
(1985) 09 RAJ CK 0077

Rajasthan High Court

Case No: None

United India Insurance
Company Limited

APPELLANT

Vs

Harbhajan Lal and
Others

RESPONDENT

Date of Decision: Sept. 23, 1985

Acts Referred:

- Motor Vehicles Act, 1988 - Section 96

Citation: (1986) 2 ACC 432

Hon'ble Judges: G.M. Lodha, J

Bench: Single Bench

Judgement

G.M. Lodha, J.

I would not allow victims of Motor Accidents to again become victims of Judicial accidents. In the first, the negligence is of the Driver and the second would be due to negligence of Bar or uncertainty of Judge made law, i.e. Bench. Let the Judiciary step in and make up to endure and heal up the wounds of accidents, which the God refused to cure, by liberal interpretation in favour of victims.

2. In this golden Era of "SOCIAL JUSTICE" new judicial innovations should be carved by out Judiciary moreso when the litigation is about getting relief to victims of social insecurity, imbalance or accidents, and the law to be interpreted is, "Social Welfare Legislation" aimed, to provide social security. Pleadings and proof are all subsidiary, and secondary, and technicalities should give way to substantial and real Justice.

3. The above is the "Motto" of this judgment for guidance of "Tribunals". Now the traditional facts.

4. This appeal alongwith cross-objection filed by the claimants, has been filed against the Award passed by the Motor Accident Claims Tribunal, Jaipur.

5. The judgment of the Full Bench in Smt. Santra Bai and Ors. v. Prahlad and Ors. S.B. Civil Misc. Appeal No. 111/1974 dated 17-4-1985, formulates the four categories, out of which the first two are relevant for our purposes, as under:

(i) in case of gratuitous passenger going on joyride or on his own responsibility, insurance company is not liable ;

(ii) in case of passengers carried for hire or reward or by reason of or in pursuance of a contract of employment in any vehicle, the Insurance company is liable. This would include owner of the goods as well as his employees.

6. In the instant case, it is not in dispute now that so far as the claimants are concerned, neither in the application which they filed nor in the evidence which they led, it was shown that the deceased was carried as passenger for hire or reward, and therefore, the Insurance Company is liable.

7. Shri S.K. Keshote, learned Counsel appearing for the claimants took adjournment on 5-8-85 to show that if the Insurance Company fails to take defence that the passengers are on hire or reward then there would be presumption that the passengers were taken on hire or reward.

8. When the case was argued today, Shri Keshote submitted that u/s 96 of the Motor Vehicles Act, 1950, the Insurance Company is permitted to take a special defence only and therefore, it was the duty of the Insurance Company to have taken these defences.

9. Shri H.M. Bhargava learned Counsel for the Insurance Company, confronted with the above, pointed out that in the reply which has been filed, it has been mentioned that the Insurance company is not liable for the death of the deceased. In the preliminary objection, it was mentioned that the liability of the passenger is not covered under the provisions of S.95 of the Motor Vehicles Act. It was deteriorated that the applicant was only a passenger and was not required to cover by the said Act.

10. It would be obvious from the above that both, the claimants as well as the Insurance company did not think it proper to either plead or prove whether the passenger was for hire or reward or it was a case of passenger going on joyride or on his own responsibility, as per the category No. 1 and 2 articulated by the Full Bench of this Court in Santara Bai's reference case (supra).

11. Since this is a social welfare legislation I am of the opinion that it would not be proper in the interest of justice to deprive the claimants only on the ground that there was no specific pleadings and proof. Since no presumption can be drawn against the Insurance Company also, moreover as there is no pleading by which it can be presumed that the passengers were on hire or reward only, unless contrary is pleaded or proved, I am of the opinion that it would be in the interest of justice to permit all the parties including the claimant to lead evidence on this crucial point whether the case of deceased falls in the

category No. 1 of 2 of the Full Bench decision in the reference case of Santara Bai (supra).

12. The issue which would require adjudication after taking evidence of the parties, would be whether the deceased Jagdish Chandra Kaushik was travelling in the truck as a passenger for hire or reward or he was travelling on his own responsibility or as a gratuitous passenger, going on joyride. All the parties would be allowed to lead evidence on this issue.

13. Consequently this appeal is accepted, and the judgment/Award of the Tribunal so far as the appellant is concerned is set aside. The Tribunal would now after permitting the parties to lead evidence, decide the liability of the appellant-Insurance Company.

14. So far as the cross-objection against the respondent No. 12 Oriental Fire & General Insurance Company is concerned, Shri S.C. Srivastava submits that since the Tribunal rejected the claim against his company and no appeal has been filed, the claimants cannot be allowed to file cross-objection against this insurance company. This matter of cross-objection with regard to its maintainability and its merits would be decided separately as Shri Keshote wants to study the legal position in this respect.

15. The result of the above discussion is that this appeal is accepted to the above limited extent without any order as to costs the case is remanded back to the Tribunal on decision as per the above direction. The cross-objection would be decided separately.

16. Shri H.M. Bhargava has prayed that an amount of Rs. 10,000/-has already been paid to the claimants and in pursuance of the above judgment the amount should be refunded. I am not inclined to pass an order for that, at this stage. However, in case the Tribunal ultimately comes to the conclusion that the Insurance Company is not liable at all then the question of refund of this amount of Rs. 10,000/- would also be decided at that time by the Tribunal.