

Nayat Singh Vs. Ramo Devi and ors.

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Court : Allahabad

Decided On : Mar-01-1985

Reported in : 1(1986)ACC24

Judge : N.D. Ojha and ;R.K. Agarwal, JJ.

Appellant : Nayat Singh

Respondent : Ramo Devi and ors.

Judgement :

R.K. Agarwal, J.

1. This appeal has been filed against an award dated 30th May 1985 given by the Motor Accident Claims Tribunal, Pauri Garhwal in Motor Accident Claims Case No. 42 of 1983. One Harkesh Singh who was employed as a Senior Clerk in Vishnu Prayag, Construction Division II, Pipalkoti (Chamoli) was travelling in jeep No. SRM 2522. This jeep met with an accident with bus No. RTS 337 with the result that Harkesh Singh suffered serious injuries and died in the Government Hospital, Rudra Prayag where he was removed for treatment. His widow Smt. Ramo Devi made a claim for compensation under Section 110-A of the Motor Vehicles Act (hereinafter referred to as the Act). Appellant No. 1 was the driver of the bus at the time when the accident took place. Respondent No. 2 is the owner of the bus and respondent No. 3 is the Insurance Company with which the bus was insured. The claim was contested by the appellant. It was allowed on the 30th May 1985 by the

award appealed against whereby a decree was passed against the appellant and respondents Nos. 2 and 3 for Rs. 30,000/- along with interest at the rate of 6%.

2. It has been urged by the counsel for the appellant that since the appellant was the driver of the bus no award could have been made against him. According to him on the finding that the owner of the bus was vicariously liable and the award should have been made only against the owner and the Insurance Company, Reliance in support of this submission was placed on a decision of a learned Single Judge of the Orissa High Court in Prafulla Kumar Misra v. Balram Sabu 1976 ACJ P 29. Having heard counsel for the appellant at some length we find it difficult to agree with the aforesaid submission. So far as the owner of the bus is concerned he would be vicariously liable if it is held, as has been held in the instant case, that the appellant was driving the bus at the time of the accident in the course of his employment. The mere fact that the owner would be vicariously liable cannot be a ground to hold that the driver who is the principal tortfeasor would get exonerated. Even in the case of Prafulla Kumar Misra (supra) it was held that the driver is also liable on a plain reading of Section 110-B of the Act however relying on Rule 6 of the Orissa Motor Vehicles (Accident Claims) Rules, 1960 and the form prescribed for making claim under the Act, it was held that since Rule 6 contemplated notice of the claimants the owner and insurer only. The intention of the Rule was manifest that the driver was not to be made liable for compensation, with due respect to the learned judge deciding the said case, we find it difficult to subscribe to the view taken by him. Once it is held that Section 110-B contemplated an award even against the driver the mere fact that the rules provide for notice being issued to the owner of the vehicle and the insurer only cannot be interpreted to mean that the rules contemplate to exonerate the driver from the liability to pay compensation. On the interpretation suggested by the counsel for the appellant the rule shall apparently be inconsistent with the main provision in the Act. It is settled law that in case of inconsistency between the Act and the Rules the provisions of the Act shall prevail and the provisions in the rules shall have to yield. A Rule similar to Rule 6 of the Orissa Rules, has been framed by the State of Uttar Pradesh also and Rule 7 of the U.P. Motor Accident Claims Tribunal Rules, 1967 which is in comparison with Rule 6 of the Orissa Rules is interpreted as has been urged by the counsel for the appellant, namely that in view

of that Rule and the form prescribed for making a claim petition the particulars of the owner of the bus and the insurer alone are to be given and the notice of the claim petition is to be given only to them and that the driver is neither to be impleaded nor can an award of compensation be made against him is accepted, it will result in an anomalous situation. Take for instance a case in which a claim petition is filed by the legal representatives of a person who died in an accident due to the rash and negligent driving of a vehicle by its driver, only against the owner of the vehicle and the insurer and ultimately it is held that the owner is not liable because his vicarious liability has not been established and the insurer is also not liable because the accident was caused in a manner and under circumstances not covered by the policy of insurance the claim petition will have to be dismissed and the legal representatives of the deceased would not be in a position to get any compensation. It is again a settled principle of law that if there appears to be inconsistency between the Act and the Rules and the inconsistency can be avoided by giving a reasonable interpretation to the Rules, that interpretation has to be preferred in place of declaring the Rule to be ultra vires. In our opinion Rule 7 of the Rules framed by the State of Uttar Pradesh as also the form prescribed for making an application for claim can be so construed as to save them from being declared ultra vires. Because of the main provision contained in Section 110-B of the Act the liability of the driver of the vehicle would be there in view of the fact that he is the principal tortfeasor in as much it is because of his rash and negligent driving that the death or injury was caused to another person giving rise to a claim for compensation. Since in law the owner is vicariously liable for the driver's action in the course of employment and the insurer is also liable partly because of the statutory obligation fixed upon the insurer and partly because of the contractual obligation their particulars have to be given and they also have to be served with notices of the claim petition because unless they are given opportunity to meet the claim an award made against them either on the basis of vicarious liability or on the basis of statutory or contractual obligation would, on the face of it, be in violation of the principles of natural justice. It is to save such a situation that Rule 7 contemplates notice to be given to the owner of the vehicle as also to the insurer. That, however, does not mean that the rule contemplates to exonerate the principal tortfeasor viz : the driver.

3. It was then urged by the counsel for the appellant that the finding recorded by the Tribunal that the appellant was guilty of rash and negligent driving is erroneous. We find it difficult to agree with this submission either. We have considered the reasons recorded by the Tribunal in support of the aforesaid finding and do not find any such ground which may justify us to interfere with that decision.

4. No other point has been pressed. In the result this appeal fails and is dismissed under Order XLI Rule 11 CPC.

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