

Smt. Mandi Das and ors. Vs. Smt. Rama Devi and anr.

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Court : Orissa

Decided On : Jul-05-1993

Reported in : AIR1994Ori17

Judge : A. Pasayat, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 140, 141 and 149

Appeal No. : Misc. Appeal Nos. 203, 224 etc. of 1986

Appellant : Smt. Mandi Das and ors.

Respondent : Smt. Rama Devi and anr.

Advocate for Def. : P.K. Mishra, ;N.C. Pati, ;S.K. Swain, ;A.K. Nanda, ;P. Roy, ;S.K. Ghose and ;L. Dash, Adv.

Advocate for Pet/Ap. : L. Mohapatra, ;R.K. Misra and ;M.R. Mohanty, Adv.

Judgement :

ORDER

A. Pasayat, J.

1. These eighteen cases relate to an accident which occurred on 16-12-1986 in which a truck bearing registration No. ORC 1501 was involved. Two persons namely, Jagil Das and Panchu Sethi (hereinafter referred to as the 'deceased')

breathed their last at the spot of accident, and several other persons were injured. The accident occurred around 10 p.m. and F.I.R. was lodged at Pattapur Police Station on 17-12-1986. Some of the injured persons were sent to the M.K.C.G. Medical College Hospital and others to Kankorda P.M.C. for treatment by the police, and G.R. Case No. 44 of 1986 was instituted. Post-mortem in respect of the two deceased was conducted at the M.K.C.G. Medical College Hospital.

2. The legal representatives of the aforesaid two persons filed two claim petitions, while 21 cases were instituted by the injured persons, claiming compensation from Smt. Rama Devi, the owner of the vehicle (hereinafter referred to as the 'owner') and against the New India Assurance Co. Ltd., the insurer of the vehicle (hereinafter referred to as the 'insurer') for indemnification. The stand taken in the claim petitions was to the effect that the deceased and the injured persons were going to Kenduguda to work as daily labourers. They were being taken to Kenduguda to render service as labourers and the vehicle was taking them to the place of their engagement. The owner did not dispute the accident, but took a positive stand that she had not instructed and directed the authorised driver to carry any passenger. According to her Abhimanyu Nath who was driving the vehicle was not her employee. Prafulla Kumar Petro (OPW 2) was the driver and one Bainath Pradhan (OPW J) was the helper of the vehicle. The truck was brought from Dadnala to Berhanpur for repairing and after the repair was over, it was given on hire basis. The driver, Prafulla suddenly fell ill, and he engaged Abhimanyu to drive back the truck to Dadanala, without knowledge of the owner. If passengers were taken the same was done at the risk of the driver, but not of the owner. Certain medical reports (Exts. 2 to 11) were filed to prove that all the claimants had not sustained injuries as claimed and only a few had sustained injuries.

3. The insurer filed written statement denying the allegation made in the claim petition. It is the specific case of insurer that the passengers had forcibly entered into the truck and forced the driver, to drive the Vehicle, hence question of owner of the vehicle permitting the deceased and others to travel in the truck is a false plea.

4. The claim applications were considered by the Second Motor Accidents Claims Tribunal (S.D.), Berhanpur (in short, the Tribunal'). The Tribunal took up twenty-three petitions together, and disposed of them by a common order. The issues framed by the Tribunal were as follows :--

1. Whether the vehicle ORC 1501 (Truck) was driven in a rash and negligent manner causing death to Jagili Das and Panchu Sethi and injuries to Mangala Sethi, Judhisti Padhial, Udhab Das, Nalu Sethi, Trinath Das, Surendra Naik, Jagili Das, Ramesh Sethi, Bhika Sethi, Bijaya Jena, Jagili Sethi, Niranjana Sethi, Kalu Behera, Uchhab Das, Haiha Das, Narayan Jena, Kasia Naik, Raibari Das, Sura Sethi, Siranchal Sethi and Bhaskar Das?

2. Whether the petitioners are entitled to compensation?

3. Whether the quantum of compensation, as claimed, is high?

4. To what relief

So far as issue No. 1 is concerned, it was observed that the vehicle was being driven in a rash and negligent manner on 16-12-1986 resulting death of two persons and injuries to some persons. It was held that on account of the accident, the deceased Jagili Das and Panchu Sethi had lost their lives and the claimants except Uchhaba Das and Saiba Das had sustained injuries. It was accepted that deceased and 19 of the claimants excluding Uchhab Das and Saiba Das were travelling in the vehicle in question. So far as question of liability of the vehicle is concerned, it was held that there being no material to show that Abhimanyu who was driving the vehicle on the date of accident was either authorised by the owner of the vehicle or being under employment of the owner, she cannot be held to be liable for wrongful act of the driver. Though there was evidence that injured and the deceased were travelling in the vehicle as labourers on being called by contractor Bhaskar Das, but did not state that they were to work under the owner. Bhaskar Das (P.W. 3) under whose direction, the labourers were travelling in the truck stated that he was taking the labourers to Kendu-guda on the instruction of one Prafulla Choudhury. That being the position, it was observed that neither the owner nor the insurer can be held liable to pay compensation. Claim applications

were accordingly rejected.

5. In these appeals, legal representatives of the deceased Jagili and Panchu and some of the injured have questioned legality of conclusion regarding non-liability of either owner or insurer. Learned Counsel appearing for the owner and the insurer, however, supported the judgment of the Tribunal. It has been highlighted by them that even on facts, some of the claimants have not proved that they sustained injuries and, therefore, the Tribunal was justified in not entertaining their claims.

6. There has been alarming increase of road accidents in the last few years. The rate of road accident is 35 per 1000 in India, which is the highest in the world although, it has only 1% of total number of the vehicle. The Motor Vehicles Act, 1939 (in short, the 'Old Act') and [Motor Vehicles Act, 1988](#) (in short, the 'New Act') provide for compensation to the victims of vehicular accidents. In *Smt. Manjushri Baha v. B. L. Gupta*, 1977 ACJ 134: (AIR 1977 SC 1158), it was observed that with the emergence of the ultra-modern age which has led to strides of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though some times in the case of some it has also proved to be misfortune. It was further observed that time was right for serious consideration for creating no fault liability. Honouring sentimental expression in *Manjushri's* case (*supra*) and many other cases, a new Chapter VII-A was introduced under the heading 'No fault liability' in the Old Act. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan*, 1987 ACJ 411 : (AIR 1987 SC 1184), while considering a plea relating to defence available under Section 96(2) of the Old Act, corresponding to Section 149 of the New Act, the apex Court observed that Section 96(2)(b)(ii) (Now Section 149(2)(a)(ii)) extends immunity to the Insurance Company if a breach is committed of the conditions excluding driving by a named person or persons or by any person who is not fully licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation'. It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will be in charge of the vehicle. The very concept of

infringement or violation of the promise that the expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promiser must be a wilful infringement or violation. It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed driver. Unless the insured is at fault and guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise, and not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive himself, it cannot be said that the insurer is guilty of any breach. And it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause.

7. It is now firmly established that the master's liability is based on the ground that the act is done in the scope or course of his employment or authority; The position was stated in illuminating words by Lord Denning in *Young v. Edward Box and Co. Ltd.*, (1951) 1 TLR 769 at p. 793 as follows :

'..... the first question, is to see whether the servant was liable. If the answer is yes, the second question is to see whether the employer must shoulder the Servant's liability. So far as the driver is concerned, his liability depends on whether the plaintiff was on the lorry with his consent or not.

The next question is how far employers are liable for their servant's conduct. In order to make the employers liable to the passenger it is not sufficient that they should be liable for their servant's negligence in driving. They must also be responsible for his conduct in giving the man a lift. If the servant has been forbidden, or is unauthorised, to give anyone a lift, then no doubt the passenger is a trespasser on the lorry so far as the owners are concerned, but that is not of itself an answer to the claim. In my opinion, when the owner of a lorry sends his servant on a journey with it, thereby putting the servant in a position, not only to

drive it, but also to give people a lift in it, then he is answerable for the manner in which the servant conducts himself on the journey, not only in the driving of it, but also in giving lifts in it, provided, of course, that in so doing the servant is acting in the course of his employment.'

By extending doctrine of the scope of employment as indicated by Lord Denning, in *Ormrod v. Crosville Motor Services Ltd.*, (1953) 2 All LR 753, the owner is also liable if the driver with the owner's consent, driving the car on the owner's business or for the owner's purposes. '

8. A perusal of written statement filed by the owner clearly shows that she has accepted that, the vehicle was being utilised in a contract work at Badanala. Her version is that Prafulla Kumar Patro (OPW 2) who is the driver of the truck had brought the same from Badanala to Berhanpur for repair. After repair, it was to be taken to Badanala for work there. As the driver of the truck Prafulla was suddenly indisposed he entrusted Abhimanyu Nath, a licensed driver of Berhanpur town to take the same to Badanala with an instruction to him to take the truck to Badanala urgently without any delay, without the knowledge of the owner. But unfortunately the accident took place on the way on that date. In paragraph-5 it has been stated that the owner had not authorised or asked the driver of the truck to carry passengers in the truck, much less on the date of alleged accident. On a close reading of the written statement, it is clear that the owner did not dispute that she was aware of all relevant facts. She has categorically admitted that the vehicle was being utilised for the contract work, and that vehicle had come for repair and was required to return back urgently to Badanala. The only plea is that she had not authorised or asked the driver (OPW 2) to engage any other driver and/or to carry the passengers. She has admitted that Abhimanyu was a licensed driver. She has accepted that the driver (OPW 2) was to drive the vehicle. Since he was indisposed, Abhimanyu Nath was entrusted to take the vehicle. There is substance in the plea of learned Counsel for claimants that a licensed driver Abhimanyu was driving the vehicle with the knowledge and/or consent of the owner. Interestingly the owner has not chosen to examine herself in the case. As she was aware of all particulars, and has not taken a specific stand that she had prohibited the driver to authorise any licensed driver to drive the vehicle and/or had forbidden the driver to

take the passengers, she is liable. Whenever liability is to be fastened on her, consequentially insurer is also liable. These aspects have not been considered by the Tribunal. In the fitness of things, therefore, the Tribunal should re-consider the matter. There has been no quantification of damages, if any, payable to the claimants. The Tribunal shall consider these aspects afresh on the existing materials. On being satisfied that the fresh materials and/or evidence are necessary for effective adjudication, it may permit parties to place fresh material and/or lead further evidence. Prima facie view expressed by me relating to liability of the owner should not be taken to be conclusive. The said aspect shall be re-adjudicated on the material and/or evidence on record or to be brought on record, if permitted. The Tribunal shall consider the specific case of the owner that some of the claimants cannot be held to have sustained injuries on the basis of materials placed on record. To avoid, unnecessary delay, parties are directed to appear before the Tribunal on 27th of July, 1993 When a date of hearing shall be fixed by the Tribunal. Since the accident took place more than six years back, the Tribunal would do well to dispose of the matter before 1994 sets in.

9. The Miscellaneous Appeals are accordingly disposed of. No cost.

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