
(1988) 12 OHC CK 0018
In the Orissa High Court

Tathagata Satapathy

APPELLANT

Vs

Raghunath Mohapatra and Others

RESPONDENT

Date of Decision : 22-12-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1989) 2 ACC 535 : (1989) ACJ 891 : (1989) 67 CLT 814

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Judgement

R.C. Patnaik, J.—In the afternoon at 3-7-1977, Tathagata, Satyabadi and Upendra Mohapatra proceeded from Baripada to Bangiriposi in a jeep bearing registration number DHA 1246. The vehicle was being driven by Tathagata. On the way, it collided with a truck bearing registration number ORM 1606 coming from the opposite direction. Satyabadi and Upendra died. The father of Upendra lodged a claim for Rs. 3,60,000/- as compensation--Misc. Case No. 1 M of 1978. The parents, widow and minor children of Satyabadi jointly laid a claim for Rs. 1,10,000/- as compensation - Misc. Case No. 10M of 1978. In both the cases, the accident was alleged to have occurred due to rash and negligent driving of the drivers of both the vehicles. The jeep belonged to Tathagata and was insured with the New India Assurance Company Limited and the truck belonged to the Orisaa State Electricity Board.

2. The respective owner of the vehicles Laid the blame on the other, On the evidence tendered by the parties, the tribunal held that the collision took place due to the rashness and negligent of the driver of the jeep. In each of the cases, compensation was assessed at Rs. 30,000/- and was directed to be paid by Tathagata, the owner of the jeep on a holding that Upendra and Satyabadi were gratuitous passengers and the insurance company under the terms and conditions of the policy had not undertaken to indemnify the owner in case of death or bodily injury to gratuitous passengers

3. Being aggrieved by the decisions of the tribunal, the owner has filed Misc.

Appeal No. 340 of 1981 and Misc. Appeal No. 383 of 1982. Father of Upendra has filed Misc. Appeal No. 75 of 1982 for enhancement of the quantum of compensation and for holding the owners of both the vehicles liable etc. No doubt, Upendra was young at the time of his death. But in such case it is not the age of the person who met his death in an accident is material but the age of the claimant for that would determine the extent of dependency. The tribunal which had the occasion to assess the age of Raghunath adjudged his age at 65 years at the time of the accident. Holding that he would have lived until he reached the age of 75 years, the dependency was assessed for a period of 10 years on the evidence adduced, the tribunal assessed the compensation at Rs. 30,000/-. In my opinion, the amount determined by the tribunal does not appear to be low. On the evidence also the finding of the tribunal that the accident took place due to the rashness and negligence of the driver of the jeep in driving the vehicle cannot be upset. The only witness, PW 1, examined to justify as to the manner and the circumstances in which the accident took place was found prevaricating. Rightly, therefore, the tribunal did not place much reliance on her evidence. The driver of the truck came forward to testify as O.P.W. 1. His evidence was considered trustworthy by the tribunal. Adverse inference was drawn for non-examination of Tathagata who was driving the jeep. I am, therefore, of the view that the finding of the tribunal that Tathagata was driving the vehicle in rash and negligent manner cannot be found fault with. Accordingly, the appeal filed by Raghunath Mohapatra has no merit and is dismissed.

4. In the other two appeals by the owner of the jeep, the question that arises for consideration is if having regard to the terms and conditions of the policy, the insurer was liable for the death of passengers in an accident which came about due to rashness and negligence of the driver of the vehicle. The liability of the insurer to third parties is contained in Section (ii) of the policy. Clause (i) thereof reads as under:

1. The Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of

(a) Death of or bodily injury to any person including occupants carried in the motor car provided that such occupants are not carried for hire or reward but except so far as is necessary to meet the requirement of Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

5. Counsel for the parties are at issue on the interpretation of the aforesaid clause. Whereas the counsel for the insurer has contended that liability incurred by the owner for death of a gratuitous passenger has not been undertaken to be indemnified, the counsel for the owner has argued that having regard to the ambit and width of the language, the liability incurred for death of or bodily injury to any person including occupants carried in the vehicle provided that such

occupants were not carried for hire or reward. As Udaya and Satyabadi were admittedly occupants of the jeep and were not carried for hire or reward, the insurer had agreed to indemnify the owner insured and is to be saddled with the liability. Reliance is placed by the counsel for the insurer on a decision of the Supreme Court reported in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, . The contents of Clause (a) of Section 2 with which we are concerned here in this case are different from the contents of Clause (a) of Section II (a) of the policy considered in Pushpabai's case (supra). The words "including occupants carried in the motorcar provided that such occupants are not carried for hire or rewards were not there in clause (a) of the policy in Pushpabai case (supra). Hence, Pushpabai's case is distinguishable. The exception clause in Clause (a) is relatable not to the first part of clause (a) but to the second part, namely, where such death of or bodily injury arises out of or in course of employment of such person was restricted to the liability arising out of the statutory requirements of Section 95. Hence, Pushpabai's case is of no assistance to the insurer. In Civil Insurance Co. Ltd. and Ors. v. Jogendra Singh and Anr. 1972 ACJ 295, the Division Bench of this Court held that ordinarily the insurer was not liable to indemnify a gratuitous passenger in a vehicle which was not meant to carry passengers for hire or reward unless the policy expressly covered liability in respect of such gratuitous passengers But justice SK. Ray (as he then was) who had delivered the leading judgment in Civil Insurance case held in Prabhudayal Agarwal v. Saraswati Bai and Anr. 1972 ACJ 355, upon a construction of clause (a) of Section II. 1 that "any person" in sub-Para (a) was of wide and unrestricted import and there was no reason to interpret in a manner so as to exclude person travelling in the car. In Madras Motor and General Insurance Co. Ltd. v. Katanreddi Subbareddy and Ors. 1975 ACJ 95, Chinnappa Reddy, J. (as he then was) held that the expression used in the first paragraph of Section II was "any person" and there was no reason why the expression should be interpreted so as to exclude persons travelling in the car. In Assam Corporation and Anr. v. Binu Rani Ao and Ors. AIR 1975 Gau 3, a Division Bench held that a gratuitous passenger travelling in a motor vehicle involved in the accident would be a third party within the meaning of an insurance policy covering third party risk. In Sushil Kumar etc. Vs. Binodini Rath and Others, , construing clause (a) of Section II. 1. S Acharya, J. followed the ratio laid down in Prabhudayal's case (supra). A case analogous to the one I am dealing with is Oriental Fire and General Insurance Co. Limited v. Sanatan Pradhan and Anr. etc. 65 (1981) CLT 461. It was noticed there that on the instruction of the Tariff Advisory Committee, clause (a) was amended to include the liability for death of or bodily injury to occupants carried in the motorcar provided that such occupants were not carried for hire or reward. The instruction was effective from 25th March 1977. I have extracted above clause (a) of the policy in the present case which contains the aforesaid clause inserted pursuant to the instruction. It was held in Oriental Fire case (supra) that after incorporation of the clause, it could no more be urged that the liability for death of or bodily injury to passengers in a vehicle was not to be indemnified by the

insurer.

6. In the present case, the policy was issued on 10-5-1977. Therefore, it is no more open to the insurer to contend that the liability on account of death of the occupants not carried for hire or reward in course of accident brought about by the negligence of the driver of the vehicle had not been undertaken to be indemnified. I, therefore, negative the plea of the insurer and held that the amount of compensation shall be payable in each of the cases by the insurer, the New India Assurance Company Limited.

7. Whereas the amount of compensation awarded to Raghunath Mohapatra does not appear to be low, the amount of compensation awarded to the parents, widow and two minor children for the death of Satyabadi who died at the age of 35 and was Maintaining his family after discontinuing medical studies with a view to looking after his property, appears to me to be inordinately low. But sadly there is no cross-appeal by the claimants.

8. The parents, widow and minor children of Satyabadi despite the award have not received a copper though the bread-earner was snatched away ten years back. While, therefore, allowing Misc. Appeal No. 340 of 1981 and 383 of 1982 directing that the liability shall be borne by the insurer, I direct that interest at the rate of 10 per cent shall be payable in Misc. Case No. 10-M of 1978. Fifty per cent of the total amount payable shall be kept in fixed deposit at least for seven years in the name of the widow with a direction to the bank authorities not to permit pledge or withdrawal before expiry of the period. Nor can the amount be offered as security.

9. In the result, Misc. Appeal No. 75 of 1982 is dismissed and Misc. Appeal Nos. 340 of 1981 and 383 of 1982 are allowed. But in the circumstances, there would be no order as to costs.