

(1981) 07 OHC CK 0009

In the Orissa High Court

Case No : Miscellaneous Appeal No. 51 of 1977

State of Orissa and Another

APPELLANT

Vs

Smt. Madhurilata Ray

RESPONDENT

Date of Decision : 28-07-1981

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110D

Citation : (1981) 52 CLT 357

Hon'ble Judges : R.N. Misra, C.J.;B.N. Misra, J

Bench : Division Bench

Advocate : Government Advocate, for the Appellant; R.C. Patnaik, P.K. Misra and M. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, C.J.—This appeal u/s 110-D of the Motor Vehicles Act is directed against the award of the Motor Accident Claims Tribunal, Puri, dated 9-12-1976 in Misc. Case No. 82/2 of 1975 u/s 110-A of the Act.

2. One Bimal Kanti Ray working as Executive Engineer, Subarnarekha Division at Jaleswar came to Balasore on duty for having discussions with his Superintending Engineer over the construction of a bridge. Samples of soil at the foundation level of a pier had to be tested at Bhubaneswar and on being asked to personally proceed for the testing, Bimal proceeded in a Government jeep bearing registration No. ORP 2386 driven by a State Government driver on 6-7-1974. Along with him his wife Smt. Bani Ray, two minor children being Satyajit and Avijlt and Bimal's father Birendra travelled in the jeep. Near Chhatia on the National Highway No. 5 while negotiating a curve the jeep overturned. As a result of this accident the occupants of the jeep received multiple injuries. Bimal and his father Birendra succumbed to their injuries while Bimal's wife and the two children survived.

It was discovered after the accident that the rear wheel of the vehicle had

completely gone out of its place by tearing away the rim-plate. Four separate claims were laid:

(i) One by Bimal's widow for self and on behalf of minor sons and Bimal's mother. This was registered as Misc. Case No. 81/1 of 1975. This related to the death of Bimal;

(ii) The second by Bimal's mother which was registered as Misc. Case No. 82/2 of 1975 on account of Birendra's death;

(iii) The third by Bimal's widow for her own injuries which was registered as Misc. Case No. 83/3 of 1975; and

(iv) The fourth by Avijit for his own injuries which was registered as Misc. Case No. 84/4 of 1975.

The Tribunal after hearing parties awarded different amounts of compensation. Bimal's mother was given compensation of Rs. 8,250/- on account of her husband's death.

Four separate appeals were brought before this Court. Three arising out of the connected matters have already been disputed of against the Appellants. This Miscellaneous Appeal No. 51 of 1917 arising out of the award in Misc. Case No. 82/2 of 1975 came up for hearing before one of us and was directed to be placed before a Division Bench. That is how this appeal has been placed before us.

3. One of the pleas in the written statement was that Birendra was an unauthorised occupant of the jeep and the claim for compensation by his widow was, therefore, not maintainable. That contention was reiterated in appeal by the learned Government Advocate before the Single Judge and Mr. Patnaik for the claimant-widow relied on certain authorities for the position that in the absence of any clear direction to the driver who was in charge of the vehicle not to take Birendra on the vehicle as passenger, once Birendra was admitted into the vehicle he could not be treated as a trespasser.

4. The Supreme Court in the case Pushpabai Parshottam Udeshi and Ors. v. Ranjit Ginning & Pressing Company Pvt. Ltd. and Anr. AIR 1977 S.C. 1935, indicated:

It is not firmly established that the master's liability is based on the ground that the act is done in the scope or course of his employment or authority. The position was stated by Lord Justice Denning in *Young v. Edward Box and Company Ltd.* (1951) 1 T.L.R. 789 at p. 793. The Plaintiff and fellow workmen were given a lift in one of the Defendants' lorries with the consent of his foreman and of the driver of the lorry. On a Sunday evening the Plaintiff, in the course of that journey, was injured by the negligence of the driver of the lorry and the Plaintiff brought an action against the Defendants claiming damages for his injuries. The defence was that the Plaintiff, when on the lorry, was a trespasser. The traffic manager of the Defendants pleaded that he had never given

instructions to the foreman that he should arrange for lifts being given to the Plaintiff and his fellow-workmen on Sundays and that the foreman had no authority to consent to the Plaintiffs riding on the lorry. While two learned Judges held that the right to give the Plaintiff leave to ride on the lorry was within the ostensible authority of the foreman, and that the Plaintiff was entitled to rely on that authority and in that respect was a licensee. Lord Denning held that although the Plaintiff, when on the lorry, was a trespasser, so far as the Defendants were concerned, the driver was acting in the course of his employment in giving the Plaintiff a lift and that was sufficient to make the Defendants liable and that he did not base his judgment on the consent of the foreman. Lord Justice Denning stated the position thus:

...the first question is to see whether the servant was liable. If the answer is Yes, the second question is to see whether the employer must shoulder the servant's liability. So far as the driver is concerned, his liability depends on whether the Plaintiff was on the lorry with his consent or not....

The next question is how far the employers are liable for their servant's conduct. In order to make the employers liable to the passenger it is not sufficient that they should be liable for their servant's negligence in driving. They must also be responsible for his conduct in giving the man a lift. If the servant has been forbidden, or is unauthorised to give anyone a lift, then no doubt the passenger is a trespasser on the lorry so far as the owners are concerned but, that is not of itself an answer to the claim. In my opinion, when the owner of a lorry sends his servant on a journey with it, thereby putting the servant in a position, not only to drive it, but also to give people a lift in it, then he is answerable for the manner in which the servant conducts himself on the journey, not only in the driving of it, but also in giving lifts in it, provided, of course, that in so doing the servant is acting in the course of his employment.

...Applying the test laid down there can be no difficulty in concluding that the right to give leave to Purshottam to ride in the car was within the ostensible authority of the Manager of the company, who was driving the car and that the Manager was acting in the course of his employment in giving leave to Purshottam. Under both the tests the Respondents "Would be liable.

To the same effect are several other authorities cited by Mr. Patnaik for the claimant-Respondent, namely, *Narayanlal and Anr. v. Rukhmanibai* and Ors. 1979 A.C.J. 261, *State of Assam and Anr. v. Mrs. Banti Baruah* and Anr. 1978 A.C.J. 412 and *Bhoi Vanaji Dhulaji and Another Vs. Patel Shivabhai Kashibhai and Others*, .

Learned Government Advocate at one stage in course of his argument had taken the stand that there was a rule prescribing which relations of a Government servant would be entitled to go along with the government servant when he moves on duty in a government vehicle. No such rule has, however, been placed before us though opportunity therefore has been given. Learned Government

Advocate has fairly conceded that what should be looked for in a case of this type is not positive authority of the driver but a prohibition against lifting of persons or a prescription that excepting particular relations, others cannot travel in the vehicle. On the basis of the authorities indicated above, we must hold that the Government as owner of the vehicle had vicarious liability in the matter and, therefore, would be liable for the amount of compensation. The appeal is accordingly dismissed with costs. Hearing fee is assessed at rupees one hundred.

B.N. Misra, J.

5. I agree.