(1987) 02 GAU CK 0011

In the Gauhati High Court

Debraj Ojah APPELLANT

Vs

Mahendra Nath Barman and Another RESPONDENT

Date of Decision : 06-02-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1987) 2 ACC 226

Hon'ble Judges : T.C. Das, J;S.N. Phukan, J

Bench : Division Bench

Judgement

T.C. Das, J.—By this common judgment we propose to dispose of the two appeals as they stem from a common award of the Motor Accident Claims Tribunal in M.A C. Case No. 27(K)/72 and MAC. Case No. 104(K)/72 and Ors. Both the appeals contain similar facts involving similar questions of law. Debraj Ojah is the appellant in both the cases though the respondents are different. The appellant is the owner of ill-fated bus No. ASK 7486 which was involved in an accident on 8-2-70 at Sa-raighat Bridge, Gauhati. On the fateful day the bus loaded with passengers to its capacity proceeded from Rangiya towards Gaubati and while taking a turning on the approach of the northern side of the Saraighat Bridge, it dashed against the approach iron railing of the bride and fell down on the railway line below and then on the river side ground as a result of which the inmates of the bus received serious injuries. The respondent of M.A.F. No. 54/77 Shri Ganeshlal Das and the respondent of M.A.F. No. 52/77 Shri Mahendra Nath Barman who were also the inmates of the bus also received serious injuries. Therefore, they filed independent claim petitions in the Motor Accident Claims Tribunal claiming compensation for their injuries. The learned Tribunal, on consideration of the evidence on record and also basing the facts and circumstances of the case, awarded compensation to the respondent of M.A.F. No. 54/77 to the tune of Rs. 35,000/- and the respondent of M.A F. No. 52/77 to the tune of Rs. 30,000/-. The learned Tribunal directed that the respondent Insurance company would pay only Rs. 2,000/- in each case to cover up their liabilities and the remaining portion of the award would be shared by the appellant of both the appeals. The learned Tribunal also awarded interest and cost of the litigation as directed in the award. Being aggrieved by the apportionment of the award amount the appellant has preferred these two appeals which are now the subject-matter for our consideration.

2. During the pendency of the appeal respondent of M.A.F. 52/77 Mahendra Nath Barman having died his legal heirs and representatives have been brought on record as respondents.

3. We have heard Mr. D.K. Talukdar, learned Counsel for the appellant, Mr. S. Medhi, learned Counsel for the main respondent and Mr. A.K. Choudhury, learned Counsel appearing on behalf of the Insurance Company. The sole point that has been raised by Mr. Talukdar is some what substantial and it contains legal question of considerable importance. The learned Counsel for the appellant has not seriously questioned the quantum of the award but has urged that the apportionment of the award as made by the learned Tribunal is not on legal basis and not in compliance with the provisions of Section 95(2) of the Motor Vehicles Act.

4. This case would to governed by the old provisions of Section 95(2) of the Motor Vehicles Act, 1939 as the accident took place on 8-2-70 prior to the 1969 amendment which came into force with effect from 2-3-70. However, to appreciate the submissions of Mr. Talukdar we may quote the provisions of Section 95(2) of the 1939 Act herein below:

95(2). Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:

(a) where the vehicle is a vehicle used or adopted to be used for the carriage of goods, a limit of twenty thousand rupees:

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers including the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver:

(c) where the vehicle is a vehicle of any other class, the amount of the liability incurred.

5. In the context of the provisions of law, Mr. Talukdar, learned Counsel for the appellant has submitted before us that the Insurance Company is such nature of a case must be saddled with the liabilities to the extent of the limit as prescribed under the law. It is further submitted by the learned Counsel that for each individual inmate of the vehicle who sustained injuries, the liabilities as

prescribed under the law to the limit must be paid by the Insurance Company though the occurrence took place in the same course of transaction as a result of which several inmates sustained injuries. Now the point for consideration which stands before us is whether the Insurance Company, if found liable, is really liable to pay the maximum limit as prescribed under the law to each individual who sustained injury in the same course of transaction and in one accident arising out of the same cause of action. Our answer on this point would be that the Insurance Company shall be liable to pay its maximum limit as prescribed under the law to each individual who sustained injuries in same transaction as a result of an accident of this nature. Its liability under the law as prescribed (prior to amendment of 1969 Act which came into force with effect from 2-3-70) i" Rs. 20,000/- to its maximum limit for injuries sustained by each individual in the present nature of the case. We have said so as because it is now settled law. In Fatik Chandra Bora v. Milan Baroi and Anr. as reported in 1980 A.C.J. 391 a Division Bench of this Court had the occasion to deal with the same legal aspect of the matter as to what would be the extent of liability of the insurance company in case of each individual in such nature of a motor accident claim case. It was held by this Court that there is a statutory obligation of an owner to insure the vehicle against Third Party Risk. Section 95(1) requires that the policy must cover person or classes of persons to the extent specified in Section 95(2) against any liability which may be incurred by the insured in respect of the death or bodily injury to any person caused by or arising out of the use of the vehicle in a public place.

6. Mr. Talukdar, learned Counsel for the appellant has also referred to us a decision of the Supreme Court as reported in Motor Owners'' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, While dealing with the provisions of Section 95(2) of the Motor Vehicles Act prior to 1969 amendment, their Lordships held that if the matter is considered subjectively, the insurer''s liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each of the injured persons since each met with an accident though during the same transaction. It was further observed by their Lordships that a consideration of preponderating importance in a matter of this nature is not whether there was any one transaction which resulted in injuries to many but whether more than one person was injured, giving rise to more than one claim or cause of action, even if the injuries were caused in the course of one single transaction, if more than one person is injured during the course of the same transaction, each one of the persons has met with an accident. In the said case their Lordships had the occasion to consider several decisions of various courts including Supreme Court and decisions in few English cases for interpreting the expression "any one accident" in the provisions of Section 95(2) of the Motor Vehicles Act. The provisions of Section 95(2) underwent a further amendment by the Amendment Act 56 of 1969 which came into force on March 2, 1970. The provisions as laid down under Clause (b) of Section 95 applies to vehicles in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of

employment and under that clause as it stood in 1939 Act, the liability was restricted to Rs. 20,000/- in respect of passengers. In Motor Owners'' Insurance Co. Ltd. (supra), argument was advanced that if more than one persons die in a collision between a car and a goods vehicle and two or three others are injured as a result of the negligence of the driver of the goods vehicle, the heirs of the deceased and the injured persons will together be entitled to Rs. 20,000/- in all, no matter how serious the injuries and how grave the hardship to the heirs ensuing upon the loss of lives of those who perished in the collision. Their Lordships observed--

... But there is more flagrant injustice which one shall have to countenance if one were to accept the argument advanced on behalf of the appellant and it is this: If two persons of unequal economic status die in the kind of collision mentioned above, the heirs of the affluent victim will virtually monopolise the compensation by getting a lion''s share in it thereby adding insult to the injury caused to the heirs of the indigent victim. The purpose of law is to alleviate not lugment, the sufferings of the people. It is well-known that the award of compensation depends upon a variety of factors, including the extent by monetary deprivation to which the heirs of the deceased are subjected. Applying that criterion at one of the many variable criteria which are applicable for fixing compensation in motor accident cases, the heirs of the affluent victim may have been awarded, say a compensation of Rs. 90,000. The heirs of the other victim who may have been just managing to keep his body and soul together will probably have received by that standard a compensation of, say, ten thousand rupees. The compensation awarded to these two groups of heirs shall have to be reduced rateably in the proportion of 9 :1, in order to ensure that it does not exceed rupees twenty thousand "in all". The result of this will be that the Insurance Company will be liable to pay a sum of Rs 18,000/- to the heirs of the affluent person and Rs. 2,000/- to the heirs of the other person. The icy hand of death may have fallen in one stroke on two victims of desperate economic status but then, the arithmatic of the appellant''s argument will perpetuate the gross inequality between the two even after their death. We must avoid a construction which will produce such an unfair result, if we can do so without doing violence to the language of the section...

their Lordships further held:

''any one accident'' means ''accident to any one'' ". It was further held:

...If the matter is looked at from an objective point of view, the insurer''s liability will be limited to Rs. 20,000/- in respect of injuries caused to all the five persons considered en block as a single entity, since they were injured as a result of one single collision. On the other hand, if the matter is looked at subjectively as it ought to be the insurer''s liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each one of the five persons, since each met with an accident, though during the course of the same transaction ...

7. If we consider the ratio of both the decisions referred to above, it leaves no room for further interpretation and or for further consideration as to the extent of liability of the Insurance Company in such nature of a case which we are dealing herein.

8. Mr. A.K. Choudhury, learned Counsel for the Insurance Company has fairly submitted that in view of the decisions of their Lordships of the Supreme Court and of this Court in Motor Owners'' Insurance Co. Ltd. (supra) and of this Court in Fatik Chandra Bora (supra), the Insurance Company cannot escape its liability to the extent indicated in the relevant provisions of the Motor Vehicles Act. There is no dispute as regards the validity of the insurance policy. The policy was valid and the terms were in force on the date of accident. There is no plea as to the violation of any of the terms of the policy. On the undisputed facts we must say that the Insurance Company is liable to pay to each of the respondents a sum of Rs. 20,000/- being its maximum limit out of the award amount in view of the decisions of their Lordships of the Supreme Court and of this Court. Therefore, the apportionment made by the learned Tribunal in the award should be modified. We accordingly modify the award to the extent that the respondent-claimant in M.A F. No. 54 of 1977 in whose favour an award of Rs. 35,000/- has been made with interest and cost shall be paid the said amount out of which the insurance company shall pay Rs. 20,000/- and the balance amount shall be paid by the appellant. Similarly, the respondent-claimant in M.A.F. No. 52 of 1977 in whose favour Rs. 30,000/- has been awarded with interest and cost by the learned Tribunal shall be paid the said amount out of which Rs. 20,000/- shall be paid by the insurance company and the balance amount shall be paid by the appellant. Cost and interest in both the cases shall be shared by the Insurance Company and the appellant proportionately. Though lastly a faint attempt was made to challenge the quantum in both the appeals by the appellant, we do not find any substance in the submission of the learned Counsel for the appellant to reduce the award amount as assessed by the learned Tribunal. We accordingly modify the award as to the liability to pay compensation by the Insurance Company and the appellant to the extent as indicated above. Both the appeals are partly allowed.