

(1996) 09 KAR CK 0010
In the Karnataka High Court

Bharat Fritz Werners Ltd.

APPELLANT

Vs

Smt. Channawwa and Others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 95 (2), 95 (2) (b)

Citation : (1996) 1 ACC 153

Hon'ble Judges : S.A. Hakeem, J;B. Padmaraj, J

Bench : Division Bench

Judgement

S.A. Hakeem, J.—This appeal is filed by the owner of the motor vehicle involved in the accident, against the quantum of compensation awarded by the Tribunal to the L.Rs. of one S.V. Uppin who died in the accident on 22.3.1989.

2. The occurrence of the accident and the actionable negligence on the part of the driver of the vehicle is no more in dispute. Even otherwise there is adequate material on record, which would establish that the accident and the resultant death of S.V. Uppin was on account of the actionable negligence on the part of the driver of the vehicle bearing No. CAI-7769.

3. The claimants in turn have preferred their cross objections, seeking enhancement of compensation awarded by the Tribunal, which according to them is grossly inadequate.

4. The deceased was a State Government servant, working as an Excise Inspector, drawing a gross salary of Rs. 2,915/- at the time of the accident. According to the extract of service register his age is held to be 39 years. P.W.1, the wife of the deceased has stated that her husband was earning a sum of Rs. 3,000/- p.m. and used to spend a sum of Rs. 2,000/- towards maintenance of the family. After making allowance for compulsory deductions from his pay, and for his personal expenses, the learned Member of the Tribunal has determined the loss of dependency to the family at Rs. 2,000/- p.m., which would work out to Rs. 24,000/- per annum. Having regard to his age of the deceased and

applying the appropriate multiplier of 12, the total loss of dependency to the family is computed at Rs. 2,88,000/-. In addition the Tribunal has awarded a sum of Rs. 5,000/- towards loss to the estate, Rs. 5,000/- towards loss of consortium and Rs. 2,000/- towards funeral expenses. In our opinion the only head that requires interference is the sum awarded towards loss of consortium which should be Rs. 6,000/-.

As such the total amount of compensation would come to Rs. 3,01,000/ -. The cross objection of the claimant is partly allowed to that extent only.

5. This takes us to the question as to the relative liability of the owner and the insurer of the vehicle. The vehicle bearing No. CAI-7769 was insured for comprehensive risk with the 5th respondent-Insurance Company. It is pertinent to mention at this stage that the owner and the insurer took a common defence before the Tribunal and the objections filed on behalf of the Insurance Company was adopted by the owner. The relevant defence in respect of the insurance liability is stated at para 2 of the counter, which reads thus:

This respondent submits that the liability of this respondent, if any, is limited to the terms and conditions of the policy of the Motor Vehicles Act and Rules framed thereunder.

Again at para 9 it is stated thus:

This respondent respectfully submits that liability of this respondent, if any, is limited only to the tune of Rs. 50,000/- as per policy, if any. This respondent reserves the liberty to file an additional written statement at a later stage if the occasion demands.

6. The only witness examined is an Officer of the Insurance Company and the policy has been marked through her as Ex.R-1. Her evidence is also to the effect that the insurer's liability under the policy is limited to Rs. 50,000/-. That, the Insurance Company has not collected any extra premium to cover higher risk in respect of third party. In the background of the stand taken in the pleadings and the evidence, the question that falls for consideration is as to the extent of insurer's liability under the Act policy u/s 95(2) of the Motor Vehicles Act, 1939 which was in force at the relevant point of time.

7. The owner of the bus is M/s. Bharat Fritz Werners (P) Ltd., a private limited company, incorporated under the Companies Act. The bus bearing Registration No. CAI-7769 is a Ashok Leyland omni bus 1983 model, with the registered seating capacity of 59 plus 1. Under the head "limitations as to use" of omni bus as permitted within the meaning of the Motor Vehicles Act, 1939. It is urged by Mr. A. Y.N. Gupta, learned Counsel for the appellant-owner that the omni bus covered under the policy would come within the purview of Section 95(2)(c) of the Act, while the learned Counsel for the insurer maintains that it is covered by the class of vehicles stated under Clause (b) of Section 95(2).

8. Section 95(2) came up for interpretation before this Court in National

Insurance Co. Ltd. Vs. Dundamma and others, , in which the relative liability of the insurer under Clauses (b) and (c) of Section 95(2) is explained thus:

(2) Clause (b) of Section 95(2) covers the liability in respect of vehicles in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment and fixed the liability in respect of persons other than passengers carried for hire or reward at Rs. 50,000/-i.e., third parties. In respect of passenger a limit of Rs. 15,000/- in respect of each passenger is fixed.

(3) Clause (c) relates to third category of vehicles which are neither goods vehicles nor vehicles meant for carrying passengers for hire or reward. The liability in respect of these vehicles is only in respect of third parties and the liability is unlimited. The private motor cars and omni buses fall under this category.

9. The contention of Mr. A.Y.N. Gupta, learned Counsel for the owner appears to be that in the aforesaid case this Court has brought "omni buses" under Clause (c) category and, as such, the liability of the insurer in the instant case should be held to be unlimited. We are unable to agree with this contention in view of the clear object of the provisions, i.e., Section 95(2)(b). Reading the second part of the aforesaid extract of the decision (supra) as a whole makes it clear that Clause (c) applies to vehicles which are neither goods vehicles nor vehicles meant for carrying passengers for hire or reward. This read with the condition under Clause (b) the vehicle in which, "passengers being carried by reason of or in pursuance of contract of employment", is clearly excluded for the purpose of insurer's unlimited liability.

10. A similar question on the interpretation of Section 95(2) and (c) of the Act having come up for consideration in Principal, Tamil Nadu Theological Seminary Vs. A. Saraswathi and Others, , a Division Bench of the Madras High Court has stated thus:

The question that now arises for consideration is whether the van TNA 677 is a vehicle in which passengers are carried for hire or reward or by reason of, or in pursuance of, a contract of employment. The vehicle is described in the policy Exh. R-9 as "TNA 677 Matador van, carrying capacity of passengers 15". As regards the limitation as to use, it is stated that it is being used as hotel/school technical omnibus and Rs. 90/- was paid as premium under the head "passenger". It is seen from Endorsement No. 13(b) attached to and forming part of policy, for legal liability to passenger's excluding liability for accidents to employees of the insured arising out of and in the course of their employment, an additional premium of Rs. 95/- was paid. It is seen from Exh. P-5, report of the Motor Vehicles Inspector that the said vehicle has been described as LMV omnibus and fitness certificate was also issued to the vehicle and the particulars were also noted.

In the circumstances it was held that the limit of the amount of insurer's liability Under Sections 2(2) and 1(1) in respect of any one accident is such amount as

may be necessary to meet the requirements of M.V. Act, 1939. As against the limit of the amount of conventional liability u/s 12 in respect of any one claim or series of claims arising out of one event, it is shown as Rs. 50,000/-. Once it is held that the vehicle is covered u/s 95(2)(b) of the Act, the possibility of the same vehicle coming within the purview of Clause (c) is ruled out. In that view of the matter we have no hesitation in holding that the bus in question although described as an omnibus can come only within the purview of Clause (2)(b) of Section 95 of the Act, and consequently the liability of the insurer is limited to Rs. 50,000/- in respect of third party risk. As such we do not find any error in the finding arrived at by the Tribunal restricting the insurer's liability to Rs. 50,000/- and the balance of compensation to be paid by the owner.

11. In the result the appeal is dismissed. The cross objections are partly allowed. In modification of the award the amount of compensation payable to the claimants shall be Rs. 3,01,000/- with interest thereon at the rate awarded by the Tribunal.

In the circumstances of the case, the parties shall bear their own costs.