

(2009) 11 JH CK 0058

Jharkhand High Court

Case No: None

United India Insurance Co. Ltd.

APPELLANT

Vs

Silwanti Lakra and Others

RESPONDENT

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**Date of Decision:** Nov. 4, 2009**Acts Referred:**

- Insurance Act, 1938 - Section 64VB
- Motor Vehicles Act, 1988 - Section 147

**Citation:** AIR 2010 Jhar 109**Hon'ble Judges:** M.Y. Eqbal, J; Jaya Roy, J**Bench:** Division Bench**Final Decision:** Allowed

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**Judgement**

M.Y. Eqbal, J.

This appeal, by the appellant-Insurance Company, is directed against the judgment and award dated 12.5.2000 passed by Motor Accident Claims Tribunal, Gumla in MJC Case No. 20/95, whereby he has held that the appellant-Insurance Company is liable to pay compensation amount.

2. The facts of the case lie in a narrow compass.

The claimants-respondents filed the claim application for payment of compensation on account of death of the deceased in a motor vehicle accident. The claimants' case is that the deceased was traveling on the truck on 30.11.1994 and because of rash and negligent driving of the truck by the driver accident took place, as a result of which many persons including the deceased sustained injuries. A criminal case was instituted being Bishunpur P.S. Case No. 59/94. The respondent-owner of the truck neither appeared nor contested the case. The appellant-Insurance Company contested the case on various grounds including that the truck in question is goods carrying vehicle but it was carrying passengers at the relevant time when the deceased along with other persons were traveling as passengers. Hence the

Insurance Company has no liability for payment of compensation.

3. The evidence was led by the claimants and the Tribunal after considering the evidence came to the conclusion that the truck was not engaged in loading and unloading of Boxite on the particular date and the deceased was not employed as a labourer. The Tribunal held that the deceased was traveling on the truck as a passenger. However, the Tribunal held that the Insurance Company is liable to pay compensation.

4. For better appreciation, para 8,9 and 10 of the judgment passed by the Tribunal is worth to be quoted herein below:

8. It is argued on behalf of the O.P. No. 3 that as per claim petition and the evidence adduced on behalf of the claimant the deceased was employee as a labourer in the truck for loading boxite which is not true nor it has been well proved. A. P. Ws. 1 to 3 are alleged to be eye witnesses to the accident but they are not eye witnesses and they are not chargesheeted witnesses of this occurrence except A.P.W.3. Almost all the witnesses have stated that this truck has gone towards Lohardaga and truck was empty and passengers were loaded. Witnesses have admitted that Boxite Khadan is Dumperpat towards Netrahat and after loading at Dumerpat the same was unloaded at Chandwa. All these clearly show that the truck was empty and was not going in the direction of the mines but was going to the opposite direction where the boxite was used to be taken unloaded. Therefore, the deceased was not employee as a labourer in the truck on that particular date. On the other hand F.I.R. Ext. 4, and charge sheet Ext. 5 clearly show that the truck was going to Gumla, carrying passengers who were going to take part in the Rally of Jharkhand Mukti Morcha. A.P.W. 3 Pitter Oraon informant of this accident for which F.I.R. has been lodged is not reliable at all and fit to be discarded out right because he has totally contradicted his own fardbeyan in the F.I.R. In presence of documentary evidence Ext. 4 evidence of other witnesses are not reliable and witnesses have deposed falsely at the instance of the claimant. Hence they cannot be believed. From perusal of the material available on the record and the discussions made above it is clear that neither the truck was engaged in the loading and unloading of the boxite on that particular day nor the deceased was employed as a labour and the truck was carrying passengers, who were going to Gumla to participate in the Rally of Jharkhand and the deceased was one such passenger on that relevant day and time. So far the question of income of deceased, all witnesses have said the same about his monthly income. A.P.Ws.1 and 2 have repeated the same things which has been told by the A. P. W. 5 Silibanti Lakra applicant. Almost all witnesses has stated that the deceased had a income of Rs. 700/-from agriculture and Rs. 900/-from wages. They have not said this income was approximate but given fixed figures which has been given in the claim petition and said by the claimant. Thus, they are the tutored witnesses to repeat parrot like the figures given in the claim petition and are not reliable. Moreover, according to evidence, the deceased used to grow vegetables

and also raised paddy crops on his land. A person engaged in the growing vegetables, which would fetch him on monthly income of Rs. 700/- round the year must be working whole time in the field. He has no time to engage himself as a labourer for the whole days anywhere else. Both things are not possible by a single person (man). At best he could have been engaged as a labourer for a few days only during the month if at all.

9. So far the question of liability of Insurance Company is concerned and objection has been taken in the written statement that the truck was carrying passengers at the relevant date and time of the occurrence which is a violation of the Insurance policy condition as well as law. The ruling cited on behalf of the applicant is not applicable under the facts and circumstances of this case which has ruled that Section 147 of the Motor Vehicle Act, 1988. Third party insurance covers gratuitous passengers also. This judgment, however, does not support the case of the claimant in any manner, as the case of the claimant is that the deceased was engaged as a labour in the truck on that particular day. Thus, according to the claimant the deceased was not gratuitous passenger. Moreover, coverage passenger to the liability is a separate contract for which Insured has to pay a separate premium like Rs. 110/- per passenger which has not been done in the present case. Section 64VB of the Insurance Act also prohibits taking of any risk for which premium has not been received in advance. In view of the above discussion it is clear that the Insurance company is not liable and it is the owner who is liable to pay the compensation.

10. The accident and age of the deceased was not denied and the same is proved by the documentary as well as oral evidence available on the record. It is also admitted fact that the vehicle was insured at the relevant date and time of the accident. The policy was comprehensive one. Therefore, the Insurance Company is liable for any compensation awarded to the applicant. So far the deceased was not employee of the said truck, in absence of any document and examinations of the employer of the truck and vehicle was empty and going to Lohardaga with passengers and material available on the record it is very difficult to hold that the deceased was employed of the truck and earning Rs. 900/- per month as labourer and it can be safely held that the deceased was not an employee of the said truck on the relevant date and time of the accident. However, his monthly income from the cultivation was Rs. 700/- has not been challenged and denied by the O.P. No. 3. Besides this he may earn by labour elsewhere which comes at least Rs. 500/- per month and this deceased was gratuitous passenger. In all respect, the ruling cited on behalf of the applicant is fully applicable to the facts and circumstances of this case and argument advanced by the O.P. No. 3 is not tenable in the light of the above said ruling.

5. Mr. Alok Lal, learned Counsel appearing for the appellant-Insurance Company, assailed the impugned judgment as being erroneous in law. Learned Counsel submitted that the Tribunal, after having come to the conclusive finding that the

deceased was traveling as gratuitous passenger, the Insurance Company cannot be held liable to pay compensation.

6. On the other hand, Mr. Sunil Kumar, learned Counsel appearing for the respondents-claimants, submitted that sufficient evidence was adduced by the claimants in support of their case that the deceased was traveling as a labourer and not as a passenger and, therefore, the Insurance Company cannot disown its liability for payment of compensation. In the alternative learned Counsel submitted that the policy being the comprehensive policy, even in a case where persons traveling as passengers, the insurance company is liable to pay compensation amount. Learned Counsel lastly submitted that it is a fit case where the Insurance Company should pay the compensation amount and recover the same from the owner of the vehicle.

7. As noticed above, the respondent-owner of the truck, has neither appeared nor contested the case. There is no pleading from the side of the respondent-owner that the deceased was traveling as a labourer and not as a passenger. The Tribunal, on consideration of evidence including the FIR and the charge sheet, has recorded a finding that the vehicle was carrying passengers on the relevant date of accident. The finding recorded by the Tribunal that the deceased was traveling on the vehicle, as a passenger, cannot be disturbed in absence of any reliable evidence.

8. Now the question arises as to whether the Insurance Company can be held liable for payment of compensation in respect of death of a person, who was traveling like passenger in a goods carrying vehicle. The answer would be negative. The view expressed by the Tribunal that the Insurance Company is liable to pay compensation, as the vehicle was comprehensively insured, is erroneous in law. In my considered opinion, merely because the vehicle was comprehensively insured, it cannot cover the risk of a person traveling in a goods carrying vehicle as a passenger. In the instant case, the finding recorded by the Tribunal is that the deceased was traveling as a passenger in goods carrying vehicle and, therefore, the Insurance Company cannot be held liable for payment of compensation.

9. As noticed above, the owner of the vehicle has not come forward with a case disowning his liability. In such circumstances, it would not be proper to direct the Insurance Company to pay compensation amount and recover the same from the owner of the vehicle. The judgment and award passed by the Tribunal directing the Insurance Company to pay compensation amount cannot be sustained in law. It can safely be held that the respondent-owner of the vehicle, is liable to pay the compensation amount.

10. For the reason aforesaid, this appeal is allowed and the judgment and award passed by the Tribunal, so far he directed the Insurance Company to pay the compensation amount, is set aside. It is held that the claimants-respondents shall be entitled to recover the compensation amount from the respondent-owner of the

vehicle.