

(1984) 08 AHC CK 0011
In the Allahabad High Court
Case No : F.A.F.O. No. 492 of 1977

Jyoti Prasad Dixit (deceased by L.Rs.)	APPELLANT
Vs	
Smt. Bitan Devi and Others	RESPONDENT

Date of Decision : 30-08-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1
Motor Vehicles Act, 1939 — Section 110A, 95(2)

Citation : (1986) 1 ACC 242 : (1986) ACJ 371 : AIR 1985 All 32 : (1986) 59 CompCas 348

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : B.R. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

M. Wahajuddin, J.—This is an appeal filed by the private individual concerned against the claim decree on account of accident and death passed in favour of respondents Nos. 1 to 4, The trial court held that the accident resulting into death of Chhedi Lal Dubey was caused due to rash and negligence of the driver of that bus. It determined the liability for damages for a sum of Rs. 12000/-. It further directed that out of the aforesaid sum Rs. 5000/- would be paid by the Insurance Company which has insured the bus in question while the remaining amount, that is, Rs. 7000/- will be paid by the owner of the Bus. Two arguments are urged on behalf of the appellant. The first argument urged is that the Bus was itself hit by the Railway Engine and it was unmanned railway crossing so Union of India was also a necessary party. When the crossing is unmanned it is the duty of the person driving any vehicle or cart at the crossing railway line at that point to be alert and vigilant. The driver of the Bus should have taken notice of the approaching engine. If that was not done naturally accident will be due to negligent act of the driver and there is no question in such situation of any contributory negligence. Union of India was thus not a necessary party. Apart from that where there is a joint and several liability it is always open to sue any

of the person so liable without making other a party. The arguments to the contrary have no force and are rejected.

2. The next point urged is that the Bus in question had the capacity of more than 30 and so bus was compulsorily insurable for Rs. 75000/- under the provisions of Section 95(2)(b) of the Motor Vehicles Act and when that is the position and claim was allowed for Rs. 12000/- only the Insurance Company should have been taxed with the entire liability and any part of the liability should not have been fastened to the owner of the Bus. Reliance is placed in that connection upon the case of *New India Assurance Co. Ltd., Allahabad v. Mahmood Ahmad* AIR 1984 All 183 . It was held in that case while interpreting Section 95 (2) (b) (4) of the Motor Vehicles Act that whereas only one passenger injured limit of liability of insurer as regards compensation amount for each passenger does not apply. With great respect to the Hon'ble Judge 1 may mention that in the aforesaid case the direct authority of the Supreme Court reported in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, was not brought to the notice of his Lordship by the counsel for any parties. This case is of *Sheikhupura Transport Co. Ltd. v. Northern India Transporters" Insurance. Co. Ltd.* The point that directly arose for consideration in that case was is to limit of liability of an Insurance Company u/s 95(2) of the Motor Vehicles Act 1939. At that time the limit was Rs. 2000/- in respect of the individual passenger carried in vehicle other than one carried in a Motor cab. That limit has been raised now to Rs. 5000/-. But there is no other change in the rest of that provision. In fact, in that case also the total liability of the insurance company was Rs. 20000/- with a rider concerning individual passenger carried in the vehicle limiting the liability, and it was held that actually that rider which limits liability to certain amount will govern the case irrespective of the total liability of insurance amount. In fact Section 95(2)(b)(ii)(4) of the Motor! Vehicles Act is express on the point. Sub-section (2) lays down that the Insurance covers liability up to the limits laid down below and then Clause (4) of sub-sec. (2)(b) lays down the limit of liability for each individual passenger to Rs. 5000/- only, this would be the maximum limit irrespective of the total a mount for which , vehicle is insured or required to be insured. The statutory liability is only" to that extent. Any further liability can be taken by insurance Company only in pursuance of any further contract or stipulation which is not the case. Similar view was taken in the case of *Madras Motorand General Insurance Co. Ltd. v. U. P. Balakrishna* also 1982 ACJ 460 (Ker), I am hound by the authority of the Supreme Court which I must follow with greatest respect.

3. The next point urged is that it is joint liability and Court cannot apportion the liability. The position is just reverse. The primary liability is of the bus driver and the bus owner. The Insurance Co. becomes liable only by the provision of statute and not on account of their having committed any wrongful act, ca using accident so the Insurance Company would be liable only for the limited amount of Rs. 5000/- under its statutory liability and not beyond that and when that is the position the amount has rightly been apportioned as not to tax bus owner for

the total liability but only for the balance amount left by apportionment, passing a decree against the Insurance Company to the extent of its liability and against the Bus owner for the balance amount assessed as the compensation.

4. In the result I hold that the liability of Insurance Company is limited to Rs. 5000/- only and the claim has been rightly allowed to the limit of Rs. 5000/- only against the Insurance Company and the decree for the balance amount has rightly been passed against the appellant. This appeal has, therefore, no force and is dismissed. I direct the parties to bear their own costs.

5. From the claimant's side a cross objection was also filed seeking enhancement of the amount, I find that the Motor Accidents Claim Tribunal has made rational approach taking all relevant dates into consideration and the amount of claim award fixed is reasonable and in accordance with the settled principles of law. The judgment determining the amount to be awarded is based on a proper rationale and on settled legal proposition. It is, therefore, not a fit case for making any interference and enhancing the amount of the damages. The cross-objection is also dismissed and parties to bear their own costs.