
(2002) 12 MP CK 0016
In the Madhya Pradesh High Court

Rajendra Singh

APPELLANT

Vs

Tulsabai and Others

RESPONDENT

Date of Decision : 19-12-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166, 173, 2

Citation : (2005) 2 ACC 719

Hon'ble Judges : S.P. Khare, J;S.K. Kulshreshtha, J

Bench : Division Bench

Judgement

S.P. Khare, J.—This is an appeal by the owner of the vehicle u/s 173 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as "the Act") challenging that part of the order by which Insurance Companies have been exonerated from their liability to pay compensation on the ground that the accident did not occur in a "public place" as defined in Section 2(34) of the Act.

2. There is Diamond Cement Factory at Damoh. Trucks and dampers come inside the said factory to load cement bags for transportation to various destinations. On 3rd April, 1996 at about 10.30 p.m. such vehicles were standing in queue waiting for their turn to load cement bags. Truck No. CPQ 7157 was also there. Non-applicant No. 1 Phoolchand was its driver, non-applicant No. 3 Rajendra Singh (the appellant) is its owner and it was insured with the non-applicant No. 5 Oriental Insurance Co. Ltd. Behind this truck there was dumper No. MP 15-D 0403. Non-applicant No. 2 Ghanshyam was its driver. It was owned by non-applicant No. 4 Raghubar Prasad and it was insured with non-applicant No. 6 New India Assurance Co. Ltd. The driver of the truck wanted to move, the vehicle forward for loading the cement bags but the engine did not start. On his request the driver of the dumper gave a push to the truck by his vehicle and in that process Lakhanlal aged about 22 years who was a labourer in the truck was crushed and he died on the spot. The applicants are his legal representatives who submitted the application u/s 166 of the Act claiming compensation. The Claims Tribunal, after appreciation of the evidence adduced by both the sides,

gave the finding that there was composite negligence of the drivers of both the vehicles which resulted in the death of Lakhanlal. His income was determined at Rs. 3,000/- per month. The dependency was assessed at Rs. 2,000 x 12 = Rs. 24,000/- per annum and on applying the multiplier of 16, the amount of compensation was arrived at Rs. 3,84,000/-. To this amount a sum of Rs. 10,000/- was added towards the loss of consortium to the wife of the deceased. Thus, the total compensation of Rs. 3,94,000/- with interest at the rate of 12 per cent per annum was awarded against the drivers and owners of the vehicle and their liability was held to be joint and several. The Insurance Companies have been exonerated on the ground that the accident did not occur in a "public place" and, therefore, the case being not covered by Section 147(1)(b)(i) of the Act the liability cannot be fastened on them. The driving licence of the driver of the dumper was found to be valid as it was renewed by the Regional Transport Officer, Sagar for the period 30th June, 1994 to 29th June, 1997 on 19th November, 1994 as per Exh. D-3. Therefore, on the date of accident, i.e., on 3rd April, 1996 he possessed a valid driving licence and New India Assurance Co. Ltd. could not be exonerated on this ground.

3. The only point which has been debated during the course of the hearing of this appeal is whether the place where the accident took place is "public place" or not within the meaning of Section 2(34) of the Act.

4. The definition of "public place" in the Motor Vehicles Act, 1939 in Section 2(24) was identical. It is as under:

2(24). "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 staid at which passengers are picked up or set down by a stage carriage.

5. The words "whether a thoroughfare or not" and "the place to which the public have a right of access" are relevant in the present context and these are of crucial importance and great significance to arrive at the conclusion whether the place is a public place or not. A "thoroughfare" as per Oxford English dictionary means "a public way unobstructed and open at both ends, especially a main road or street or a highway". A private road or place as per contra distinguished from a thoroughfare, as per definition, would be a public place if the public have a right of access to it. Even if the right of access is with express or implied permission of its owner it would be covered by the definition of "public place". The compound of the cement factory was being frequented by heavy vehicles in the course of the business with the express or implied consent of its owner and, therefore, it was a place to which the public had the right of access.

6. In Law Lexicon of P.R. Aiyar, edited by Justice Y.V. Chandrachud, 1997 Edn., page 1560, quoting the case of the Privy Council in *Emperor v. Govindarajulu* 30 I.C. 751, in which the decision in *The Queen v. Wellard* 14 Q.B.D 63, was followed, it has been stated: "a public place is one to which the public go whether they have a right to do so or not. A legal right of access is not essential

to constitute a public place". In Stroud's Judicial Dictionary, 5th Edn., page 2094, "public place" has been defined as follows:

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....

7. In *Narsingh v. Balkishan I* (1987) ACC 306 : 1988 A.C.J. 288, it was held by a Single Bench of this Court that the compound or the campus of the printing press where the accident took place is a "public place" within the meaning of Section 2(24) of the Act of 1939. The words "other place" occurring in the definition are significant in their connotation and should be given a wide import and interpretation. "Public place" is a place where the public can and do have access. Even user of a private place and access of public to it can be interpreted as a "public place" within the meaning of the definition.

8. The interpretation of the words "public place" in the above decision of this Court was heavily relied upon by the Full Bench of the Bombay High Court in *Pandurang Chimaji Agale v. New India Life Insurance Co. II* (1986) ACC 75 : 1988 A.C.J. 674. The Full Bench after an exhaustive survey of the entire case, law held that:

The term "public place" is a term of the Act, 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 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 shows 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, regulated or restricted 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.

9. This decision of the Full Bench was relied upon by the Orissa High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others*, ,

by G.B. Patnaik, J. (as His Lordship then was) in preference to the decision in *L.I.C. of India v. Karthyani* 1975 A.C.J. 226 (Orissa). he also relied upon the decision of this Court in *Narsingh v. Balkishan* (supra), and then concluded that the road inside Secretariat compound is also a "public place" within the meaning of Section 2(24) of the Act inasmuch as the members of the public have the right of access to it though a permission or pass is required for such entry.

10. In *Sahodra Devi Vs. Ramnarayan Satyanarayan and Others*, a Single Bench of this Court followed the earlier decision in *Narsingh v. Balkishan* (supra), and that of the Full Bench of Bombay High Court referred above. There are two Division Bench decisions of this Court taking the same view. One is *K.K. Jain and Another Vs. Smt. Masroor Anwar and Others*, , in which the premises of the Bhilai Steel Plant was held to be a "public place". The other is the Division Bench decision to which one of us (S.P. Khare, J.) was a party in *National Insurance Co. Ltd. Vs. Sahiba Khatun and Others*, . In this case decision of Orissa High Court in *Raghunath's case* (supra), referred above was relied upon and it was held that mines area owned by the Central Coal Fields, where entry is restricted but members of the public have access on permission, is a "public place" and the insurer of the vehicle is liable of compensation on account of accident in that area.

11. Thus, the consistent view of this Court has been that a private place to which public have a permissive access is also a public place. The Claims Tribunal has relied upon the decision of Orissa High Court in *L.I.C. of India v. Karthyani* (supra), which has not been followed by the same High Court subsequently. Similarly, the Claims Tribunal has relied upon the two decisions of Gujarat High Court and Madras High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja*, and *Mangalam v. Express Newspapers Ltd.* 1982 A.C.J. 203 (Mad.), which have taken a contrary view. It is noteworthy that the Division Bench of Gujarat High Court also in a subsequent decision in *Prakash Chemicals Private Ltd. Vs. Krishna Singh Sata Singh*, , has followed the decision of the Bombay High Court referred above. The same view has been taken by Gujarat High Court in *United India Insurance Co. Ltd. Vs. Gujarat Ship Trading Corporation*, . The Full Bench of the Madras High Court also in *United India Insurance Co. Ltd. Vs. Parvathi Devi and Others*, has held: "public place under the Motor Vehicles Act will cover all places including those of private ownership where members of public have an access whether free or controlled in any manner whatsoever. The earlier decisions of that High Court must be held to have been overruled by this Full Bench decision. Similarly, Kerala High Court in *United India Insurance Co. Ltd. v. Lakshmi*, 1997 A.C.J. 489, has held: "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 it and no one is prevented there from so resorting to it". In *Chinna Gangappa Vs. B. Sanjeeva Reddy and Another*, it has been held by Andhra Pradesh High Court that "auto garage where accident occurred has to be construed as a public place".

12. It will thus appear that almost all the High Courts including those who held a contrary view earlier are veering round to the illuminating dictum of Sawant, J. (as His Lordship then was) in the Full Bench case of the Bombay High Court.

13. It is well settled that the decision of this Court are binding precedents on the Courts subordinate to it. Therefore, the Claims Tribunal ought to have relied upon the three decisions of this Court referred above which were reported long before the Claims Tribunal rendered its decision in the present case on 30th June, 1998. It is expected that Claims Tribunal and subordinate Courts must update their legal knowledge especially by making a study of the authoritative and binding precedents.

14. In view of the above discussion the compound of Diamond Cement p Factory at Damoh to which the public had access and the vehicles were going there for the business purposes and where the accident occurred was definitely a "public place" and, therefore, the two Insurance Companies in the present case cannot escape their liability and are bound to indemnify their insured persons and pay the compensation directly to the applicants. They are also jointly and severally liable with drivers and the owners of the vehicles to compensate the applicants.

15. The appeal is allowed. The impugned order so far as it has exonerated the two Insurance Companies from their liability to pay the compensation is set aside and it is directed that the respondent Nos. 8 and 9--Oriental Insurance Co. Ltd. and New India Assurance Co. Ltd.--shall also jointly and severally with the appellant and respondent Nos. 5 to 7, satisfy the award made by the Claims Tribunal in favour of the applicants. The appellant would be entitled to have the amount reimbursed to him from the Insurance Companies, if he has paid any, in satisfaction of the award.