

(2012) 09 JH CK 0107

Jharkhand High Court

Case No: Misc. Appeal No. 283 of 2000 (P)

Most. Kamiya Devi, Rajib Kumar,
Sunita Kumari and Lila Devi

APPELLANT

Vs

Krishna Kumar Agarwal @
Tekriwal and The Oriental
Insurance Company Ltd., Godda

RESPONDENT

Date of Decision: Sept. 25, 2012

Citation: (2013) 1 AJR 469 : (2013) 4 ALLMR 46 : (2013) 1 JLJR 55

Hon'ble Judges: Jaya Roy, J

Bench: Single Bench

Advocate: Manoj Kumar Sah, for the Appellant; P.K. Verma, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Jaya Roy, J.

With the consent of both the parties i.e. the Claimant-appellants and the owner-Respondent, this appeal is being heard for final disposal. Heard the counsel of the appellant-Claimant and the owner of the Vehicle. Notice of transfer of the case from Patna High Court to Jharkhand High Court was given to Insurance Company, inspite of valid service of notice to Insurance Company, the company has not appeared before this court.

2. The claimant-appellant has filed this appeal against the Judgment and award dated 29.04.2000 passed by 2nd Additional District Judge- cum M.A.C.T., Godda, in Title Claim Suit No. 12 of 97/01 of 2000 whereby the tribunal dismissed the claim petition filed by the Claimant-appellants.

3. The fact of the case lies in a narrow campus. The claimant Mostt. Kamiya Devi and her minor son and daughters of the victim have filed the claim case against the opposite parties/respondents stating therein that Satrughan Singh husband of the claimant No. 1 and the father of the Claimant nos. 2 and 3 died in a motor accident

on 7.5.1997 by truck No. BEQ-4838. The fact is that the deceased was a young man of twenty eight years earning Rs. 2000/- per month selling the vegetables in the village Market. After purchasing vegetables from Mohanpur Hat, he was going to Godda market, he boarded the truck BE-4838 as passenger at 10.15 P.M. with Vegetables and as the truck driver was driving the vehicle in rash and negligent manner, due to which the truck fell down in a ditch near Mahadeo than and Satrughan Singh died at the spot in the accident and for this Mahagama P.S. Case No. 35/97 was instituted against the driver of the truck. The claimants demanded Rs. 3,00,000/- (Rupees three lakhs) as compensation.

4. The respondent No. 2/ opposite party No. 3 Oriental Insurance Co. appeared and filed written statement controverting the statements made in the claim petition stating interalia that the truck was insured with the Oriental Insurance Co. It was a goods carrying vehicle as such the company is not liable to pay compensation for death any passenger carried on it. It is a case of contravention of the condition of Insurance policy. The respondent No. 1/ opposite party No. 1 the owner of the truck also appeared and filed written statement stating therein that truck was not driven rashly and negligently and it was not carrying any passenger. The truck was insured with Oriental Insurance Co. if any compensation have to be paid, it will be paid by the Insurance Co.

5. In order to prove the case, the claimant has examined five witnesses. Among them A.W. (Applicants witness) No. 5 is Mostt. Kamiya Devi the claimant No. 1, she is wife of the deceased, A.W. 1 is Jaikant Prasad Singh, A.W./2 is Jagat Paswan, A.W.3 is Sudama Rai the only eye witness of the alleged occurrence. A.W.4 is Girdhari Singh, the brother of the deceased who is hearsay witness. On behalf of respondent/opposite party four witnesses were examined O.P.W. No. 1 is Anirudha Das, O.P.W.2 is Kanhaiya Prasad, O.P.W.3 is Rajendra Prasad Singh and O.P.W.4 is Jaikant Singh. The claimants filed the certified copy of the F.I.R. of Mahagama P.S. Case No. 35 of 1997 which has been marked as Exhibit-1.

6. Mr. Manoj Kumar Sah, the learned counsel for the appellant has submitted that admittedly the deceased was a passenger and he died due to the accident of the truck in question. Therefore even if the deceased was not a gratuitous passenger, he is entitled to get compensation. To support his contention, he has placed before me the decision of this Court in the case of Ashok Kumar Singh Vrs. Pankhrasius Toppo & others reported in 2009(1) J.C.R. 346 (Jhar). I find that the fact of the said case is that police officer of Gary Police Station forced the deceased and other persons to board the truck, but the fact of the case at hand is quite different. In the present case, the deceased boarded the truck in the darkness while it was standing at Mohanpur. There is no evidence that the deceased had boarded the bus with the permission of the driver or of the cleaner or of the owner of the vehicle.

7. Mr. P.K. Verma, the learned counsel appearing for the respondent No. 1 the owner of the truck on the other hand, has submitted that the deceased boarded the

bus quietly while the truck was standing at Mohanpur and that too without permission or knowledge of the driver or the cleaner which has been found by the tribunal as such the claimant is not entitled to get any compensation either from the owner of the truck or the Insurance Company.

8. From the impugned judgment, I find that the tribunal after analyzing the oral and documentary evidence on record, has found as mentioned at para-9 of the judgment that:-

From the evidence produced on behalf of the claimants it appears clearly that the deceased sat on the truck in the darkness while it was standing at Mohanpur. There is no evidence that the driver, owner or cleaner of the truck had given lift to the deceased on his prayer.

This type of passengers cannot be treated a gratuitous passenger. The driver of truck (vehicle) also cannot dare to ask such type of mighty passengers to get down from the vehicle. The law cannot help such type of passengers who travels at his own risk without permission or payment.

After hearing the counsels of both the parties, and going through the judgment of the tribunal, I find that the learned tribunal rightly held that the deceased Satrughan Singh was not a gratuitous passenger as he boarded the truck quietly in the darkness while it was standing at Mohanpur without knowledge of any one on the truck. There is no evidence that the driver, owner or cleaner of the truck had given lift to him on his prayer. Therefore, in my view the claimants have got no cause of action for filing the claim application and they are not entitled for any compensation in this case. Accordingly this appeal is dismissed.