Oriental Insurance Co. Ltd vs Smt. Raj Kumari & Ors on 14 November, 2007

Equivalent citations: AIR 2008 SUPREME COURT 403, 2007 (12) SCC 768, 2007 AIR SCW 7149, 2007 (13) SCALE 113, 2008 (3) SCC(CRI) 385, 2008 (1) PUN LR 227, (2008) 1 MAD LJ 501, (2008) 2 MAD LW 19, (2008) 1 TAC 1, (2008) 1 RECCIVR 69, (2007) 13 SCALE 113, (2007) 4 ACC 761, (2008) 1 ACJ 295, (2008) 1 ALL WC 257, (2008) 1 ANDHLD 109, (2008) 1 RAJ CRI C 40

Author: Arijit Pasayat

Bench: Arijit Pasayat, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (civil)  5209 of 2007

PETITIONER:
Oriental Insurance Co. Ltd

RESPONDENT:
Smt. Raj Kumari & Ors

DATE OF JUDGMENT: 14/11/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No. 2511/2006) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court. By the impugned judgment, the High Court held that though the liability of the appellant (hereinafter referred to as the insurer) was limited to Rs.50,000/- yet it was to first pay the amount awarded to the claimants and recover amount in excess of Rs.50,000/- from the owner and driver of the offending vehicle.

2. Factual position in a nutshell is as follows:

> One Karan Singh, conductor of the bus no.DEP-3514 lost his life in an accident which took place on 14.7.1984. The bus belonged to M/s Mewat Transport Company Private Limited (hereinafter referred to as the insured). The bus was driven by deceased

> Karan Singh and it dashed in a tanker no.HRG- 2852. The impact was so intense and severe that several persons sitting in the bus died, while many others sustained injuries. The widow, minor children and parents of aforesaid Karan Singh lodged claim petition claiming compensation of Rs.1,40,000/-. The Tribunal took several claim petitions together and in respect of the claim under consideration awarded compensation of Rs.57,600/- along with 12% interest p.a. from the date of institution of the claim petition. It was, however, held that liability of the insurer was limited to Rs.50,000/-.

3. The claimants filed appeal before the Punjab and Haryana High Court. By the impugned order the High Court enhanced claim of compensation to Rs.1,25,200/-. It was held, as was done by the Tribunal, that the liability of the insurer was limited to Rs.50,000/- in terms of the insurance policy. However, it was held that the entire amount was to be paid by the insurer to the claimants and it was entitled to recover the amount in excess of Rs.50,000/- from the owner and the driver of the vehicle.

4. In support of the appeal, learned counsel for the appellant submitted that having held that the liability of the insurance company was limited to Rs.50,000/-, the High Court was not justified in directing payment of the entire amount by it and to recover the differential amount.

5. There is no appearance on behalf of the respondents.

6. It would be appropriate to take a note of what was held by the Constitution Bench of this Court in New India Assurance Co. Ltd. V. C.M. Jaya and Ors. (2002 (2) SCC 278). In that case it was held, inter alia, as follows:

> In the circumstances, we hold that the liability of the appellant, insurance-company is limited to Rs.50,000/-, as held by the Tribunal. In the view we have taken, it is unnecessary to go into the question relating to either maintainability of cross-objections before the High Court against the appellant alone or as to the enhancement of compensation when the owner and driver have not filed appeal against the impugned judgment.

7. The questions that were considered by the Constitution Bench are as follows:

> , "The question involved in these appeals is whether in a case of insurance policy not taking any higher liability by accepting a higher premium, in case of payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) or the insurer would be liable to pay the entire amount and he may ultimately recover from the insured. On this question, there appears to be some apparent conflict in the two three-Judge Bench decision of this Court - (1) New India Assurance Co. Ltd. v. Shanti Bai (1995 (2) SCC 539) and (2) Amrit Lal Sood v. Kaushalya Devi Thapar (1998 (3) SCC 744) .

> 2. In the latter decision, unfortunately the decision in New India Assurance case (supra) has not been noticed though reference has been made to the decision of this Court in National Insurance Co. Ltd. v. Jugal Kishore [(1998) 1 SCC 626], which was relied upon in the earlier three-Judge Bench Judgment. In view of the apparent conflict in these two three-Judge Bench decisions, we think it appropriate that the records of this case may be placed before my Lord, the Chief Justice of India to constitute a larger Bench for resolving the conflict. We accordingly so direct. The record may now be placed before the Hon'ble the Chief Justice of India."

8. It would be evident from the conclusions of this Court the liability of the insurance company would in the instant case be limited to quantum which was to be indemnified in terms of the policy. The Tribunal and the High Court have held accordingly.

9. In Oriental Insurance Co. Ltd. vs. Shakuntala Garg and Ors. (Civil Appeal No. 104 of 2000, disposed of on 10.1.2003), it was held as follows:

> Learned counsel for the appellant at this stage expressed an apprehension that by virtue of the terms of the Award, the appellant may be required to pay the entire amount and recover it from the owner. In the light of the modification of the impugned Award, such question does not arise.

10. It is true that in certain cases this Court has, after looking into the fact situation, directed the insurance company to make payment with liberty to recover the amount in excess of the liability from the insured. Those decisions were given on the facts situation of the cases concerned.

11. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC

647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the

particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

12. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

> The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

13. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, Lord Atkin s speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances. Megarry, J in (1971) 1 WLR 1062 observed:

> One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:
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> There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

14. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to

> another case is not at all decisive. *** *** *** Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

16. In the instant case the insurer was a private limited company doing transport business. There was no material placed before the High Court to show that the claimants would have any difficulty in recovering the awarded amount from it. That being so, the High Court s order is modified to the extent that the insurer shall pay an amount of Rs.50,000/- with interest awarded to claimants. The balance has to be paid by the insured.

17. Another point urged before this Court in support of the appeal was that the rate of interest is high. The liability of the insurance company is limited to Rs.50,000/- with interest @ 9% p.a. from the date of the application. The rate is being fixed considering the date of accident. The insured shall forthwith make payment of the balance amount with interest to the claimants and in any event not later than 3 months from the date of this order.

18. The appeal is allowed to the aforesaid extent with no order as to costs.