
(2001) 02 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 324 of 1986

United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Asha Rani

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 108, 2(24), 95(1)

Citation : (2002) 1 ACC 134 : (2002) ACJ 134 : (2001) 3 RCR(Civil) 522

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : Mr. Munishwar Puri, for the Appellant;

Judgement

V.S. Aggarwal, J.—The present appeal has been preferred by United India Insurance Company Ltd., hereinafter described as "the appellant", directed against the award of the Motor Accident Claims Tribunal. Faridkot, dated 4.1.1986. By virtue of me impugned award, the learned Tribunal awarded compensation of Rs. 67,200/- to the claimants Asha Rani and others with a direction that out of this amount, Parkash Wati, sister of the deceased who is a widow and was dependent on the deceased, will get Rs. 12,000/- and the remaining amount shall be paid to the other claimants in equal shares. The liability of the Insurance Company was limited to Rs. 50,000/-. Interest was awarded at 12% per annum on the amount of compensation from the date of filing of the petition.

2. The relevant facts alleged by the claimants are that on 14.8.1985 Resham Lal went to Ganesh Cotton Factory, Malout. He had gone there to get the truck loaded. Dara Singh had taken truck bearing No. RSC 2595 to Ganesh Cotton Factory for loading of the same. The deceased Resham Lal did not return. It is alleged that Resham Lal was sleeping and Dara Singh drove the truck in a rash and negligent manner. The left wheel of the truck crushed Resham Lal who died at the spot. The claimants asserted that they were dependent upon the deceased who was earning Rs. 800/- per month and was of 32 years of age. The claim was

lodged for Rs. 3 lacs.

3. The application as such was contested. It was denied that there was any rash or negligent driving. So far as appellant was concerned, it also look up the plea that the accident, if any, took place not at a public place and, therefore, no compensation was liable to be paid.

4. The learned Tribunal framed the issues and decided all the issues against me appellant and others. The argument of the appellant that the accident took place not at a public place or within the premises of the factory was repelled. With these basic findings, the impugned award was passed.

5. During the course of arguments, learned Counsel for the appellant raised only one pertinent plea. According to him, the accident, if any, took place within the factory premises. It was not a public place and, therefore, compensation was not liable to be paid. To appreciate the said contention, reference can well be made to the definition of "public place" u/s 2(24) of the Motor Vehicles Act, 1939 (for short "the Act") and reads as under :-

"2(24) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"

Section 95(1)(b) of the Act refers to the requirement of policies and limits of liability of the Insurance Company and reads as under :-

"95. Requirements of policies and limits of liability. -In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer (or by a co-operative society allowed under Sec-108 to transact the business of an insurer), and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place:

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:"

It is abundantly clear from the aforesaid that the appellant Insurance Company would be liable if the accident took place in a public place. "Public place" would be as defined u/s 2(24) of the Act. A bare reading of the said definition of "public place" would indicate that if it is a place to which the public has an access then it would be a public place and it is not, therefore, confined to a definition akin to a totally private place. However, the learned Counsel for the appellant strongly relied upon certain precedents to bring home the said fact in support of his claim.

The attention of the Court was drawn to the decision of the High Court of Orissa in the case of Life Insurance Corporation of India v. Karthyanl and others 1975 A.C.J. 226. In the cited case, the accident took place inside the premises of Hindustan Steel Factory. It was recorded that the public had no right of access to the said place. Keeping in view the said fact, the Court concluded that the accident took place in a private place and not in a public place. The cited decision must be taken to be distinguishable for the reason that a finding of fact had been arrived at that the public had no access to that place. It is this important finding that turns the table and was so found in the facts of that case.

6. Reliance was further placed on the decision of Gujarat High Court in the case of Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja, , Herein also, the accident took place inside the compound of the factory. It was held that the public had no right of access to that place. The truck was being reversed and ran over a labourer. It was held that the accident took place in a private place and consequently the Insurance Company was not liable. The findings arrived at by the court were as under:-

"It is, therefore, clear that before any place can be considered to be a public place it must be proved to be one where public will have a right of access. It is, therefore, obvious that private premises or compound of private factories where members of public can enter only upon express or implied permission or private owners of those premises, cannot meet with the statutory requirement of Section 2(24). In the present case, it is an admitted position that the site of the accident was within the compound of Western India Tiles Factory. The claimant, son of the deceased labourer Bai Jivi in his deposition at Ex. 35 stated on oath that at the time of the accident, his mother was working as a manual labourer in Western India Tiles Factory and she was working in the factory premises and at that time she was fatally injured by the offending truck."

Similar findings were arrived at by the Madras High Court in the case of Mangalam and others v. Express Newspapers Ltd. and another 1982 A C J 203. Herein the accident took place inside the compound of the Express-Newspaper Estate. A Division Bench of that Court held that the Insurance Company would not be liable because the accident took place inside the private property. The plea was accepted that it is not possible to equate a premises belonging to a private person as a public place. It was concluded as under :-

"The learned Counsel for the appellants would refer to the decision in Queen v. Wellard holding "a legal right of access by the public is not necessary to constitute a public place. A public place is one where the public go, no matter whether they have a right to go or not." It is not possible to equate a premises belonging to a private person as a public place such as harbour, air-port, railway station or bus stand where public are entitled to enter as of right for purpose of utilising the services or facilities offered in those premises. The decision which relates to a harbour premises cannot be applied to a private business house even if it would be the printing and publishing place of a newspaper. Otherwise, even

shops and hotels which are owned and run by private individuals will become public places as in all such establishments the public are allowed or even invited to enter. We have to therefore hold that the accident in this case occurred in a private place and not in a public place. The result is the insurer of the vehicle is not liable to pay compensation even if the claim petition is maintainable."

It is difficult to subscribe to the views expressed in the aforesaid judgments. The definition of "public place" has already been reproduced above. It refers to a place where the public has a right of access. The access, would mean admittance or admission. Therefore, a place to which the public has a right of access would mean the place where the members of the public had been authorised or where they can go without hindrance. Even if they go with permission, the right accrues.

7. This question had been considered further by the Full Bench of the Bombay High Court in the case of Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others, . In the cited case, the accident took place in the compound of Tata Engineering and Locomotive Company Limited. A person entering the factory premises was supposed to possess permission or authority. The plea offered once again was that it was a private place where the accident took place. Bombay High Court rejected the said contention and held as under :-

"The definition of "public place" under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation other purposes."

Similar was the view point of the Madhya Pradesh High Court in the case of Sahodra Devi Vs. Ramnarayan Satyanarayan and Others, . It was held as under :-"In the present case it cannot be held that place where the accident took place, the public had no entry. Even if it is presumed to be so, the place was the stand of the truck where it was used to be kept for use and the accident took place while use of the vehicle. The driver, owner and Insurance Company are liable for the accident. The driver was negligent for the same. Therefore, I hold that the place is covered under sub-section (24) of Section 2 of the Act."

8. A Division Bench of Gujarat High Court in the case of Prakash Chemicals Private Ltd. Vs. Krishna Singh Sata Singh, , relied upon the decision of the Bombay High Court and held that a narrow construction to the word "public place" should not be given. The precise findings returned were as under :-

".....When we talk of entry of large number of members of public in such establishments, we include therein, entry of vehicles. As could be seen from the facts of the present case as also, as could be seen from the facts of the case decided by the Bombay High Court, though the premises of IPCL and TELCO may be private premises, many vehicles ply therein; roads are laid down, electric

poles are laid down and large number of members of public either on foot or by means of vehicles have ingress to and egress from such premises. If, on a narrow construction of the expression "public place" such establishments or premises of such establishments are kept out of the purview of the expression "public place", in quite a large number of cases, the schemes of compulsory insurance would be frustrated."

9. Orissa High Court in the case of Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others, , referred to the dictionary meaning and found itself with the view point of the Full Bench of the Bombay High Court in Pandurang Chimaji Agale's case (supra). It was concluded as under :-

"In Stroud's Judicial Dictionary, the meaning of the words "public access to a place" has been given to be a place open to all the public whether by right or permission. According to K.J. Aiyer's Judicial Dictionary, the test of a public place is whether it is open to the members of the public or not even though there may be certain conditions attached to the entry or the use thereof What is required is that such a place must be open for entry by an indeterminate number of members of the public or a determinate number. In Law Lexicon and Legal Maxims by Venkalaramaiya, the meaning that has been given to the expression "public place" is a place "open to all the public in tact, whether by right or permission" and does not necessarily connote that this must be as of right. In the case of R. v. Kane 1965(1) All ER 705, it was held that a public place cannot be confined to a street or highway but that it means to a place to which public have access....."

10. Not only the weight of the judicial pronouncements is in favour of the finding that where the public enter with permission would become a public place for the purposes of the Motor Vehicles Act, but this necessarily is the only conclusion. It has already been referred to above that once the public has access to a place with permission and they have entered the place, necessarily it would for the purposes of the said provision be a public place. There is no other conclusion that can be so arrived at because otherwise the Legislature would have not used the word "access" and instead would have used the word "private place" which has been so excluded. Therefore, in accordance with the Full Bench decision of the Bombay High Court in Pandurang Chimaji Agale's case (supra), the plea of the learned Counsel for the appellants must fail. As a necessary corollary, it would follow that the appeal is without any merit.

For these reasons, the appeal fails and is hereby dismissed.

11. Appeal dismissed.