

Safidan Bibi and ors. Vs. Hardesh Kumar Jaggi and anr.

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Court : Jharkhand

Decided On : Feb-01-2002

Reported in : II(2003)ACC647

Judge : Gurusharan Sharma and; Hari Shankar Prasad, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 95(2) and 110A

Appeal No. : Appeal from Original Order No. 541 of 1993(R)

Appellant : Safidan Bibi and ors.

Respondent : Hardesh Kumar Jaggi and anr.

Advocate for Def. : Shekhar Sinha, Adv. for respondent No. 1 and; A.K. Sahani, Adv. for respondent No. 2

Advocate for Pet/Ap. : A.K. Lall, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

1. A Truck bearing registration No. BHV-9016 was engaged in carrying bauxite stones from Lohardaga to Chandwa-Tori Railway Station and on the way on 30.10.1985, one Abdul Ghafoor An-sari loaded vegetable baskets and she goats thereon and himself also sat on it. It was a half dalla truck and bauxite holders was

already loaded thereon to its capacity.

2. The said truck turned turtle at Salaiya Tonggi turning due to negligence of driver and in the said accident, Abdul Ghafoor Ansari sustained serious injury and died after 1-1/2 months. His widow and five sons filed Compensation Case No. 49 of 1986, under Section 110-A of the [Motor Vehicles Act, 1939](#) (hereinafter referred to as 'the Act').

3. Safia Khatoon, daughter's daughter of Abdul Ghafoor Ansari had also loaded her vegetable baskets and had sat in the cabin of said truck. She also sustained injury and her left leg from knee was subsequently amputated. She filed another claim application for compensation, bearing Compensation Case No. 47 of 1986, Both claim applications were heard together and disposed of by common judgment.

4. The present appeal has been filed by claimants of Claim Case No. 47 of 1986, challenging tribunal's order, whereby they were held not entitled to any compensation under the Act, on the death of Abdul Ghafoor Ansari in the accident in question.

5. The tribunal observed that the deceased had himself taken suicidal decision of boarding on the dally of the truck, when he knew that it was already loaded to its capacity with bauxite boulders. The Insurance Company was, therefore, not liable to pay compensation under the Act.

6. The tribunal held that accident took place on account of negligence of driver of the truck and granted compensation to the injured, Safia Khatoon.

7. The Insurance Certificate of the vehicle was produced and was marked as Exhibit A before the tribunal. It shows that only statutory amount of premium for the insurance was paid and extra premium of Rs. 24/- was paid for covering risk of driver and cleaner of the truck.

8. In Smt. Mallawwa v. Oriental Insurance Company Limited, AIR 1999 SC 589, it was held that Section 95(2) of the Act specifies limit of liability and Clause (a) deals with goods vehicle and in so far as the person travelling in goods vehicle is

concerned, it has confined the liability to the employee only. This indicated that legislature did not have in mind carrying of either the hirer of the vehicle or his employee in the goods vehicle, otherwise, Clause (a) would have provided a limit of liability regarding such person also. It was, therefore, held that the Insurance Company was not liable in case of death of owner of goods carried in a goods vehicle, hence, in the present case, it was rightly held that by tribunal that Insurance Company was not liable to indemnify the liability of owner of truck in question.

9. In the impugned judgment, the tribunal failed to decide whether owner of truck was also not liable to pay compensation.

10. No doubt truck in question was a goods vehicle but it is nobody's case that Abdul Ghafoor Ansari had loaded his vegetables and goats thereon and was himself also travelling thereon forcibly. Although truck was already loaded to its full capacity with bauxite boulders, but still driver permitted the deceased to load his goods and travel on the truck. It also cannot be denied that by boarding on the truck, deceased had also taken a risk and violated the rules as nobody was allowed to travel on a goods vehicle. As such, there was negligence on the part of deceased too. It cannot be said that owner of the truck was not liable to pay compensation under the Act on the death of Abdul Ghafoor Ansari to the extent of negligence on the part of driver, who was responsible for the accident.

11. One son of deceased examined himself as AW 1 and claimed that his father was earning a sum of Rs. 1500/- p.m. and he was aged about 55 years at the time of accident. No evidence on the contrary was produced in this case and as such after deducting 1/3rd amount out of his monthly earnings annual dependency in the present case is calculated Rs. 1000/- per month and considering age of the deceased, in our opinion, appropriate multiplier to be applied in the instance case would be 10. In this manner, total amount of compensation is calculated at Rs. 1,20,000/-.

12. The deceased himself had contributed in the occurrence of the accident when he could see that the truck was already loaded to its full capacity and even then boarded thereon with his goods. It was clearly an act of contributory negligence.

13. In our opinion, contribution of the deceased in the accident was to the extent of 30% and 70% negligence was attributable to the driver of the truck.

14. Consequently, claimants-appellants are entitled to get only 70% compensation amount out of aforesaid Rs. 1,20,000/-which comes to Rs. 84000/-. The impugned judgment and award stand modified to the aforesaid extent.

15. In the result, the appeal is allowed to the extent indicated above, but there will be no order as to costs.

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