

(2002) 02 JH CK 0080

In the Jharkhand High Court

Case No : Appeal from Original Order No. 854 of 1996 (R)

Oriental Insurance Company Ltd.

APPELLANT

Vs

Bipat Uraon and Others

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149(2), 2(14)

Citation : (2002) 3 ACC 46

Hon'ble Judges : Hari Shankar Prasad, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : A. Alam, for the Appellant; S.N. Lal, for the Respondent

Final Decision : Dismissed

Judgement

1. In the present appeal, the insurance company has challenged the impugned award, passed under the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") and has raised a limited question that insurer was not responsible to indemnify the liability of owner of the vehicle involved in the accident in question.

2. Admittedly, on 22.8.1991. the truck (BHN-8207) belonging to Gopi Krishna Rajgarhiya met an accident. One Mahabir Oraon was travelling on the said truck with his vegetables loaded thereon. The said truck dashed against a bus (MP-26A-7711). as a result of which Mahabir Oraon sustained injuries and died in course of treatment at Chaghra Hospital.

3. It was proved that accident took place for the fault of driver of truck and, therefore, its owner was liable to pay a sum of Rs. 1,50,000/- as compensation to the sole claimant, who was widow of the deceased.

4. Annual dependency was fixed at Rs. 12,000/- and 17 multiplier was applied there-to, which came to Rs. 2,04,000/-. A sum of Rs. 2,000/- for funeral expenses. Rs. 5,000/- for loss of consortium and Rs. 2,500/- for loss of estate were added thereon.

5. However, since the claimant had made claim of Rs. 1,50,000/- only, she was awarded the said amount. At the relevant time, truck was insured with M/s. Oriental Insurance Company Limited. Hence, the said insurance company was directed to indemnify the aforesaid liability of the owner.

6. However, we find that in view of recent decision of the apex Court in Kaushnuma Begum and Ors. v. The New India Assurance Company Limited and Ors., AIR 2001 SC 485. the rate of interest granted by Tribunal is required to be reduced from 12% to 9% per annum.

7. Mr. Allam, Counsel for the appellant submitted that the vehicle in question was a goods carriage within the meaning of Section 2(14) of the Act and it could not have carried any passenger. Accordingly the deceased being a passenger on the truck, in view of Section 149(2) of the Act. no liability for payment of compensation amount could be fastened on the insurance company.

8. In this regard, a reference may be made to a decision of the apex Court in New India Assurance Company Vs. Shri Satpal Singh and Others, wherein while interpreting Section 147 it was held that insurance company was liable for both gratuitous passengers and the owner or his representative of the goods, while travelling in a goods carriage.

9. The apex Court in Smt. Mallwwa v. Oriental Insurance Company Limited AIR 1999 SC 589. while interpreting Section 95(1)(ii) of the Motor Vehicles Act. 1939. held that Insurance Company was not liable to pay compensation either to the gratuitous passengers or to the owners of the goods.

10. It was held in Satpal Singh (supra) that the result was that under 1988 Act an insurance policy covering third party risk was not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle, was of any type or class. "Hence, the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the new Act came into force."

11. On the ratio of Satpal Singh (supra) we are not in a position to interfere with the impugned judgment and award whereby insurer of truck in question was directed to indemnify the owner's liability to pay compensation under the Act.

12. Mr. Allam, also pointed out that recently in New India Insurance Company v. Asha Rani 2001 SCWR 3295. decision in Satpal Singh (supra) has been referred to a larger Bench for reconsideration of difference between definition of goods vehicles under 1939 Act and "goods carriage" under 1988 Act. Now the goods vehicles could not be used for carrying passengers.

13. The decision of apex Court in Satpal Singh (supra) has neither been overruled nor it has been rendered as not good law and it holds the field. No decision taking a view contrary thereto has been brought to our notice.

14. In the result this appeal is dismissed. No. costs.