

# PATNA HIGH COURT

Tara Pada Roy

Vs

Dwijendra Nath Sen

A.F.O.O. Nos. 198 to 203 and 204 of 1974

(B.P. Jha and S.K. Choudhuri, JJ.)

15.11.1984

## JUDGEMENT

### **S.K. Choudhuri, J.**

1. These appeals have been heard together as they involve common question of law and are being disposed of by this judgment. All these appeals have been preferred by the owner of the vehicle against the judgment and award dated 21st of May, 1974 passed by the District Judge (Motor Accident Claims Tribunal), Dhanbad. By this judgment several claim cases, which were registered as title suits, were disposed of.

2. On 26th Sept. 1970 the passenger bus (public vehicle) named 'Sri Durga Bus Service' bearing registration No. WOW 91 was going from Ranchi to Jharia with passengers. Unfortunately this bus met with an accident at a place known as 'Chas' near village Chautand, Police-station Chas on the same day at about 4.30 p.m. Several persons were injured and some of the passengers also died in that accident. This accident gave rise to different claim cases. The bus was admittedly insured at the relevant time with the Insurance Company known as 'Oriental Fire and General Insurance Co. Ltd.'. The seven appeals with which this Court is concerned arise out of the claim petitions, which were registered as title suits and for convenience they are being mentioned in the following chart:-

Appeal No.	Suit No.	Claimant	Compensation allowed
M. A. 198/74	T. S. 47/1970	Dwijendra Nath Sen	Rs. 5,000/-
M. A. 201/74	T. S. 48/1970	Smt. Sibani Rani Dey	Rs. 2,000/-
M. A. 200/74	T. S. 49/1970	Minor Subodh Kumar Sen and others	Rs. 5,000/-
M. A. 204/74	T. S. 7/1971	Khalid Latif	Rs. 4,300/-
M. A. 203/74	T. S. 8/1971	Khalid Latif	Rs. 20,000/-
M. A. 202/74	T. S. 9/1971	Khalid Latif	Rs. 2,000/-
M. A. 199/74	T. S. 10/1971	Khalid Latif and another	Rs. 4,300/-

In the operative part of the judgment the Claims Tribunal has held that under the new Act, the liability of the Insurance Company was up to Rs. 75,000/-, but as the insurance policy was issued before the new Act came into force, the liability of the Insurance Company will be only up to Rs. 20,000/-. Accordingly, the Claims Tribunal held that the concerned Insurance Company is liable, only up to Rs. 20,000/-, but as the total amount awarded in different claim cases to different persons comes to Rs. 42,600/-, the balance liability beyond Rs. 20,000/- would be of the owner Tara Pada Roy. It further ordered that the amount of compensation awarded in title suit No. 8 of 1971 being Rs. 20,000/-, the said sum should be paid by the Insurance Company to the claimant of that case and the remaining amount of Rs. 22,600/- would be satisfied by the owner of the bus, namely, Tara Pada Roy.

3. The claimant in title suit No. 47 of 1970 was himself injured in the accident and the amount of claim of compensation was Rs. 10,000/-. The claimant in title suit No. 48 of 1970 was also an injured lady who is Smt. Sibani Rani Dey wife of one Shristi Dhar Dey, who claimed Rs. 5,000/- as compensation. In title suit No. 49 of 1970 one Smt. Mukta Rani Sen wife of Dwijendra Nath Sen died and the claimants were minor son and daughter of the deceased along with her husband. The claim made in that case was for a sum of Rs. 20,000/-. In title suit No. 7 of 1971, the claimants were the father and a brother of the deceased Munna. The amount of compensation claimed was Rs. 40,000/-. In title suit No. 8 of 1971 one Hazra Khatoon wife of Khalid Latif died. Claimant No. 1 Khalid Latif was the husband and claimant No. 2 Akhtar Hussain was the minor son of the deceased. The amount of compensation claimed was Rs. 75,000/-. In title suit No. 9 of 1971, the claimant Khalid Latif was the injured person. He claimed Rs. 5,000/- as compensation. In title suit No. 10 of 1971, the claimants were the heirs of one Shabnam Parvin daughter of Khalid Latif. Claimant No. 1 was Khalid Latif and claimant No. 2 Akhtar Hussain was minor son of Khalid Latif and the amount of compensation claimed was Rs. 40,000/-. I have already mentioned above in the chart the amount of compensation allowed in different title suits.

4. It appears that out of the judgment and award passed in title suit No. 8 of 1971, which has given rise to Miscellaneous Appeal No. 203 of 1974 (filed by the owner of the bus), a separate appeal was filed before the Ranchi Bench by the concerned Insurance Company, which was registered as Misc. Appeal No. 188 of 1974. This appeal was heard by a Division Bench and allowed in part by the judgment dated 18th May, 1980. The operative portion of the judgment reads thus :-

".....We allow this appeal only to the extent that the compensation awarded for the death of the wife of respondent No. 1 against the appellant would be reduced to Rs. 2,000/-. Counsel for the appellant undertakes to deposit Rs. 2,000/- in this Court with up to date interest within three months from today.

In the result, the appeal is allowed in part as indicated above; but in the circumstances of the case there will be no order as to costs."

The said judgment relying upon the cases of *M/s. Sheikhpura Transport Co. Ltd. v. Northern India Transporters Insurance Co. Ltd*<sup>1</sup>. and *Manjushri Raha v. B. L. Gupta*<sup>2</sup> held that :-

"In absence of any contract to the contrary, the statutory liability of the insurer to indemnify the injured in the case of a vehicle allowed to carry more than six passengers

extends only up to Rs. 2,000/- in respect of each passenger and the total liability would not go beyond Rs. 20,000/-"

Thus by the operative part of the said judgment, already quoted above, the Bench hearing the said appeal fixed the liability of the Insurance Company at a figure of Rs. 2,000/- and thus allowed the appeal in part.

5. Mr. Sudhir Chandra Ghose learned Counsel in all the appeals by the owner of the bus contended that the trial Court has taken a wrong view of law in holding that the new amended Act came into force on 2nd Sept 1973 and therefore, it would not apply to the present cases as the insurance policy (Ext B) was issued on 13th Feb. 1970. He contended that the liability of the Insurance Company under the new amended Act would be to the extent of Rs. 75,000/- and as the total claim awarded in all the claim cases comes to Rs. 42,600/-, the whole amount should have been directed to be paid by the Insurance Company. According to the learned Counsel, therefore, the direction to the Insurance Company that the liability of the said Company is only to the extent of Rs. 20,000/- is erroneous and, therefore, the operative part of the judgment of the trial Court should be modified, accordingly. The accident which gave rise to the present claim cases, took place on 26th Sept. 1970 and, therefore, the cause of action for the claim cases arose on that very date. It is well settled that the liability of the insurer to pay a claim under a motor-cum-accident policy arises on the occurrence of the accident and not before, and, therefore, the law as was in force on the date of the accident would be the determining factor in awarding compensation to different claimants and the extent of the insurance company's liability would be determined accordingly, see the case of *Padma Srinivasan v. Premier Insurance Co. Ltd*<sup>3</sup>.

6. Nobody has appeared on behalf of the Insurance Company or the claimants to oppose any of the appeals. It appears from the judgment of the Claims Tribunal that the liability under the amended Act of the insurer would be up to the limit of Rs. 75,000/-. This position, as appears from the judgment of the trial Court, was not disputed, if the amended Act would apply. The total liability of the insurer, therefore, would be to the extent of Rs. 75,000/- and the Insurance Company is accordingly liable to pay the whole amount awarded to the different claimants in the different claim cases. However, there is a big obstacle in the way in giving complete relief to the owner of the vehicle, who is the appellant before this Court, in view of the judgment of the Division Bench in Misc. Appeal No. 188 of 1974 aforesaid.

7. In order to obviate this anomalous situation created by the aforesaid Bench decision, Mr. Ghose in his argument relied upon a subsequent Bench decision of this Court in the case of *National Insurance Co. Ltd. v. Chunnu Ram*<sup>4</sup> taking a contrary view and supporting fully the submission of Mr. Ghosh. It has been pointed out by learned Counsel Mr. Ghose that one of the learned Judges, who was a member of the Bench which delivered the judgment in Misc. Appeal No. 188 of 1974 was also a member of this Bench decision. Be that as it may it appears that when the previous unreported judgment was delivered on 16th May. 1980, the judgment of the Supreme Court in the *Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi*<sup>5</sup> was not pronounced interpreting the correct position of law. In this Supreme Court decision the relevant words appearing in Section 95(2) of the Motor Vehicles Act (IV of 1939) 'any one accident' have been interpreted. The said expression has been interpreted to mean, 'accident to any one'. It has been held that the word 'accident' is used in the expression, 'any one accident' from the point of

view of various claimants each of whom is entitled to make a separate claim for the accident suffered by him and not from the point of view of the insurer. Following this Supreme Court decision, the Ranchi Bench in National Insurance Co.'s case (supra) observed, 'in view of the decision of the Supreme Court, the Court may perhaps in a given case award the maximum compensation even to only one passenger who might be a victim of the accident in the type of the bus he was travelling against the Insurance Company'. In the result, the appeal which was preferred by the Insurance Company was dismissed and the order of the Claims Tribunal awarding Rs. 20,000/- to the claimant, holding the same to be proper and justified, was upheld.

8. It cannot, therefore, be disputed that the law as interpreted by the Supreme Court in the Motor Owners Insurance Co. Ltd. AIR 1981 Supreme Court 2059 has to be followed in deciding the present appeal also.

9. In view of the discussions made above, Miscellaneous Appeals Nos. 198 of 1974, 201 of 1974, 200 of 1974 and 204 of 1974 have to be allowed and it is held that the owner of the vehicle, namely, the appellant Tara Pada Roy is not liable to pay any amount to any of these claimants, but the amount awarded by the Claims Tribunal to the claimants of these cases should be paid by the Insurance Company. However there is a big obstacle in allowing Miscellaneous Appeal No. 203 of 1974, in view of the judgment passed in Misc. Appeal No. 188 of 1974 (Pat). The judgment passed by the Ranchi Bench in the said appeal has become final and the parties in that appeal as also in Miscellaneous Appeal No. 203 of 1974 are common. As the judgment in Misc. Appeal No. 188 of 1974 (Pat) has become final, Miscellaneous Appeal No. 203 of 1974 cannot be allowed because in such a situation a conflicting decision would come into existence which would create anomaly. It is, therefore, held that in so far as Miscellaneous Appeal No. 203 of 1974 is concerned, the judgment passed in Misc. Appeal No. 188 of 1974 (Pat) has binding effect between the parties and as the said judgment cannot be disturbed by this Court, Miscellaneous Appeal No. 203 of 1974, is dismissed, but without costs. Miscellaneous Appeal No. 202 of 1974 and Miscellaneous Appeal No. 199 of 1974 stand on the same footing as the other four appeals which have been allowed. Accordingly these two appeals are also allowed and the amounts covered by these two appeals are also directed to be paid by the

Insurance Company and not by the bus owner, the appellant.

10. In the result. Miscellaneous Appeal No. 203 of 1974 is dismissed and the rest six appeals mentioned above are allowed, as indicated above. In the circumstances of the case, there will be no order as to costs.

**B.P. Jha, J.**

6. I agree.

Order accordingly.

Cases Referred.

<sup>1</sup> AIR 1971 SC 1624

<sup>2</sup> AIR 1977 SC 1158

<sup>3</sup> AIR 1982 SC 836

<sup>4</sup> AIR 1984 Pat 1

<sup>5</sup> AIR 1981 SC 2059