

(1989) 07 OHC CK 0031

In the Orissa High Court

Case No : Miscellaneous Appeal No. 265 of 1984

Pradeep Kumar Singh Deo

APPELLANT

Vs

Draupadi Verasagar and Others

RESPONDENT

Date of Decision : 25-07-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1990) ACJ 392 : (1989) 68 CLT 690 : (1990) 67 CompCas 566

Hon'ble Judges : H.L. Agrawal, C.J

Bench : Single Bench

Advocate : P.K. Padhi, for the Appellant; Ajaya Kr. Mohanty and None for respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, C.J.—The appellant is the owner of a motor truck bearing No. OSS 5792 which was involved in an accident on December 26, 1982, while driven by his driver. It is alleged that, due to rash driving by the driver, the vehicle which was carrying sugarcane capsized and certain coolies including one Prafulla Verasagar aged about 24 years fell down and Prafulla died.

2. The claim application was filed by his widow and other legal representatives. The Claims Tribunal, Sambalpur, held that the accident took place on account of the negligence of the truck driver and, accordingly, allowed compensation of Rs. 27,600 to be distributed in different proportions among the claimants (details are not relevant). He, however, altogether exonerated the insurer, namely, the United India Insurance Co. Ltd. respondent No. 6 on the ground that the truck was carrying more than four persons (sic), i.e., beyond the permissible limit under the law. Therefore, the number of persons carried being beyond the permitted limit, the insurance company could not be held liable.

3. The owner of the truck has, therefore, come to this court and the only point that falls for consideration on the facts and in the circumstances of the case is,

as to whether the insurance company can be saddled with the liability to indemnify the insured for the amount awarded as compensation or any part thereof.

4. The arguments are advanced on the basis of the provisions contained in Section 95(2) (a) of the Motor Vehicles Act which reads as follows : --

"95(2). Subject to the provisions of Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely: --

(a) Where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees other than the driver, not exceeding six in number, being carried in the vehicle ;"

5. The scheme of Clause (a) of Section 95(2) only suggests that the amount specified therein is the over-all limit of liability of the insurance company incurred in respect of any one accident. It may be mentioned here that the insurance company had taken a plea before the Claims Tribunal that the deceased was not an employee (coolie) working in the truck, but was a passenger unauthorisedly picked up, and, therefore, no liability of the insurer was attracted under the law. This plea had been rejected by the Tribunal and it had been found as a fact that the deceased was an employee of the truck-owner. Once this position is established, it has to be seen as to whether the liability of the insurer disappeared if the number of employees carried in a goods vehicle exceeded the statutory number, the view taken by the Tribunal.

6. In my opinion, the Tribunal has completely misdirected itself and, has taken an erroneous view in discharging the liability of the insurer on that account. The intent and purpose of Clause (a) of Section 95(2) is only to limit the extent of liability of the insurer which is fixed to a particular number of persons. If a larger number of employees are carried in a goods vehicle, then the liability of the insurer will be confined, besides the monetary limit, to the death of, or bodily injury suffered by, such number of employees which is fixed in the statute or agreement. For example, if the statute limits the liability of the insurance company to six employees, and ten persons travelling in a vehicle die or suffer bodily injuries as a result of an accident, then the liability of the insurer will be confined with respect to six persons only, the compensation not exceeding the maximum amount prescribed in that regard. In that view of the matter, the insurance company is to indemnify the insured, namely, the appellant, to that extent, i.e., the extent of compensation payable to the claimants under the provisions of the Workmen's Compensation Act. The responsibility for payment of the additional amount of compensation would remain with the appellant. The insurer cannot escape its liability for the reason that the vehicle had carried more number of employees.

7. I am supported in my view by a decision of this court in The Orissa Cooperative Insurance Society Ltd. Vs. Sarat Chandra Champati and Another, , wherein it had been held that the liability of the insurance company to pay compensation is limited only to the extent payable under the Workmen's Compensation Act.

8. In the case of Orissa State Road Transport Corporation v. Shankar Sahu [1989] OJD (Civil) 1, sitting in a Division Bench, I have held that it is open to a claimant to approach either of the forums under the Workmen's Compensation Act or the Motor Vehicles Act.

9. Since the Tribunal had not proceeded to examine the case from this aspect, while allowing this appeal, I would remit the matter to the Claims Tribunal to find out the compensation payable to the claimants under the provisions of the Workmen's Compensation Act. The liability of the insurance company will be confined to that extent and only the balance amount of the compensation as awarded, will be paid by the appellant.

10. In the result, the appeal is allowed and the matter is remitted to the Tribunal with the aforesaid direction. In the circumstances, there will be no order as to costs.