
Before Viney Mittal, J.

SARBATI—Petitioner

versus

ANIL KUMAR AND OTHERS—Respondents

F.A.O. No. 810 of 1998

4th January, 2006

Motor Vehicle Act, 1988—S. 163—A—Motor Vehicles (Operation of Commercial Traffic between India and Contiguous Countries) Rules, 1963—Rl.4—Death by drowning of 54 passengers travelling in bus which fell in a river—Accident within the territory of Nepal—Dismissal of claim petitions by the Tribunals holding the same not maintainable—Provisions of S. 163-A provide for grant of compensation on structural formula basis & the same apply to claims for accidents within the Indian territory only—Provisions of Rl.4 of the 1963 do not apply qua such deaths—Appeals dismissed while granting liberty to claimants to seek any other remedy available to them in accordance with law.

Held, that it is not in dispute that the accident in question had taken place outside the territory of India and rather in the territory of Nepal. Provisions of Rule 4 of the Motor Vehicles (Operation of Commercial Traffic between India and Contiguous Countries) Rules, 1963 provide for a procedure and legal requirements for plying the motor vehicles outside the territory of India and in such countries which are contiguous and which are having a reciprocal arrangements with India. Similarly Section 163-A of the Motor Vehicles Act deals with special provisions for the grant of compensation on structural formula basis. Since the provisions of the Act only apply within the country and not beyond that, therefore, it must necessarily follow that even the aforesaid provision would apply to claims for accidents within the Indian territory. Further, the only inference which can flow from rule 4 of the Rules is that if a claimant pursues his remedies in a Court of competent jurisdiction in country where a cause of action has arisen and is awarded compensation, then the Insurance Company cannot absolve itself of its liability and shall be liable to reimburse the insured with regard to the payment of compensation. By any stretch of imagination, it cannot be inferred that the aforesaid provisions would be applicable to the present case.

(Paras 9 & 10)

R.S. Mamli, Deepak Gupta, Kirti Kumar, A.S. Virk, Gopal Mittal,
Yogesh Goel, Mukesh Mittal, Manoj Bajaj, Sumeet Goel,
Advocates.

Pardeep Bedi, Naveen Daryal, Paul S. Saini and R.K.
Bashambo, Advocates

JUDGMENT

VINEY MITTAL, J.

(1) These eighteen appeals have been filed by the claimants and arise out of a common accident which took place in the intervening night on 17th/18th June, 1995 at near the bridge of Pareva Bhir in the area of Police Station Mugling in District Chandi Bhajan in Nepal. Since the Motor Accidents Claims Tribunals in all the claim petitions have held that the claim petitions were not maintainable before the Tribunals in India and consequently dismissed the claim petitions, therefore, the claimants have approached this Court through the present appeals.

(2) The facts are not in dispute. The admitted position between the parties is that a bus No. UP-10-B-0939 took various persons for pilgrimage from Delhi to Kathmandu (Nepal). On the fateful day, at about 2.00 a.m. when the aforesaid bus reached near the bridge of Pareva Bhir in the territory of Nepal, the bus Driver allegedly lost his control over the bus and because of the same the bus fell into the river known as 'Trishuli-Nadi'. All the 54 passengers travelling the said bus drowned in the river and died. Various claims petitions were filed by the legal representatives of the deceased before the Motor Accidents Claims Tribunals, Panipat, Karnal and Kurukshetra. All the Tribunals took a consistent view that in view of the fact that the accident in question had taken place outside the territory of India, therefore, the claim petitions were not maintainable. Consequently, the claim petitions were dismissed.

(3) I have heard the learned counsel for the parties and with their assistance have also gone through the record of the case.

(4) The learned counsel for the appellants have vehemently relied upon the provisions of Section 163-A of the Motor Vehicles Act and provisions of the Motor Vehicles (Operation of Commercial Traffic between India and Contiguous Countries) Rules, 1963. On the basis of the aforesaid provisions, it has been contended by the learned counsel that since the bus in question was registered in India and was owned by the persons who were Indian Citizens, and the claimants as well as the respondents were Indian Citizens, therefore, the claim petitions filed by the claimants before the Tribunals in India were maintainable. My specific attention has been drawn to Rule 4 of the Rules to support the aforesaid contention.

(5) On the other hand, the learned counsel for the respondents have argued that Section 1 of the Motor Vehicles Act itself stipulated that the provisions of the Act extended to whole of India. On that basis, it has been argued that since the accident in question had been taken place outside the territory of India, therefore, the provisions of the Act were not attracted to the accident in question and the claim petitions filed by the claimants before the Tribunals in India were not maintainable. It has further been argued by the learned counsel for the respondent that the Rules relied upon by the appellants were only applicable for the purposes of granting sanction and validity to the permits for plying the vehicles outside the country but were not applicable for the claims arising out of accidents, if any, outside the territory of India. It has further been argued that even provisions of the Act were only special provisions for the grant of compensation on special structural formula basis but were only attracted to the claims arising out of accidents occurring in Indian territory.

(6) I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties and find that the present appeals are devoid of merit.

(7) As noticed above, it is not in dispute that the accident in question had taken place outside the territory of India and rather in

the territory of Nepal. The provisions of section 163-A of the Act which have been relied upon by the learned counsel for the appellants are extracted below :

“163-A. Special Provisions as to payment of compensation on structured formula basis.—(1)

Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

- (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
- (3) The Central Government may, keeping in view the cost of living by notification in the official Gazette, from time to time amend the Second Schedule.”

(8) Rule 4 of the Rules relied upon by the learned counsel for the appellants is also reproduced as follows :

“4 Conditions applicable to transport vehicles of India entering a contiguous country—(1) A transport vehicle registered in India at the time of entering a contiguous country shall be so constructed and maintained as to be at all times under the effective control of the persons driving the vehicle.

- (2) There shall be in force in relation to a transport vehicle referred to in sub-rule (1)–
- (i) a certificate of registration;
- (ii) a certificate of fitness;

(iii) an insurance policy; and

(iv) a permit.

(3) The person driving the vehicle shall be in possession of a valid current driving authorization and also a driver's badge issued under rule 13.

(4) A conductor of a public service vehicle shall be in possession of a valid current conductor's certificate and also a conductor's badge issued under rule 13.

(5) Throughout his stay in the contiguous country a conductor or driver shall display his badge on his left breast."

(9) Provisions of Rule 4 which have been strongly relied upon by the learned counsel for the appellants provide for a procedure and legal requirements for plying the motor vehicles outside the territory of India and in such countries which are contiguous and which are having a reciprocal arrangements with India. Similarly, Section 163-A of the Act deals with special provisions for the grant of compensation on structural formula basis. Since the provisions of the Act only apply within the country and not beyond that, therefore, it must necessarily follow that even the aforesaid provision would apply to claims for accidents within the Indian territory.

(10) Further, the only inference which can flow from rule 4 of the Rules is that if a claimant pursues his remedies in a Court of competent jurisdiction in a country where a cause of action has arisen and is awarded compensation, then the insurance company cannot absolve itself of its liability and shall be liable to reimburse the insured with regard to the payment of compensation. By any stretch of imagination, it cannot be inferred that the aforesaid provisions would be applicable to the present case.

(11) In view of the aforesaid discussion, I do not find any merit in the present appeals and the same are accordingly dismissed.

(12) However, the claimants would be at liberty to seek any other remedy available to them in accordance with law.