
(1984) 01 OHC CK 0011

In the Orissa High Court

Case No : Miscellaneous Appeal No. 18 of 1979

Subasini Panda and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95

Citation : (1984) 2 ACC 13 : (1984) ACJ 276 : (1984) 57 CLT 262 : (1986) 60 CompCas 124

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Advocate : P.K. Misra, L. Mohapatra, J.R. Dash and J.P. Mishra, for the Appellant; Additional Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Misra, J.—This appeal arises out of the award passed by the Second Motor Accidents Claims Tribunal, Cuttack, in Misc. Case No. 86 of 1976.

2. One Kanhu Charan Panda died in an accident on October 7, 1972, at about 8.30 p.m. near Vani Vihar, Bhubaneswar, while driving the jeep bearing registration No. ORK 1908 which collided with the truck bearing registration No. ORU 24. His children are the claimants in a case u/s 110A of the Motor Vehicles Act, 1939 (for short, " the Act ").

3. The case of the claimants before the Tribunal was that their father, late Kanhu Charan Panda, was driving the jeep belonging to the State of Orissa. He was carrying the Panchayat Samiti Chairman and others as occupants and they were proceeding on an official work. The jeep was proceeding from the side of the office of the Orissa State Electricity Board and took a turn to the right round the traffic island and came upon the road leading to Cuttack side. The truck in question was coming from Cuttack side at a high speed and collided with the jeep as a consequence of which Kanhu Charan Panda died on the spot and the

other occupants of the jeep were seriously injured. Both the vehicles were badly damaged due to the collision. It was also alleged that the accident occurred due to the rash and negligent driving of the truck in question. According to the claimants, the deceased was aged about 50 years at the time of his death, and was earning Rs. 300 per month out of which he was contributing about Rs. 220 per month towards the maintenance of the family and the balance was being spent for his personal expenses. The claimants calculated the period of dependency as 20 years and claimed a sum of Rs. 45,000 on that account. A sum of Rs. 10,000 was claimed on account of the mental shock caused to them due to the death of their father. It was also pleaded that their mother, Suma Bewa, became practically insane on the death of their father and it was for this reason that she could not take any steps to prefer any claim earlier. It was stated that she has been arrayed as one of the pro forma respondents in this proceeding. They also prayed for condonation of delay on the above ground.

4. Opposite party Nos. 1 and 2 are the State of Orissa represented by the Secretary, Community Development Department, and the Block Development Officer, Tangi-Chowdwar, who filed separate written statements. The pleas taken by them are almost identical. They stated that the claim petition was barred by limitation and was not maintainable as a similar petition was filed by the mother of the claimants previously which was dismissed on December 21, 1974. They also alleged that there was no cause of action against opposite parties Nos. 1 and 2 inasmuch as the deceased was not ordered by any competent authority to take the vehicle to Bhubaneswar. They further asserted that the deceased could not be said to have driven the jeep or died in the course of his employment and, therefore, the State of Orissa was not liable to compensate the claimants. It was further stated by the said opposite parties that in the event it was found that the accident took place due to the rash and negligent driving of the truck, the claimants might be entitled to compensation from the owner of the truck or the insurer of the truck and not from opposite parties Nos. 1 and 2. They also took a plea that the amount of compensation claimed by the claimants was highly exaggerated and arbitrary.

5. Opposite parties Nos. 3 and 4 are said to be the owners of the truck ORU No. 24 and as they did not appear or file any written statement after being noticed, they were set ex parte. The insurer of the truck who was impleaded as opposite party No. 5 filed a written statement denying all the allegations made in the claim petition. It was contended in its written statement that the claim was barred by limitation and the present claim petition was not maintainable as a similar claim petition was earlier filed and was dismissed. It was asserted that the accident was not due to rash and negligent driving of the truck but was due rash and negligent driving of the jeep by the deceased. It also alleged that the claim was highly excessive.

6. The Accidents Claims Tribunal after considering the evidence adduced before it came to the following findings :

(i) The accident took place due to the rash and negligent driving of the jeep No. ORK 1908 and the driver of the truck No. ORU 24 was not at all negligent.

(ii) The claimants are not entitled to any compensation whatsoever.

(iii) The grounds set forth for condonation of delay are not sufficient and, therefore, the claim petition is barred by limitation.

(iv) There having been a previous proceeding u/s 110A of the Act which was dismissed for default, the present claim petition is not maintainable in law.

7. All the aforesaid findings of the Tribunal have been challenged in this appeal. The primary question that is required to be decided in this appeal is as to whether the accident took place due to the rash and negligent driving of the truck in which case alone the claimants would be entitled to compensation in a proceeding u/s 110A of the Act.

8. The claimants examined five witnesses in support of their claim and relied upon the acquittance roll of the office of the Block Development Officer, Tangi-Chowdwar (exhibit No. 1), in respect of the deceased. P. W.s 1 and 2 are not eye witnesses to the occurrence. P.W. 1 is claimant No.1 and she has admitted in her examination-in-chief that she was not an eye witness to the accident. P.W. 2 is a formal witness who was deputed by the B.D.O. to produce the acquittance roll relating to the deceased and his service book in pursuance of a summons, P.W. 3 has deposed to the effect that he happened to be passing by that way when the unfortunate accident took place and had seen the occurrence. He was disbelieved by the Tribunal and for good reasons. According to this witness, the accident took place before the jeep took its turn towards Cuttack side while it was proceeding from the side of the office of the O.S.E.B. towards the traffic island at Vani Vihar. But P.W.s 4 and 5 who admittedly were travelling in the ill-fated jeep have stated that the accident took place after the jeep had taken a turn round the traffic island at Vani Vihar junction to the right and had come upon the road leading to Cuttack. Besides the above, the Tribunal has also assigned other reasons to discard the evidence of P.W. 3 as not reliable. P.W.s 4 and 5 have categorically stated that the impact took place immediately after the jeep turned round that traffic island to the right and came on the National Highway towards Cuttack while the truck which was proceeding from Cuttack side was clearly visible. According to P.W. 4, the jeep was driven at a speed of 35 to 40 kms. per hour when it met with the accident. It is, therefore, apparent that the jeep was not sufficiently slow while approaching a road junction and did not give way to the vehicles passing on the main road which is a National Highway. Section 78 of the Act casts a duty upon the driver of a motor vehicle to drive the vehicle in conformity with the driving regulations set forth in the Tenth Schedule thereof. Regulations 6 and 7 of the Tenth Schedule to the Act are quoted below :

" 6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without

endangering the safety of persons thereof.

7. The driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand. "

9. The aforesaid regulations are meant to be obeyed scrupulously to avoid road accidents and for the safety of the users of the road. Once, it is held that the deceased did not comply with the cautions spelt out in regulations 6 and 7 of the Act, it is he who is to be blamed for the unfortunate accident and not the driver of the truck. As already stated, the truck was visible to the driver of the jeep after he had taken a turn round the traffic island and he should not have come upon the National Highway without being sure that no vehicle was approaching it either from Cuttack side or towards Cuttack side. It is well known that the National Highway from Cuttack to Bhubaneswar and specially near about Vani Vihar is a very busy road and warrants extra caution while driving vehicles. The speed of the jeep at 35 to 40 kms. per hour at such a junction is too high and the deceased was, therefore, guilty of driving the vehicle rashly and negligently. According to P.W.s 4 and 5, the right side of each of the vehicles--the jeep and the truck--came in contact with each other during the collision. This suggests that the truck was on its left and was moving on the correct side of the road. In these circumstances, no other conclusion is possible except that the driver of the jeep was rashly and negligently driving the jeep due to which the unfortunate accident took place and the driver of the truck had no contribution whatsoever to the accident.

10. It has next been contended on behalf of the appellants that the application u/s 110A of the Act cannot be said to be barred by limitation. According to them, the claimants who are the children of the deceased were minors at the time when the accident took place. After claimant No. I, namely, Kumari Subasini Panda, attained majority, the application was filed. They relied upon the provisions of Section 6 of the Limitation Act, 1963, and contended that since claimant No. 1 was a minor and, therefore, under a legal disability, the period for filing of the application u/s 110A of the Act should be reckoned after the disability ceased. This argument of the appellants ignores the provisions of Section 7 of the Limitation Act. Section 6 is an enabling section which confers a personal privilege on the person under disability. Section 7 is a proviso to Section 6 and should go together. Section 7 of the Indian Limitation Act does not, in terms, extend the period of limitation prescribed for any legal action but merely enables a person under disability at his choice to have limitation reckoned against him either from the date of accrual of the cause of action or from the date of cessation of the disability. In case the person under disability chooses the prescribed period of limitation to be reckoned from the date of accrual of the cause of action, the whole period prescribed begins to run from the date of the cause of action. In the latter case, Section 8 of the Indian Limitation Act steps in

to cut short the period of three years from the date of cessation of the disability where the prescribed period exceeds three years. Section 7 of the Limitation Act prescribes that where several persons are entitled to institute a suit or make an application and their legal relationship is such that one or some of them who is or are free from any disability can give full discharge of the whole debt or claim without the concurrence of others who are under disability, time runs against all from the date of the cause of action irrespective of the disability of some of them and the persons under disability would not be entitled to the benefit u/s 6 of the Limitation Act. The deceased had left behind his wife, Suma Bawa and some minor children. It is contended that Suma Bawa developed mental imbalance soon after the death of her husband. According to P. W. 1, the mental imbalance of her mother continued for about 2 years since the death of her husband on October 7, 1972. But as a matter of fact, it is admitted that she had filed an application claiming compensation u/s 110A of the Act which was dismissed for default on December 21, 1974. There is no evidence on record save and except the oral evidence of P. W. 1 which is so vague that an inference as to her mental unsoundness cannot be found as a fact. At any rate, she cannot be said to be of imbalanced mind when she preferred the claim u/s 110A of the Act. In these circumstances, it is not correct to say that limitation will begin to run from the date of the cause of action. It is also in the evidence of P. W. 1 that after the dismissal of the earlier claim case, the present claimants joined with their mother in filing the restoration petition but the same was dismissed. Thus, it cannot be said that the mental imbalance, if any, of the mother of the present appellants was of such a nature so as to prevent her and the present claimants to pursue the earlier case. The mother of the claimants was not examined to corroborate the aforesaid story. Merely describing her as one of the respondents in the claim case would not be sufficient to discharge the onus which lay heavily on the claimants-appellants to take advantage of Section 6 of the Limitation Act or to explain the delay and to pray for condonation thereof.

11. In the claim petition, the claimants did not breathe a word about the earlier claim case which had been dismissed for default or about the application for restoration which was also dismissed. In view of the dismissal of the earlier claim case which was instituted by the mother of the appellants who was legally competent to give a full discharge of the claim, the present proceeding is not maintainable in law.

12. The only other point which is urged on behalf of the claimants is that even though the claimants were not entitled to compensation u/s 110A of the Act in the absence of proof of rashness and negligence on the part of the driver of the truck, they are entitled to compensation inasmuch as the deceased was a workman and his death was in the course of his employment. It is urged that compensation is awardable under the provisions of the Workmen's Compensation Act of 1923 (shortly stated, "1923 Act"). It is also contended that the Tribunal constituted under the Motor Vehicles Act could award compensation payable to a workman under the 1923 Act. In support of the aforesaid

contention, reliance is placed on the decisions in the cases of T.M. Venkatarajan and Another Vs. T. Abdul Munaf Sahib and Others, National Insurance Co. Ltd. v. Harekrishna Sahu ILR 1978 Cut 221 and Oriental Fire and Genl. Ins. Co. Ltd. Vs. Bidi and Others,

13. In T.M. Venkatarajan and Another Vs. T. Abdul Munaf Sahib and Others, it was held that u/s 95 of the Act, a statutory duty has been cast upon the insurance company to indemnify the insured against any liability to pay compensation to his employee under the 1923 Act. It was also decided that the insurance company could not contend that it was absolved of the liability to pay compensation merely because the claimant had initiated proceedings under the Act instead of the 1923 Act and that it was open to the Claims Tribunal to determine the liability under the 1923 Act and award the amount so determined against the insurance company. In the said case, it was contended on behalf of the insurance company that neither Section 95 of the Act nor the terms of the insurance policy saddled any liability on the death of a workman against the insurance company. On an analysis of Section 95 of the Act, it was held that it cast a statutory duty upon the insurance company to indemnify the insured against any liability to pay compensation to its employee under the 1923 Act. The limitation in Section 95 of the Act is with reference to the quantum of the liability under the 1923 Act and not with reference to the forum on which the liability is to be quantified. Thus, the aforesaid decision is an authority for the proposition that the insurance company cannot plead non-liability merely on the ground that the proceedings have been initiated under the Act and that the Tribunal under the Act is competent to quantify the liability of the insurance company with reference to the 1923 Act.

14. In the case of Oriental Fire and Genl. Ins. Co. Ltd. Vs. Bidi and Others, a similar question was under consideration. As a matter of fact, Section 95 puts a limitation with reference to the quantum of liability of the insurance company in certain circumstances enumerated in the said section. It was also held in the said decision that it was not open to the insurance company to plead that it was not liable because the proceedings had been initiated under the Act.

15. In the case of National Insurance Co. Ltd. v. Harekrishna Sahu ILR 1978 Cut 221 it was held that the bar u/s 110AA of the Act would apply irrespective of the fact that the person against whom the claim could be entertained under the 1923 Act was different from the person against whom a claim could be made under the Act.

16. None of the above decisions is an authority for the proposition that the Accidents Claims Tribunal could award compensation against the employer in substitution of the authority under the 1923 Act. There is no dispute about the proposition that Sub-section (5) of Section 3 of the 1923 Act gives an option to the claimants to choose either the forum prescribed by the 1923 Act or the civil court (which after the introduction of Section 110A of the Act would include a Tribunal constituted thereunder) and that once the claimants select either of the

forums, they would be precluded under that sub-section from resorting to the other forum. It is also correct to say that by virtue of Section 95 of the Act, the Tribunal constituted under that Act is competent to determine the liability of the insurance company to the extent the workman was entitled to compensation under the 1923 Act. Had the workman or his successors gone to the forum under the 1923 Act, they could have got compensation as prescribed under the 1923 Act and the insurance company would have been bound to indemnify the owner to that extent. In case proceedings are initiated before the Claims Tribunal and the claimants are able to prove negligence, they might get a larger amount by way of compensation and in such an event, the insurance company would be liable to pay the amount payable under the 1923 Act because under the contract of insurance, read with Section 95(1) of the Act, its liability is limited to the amount payable under the 1923 Act. It cannot be further extended to say that the Tribunal constituted under the Act shall be a forum for determination and payment of compensation under the 1923 Act.

17. The nature of proceedings under the 1923 Act and that under the M.V. Act are widely different. Different procedures and limitations have been prescribed in the matter of claim to be laid before the Tribunals under the two Acts. There is an essential difference between the mode of payment of compensation under both the aforesaid Acts. Thus, in my opinion, the Accidents Claims Tribunal could not exercise jurisdiction under the 1923 Act in substitution of the prescribed authority under the Motor Vehicles Act.

18. The appeal, therefore, has no merit and is accordingly dismissed. There would be no order for costs.