

(1984) 01 OHC CK 0012

In the Orissa High Court

Case No : Miscellaneous Appeal No's. 166 to 168 of 1978

Prafulla Kumari Pradhan and Others

APPELLANT

Vs

Orient Paper Mills Ltd. and Others

RESPONDENT

Date of Decision : 20-01-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 96

Citation : (1984) 2 ACC 165 : (1984) ACJ 584 : (1986) 60 CompCas 226

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : P.K. Misra, for the Appellant; N.C. Panigrahi, for the Respondent

Judgement

G.B. Patnaik, J.—These three appeals arise out of three different miscellaneous cases wherein the Second Motor Accidents Claims Tribunal passed orders on the same date, namely, June 30, 1978, and the point in issue is also the same and, therefore, all these three appeals were heard together and are being disposed of by this common judgment.

2. Miscellaneous Appeal No. 166 of 1978 arises out of Miscellaneous Case No. 57 of 1976, wherein the claimants are the wife, the minor daughters and the parents of the deceased, Kanhu Charan Pradhan. Miscellaneous Appeal No. 167 of 1978 arises out of Miscellaneous Case No. 56 of 1976, wherein the wife and minor children of the deceased, Purandar Mallik, are the claimants. Miscellaneous Appeal No. 168 of 1978 arises out of Miscellaneous Case No. 85 of 1976, wherein the wife and minor children of the deceased, Gumani Behera, are the claimants.

3. All these cases arise out of one and the same accident which took place on May 22, 1976, at about 4 p. m., near village Takara. The truck bearing No. ORS 8712 belonging to the Orient Paper Mills came with a high speed being driven rashly and negligently without blowing horn and ran over and crushed a number of persons out of whom four died on the spot and others were injured. In Miscellaneous Case No. 57 of 1976, the deceased was a forest guard and the

claimants claimed compensation to the tune of Rs. 85,000. In Miscellaneous Case No. 56 of 1976, the deceased was a skilled labourer and compensation to the tune of Rs. 50,000 was claimed by the claimants. In Miscellaneous Case No. 85 of 1976, the deceased was a student and compensation to the tune of Rs. 30,000 had been claimed by the claimants.

4. During the continuance of the claim proceedings, the respective claimants in each of the three cases entered into a compromise with the owner of the truck, namely, the Orient Paper Mills Ltd., and received certain compensation upon filing compromise petitions before the Tribunal. The Tribunal recorded the compromise after hearing the counsel for the parties in each of the cases and directed that the claim as against the said Orient Paper Mills, the owner of the truck, be dismissed on full satisfaction. After recording the aforesaid finding, the Tribunal further recorded that the claimants could not continue the proceedings any further against the insurance company. In these three appeals, the said order of the Tribunal has been challenged.

5. Mr. P.K. Misra, the learned counsel for the appellants, has urged before me that by entering into a compromise with the owner of the truck, the liability of the insurance company or any other person liable to pay compensation on account of the accident will not be absolved and, therefore, the proceedings should have been continued as against the remaining opposite parties. He reiterated that in view of the specific term in the compromise petition that the claimants have entered into the compromise in full and final satisfaction of their claim against the owner of the truck without prejudice to their claim for any additional amount, they will be entitled to from the insurance company, as per statutory liability, the order of the Tribunal is insupportable and it must be held that the proceedings should continue. In support of such submission, the learned counsel has, however, not been able to cite any authority.

6. Chapter VIII of the Motor Vehicles Act, 1939, deals with "Insurance of motor vehicles against third party risks " and makes provision for compulsory insurance in respect of third party risks. These provisions were inserted on the recommendations of the Motor Vehicles Insurance Committee and have been adapted mostly from the English law. The necessity for insurance against third party risks was felt and provision for compulsory insurance was made as injured persons or the dependants of those killed in accidents found it difficult to realise damages or compensation from the owner or driver of a vehicle who had no means to satisfy the claims. Under the provisions of the Motor Vehicles Act, a vehicle cannot be used in a public place unless there is in force in relation to the use of the vehicle, a policy of insurance in compliance with the requirements of the provisions contained in Chapter VIII. Section 95 deals with the policy of insurance and the limits of liability. Under the policy of insurance, the risk of a person who has incurred liability for the death of, or bodily injury to, any person or damage to any property of a third party is indemnified by the insurer. The insurance will come into play and will be enforced when the insurer will incur the

liability, such liability being a vicarious one making the owner of the vehicle responsible for the negligent act of his driver. The liability of the insurer arises out of the provisions contained in Section 96. The provisions contained in Section 96 are analogous to Section 10(1) of the English Road Traffic Act, 1934, and by the said provision, statutorily, the liability of the insurer to pay the claimant directly has been declared, even though there is no privity of contract between the insurer and the claimant. The provision enacts that the insurer is bound to pay to the person entitled to the benefit of the decree against an insured as if the insurer is the judgment-debtor in respect of the liability. The limit of the insurer's liability, however, cannot exceed the sum assured payable under the policy or if the sum assured is not specified or the specified sum is less than the sum payable under Sub-section (2) of Section 95, then the maximum liability will be that as laid down in that sub-section. But if the sum specified exceeds the sum as fixed u/s 95(2), the maximum liability shall be the sum specified in the policy. Thus, it is amply clear that the provisions of the section relate to the liability of the insurer which arises only when the insured has incurred liability, but not independent of it. A claimant is, therefore, entitled to recover from the insurer the amount of compensation which he is in law entitled to obtain from the insured subject to the statutory limits of liability of the insurer. The aforesaid conclusion of mine gets support from the Full Bench decision of the Madhya Pradesh High Court in the case of Mangilal v. Parasram [1972] 42 CompCas 102 [FB].

7. In the present case, the claimants having squared off their claim against the owner of the vehicle, namely, the insured, are, therefore, not entitled to pursue against the insurer any further and the Tribunal, therefore, was amply justified in rejecting their prayer to proceed with the case against the insurance company. In the result, therefore, I find no merits in these appeals which are accordingly dismissed but without any order as to costs.