
(2002) 06 AP CK 0109
In the Andhra Pradesh High Court
Case No : A.A.O. No. 1569 of 1992

Pinnaboyina Chittamma and Others	Vs	APPELLANT
B. Narasingarao and Others		RESPONDENT

Date of Decision : 20-06-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(24), 95

Citation : (2003) ACJ 1531 : (2002) 6 ALT 723

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : G. Rama Gopal, for the Appellant; K. Ranga Rao and B. Venkata Ratnam, and, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The appeal is filed by the claimants challenging the order passed by the Motor Accidents Claims Tribunal-II Additional District Judge, Visakhapatnam, in O.P. No. 23 of 1986 dated 30-10-1991.

2. An important issue that arises for consideration in this appeal is the interpretation of the expression "public place."

3. One Mr. Gangaiah was the driver of the lorry bearing No. ABK 8035. On 28-8-1985, the lorry went to the premises of Coromandel Fertilisers Limited, Visakhapatnam to load Gypsum. The lorry entered into the premises of the factory after obtaining necessary permission. It was parked at the appropriate parking place and the driver was with the vehicle. While so, a cleaner of another lorry bearing No. ATV 3438 while taking reverse of the vehicle dashed against Gangaiah on account of which he died. Consequently, the legal representatives of the deceased laid a claim for compensation. The Tribunal found that the accident had not taken place in a public place and absolved the Insurance Company of the liability and mulcted the liability on the owner of the vehicle by an order dated 30-10-1991. The compensation was computed at Rs. 93,600/- Not satisfied with

the compensation and not making the Insurance Company liable, the present appeal has been filed.

4. Learned Counsel for the appellants-claimants submits that the finding of the Tribunal that the accident had not occurred in a public place is absolutely misconceived and the Tribunal has not properly considered this issue with reference to the definition contained in Section 2(34) of the Motor Vehicles Act, 1988 and the decisions of this Court. Learned counsel would submit that the Tribunal relied on the decision of the Gujarat High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja*, , which was later dissented by the same High Court in a subsequent decision in *Ekta Arvindkumar Shah (Minor) and Another Vs. H.S. Shah and Another*, . Learned counsel would also submit that the contention of the Insurance Company that the cleaner of the offending vehicle has caused the accident and the Insurance Company is not liable is also not sustainable and that as per the judgment of the Supreme Court in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, , even though the vehicle was driven by the unauthorized person, the owner and the Insurer of the vehicle are liable for payment of compensation. When once entrustment of the driver was established, the subsequent changes would not absolve the owner and the Insurance Company of the liability.

5. Before considering the quantum of compensation, it is necessary to consider whether the accident has occurred in a public place so as to deny the liability on the part of the Insurance Company.

6. It is not in dispute that the entry into the Coromandel Fertilizers was restricted and it is also in evidence that the lorry driven by the deceased was permitted to enter inside and only after entry into the factory premises, the accident had taken place. The definition of public place as contained in Section 2(34) of the Motor Vehicles Act, 1988 reads thus:

"Public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage."

7. The expression "public place" was interpreted in number of cases with reference to the aims and object of the concerned statute. In olden days, this expression came to be considered mostly in Gaming Act.

8. In *Reg. v. Wellard*, (1884)14 QBD 63, Lord Coleridge, C.J. enunciated the principle that a place is a public place though it is private property when it is shown that the public are in the habit of resorting to the place, and no one prevented them from so resorting to it. The prisoner was convicted of indecently exposing his person to divers subjects of the Queen in a certain public place, upon evidence showing that the place in question was out of sight of the public footpath, but was a place to which the prisoner had gone with several little girls, though without any legal right to go there, and was a place to which persons were in the habit of going without having any strict legal right so to do, and that

persons so going were never in any way hindered or interfered with. Grove, J, said that a "public place is one where the public go, no matter whether they have a right to go or not". The same view was adopted by Madras High Court in *Emperor v. Musa*, 40 Mad. 556 . It was said that a place was a public place where public were in the habit of resorting to do and no one prevented them from doing it, no matter whether they have a right to go there or not. However, it is to be noted that the application of principle depends on the facts of a particular case.

9. In *State of Kerala Vs. Cherian Secariah and Others*, , the learned Single Judge following the principle laid down in *Wellard's* case (4th cited supra), held that to constitute a public place, it is not necessary that the place should be a public property, but if it is a private property, it must be proved not only the public could have access to it, but it is a place to which members of the public in fact resort.

10. Following the decision in *Wellard's* case (4th cited supra), it was held in *Emperor v. Govindarajulu*, (ILR 39 Mad. 886 = AIR 1916 Mad. 474) that a legal right to access by the public is not necessary to constitute a public place and that a public place is one which is resorted to by the public whether they have a right to go or not. It was held in that case that persons who were found guilty of disorderly behaviour in the harbour premises could be convicted for an offence u/s 75 of Madras City Police Act, as the harbour premises constitute a place of public resort.

11. In *Babu Ram and Others Vs. King-Emperor Sulaiman, J.* dealing with the question whether a place was a public place within the meaning of Section 13, Public Gaming Act, which corresponds to Section 12, Madras Gaming Act, held that a vacant land which was private property and surrounded on three sides by fields and on the fourth by a stream was not a public place. In the course of the judgment the learned Judge observed that:

"a place to which the public had not by right, permission, usage or otherwise, access could not be a public place even though it were close to a public street so that any member of the public walking along the street could see what was going on there"

12. It was further stated there that it must be a place either open to the public or actually used by the public, the mere publicity of the situation not being sufficient.

13. In *Ahmad Ali v. King Emperor* (1904 (1) All.L.J. 129) it was held that a private grove was not a public place although people could pass through it while going to the bazaar its boundary wall being broken at place.

14. To the same effect is the decision in *Ramjank Patwa v. Emperor* . where also it was held that gambling in a bamboo grove, a place where two footpaths meet, was not a public place within the meaning of the Bengal Public Gambling Act.

15. Similarly, in the case, *In Re, Unna Muhammad*, (AIR 1938 MAD. 74), it is laid down that gambling in a tank bed is not an offence u/s 12, Madras Gaming Act because,

"The word "place" in Section 12 means from its context a place akin to a street or thoroughfare used regularly and necessarily by people going from one place to another and that the real offence dealt with in Section 12, Madras Gaming Act, is obstruction or annoyance to wayfarers and pedestrians."

16. The learned Judge followed a ruling of a Bench of the Bombay High Court in *Emperor v. Hussein* ILR(1906) 30 Bom. 348) which laid down that a railway carriage forming part of a through special train was not a public place within the meaning of Section 12, Prevention of Gambling Act.

17. It was pointed out in *Emperor v. Jasub Ally* ILR(1905) 29 Bom. 386) that the gist of the offence u/s 12 of Bombay Prevention of Gambling Act which corresponds to Section 12, Madras Gaming Act consists in individuals carrying on their gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed if his inclination lie that way-to join in or follow the bad example openly placed in his way. It was held that the accused who carried on gambling in a boat chartered for that purpose and anchored in Bombay Harbour a mile away from the land had not committed an offence u/s 12 of that Act.

18. *J. Raghunadhu v. Emperor* 1933 (Mad. W.N. 1422) is yet another case where it was laid down that the place of a private residence is not a public place though it is alongside a public road and accessible from it.

19. One of the other cases to which reference may be made is the case *In re. In Re: Kuchampudi Satyanarayana Raju and Others*, where Chandra Reddi, J. (as he then was) has reviewed the entire case law and observed thus:

"It is unnecessary to multiply decisions on this point. The principle deducible from all these decisions is that in order to constitute a public place it is not necessary that the place should be a public property, but if it is a private property, it must be proved that not only the public could have access to it, but it is a place to which members of the public in fact resort. All that the prosecution has proved in this case is that the accused were seen playing in a compound by the side of the temple."

20. In that case, it was found that the prosecution failed to establish that the public were as a matter of fact frequenting that place and were in the habit of indulging in gambling. It was, therefore, held that the petitioners were not guilty of the offence u/s 15 of the Act and they were acquitted.

21. In *Ram Bilas and Others Vs. Nitya Nand and Others*, it was held that when a public have access to a place without their access being refused or interfered with that place is a public place, whether the public have a right to go there or not. The accused were found gambling in a grove, which was a private property

but was used by the public on the occasion of fairs without interference and the visitors on such occasions presented all parts of the grove.

22. In *Ahmadali v. Emperor* 1915 CrLJ. 704 the Madras High Court while dealing with the expression place of public resort under Madras City Police Act held that a legal right of access by the public is not necessary to constitute a public place. A public place is one where the public go, no matter whether they have a right to go or not.

23. It was further held that Harbour premises which respectable people and other people who have business are permitted to enter, are "places of public resort" within the meaning of Section 75 of the Madras City Police Act.

24. In *Lanka Sarmma Vs. Rajendra Singh and Others*, , P.A. Choudary J, while interpreting the words "public place" under Motor Vehicles Act observed, where the coolies were hired for loading and unloading stones to be delivered at dam site and accident occurred near the dam site, the place of accident would have to be considered as one falling within the definition of "public place" though it belonged to the Public Works Department, as the workmen constituted public and, as such the place was a public place." He further observed the words "the other place which is not a thoroughfare" cannot be interpreted according to ejusdem generis rule, because they are negative in nature. A place over which a vehicle can pass and which is yet not a thoroughfare can only refer to a private place made fit for plying of the motor vehicle.

25. In *Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others*, , the Full Bench of Bombay High Court while referring to the expression "public place" in Motor Vehicles Act observed as follows:

"The term "public place, is a term of Article, the same having been defined specifically by Sub-clause (24) of Section 2 of the Act. The first thing to remember with regard to the definition is that it is an inclusive one. Secondly, it is an inclusive one. Secondly, it in terms makes it clear that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or set down by a stage carriage, is a public place, it show that it is not so much concerned with the ownership of the place as with its user. The definition of "public place" under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purpose-Hence, all places where the members of public have an access, for whatever reasons, whether as

of right or controlled in any manner whatsoever, would be covered by the definition of "public place" in Section 2(24) of the Act. *Lanka Sarmma Vs. Rajendra Singh and Others*, , and *State Vs. Dohana Jamnadas and Others*, , Rel. on. *Life Insurance Corporation of India Vs. Karthyani and Others*, , *Mangalamma and Others Vs. Express Newspapers Ltd. and Another*, , *Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja*, , *Taxi Drivers" Union and Another Vs. Kerala State Road Transport Corporation and Others*, , Dissented from."

26. In this case accident took place in the compound of Tata Engineering and Locomotive Company Limited situate at Pimpri-Pune. Generally, a person entering the factory premises was supposed to possess permission or authority. The entire factory premises including the main road where the accident took place belonged to the company. The Full Bench held that it could not be disputed that the place where the accident occurred was a public place within the meaning of Section 95.

27. In *Taxi Drivers" Union and Another Vs. Kerala State Road Transport Corporation and Others*, , the learned Single Judge while referring to public place under the Motor Vehicles Act held that where access to particular road or place is permissive, it cannot be said that public have right of access to such road or place is excessive, it cannot be said that the public have right of access to such road or place. Hence, such road cannot be recorded as a public place.

28. In *The Corporation of Calcutta and Others Vs. Sarat Chandra Ghatak and Another*, , while dealing with Section 229 of Calcutta Municipal Act, observed that a privately owned Cinema is not a public place, within the definition of Section 229 as no member of the public has a legal right of access to it. The management may without violating law refuse access to a member of public even though he is prepared to pay for such access. Therefore, Section 229 does not empower the Corporation to impose any tax in respect of advertisements displayed to public view in a private cinema house.

29. In *Cawley v. Frost* 1976 (3) All E.R. 743, it was held that a Pitch in a Football ground surrounded by speedway track and spectators stand, where public admitted to stand, but prohibited from entering into Pitch or track was held to be a public place while interpreting the words "public place" under the Public Order Act, 1936. The Queen Bench held that the football ground as a whole was identified as place or premises which constituted a public place for the purpose of Section 5 and 9(1) of the Act; the fact that the public has been denied access to certain parts of the ground did not cause those areas to lose the character of a public place.

30. The expression "public place" which in pari materia with Section 2(m) of the Motor Vehicles Act was defined under the said Act as follows:

"Public place" includes any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise."

31. The learned Single Judge of this Court in *United India Insurance Co., Ltd., Guntur Vs. S.K. Raheemunnisa and others*, took, the same view as that of Bombay Full Bench decision. In that case, the driver of the lorry had taken the lorry to the Indian Cement Factory Limited, Chilamakur and kept the lorry in the lorry stand and he was sleeping in front of the lorry. While so, another lorry driven in a rash and negligent manner rash and negligent over the deceased and caused the death. Since the accident had taken place within the compound of Indian Cement Company Limited, the stand taken by the Insurance Company that it is not liable for payment of compensation. The learned Judge after relying on the judgment of the Bombay High Court in *Pandurang Chimaji's* case (10th cited supra) and also *Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja*, and also *State of Maharashtra Vs. Gulabi Sudhu and Others*, held that the place where the accident had occurred is a public place and that the Insurance Company is liable for payment of compensation.

32. In *United India Insurance Company Limited v. Lakshmi* 1997 ACJ 489 the Division Bench of Calcutta High Court held that an accident that took place in paddy field and in the absence of any evidence restricting or regulating the right of access by the members of the public to the property, it was held that the accident had occurred in public place and the Insurance Company is liable for payment of compensation.

33. In this case also the Division Bench followed the judgment of *Pandurang's* case (10th cited supra) and 1965(1) A11.E.R. 705

34. In *State of Maharashtra Vs. Gulabi Sudhu and Others*, the Bombay High Court also held, yet, in another case took the same view that it was a case where Sudu Guptha met with an accident in the premises of Aarey Colony, Goregaon, when he was walking on the left side of the road, tractor belonging to the Company dashed against him resulting in fatal accident. It was held that even though it was taken within the colony of Aarey Colony, which is a public place.

35. In *Oriental Fire and General Insurance Company Limited v. Rabari Gandu Punja* (1 supra), the learned Single Judge, however, taken a view that when the accident takes place within the factory premises, it cannot be treated as accident in a public place. But, however, this decision was not followed in the later decision of *Pandurang's* case (10th cited supra) and also the learned Single Judge of this Court in *Lanka Sarma's* case (9th cited supra).

36. A critical survey of the aforesaid decisions would clearly indicate as to how the public place was being interpreted from time to time. But, however, right from *Wellard's* case (4th cited supra), the consistent view of the Courts both in India and Abroad is that the expression "public place" has to be interpreted with reference to the Act which contained the expression keeping in view the aims and objects of the said Act. Admittedly, the provisions relating to compensation in respect of the accidents arising out of the use of motor vehicle is a beneficial piece of Legislation to the public engrafted in the Motor Vehicles Act. u/s 95, the

Insurance is made compulsory for all the motor vehicles only with a view to protect the interest of the innocent victims. It is not in dispute that in the instant case, the accident had taken place within the premises of the factory where the vehicle was stationed and another vehicle hit the deceased. As per the expression "public place" it has to be construed as a place where the public have an access. As held in various decisions, it is not necessary whether the access is by means of permission or unrestricted entry. The factories and other public places are usually fenced in the interest of the safety and protection. By mere fencing, it cannot be inferred that it is not a public place. As held in Cawley's case (13th cited supra), even a football ground was held to be a public place, even though in a part of area, persons were not allowed to enter. Yet, in another case, where gambling was taken place in a private grove, it was held that it is a public place. It is also to be noted in this regard that even though entry is restricted, but when the permission is granted by the authorities to enter into the premises, then as far as the persons, who entered the premises after permission having been granted and in relation to them, it cannot be treated as a private place. It has to be necessarily treated as a public place. The expression, public place has to be considered in a wider sense keeping in view the objects of Section 95. If a restricted meaning is given, the very purpose is frustrated. Thus, the decisions of the learned Single Judge of Gujarat High Court and Orissa High Court, cannot be said to be laying down the correct law with reference to the objects contained in the Motor Vehicles Act, more especially in regard to the compensation aspect. When the access is gained by virtue of the permission granted then the place becomes public place and more especially in the case of factories, where the public has to necessarily enter for performing various duties. Therefore, in such a situation, the expression has to be necessarily interpreted liberally, so as to advance the cause of the statutory provision. Even the dictionary meaning cannot be sole guiding factor. Yet, the meaning of the expression in legally acknowledged dictionaries supports the view which this Court has taken. In Stroud's Judicial Dictionary, Fifth Edition, P. 2094, "public place" has been defined thus:

"A public place is a place to which the public can and do have access; it doesn't matter whether they come at the invitation of the occupier or merely with his permission, or whether some payment or the performance of some formality is required before access can be had..."

37. In Black's Law Dictionary V Edn. P. 1107, the expression "public place" has been defined thus:

"A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighbouring public (e.g. a park or public bench). Also, a place in which the public has an interest as affecting the safety, health, morals and welfare of the community. A place exposed to the public, and where the public gather

together or pass to and fro."

38. The Supreme Court in *Bolani Ores Ltd.*, , observed as follows:

"Quite often it is not possible to hold a dictionary in one hand and the statute to be interpreted in the other for ascertaining the import and intent of the word or expression used by the Legislature. The shade of meaning of a word; its different connotations and collocations which one finds in a dictionary does not relieve one of the responsibility of having to make the ultimate choice of selecting the right meaning. One chooses that meaning which is most apt in the context, colour and diction in which the word is used. The use of a dictionary ad lib without an analysis of the entire Act, its purpose and its intent, for ascertaining the meaning in which the Legislature could have used the word or expression may not lead one to the right conclusion."

39. The decision of *Wellard* case (4th cited supra), *Cawley's* case (13th cited supra) coupled with Indian decisions in *Pandnrang's* case (10th cited supra) of Bombay Full Bench and *Lakshmi's* case (15th cited supra) of Calcutta Division Bench fully support the view that even though the accident had taken place in the factory premises, yet it is a public place falling within the definition of Section 2(m) of the Motor Vehicles Act.

40. Thus, I have to necessarily reject the contention of the learned Counsel for the Insurance Company that the accident had not occurred in a public place and the Insurance Company is not liable. Accordingly, I hold that the accident shall be deemed to have been occurred in public place and that the Insurance Company is equally liable along with the owner of the vehicle.

41. Even the finding of the Tribunal that the accident was caused by an unauthorized person who was driving the vehicle and therefore, the Insurance Company cannot be made liable is unsustainable in view of the judgment of the Supreme Court in *Sohan Lal's* case (3rd cited supra). It is not the case of the owner or the Insurance Company that initially entrustment was not given to the person who was not possessing valid driving licence and there is no such evidence on this issue also. Under those circumstances, the Insurance Company has to be made liable even though the accident was caused by the cleaner of the lorry.

42. Coming to the question of computation of compensation, the deceased was aged about 40 years and the dependency was fixed at Rs. 650/- per month. Therefore, applying the proper multiplier, dependency would work out to Rs. 1,01,400/- (650 x 12 x 13). The claimants are also entitled for Rs. 30,000/- under the head loss of consortium and loss to the estate as per the judgment of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, . The Tribunal has also awarded a sum of Rs. 700/- towards transportation and cremation charges. In all the claimants are entitled for a sum of Rs. 1,32,100/- (Rs. 1,01,400 + 30,000 + 700) instead of Rs. 99,300/- as awarded by the Tribunal, together with interest at 9% per annum from the date of petition till realisation. The owner of the

vehicle and the Insurance Company are jointly and severally liable for payment of the compensation amount. The compensation amount shall be deposited within a period of two months from the date of receipt of a copy of this order. On such deposit the claimants are entitled to receive the same equally. The compensation falling to the shares of majors shall be permitted to be withdrawn by them without furnishing any security. However, in respect of minors' share, the same shall be deposited in a scheduled bank in fixed deposit till they attain majority.

43. The C.M.A. is accordingly allowed.

No Costs.