

(2003) 08 JH CK 0042

**Jharkhand High Court****Case No:** A.F.O.O. No. 1 of 1997 (R)

Sunita Devi

APPELLANT

Vs

Autar Singh and Another

RESPONDENT

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**Date of Decision:** Aug. 26, 2003**Acts Referred:**

- Workmens Compensation Act, 1923 - Section 12(2), 13, 19, 30, 4

**Citation:** (2005) ACJ 1175 : (2004) 2 ACC 198 : (2004) 101 FLR 214 : (2004) 1 JCR 76**Hon'ble Judges:** Hari Shankar Prasad, J; Gurusharan Sharma, J**Bench:** Division Bench**Advocate:** A.K. Kashyap, for the Appellant; Arvind Kumar Sinha and D.C. Ghosh, for the Respondent**Final Decision:** Allowed

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**Judgement**

1. The appellant filed Workman Compensation Case NO. 4 of 1993 for grant of Compensation, under the provisions of the Workmen's Compensation Act, 1923 (hereinafter to be referred to as "the Act) on account of death of her husband. Bijay Ram @ Bijay Kumar on 23.5.1992, in course of his employment as a driver of Autar Singh, the respondent No. 1, who was owner of the Maruti Van (BEN-9670).

2. She claimed that her deceased husband was employed as driver by Autar Singh. On 23.5.1992, while he was driving the Maruti Van, it collided with a Truck (UGI-9845) near a pond on the Daltonganj-Ranchi Road at village Hirsa-Pokhrah in Palamu district. In the said accident he sustained head injury and died. At the time of death, he was 25 years" old and was getting a salary of Rs. 900/- per month.

3. Autar Singh appeared in the case and filed written statement stating, inter alia, that deceased. Bijay Ram @ Bijay Kumar was employed by him as driver on the said Maruti Van, which was of purely casual nature. The Van was duly insured with the New India Assurance Company Limited at the relevant time and as such the said Insurance Company is liable to pay the compensation amount if any, payable to the

claimant under the Act. After filing written statement, he left taking interest in the case and did not contest.

4. The Insurance Company also filed written statement stating, inter alia, that it was a case of gross rash and negligent driving of the van by the driver and, therefore, no compensation was payable by the Insurance Company. The deceased was a "third party" and also was not a "workman" within the meaning of the Act.

5. The claimant, in support of her case, examined three witnesses A.W. 1 was father of the deceased driver. He produced a photocopy of his driving licence, which was marked as Exhibit 5. A.W. 2, Pradip Kumar Akela stated that Bijay Ram used to drive the Maruti Van in question as taxi A.W. 3 was the claimant herself. She stated that at the time of the accident, her husband was carrying passenger in the Maruti Van on the instruction of his employer. He was 26/27 years" old and was drawing salary of Rs. 900/- per month at the time of the accident.

6. A copy of the FIR was marked as Exhibit 1, wherein driver of the Van was shown as an accused. In the Fardbeyan, the informant stated that the Maruti Van dashed with the Truck Exhibit 3, the Post Mortem Report disclosed the age of the deceased to be 25 years at the time of accident. The certificate of Insurance was marked as Exhibit 4. It was found that the owner was not correct in claiming that it was a comprehensive insurance policy.

7. The Presiding Officer, Labour Court, Ranchi, held that since the accident was caused due to the negligent driving of the Van, the claimant was not entitled to any compensation for the injury suffered by her husband. However, it was held that the deceased driver was aged about 25 years as evident from the Post Mortem Report and he died during course of his employment and was drawing Rs. 900/- per month as wages.

8. The counsel for the appellant submitted that there was absolutely no evidence on record to suggest that actually the accident in question occurred due to negligence on the part of the deceased driver himself and therefore, the Court below committed an error of record in holding that the deceased driver himself was responsible for the accident as he was driving the Maruti Van rashly and negligently. Moreover, it was not a case for grant of compensation under the Motor Vehicles Act, rather under the Workmen's Compensation Act and as such the Court below erred in holding that due to the negligent driving of the deceased the claimant was not entitled to any compensation for the injury suffered by him.

9. Although in the present appeal u/s 30 of the Act, we need not go into the question of facts, but since the submission is that the Court below has committed an error record in holding that the deceased driver was negligent in driving the Maruti Van, we have examined the oral evidence and find that the claimant's witnesses, namely, A.W. 1, the father of the deceased, A.W. 2, Pradip Kumar Akela and A.W. 3, widow of the deceased all of them were not present on the place of the accident and as such

they have not deposed about the manner of occurrence. Both the employer of the driver as well as the insurer of the Maruti Van have not examined any witness. Hence, none was examined, who had seen the actual accident and as such there was nothing on record to suggest that the deceased was driving the van rashly and negligently at the relevant time.

10. A photo copy of the driving licence of the deceased was produced by his father and was marked as Exhibit-5. The Court below observed that it was difficult to gather from the said photocopy that the deceased had a driving licence at the relevant period. No body questioned the genuineness of the said driving licence and therefore, there was no occasion for the Court below to make the aforesaid observation.

11. Further, we find that the observation of the Court below. "It is also evident that accident took place due to rash and negligent driving of the vehicle" was clearly an error of record, not based on any such material on the records of the case.

12. It is well settled that the Act is a piece of social security and welfare legislation, Its dominant purpose is to protect the workman and, therefore, the provisions of the Act should not be interpreted too narrowly so as to debar the workman from compensation which the Parliament thought they ought to have. The intention of the legislature was to make the employer an insurer of the workman responsible against the loss caused by the injuries or death, which ought have happened, while the workman was engaged in his work.

13. In our view, even if the death or serious permanent disablement of a workman might have been occurred as a consequence of serious or willful misconduct on the part of the workman, yet the compensation under the Act is recoverable from the employer. The compensation provided under the Act is in the nature of insurance and not a remedy for negligence.

14. Mr. Ghosh, counsel for the Insurance Company submitted that the insurer of the Maruti Van was not responsible under the Act for payment of compensation to the claimant on behalf of the employer of the deceased driver, who was also the owner of the vehicle.

15. In this connection, we notice that Section 12(2) and 13 of the Act indicate that the person other than the employers can also be made liable to pay compensation under the Act and moreover the expression "any person" u/s 19 of the Act covers an insurer also. Hence, we find no substance in the submission of Mr. Ghosh that the Insurance Company was not liable to pay the compensation amount.

16. We are, therefore, of the view that the impugned order cannot be sustained and is, therefore, set aside. In our opinion, the widow of the deceased driver is entitled to get compensation under the Act. In view of the admitted position that the deceased driver was 25 years" old at the time of the accident and was getting salary

of Rs. 900/- per month, applying the method of calculation of compensation u/s 4 of the Act, a total sum of Rs, 78087/- is payable as compensation under the Act to the claimant-appellant by the insurer respondent No. 2 on behalf of the employer-respondent No. 1.

17. In the result, this appeal is allowed with the above observations. No costs.