
(1987) 04 OHC CK 0021
In the Orissa High Court

Sitaram Sidhar and Others

APPELLANT

Vs

Hariram Sharma and Others

RESPONDENT

Date of Decision : 28-04-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D, 95(2)(a)

Citation : (1987) 2 ACC 174

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

Bench : Single Bench

Judgement

G.B. Patnaik, J.—All these three appeals are u/s 110-D of the Motor Vehicles Act (hereinafter referred to as the "Act") challenging the award of the Tribunal involving a common question of law and, therefore, they were heard together and are being disposed of by this common judgment. Miscellaneous Appeal No. 143 of 1984 arises out of Misc. Case No. 52 of 1983 wherein the Tribunal has awarded a compensation to the tune of Rs. 29,000/- in favour of the injured, Sitaram who was the claimant Sitaram having died during the pendency of that appeal, his legal representative has been substituted. Miscellaneous Appeal No. 144 of 1984 arises out of Misc. Case No. 50 of 1983 wherein the Tribunal has awarded a compensation to the tune of Rs. 36,000/- in favour of the claimant, Pardesh and Miscellaneous Appeal No. 145 of 1984 arises out of Misc. Case No. 51 of 1983 wherein the Tribunal has awarded a compensation to the tune of Rs. 34,000/- in favour of the claimant, Syama Kurmi. The total amount of compensation thus works out of Rs. 99,000/-. But so far as respondent No. 3, the National Insurance Company is concerned, the Tribunal has fixed its liability at Rs. 50,000/-. It is this direction of the Tribunal which is being challenged by all these claimants in the three different appeals, there being no challenge to the quantum of compensation awarded by the Tribunal.

2. These three claimants-appellants had been engaged as labourers by the owner of the truck bearing registration number ORS 6784 belonging to respondents 1 and 2 and respondent No. 3 is the Insurance Company with whom the vehicle

had been insured. On 27-2-1983, while the vehicle was returning with Mohua flowers loaded in the same, on account of rash and negligent driving of the vehicle by the driver, it capsized near the bridge over river Ib and on account of the over-turning of the vehicle, these three claimants sustained various injuries. They were taken to the Jharsuguda Hospital for treatment and after that Pardesh (Claimant in Misc. Case No. 50 of 1983 and appellant in Misc. Appeal No. 144 of 1984) was referred to Burla Medical College Hospital where he remained as an indoor patient for about a month as he had sustained multiple injuries and fracture on the pelvic region. So far as the claimant in Miscellaneous Case No. 51 of 1983 (Miscellaneous Appeal No. 145 of 1984) is concerned, he also sustained fracture of the right os ilium and dislocation of the right acromion and Sitaram (claimant in Misc. Case No. 52 of 1983 and appellant in Miscellaneous Appeal No. 143 of 1984) had bruises and fracture of the shaft of the right humerus and laceration of the occipital region. On account of their injuries, each of them claimed compensation to the tune of Rs. 50,000/-.

3. The respondents did not file any written statement but, however, participated at the time of hearing.

4. The Tribunal on consideration of the materials on record came to the conclusion that the truck in question met with an accident and such accident was the result of rash and negligent driving of the driver. It was further found that the claimants were travelling in the said truck as loading-coolie and, therefore, having sustained the injuries on account of the accident were entitled to receive compensation. So far as the quantum of compensation is concerned, the learned Tribunal on consideration of the materials on record has assessed the compensation as has been narrated earlier and the claimants do not challenge the quantum of compensation awarded.

5. Mr. Sinha, the learned Counsel appearing for the claimants, however, contends that the Tribunal committed an error in fixing the liability of respondent No. 3, the Insurance Company, to the total extent of Rs. 50,000/- whereas according to him u/s 95(2) of the Act, the Insurance Company is liable to pay the entire amount. Mr. P.K. Misra, the learned Counsel appearing for the owner of the truck also supports the contention of Mr. Sinha and Mr. Samantray, the learned Counsel appearing for the Insurance Company is also not in a position to support the conclusion of the Tribunal on this score or refute the contention of Mr. Sinha for the appellants.

6. Sub-section (2) of Section 95 of the Act on which the learned Tribunal placed reliance is extracted hereinbelow for better appreciation of the point involved:

95. Requirements of policies and limits of liability.--

(1)

(2) Subject to the proviso to 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 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.

(b)

(c)

(d)

The question for consideration is that when three of the workers were injured in the same accident while being carried in the vehicle as employees, whether the liability of the Insurance Company is Rs. 50,000/- for all the three accidents or it is Rs. 50,000/- in respect of each accident and that would depend upon the true meaning of the expression "Anyone accident". This point has been considered by the Supreme Court in the case of Motor Owners Insurance Co. Ltd. v. Jadavji Keshevji Modi and Ors. 1982 T & AC 1. After elaborately discussing the law on the subject, it has been held by their Lordships that it is appropriate to hold that the word "Accident" is used in the expression "any one accident" from the point of view of the various claimants, each of whom is entitled to make a separate claim for the accident suffered by him (emphasis is mine) and not from the point of view of the insurer. That was a case prior to 1956 when the liability of the Insurance Company u/s 95 (2) (a) was Rs. 20,000/- and the Supreme Court held that the Insurance Company is liable to pay the full amount of compensation to the heirs of the driver of the car and to the passenger who was travelling in the car, each amount being less than Rs. 20,000/-. In view of the aforesaid authoritative pronouncement of the Supreme Court, interpreting Section 95 (2) of the Act, the Tribunal committed gross error of law in limiting the liability of the Insurance Company to Rs. 50,000/- in all. Following the judgment of the Supreme Court in the aforesaid case, it must be held that the Insurance Company (respondent No. 3) is liable to pay the full amount of compensation in each of the Miscellaneous Cases since the amount of compensation is less than Rs. 50,000/- in each of the cases. Mr. Sinha's contention on this score must, therefore, be sustained.

7. Mr. Sinha, the learned Counsel for the appellants raises another submission which is also of equal force. Section 95(2)(a) was amended by Act 47 of 1982 with effect from 1-10-1982, and by such amendment, the limit of the liability of the Insurance Company in case of a goods vehicle became Rs. 1,50,000/- in all. The accident in the cases in hand having occurred subsequent to the date of amendment, even under the amended provision, the total award of compensation in the present cases not having exceeded the limit, the Tribunal committed an error in not looking to the amended provision. The question which may arise for consideration is whether the amended provisions would apply or the pre-amendment provision would apply since the policy had been issued when

the amendment had not come into force. This matter also is concluded by the judgment of the Supreme Court in the case of Padma Srinivasa v. Premer Insurance Co. Ltd. 1982 Transport and Accidents Cases, page 353. The Supreme Court held that the extent of insurer's liability must be determined by application of the law introduced by amendment which had come into force before the date of the accident. In that particular case, the accident had occurred after Section 95 (2) (a) of the Act was amended by Act 56 of 1969 enhancing the liability of the Insurance Company to Rs. 50,000/- and the Karnataka High Court had taken the view that the liability of the Insurance Company would be limited to Rs. 20,000/- according to the relevant provision as it existed on the date on which the policy came into force. Reversing the judgment of the Karnataka High Court the Supreme Court held as aforesaid. It was also held by their Lordships:

... Since the liability of the insurer to pay a claim under a motor-accident policy arises on the occurrence of the accident not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the term of the policy. That we consider to be a reasonable member in which to understand and interpret the contract of insurance entered into by the insured and the insurer in this case. The contracting parties did not incorporate the provisions of Chapter VIII of the Act in their contract. That is to say, they did not identify the liability of the promisor on the basis of the provisions of Chapter VIII as they stood on the date when the contract was made. They merely referred to the provisions of Chapter VIII, which means "the provisions of Chapter VIII in force at any given time", the given time being the date on which the right to sue accrues or, correspondingly, the liability arises. If the parties to a contract agree that one shall pay to the other damages for breach of contract in accordance with the law contained in any particular statute, without identifying the law as the provision which is in force on the date of the contract, the law which will apply for determining the quantum of damages is the one which is in force on the date on which the breach of contract is committed, that being the date on which the cause of action arises, and not the law which was in force on the date on which the contract was made.

In view of the aforesaid legal position and in view of the fact that the amendment has come into force with effect from 1-10-1982 and the accident occurred on 27-2-1983 much after the amendment, the amended provisions of Section 95 (2) (a) of the Act would apply whereunder the total liability of the insurance company is Rs. 1,50,000/-. Since the entire amount of compensation in the present case is Rs. 99,000/- there is no justification to limit the liability of the insurance company to the tune of Rs. 50,000/- as has been done by the Tribunal and on this score also the direction of the Tribunal cannot be sustained.

8. In the net result, therefore, while the amount of compensation awarded by the Tribunal is sustained, the direction of the Tribunal limiting the liability of the Insuraece Company (respondent No. 3) to the tune of Rs. 50,000/- is set aside and it is held that respondent No. 3 is liable to pay the entire amount of compensation to each of the claimants in these three appeals. If, however, any payment has been made pursuant to the order of the Tribunal, the payment so made must be taken into account.

9. The Miscellaneous Appeals are accordingly allowed, but in the circumstances, there would be no order as to costs.