

(1992) 02 OHC CK 0002

In the Orissa High Court

United India Insurance Company Ltd.

APPELLANT

Vs

Naramani Das and Others

RESPONDENT

Date of Decision : 10-02-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2), 95(2)(b)(1)

Citation : (1993) 2 ACC 509

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Judgement

D.P. Mohapatra, J.—On analysis of the case, the point that falls for determination relates to the extent of liability of the appellant, United India Insurance Company Ltd. for the compensation awarded in favour of the claimants-respondents.

2. This appeal is directed against the judgment dated 21.4.1990 of the Second Motor Accidents Claims Tribunal, Northern Division, Sambalpur (M.A.C.T. for short), in Misc. (A) Case No. 109 of 1987 (K) awarding a sum of Rs. 80,000/- in favour of the respondents 1 to 5 who were the claimants before the M.A.C.T. and directing the appellant to pay the entire sum.

3. The facts of the case and unnecessary details may be stated thus : On 2.6.1987 at about 7.45 a.m. the deceased, Harihar Das was involved in an accident with the bus bearing registration No. ORJ 7578 near Surisuria. The bus hit him from behind and due to the injuries sustained he died at the place of accident. The deceased was aged about 40 years at the time of the accident. He was working as Live-Stock Inspector under the State Government and was getting a salary of Rs. 1,400/- per month. The respondent No. 6, Kangali Sahu, was the owner of the ill-fated bus which was duly insured with the appellant on the date of accident. Respondents 1 to 5, wife and children of the deceased, filed application claiming Rs. 80,000/- towards compensation from the appellant and respondent No. 6, alleging, inter alia, that the accident was caused solely on account of rashness and negligence on the part of the driver of the bus in driving the vehicle. On the said application, the case noted above was registered before

the M.A.C.T.

4. Respondent No. 6, the owner of the vehicle and the appellant, its insurer, contested the case. In separate written statements, they assailed the allegations of rashness and negligence on the part of the driver of the bus. According to them in the police case concerning the said accident, the police on investigation had submitted final report exonerating the driver of the vehicle. They denied their liability to pay any compensation to the claimants.

5. Three witnesses were examined on behalf of the claimants-respondents of whom AW 1, Mritunjaya Das, was the son of the deceased and AWs. 2 and 3 were occurrence witnesses. No witness was examined on behalf of the appellant. On behalf of the claimants (respondents 1 to 5) some documents were produced showing the service particulars, the salary drawn by the deceased, the post-mortem report was also filed, on behalf of the appellant and respondent No. 6, copies of the M.V.I. report, the final report and the policy of insurance were produced.

6. The M.A.C.T. on assessing the evidence on record, held inter alia, that the accident took place due to the rash and negligence driving of the vehicle by the driver of the bus; the just compensation awardable in the case was estimated at Rs. 97,200/-; since the applicants had claimed Rs. 80,000/- the award was limited to that amount only. The M.A.C.T. construing the terms of the Insurance Policy (Ext. A1), held that the liability of the, insurer was unlimited and therefore directed the appellant to pay the entire sum awarded. Hence, this appeal by the Insurance Company.

7 It is clear from the discussions in the judgment of the M.A.C.T. and it was not denied before me, that the vehicle in question (bus) was duly insured with the appellant Insurance Company on the date of the accident. Though a feeble attempt was made by the learned Counsel appearing for the appellant and respondent No. 6 to assail the finding regarding rash and negligent driving of the vehicle by the driver of the bus, they could not make much progress in view of the clear statements made by the occurrence witnesses A.Ws. 2 and 3, whose competence was beyond question and the evidence beyond reproach. the learned Counsel also failed to show any serious error or infirmity in quantification of the compensation amount by the M.A.C.T. I have carefully perused the judgment of the M.A..C.T. and the depositions of the witnesses to satisfy myself about the correctness of the findings in these matters. I have no hesitation to confirm the findings arrived at by the M. A C.T. in the aforementioned matters.

8. The contention on which Sri Sinha, learned Counsel for the appellant concentrated was regarding the extent of liability of the appellant-Insurance Company. It was urged by him that in view of the provisions of Section 95(2)(b) (1), the liability of the Insurance Company is limited to Rs. 50,000/-, therefore, the M.A.C.T. was in error in saddling the appellant with liability for the entire compensation amount of Rs. 80,000/-.

9. For the purpose of determination of the above question, it will be convenient to quote Section 95(2) of the Motor Vehicles Act, 1939 (for short "the Act"):

95(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) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment:

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers:

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;

(c) save as provided in Clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of two thousand rupees in all in respect of damage to any property of a third party.

The question of extent of liability of Insurer has engaged attention of the Courts from time to time. It has been held that it is open to the Insurance Company to settle the terms of the contract and to cover liability more extensively than what is contemplated by Section 95 of the Act and that the extent of the liability in each case should be determined with reference to the terms of the policy in that case *United India Fire and General Insurance Co. Vs. Azeerunnisa and Others*, . If the policy contains an express stipulation to cover wider risk of liability arising out of death or injury So any gratuitous passenger, the insurer has to satisfy such liability, *Sushil Kumar etc. Vs. Binodini Rath and Others*, . In the case of comprehensive policy, the limitation prescribed in Section 95(2) does not apply *Oriental Fire and General Insurance Co. Vs. V. Ganapathi Ramalingam*, . On a reading of the policy, if it is evident that the limit of Rs. 50,000/- has not been

mentioned therein and it has restricted the liability of the insurer u/s 95(2), then it is possible to say that the liability of the insurer is unlimited being a comprehensive policy. Where the comprehensive policy has limited the liability of the insurer to Rs. 50,000/- it is not possible to make the insurer liable for an unlimited amount merely because the policy was comprehensive one. The Proprietor The Proprietor Sri Rajeswari Transports (Firm) Vs. M.G. Rajan and Others, .

10. Let me next examine the terms of the policy in this case in the light of principles noted above. From the policy which was filed by respondent No. 6 before the M. A.C.T. Ext. A-1 , it appears that there is no mention that the liability of the insurer is limited to Rs. 50,000/- only.

In Section II of the policy which deals with liability to third parties, it is stated as follows:

1. Subject to the limits of liability the Company will inadmitably the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of:

(i) death or bodily injury to any person caused by or arising out of the use(including the loading and/or unloading of the Motor Vehicle).

(ii) damage to property caused by the use (including the loading and/or unloading of the Motor Vehicle):

Provided always that:

(a)*** ** (b) Except so far as is necessary to meet the requirements of Sections 92A and 95 of the Motor Vehicles Act, 1939, the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment

(c) Except so far as is necessary to meet the requirements of Section 92A and Section 95 of the Motor Vehicles Act, 1939 in relation to the liability under Workmen's Compensation Act, 1923, the Company shall not be liable in respect of death of, or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises.

The other clauses in the said Section are not relevant for the purpose of the present case.

The net premium amount mentioned in the policy is Rs. 3,887/-. It is relevant to note here that the appellant has filed an application under Order 41, Rule 27, CPC in this Court seeking to file another copy of the Insurance Policy alleging, inter alia, that certain mistakes had crept in, in the copy of policy filed before the M.A.C.T. The application is supported by an affidavit of the Advocate's clerk. I am not inclined to entertain the said application. It has been filed at a belated

stage of hearing of the appeal, there is no explanation whatsoever as to how an erroneous/incorrect copy of the policy was filed before the M. A.C.T. which naturally formed the basis of consideration of the Tribunal. Further, no officer of the Company is coming forth to support the averments made in the application under Order 41, Rule 27, Civil Procedure Code. It is unfonunate that the application hay, been filed and the matter has been handled in such a casual and callous manner. The said application is therefore rejected.

11. From the terms and conditions spelt out in the policy, as noted earlier, it is clear to me that the Insurance Company had undertaken to discharge the liability of the owner of the vehicle in respect of the third party risk, subject to the limitation of Section 95(2) of the Act Judged on that basis the maximum limit of its liability as fixed by the statute was Rs. 50,000/-. The M.A.C.T. was therefore not right in awarding the sum of Rs. 80,000/- in favour of the appellant. To that extent the decision of the Tribunal is unsupportable.

12. Accordingly the appeal is allowed in part, the liability of the appellant-Insurance Company is limited to Rs. 50,000/-, it follows as a consequence that the liability for payment of the balance of Rs. 30,000/- is to be borne by respondent No. 6, the owner of the vehicle.

Parties will bear their respective costs of this appeal.