

(2003) 1 JCR 352 (2003) 1 ACC 289

Jharkhand High Court

Case No: Misc. Appeal No. 211 of 1994 (R)

Pachola Orain and
Others

APPELLANT

Vs

Mahabeer Prasad
Tebrewal and Another

RESPONDENT

Date of Decision: Oct. 31, 2002

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110D

Citation: (2003) 1 JCR 352 (2003) 1 ACC 289

Hon'ble Judges: Hari Shankar Prasad, J; Gurusharan Sharma, J

Bench: Division Bench

Advocate: A.K. Lall, for the Appellant; B.S. Lal and D.C. Ghosh, for Respondent No.2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Heard the parties, Sania Oraon was working as regular labourer in HINDALCO Buxite Mines at Maidan Pat Mines. On 6.4.1987, he along with other labourers boarded on a truck, bearing registration No. BPN 9815 to go to their respective homes. It turned turtled on the way. Sania Oraon sustained grievous injuries. He was admitted in Lohardaga Hospital, where he died in course of treatment, His heirs including the widow filed" Compensation Case No. 110 of 1987 under the provisions of Motor Vehicles Act, 1939 (hereinafter referred as "the Act"). Owner of the truck did not contest the compensation case. New India Assurance Company Limited, insurer of the truck filed written statement and contested the case, inter alia, on the ground that deceased Sania Oraon was not an authorized passenger on the truck and as such insurer had no liability to indemnify owner"s liability to pay compensation under the Act. The Tribunal found that accident took place on account of rash and negligent driving of truck, wherein Sania Oraon lost his life.

Considering earnings and age of the deceased, total amount of Rupees sixty five thousand was directed to be paid as compensation to the claimants under the Act. However, since deceased was an un-authorised passenger on the truck in question, tribunal held that insurer was not liable to indemnify owner's liability and consequently respondent No. 1, owner of the truck was directed to pay entire amount of compensation with interest to the claimants.

2. Claimants have preferred present Appeal u/s 110-D of the said Act for enhancement of amount of compensation as well as for a direction to the insurer of the vehicle to amount of compensation as well as for a direction to the insurer of the vehicle to indemnify liability or its owner and pay the compensation amount.

3. So far as question of enhancement of compensation amount is concerned, on the basis of Exhibits 5 series and 6 series, original provident fund slips and (sic) wage slips, we find that deceased was getting Rs. 14.50 per day from the mines authorities. The claimants assertion on the basis of oral evidence that deceased was getting Rs. 700/- per month was not established. It was not supported by any documentary evidence. The tribunal, therefore, on the basis of wage slips, Exhibits 6 series correctly held that deceased was getting Rs. 14.50 per day. Annual income of the deceased was, therefore, calculated at Rs. 5220/-. Nothing was deducted therefrom by the tribunal towards his personal expenses. He was aged about 45 years at the time of accident. After deduction of his 1/3rd income towards personal expenses, annual dependency comes to Rs. 3813/- and only on applying 17 multiplier the to amount of compensation Comes to Rs. 65000/-whereas maximum 16 multiplier could have been applied. So, in our opinion, there is no occasion for enhancement of compensation amount. However, we do not disturb the aforesaid amount of compensation at Rs. 65000/- assessed by the tribunal.

4. So far as the next question "Can Insurance Company be directed to pay compensation amount?" is concerned, we are of the view that for the purpose of Section 95 of the 1939 Act, ordinarily a vehicle could have been regarded as a vehicle in which passengers are carried. Keeping in mind the classification of vehicles under the Act, requirement of registration with particulars including the class to which it belonged, requirement of obtaining a permit for using the vehicle for different purpose and compulsory coverage of insurance risk, it would not be proper to consider a goods vehicle as passenger vehicle on the basis of single use or use on some stray occasions of that vehicle for carrying passengers on hire or reward. This aspect of the matter was considered by the Apex Court in [Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others](#), and it was held that for the purpose of construing the provision like proviso (ii) to Section 95 (1) (b) of the 1939 Act, the correct test to determine whether a passenger was carried for hire or reward would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used, then that vehicle in which passengers are carried for hire or reward can be said to be a vehicle. It was further held that it was not required that a policy of insurance should cover risk of the passengers who were not carried for hire or reward and as u/s 95 the risk of passengers in a vehicle who was not carried for hire or reward is

not required to be insured, the insurer cannot be held to be liable under the requirement of the 1939 Act.

5. The 1939 Act has now been replaced by 1988 Act. Section 147 of the new Act corresponding to old Section 95 has been substantially altered by the legislature. The Apex Court in *Mallawwa* (supra), therefore, observed that the above interpretation of Section 95 of the 1939 Act will cover the cases which have arisen under 1939 Act only. Accordingly, we hold that the tribunal was correct and justified in observing that owner of the goods Vehicle truck was liable to pay compensation and insurer was not liable to indemnify his liability.

6. There is no merit in this Appeal. It is dismissed.