
(2005) 06 UK CK 0022
In the Uttarakhand High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Banu Begum and Another

RESPONDENT

Date of Decision : 09-06-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 140, 163A, 165, 95

Citation : (2007) ACJ 476 : (2005) 3 UC 1993 : (2005) 2 UD 218

Hon'ble Judges : P.C. Verma, J;J.C.S. Rawat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—Appeal No. 219 of 2003 has been preferred by the opposite party Oriental Insurance Co. Ltd. against the judgment and award dated 21.5.2003 passed by Motor Accidents Claims Tribunal/Additional District Judge, Haldwani, District Nainital in Motor Accident Claim Case No. 68 of 2002, by which the claim petition filed by the claimant has been allowed for compensation of Rs. 95,000. It has further been ordered that the amount of compensation shall be paid by insurance company, opposite party No. 1, within a period of one month from the date of order, failing which claimant shall also be entitled to get interest at the rate of 9 per cent per annum from the date of application till the date of payment, whereas Appeal No. 242 of 2003 has been preferred by the claimant-appellant against the same judgment and award for enhancement of the amount of award.

2. Brief facts giving rise to this appeal are that the deceased Mohd. Idrees, husband of the claimant was in the employment with Sewa Singh and was welder in the workshop owned by Sewa Singh. On 10.2.2002 at 5 p.m. the deceased was doing repair work in tanker No. UP 08-1356. During the course of employment when the deceased was doing repair work, all of a sudden the said tanker exploded and due to explosion deceased Mohd. Idrees died on the spot after sustaining injuries. At the time of his death Mohd. Idrees was 30 years old and was getting Rs. 4,200 per month as salary. Opposite party Nos. 1 and 2,

insurance company and the owner of the said vehicle (tanker) No. UP 08-1356 respectively contested the claim petition before the Tribunal and necessary issues were framed by the learned Tribunal on the pleadings of the parties.

3. We have heard the learned counsel for the parties.

4. The learned counsel for the insurance company contended that Mohd. Idrees was employee of Sewa Singh, owner of the workshop and he died during the course of employment when the tanker was stationed for repair and welding work. The learned counsel for the insurance company further contended that the claimant was entitled to present the claim petition under the provisions of Workmen's Compensation Act, 1923 against the employer Sewa Singh. It was further contended that the learned Tribunal had no jurisdiction to entertain the claim petition and, as such, the judgment and the award rendered by the Tribunal is not just in the eyes of law and further contended that the appellant cannot be held liable to pay the compensation under the award to the claimant.

5. The contentions were refuted by Mr. Z.U. Siddique, the learned counsel for the claimant. To appreciate the contentions of the parties, it is relevant to quote the provisions of Sub-section (1) of Section 165 of the Motor Vehicles Act, 1988 which read as under:

165. Claims Tribunals.-(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both.

Explanation.-For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation u/s 140 and Section 163A.

6. The moot question to be considered for the decision of this case, therefore, is whether the death of the deceased who died as a result of accident due to explosion of the tanker while it was in a state of rest, could be said to be arising out of the "use" of motor vehicle. The answer to the question depends on the interpretation of the word "use" in the expression "arising out of the use of motor vehicle". The meaning of the word "use" given in the Compact Edn. of the Oxford English Dictionary (Vol. II), reads as follows:

act of using, or fact of being used; the act of employing the thing for any (especially a profitable) purpose; the fact, state or condition of being so employed; utilization or employment, for or with some aim or purpose, application or conversation to some (esp. good or useful) end.

In Webster's Unified Dictionary and Encyclopedia (Vol. 6) the word "use" means

"state of being in employment as the car is in constant use".

7. From the meaning of the word "use" extracted from the dictionaries aforesaid it is clear that a motor vehicle which is in a state of being in employment for any purpose can be said to be a motor vehicle in use. To attract the provisions of Motor Vehicles Act it is essential that the offending vehicle must be in motion and the act or omission on the part of the driver must be proximate to the use of vehicle. As such it is essential that the death should be caused during the use of the offending vehicle. When the vehicle was not in use, it cannot be said that the claim petition is maintainable under the Motor Vehicles Act before the Tribunal constituted u/s 165 of the Motor Vehicles Act.

8. In the light of the above factual position the only point for consideration is that as to whether the deceased involved in the accident had sustained fatal injuries arising out of the use of the motor vehicle, namely, the tanker and whether the Tribunal is justified in directing the insurance company to pay compensation in favour of the claimant for the death of the deceased in the said accident. Now let us consider the various decisions in which the expression "caused by" and "arising out of use" under the Motor Vehicles Act, 1939 and 1988 has been considered by the Supreme Court.

9. The learned counsel for the appellant gave emphasis to the decision of the Apex Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . In the said case a petrol tanker was proceeding from Pune to Bangalore on the national highway and there was collision between the petrol tanker and a motor lorry which was coming from the opposite direction. As a result of said impact the petrol tanker fell on its left side and rested on the sloppy portion at some distance away from the tarred portion of the road. On the same day there was an explosion followed by fire in the said petrol tanker which was burnt down. When the petrol tanker was in rest on the side of the road due to the collision, a number of persons from the neighbouring area were collecting the petrol coming out from the tanker. All of a sudden there was explosion and fire in the petrol tanker causing casualties at the spot. The claim petition was filed by the legal heirs of the deceased. The expression "arising out of the use of the motor vehicle" used under sections 95, 96 and 110 was considered by the court. In these circumstances, the court has to consider as to whether the said accident arose out of the use of motor vehicles. The Supreme Court held that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in explosion and fire were not unconnected but related events and merely because there was an interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between explosion and fire. In these circumstances it was further held that the explosion and fire resulting in injuries which led to the death of the deceased was due to an accident arising out of the use of the petrol tanker.

10. The Hon'ble Supreme Court in Shivaji Dayanu Patil and another Vs. Smt.

Vatschala Uttam More, held that this would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Section 95 (1) (b) (i) and (ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation u/s 92-A the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

11. Learned Counsel for the respondent relied upon a decision in a case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, . In the said case the vehicle involved in that accident was a jeep while it was in motion. The front tyre of the jeep bursted and the jeep hit against one Haji Mohammad Hanif who was walking on the road and subsequently succumbed to the injuries sustained in that accident. The Tribunal rejected the claim of the claimants to the tune of Rs. 2,36,000 and only allowed the claim of the claimants for Rs. 50,000 by way of "no fault liability". The High Court in appeal affirmed the judgment and order of the Tribunal. Apex Court allowing the appeal awarded compensation of Rs. 1,80,000 to the claimants. The vehicle in this case was in motion while the accident took place. Hence, the Motor Accidents Claims Tribunal has got ample jurisdiction to award the claim.

12. In the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , a question was posed even if there is no negligence on the part of the driver or owner of the motor vehicle but accident happens while the vehicle was in use, should not the owner be held liable for damages to the person who suffered on account of such accident? The Hon"ble Apex Court held that this question depends upon how far the rule of strict liability in *Rylands v. Fletcher* 1861 All ER 1, can apply in motor accident cases. The said rule is summarized as under:

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

13. The said principle of strict liability was approved by the Apex Court in *Gujarat State Road Trans. Corpn. v. Ramanbhai Prabhatbhai* 1987 ACJ 561 in which the

question of applicability of strict liability in India with regard to the motor accidents was considered and the Hon"ble Apex Court held that-today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicle accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of strict liability defined in *Rylands v. Fletcher* 1861 All ER 1. From the point of view of the pedestrian, the roads of this country have been rendered by the use of the motor vehicles highly dangerous. "Hit and run" cases where the drivers of the motor vehicles who have caused the accidents are not known, are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there had been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicle accidents as a liability without fault.

14. Thus, the rule of strict liability was adopted in the claim petitions arising out of the use of motor vehicles.

15. The expression employed by the legislature is "accident arising out of the use of the motor vehicle" in place of "accident caused by the use of a motor vehicle". Evidently, the legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases. The test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. After all the provisions for dealing with the compensation cases are intended for a sublime social objective. We are, therefore, not inclined to adopt a restrictive interpretation for the word "use" in the present context. In the case *United India Insurance Company Limited Vs. Amir Basha, Sahira Bi, Balakrishnan, Ravi and Amir Bai*, , it is said that the deceased was vulcanising a tube which got punctured, another person was in the process of welding certain parts near a diesel tank. Due to the processing of welding by another person, the diesel tank caught fire, thereby the deceased who was vulcanising the tube, succumbed to the injuries sustained in this accident. It was pointed out before the court that the offending vehicle was parked on the roadside and the welding work was being done on the tanker and deceased had nothing to do with the vehicle and neither the owner nor the finance company could be held liable for the same. The Division Bench of Madras High Court held that the expression "arising out of the use of motor vehicle" as mentioned in Section 165 of the Motor Vehicles Act, 1988 enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. The court, accordingly, held that the death of Absar arose out of the use of motor vehicle and held the respondents entitled for compensation due to death of deceased.

16. In the case of Samir Chanda Vs. Managing Director, Assam State TPT. Corpn., , it is said that a bomb exploded inside the bus as a result of which claimant sustained injuries on his legs. Before the Tribunal negligence on the part of owner and driver was pleaded. Tribunal awarded Rs. 1,20,000 as compensation holding that injuries sustained by the claimant were permanent. Gauhati High Court set aside the award of Tribunal holding that there was no negligence on the part of owner or driver. The Supreme Court while reversing the order of the High Court held that the explosion took place inside the bus and the usual police escort was not there. Atmosphere during the period of accident was so polluted requiring care on the part of conductor and driver of the bus. The Supreme Court justified the claims of the claimant and affirmed the judgment of the Tribunal holding that the accident arose out of use of motor vehicle.

17. In the case of Himachal Road Trans. Corpn. and Others Vs. Om Prakash and Others, , a bomb planted by someone in the bus exploded when the bus had covered a short distance after starting from a bus stand causing injuries to some and proving fatal to other passengers. Learned single Judge has held that the death of or bodily injuries to persons arose out of the use of motor vehicle and the Claims Tribunal has jurisdiction to entertain claim petitions. In the instant case, we are of the view that the expression "arising out of the use" of motor vehicle has to be given a wide meaning. We are also of the view that the tanker while it was parked for the welding work, as such, the vehicle was in use as a motor vehicle.

18. In case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , the deceased was employed to drive the autorickshaw for carrying passengers on hire and on the fateful day the autorickshaw was parked at the rickshaw stand at Dimapur and at about 5 to 6 p.m. some unknown passengers had engaged the said autorickshaw for their journey towards Singrijan area and thereafter nothing was known of the driver or autorickshaw. It was only on the next day that the authorities were able to recover the body of the deceased and the autorickshaw in question was never traced. The owner of the said autorickshaw was also compensated by the insurance company for the loss of the said autorickshaw. Tribunal awarded the compensation to the tune of Rs. 2,81,500 to the claimants. Insurance company preferred an appeal before Gauhati High Court and the High Court (Kohima Bench) by its judgment came to the conclusion that there was no motor accident as contemplated under the Act. Hence the claim petition was rejected and allowed the appeal of the insurance company. The Apex Court in the appeal filed by the claimants-appellants set aside the order of the High Court and restored the order of the Tribunal holding that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

19. It is also relevant to mention that it is the case of the parties that the accident had occurred while the tanker was being used for carrying the explosive and the explosion took place in the tanker when it was stationed to carry out the repair. Meaning thereby the tanker was stationed while it was in use. Even if the tanker is empty the gases of the explosive remain inside the tanker. The escape of the gases contained in the tanker may cause the mischief. As such the vehicle was standing there and the principle of strict liability arises in such circumstances. The owner can be held liable for the wrongs even though there was no negligence on the part of the owner and the driver.

20. In view of the above discussion made in the foregoing paras, the contentions raised by the learned counsel for the appellant are misconceived and rejected outright. We are of the view that the tanker while it was parked for welding it was the duty of the owner and the driver to check the vehicle as to whether there are some explosive or not inside the tanker. In case it was empty, it was the duty to see as to whether there were gases inside the tanker which may cause explosion in the tanker before getting the work of welding. The explosion in the tanker is the consequence of the impact of welding and the gases. We, accordingly, hold that the death of the deceased Mohd. Idrees had occurred due to accident arising out of the use of motor vehicle and the Motor Accidents Claims Tribunal has jurisdiction to entertain the claim petition for compensation.

21. No other point was pressed by the learned counsel for the appellant Oriental Insurance Co. Ltd.

22. We do not find any merit in the appeal filed by Oriental Insurance Co. Ltd. (Appeal No. 219 of 2003) and the same is liable to be dismissed.

23. Learned Counsel for the claimant-appellant in Appeal No. 242 of 2003 challenged the impugned order under appeal only on the point that the finding recorded by the Claims Tribunal on the question of quantum of compensation is erroneous and inadequate. The Tribunal has also wrongly assessed the income of the deceased.

24. A perusal of the impugned judgment reveals that the point raised by the learned counsel for appellant is related to issue Nos. 2 and 5 framed by the learned Tribunal which are as under:

Issue No. 2-Whether the claimant is entitled to get any compensation due to death of deceased Mohd. Idrees in the aforesaid accident? If so, to what extent and from which of the opposite parties?

Issue No. 5-To what relief the claimant is entitled?

25. Claims Tribunal decided these two issues jointly and recorded its finding that the claimant in support of her case did not file any cogent document regarding the income and the age of the deceased. She did not produce the employer Sewa Singh, under whose employment the deceased was doing welding work, in the witness-box to prove the monthly income of the deceased. The claimant also did

not adduce any documentary evidence regarding the age of the deceased. We are of the opinion that the Tribunal rightly held the age of the deceased as 40 years at time of accident on the basis of oral as well as documentary evidence filed by the parties. The Claims Tribunal also rightly held the income of the deceased at Rs. 1,500 per month in the absence of any cogent evidence regarding the monthly income.

26. The Tribunal in its finding in these two issues also recorded its finding that the deceased and the owner of the offending vehicle were jointly liable for the accident and found the deceased was also liable for the contributory negligence and undisputedly since the offending tanker was insured with the insurance company on the date of accident, the deceased and the insurance company were rightly held liable for 50 per cent liability. Therefore, the impugned judgment and award does not call for any interference on the point of quantum of compensation.

27. The appeal filed by the claimant Banu Begum (Appeal No. 242 of 2003) also lacks merit and is also liable to be dismissed.

28. Accordingly, both these appeals are dismissed and the impugned order dated 21.5.2003 is affirmed. No order as to costs. The amount deposited in the appeal shall be remitted to the Motor Accidents Claims Tribunal concerned within a period of one month.