

Shishir Kumar Manna Vs Satyabati Gorai

Court: Jharkhand High Court

Date of Decision: Jan. 21, 2025

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Peeyush Krishna Choudhary, Amrit Anunay, Manish Kumar

Final Decision: Allowed

Judgement

Gautam Kumar Choudhary, J

1. Appellant is the owner of the vehicle and is before this Court against award of compensation against him.

2. The main plea of the appellant is that the vehicle in question was admittedly under the insurance cover of M/s Oriental Insurance Company Limited

(respondent no.5) which met with an accident involving Maruti Car registration no.BR 16 M 8303, whereas the vehicle was the pick-up van bearing

registration no.BR 16E 4875.

3. It is argued by learned counsel on behalf of the appellant that it was the definite case of the appellant (defendant no.2) before the Tribunal that

pick-up van was carrying goods and the deceased was travelling on the vehicle as a representative of the owner of goods. Applicant/witness no.1-

Satyabati Gorain, who was one of the claimants, deposed that his son was travelling in the vehicle to deliver Company's goods from Birsanagar to

Adityapur by the said pick-up van. No contrary evidence was led by the Insurance Company to establish that the deceased was not travelling with the

goods, rather he was the cleaner of the said vehicle. Without recording a finding of fact that the deceased was travelling in the vehicle as a cleaner,

learned Tribunal while deciding issue no.III, relied on the rejoinder filed by the Insurance Company and held that since it was a goods carrying vehicle,

the deceased was travelling as a gratuitous passenger and therefore, the owner of the pick-up van cannot claim any coverage of indemnification from

the Oriental Insurance Company Limited (opposite party no.4). For this reason, the liability was saddled on the owner of the vehicle who is appellant

before this Court.

4. Having gone through the record and after considering the submission advanced on behalf of the parties, I find merit in the submission made by

learned counsel on behalf of appellant, Mr. Peeyush Krishna Choudhary that there was direct evidence of A.W. 1 that the deceased was travelling on

the said pick-up van as a representative of goods to deliver the goods of the Company, which was not considered by the Tribunal. Rejoinder of the

Insurance Company cannot be said to be evidence. Therefore, the finding that the deceased was gratuitous passenger, is without any evidence.

5. Law is settled in *New India Assurance Company Limited v. Asha Rani & Others*, 2003 AIR SC 607; *National Insurance Company Limited*

Vs. Baljit Kaur & Others, (2004) 2 SCC 1 that in case where the deceased was travelling on the goods carrying commercial vehicle as the

representative of the owner of the goods, he will come within the meaning of third party and shall not be regarded as a gratuitous passenger.

6. Under the circumstance the liability cannot be saddled on the owner of the pick up Van bearing registration no BR 16E 4875. The insurer of the

vehicle (Resp-5 Oriental Insurance Company) shall be liable to pay the compensation amount. Respondent No.5 is accordingly directed to make the

payment of the compensation amount within one month from the date of the order to the claimants.

Miscellaneous appeal is accordingly allowed.

The amount deposited by the owner of the vehicle (appellant) vide order dated 26.08.2010 of this Court before the Tribunal, shall be returned to him.

In the event the amount has been disbursed to the claimant, the Insurance Company will indemnify the appellant for the said amount.