,000 as compensation to the respondent Nos. 1 to 4 with interest at the rate of 9 per cent per annum. Against this decision dated 31.3.2003, Oriental Insurance Co. Ltd. has filed this appeal.

5. It has been submitted by the learned Counsel for the appellant that the instant case is a simple case of looting and murder on highway and does not arise out of the use of motor vehicle as the deceased Amar Deep alias Jugunoo died due to drowning in the canal and not in an accident arising out of the use of motor vehicle. The Motor Accidents Claims Tribunal has been constituted u/s 165 of Motor Vehicles Act, which deals with the claim for compensation in respect of the accidents involving the death of or bodily injury to persons arising out of the use of motor vehicle. The Tribunal has wrongly awarded the compensation against the appellant without any jurisdiction.

6. Learned Counsel for the respondent Nos. 1 to 4 submits that the intention of the miscreants was to steal the jeep and in order to commit robbery for the same they tied the hands and feet of the driver and Amar Deep alias Jugunoo and threw both of them into canal, resulting in the death of Amar Deep alias Jugunoo. No attempt was made by the miscreants to take away the personal property of the deceased and the driver. It was not a simple case of looting and murder of the passenger as has been contended by learned Counsel for appellant. The deceased Amar Deep was a bona fide passenger. His death has been caused during the use of the said jeep, which was looted by the miscreants. The legal heirs of the deceased are legally entitled to get the compensation from the appellant. The learned Counsel for the respondent Nos. 1 to 4 has placed reliance on the decision in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, . It has also been submitted by the learned Counsel for the respondent Nos. 1 to 4 that there is no illegality in the impugned award.

7. In view of the submissions of the learned Counsel for both the parties, we have perused the record.

8. Admittedly, at the time of incident the miscreants did not make any attempt to take away the personal property of the deceased Amar Deep alias Jugunoo, other passenger Ram Pragat or the driver and they threw the driver and Amar Deep alias Jugunoo into the canal and drove away the jeep. It clearly shows that the intention of the miscreants was to steal the jeep and they did so causing the death of Amar Deep alias Jugunoo one of the bona fide passengers. In the case

of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , some unknown persons hired the autorickshaw but subsequently stole the same and killed the driver of autorickshaw. Considering the provisions of Sections 163A and 167 of Motor Vehicles Act, 1988 the Hon"ble Supreme Court has held as follows:

...no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident depends on the proximity of the cause of such murder. If the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

In the instant case, the stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing of autorickshaw was only incidental to the act of stealing of the autorickshaw. Therefore, it has to be held that the driver's death was caused accidentally in the process of committing theft of the autorickshaw. Therefore, the trial court rightly came to the conclusion that the claimants were entitled to compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of the driver was not caused by an accident involving the use of motor vehicle.

It is clear that while committing robbery or stealing the vehicle if the driver is killed the legal heirs of the deceased would be entitled for compensation.

9. In the instant case, the object of the miscreants was to steal the jeep. In order to commit theft they tied the hands and feet of Amar Deep alias Jugunoo and the driver and threw them into canal and disappeared along with the jeep. In this incident Amar Deep alias Jugunoo has died but the driver saved himself. Admittedly, Amar Deep alias Jugunoo was a bona fide passenger and his death was caused accidentally in process of committing the theft of jeep. Since the death of a bona fide passenger is caused by the culprits while stealing of the vehicle, certainly the claimants who are the legal heirs of the deceased passenger are entitled for compensation in view of the principles laid down by the Hon"ble Apex Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, .

10. Learned Tribunal has also placed reliance on the decision of Hon"ble Apex Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, and has rightly held that the legal heirs of the deceased Amar Deep alias Jugunoo are entitled for compensation. We do not find any illegality in the impugned judgment and award. The appeal is devoid of merits, it is accordingly

dismissed.