

(1983) 10 GAU CK 0005

In the Gauhati High Court

Case No : M.A. (F) No's. 6 of 1978 and 39 of 1977

Kanan Bordoloi

APPELLANT

Vs

Balwant Rai Mukkar and Others

RESPONDENT

Date of Decision : 04-10-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110CC, 110F, 95(2), 96

Citation : (1984) ACJ 469

Hon'ble Judges : T.C. Das, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : P.K. Barua, S.A. Laskar and A. Dasgupta, for the Appellant; A.S. Bhattacharjee, T.C. Khetri and S.S. Sharma, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—These two appeals raise two points and arise out of a claim for compensation by the widow of Khagendra Nath who had died in a motor accident on 23.9.71. The claim was on behalf of herself and two minor children aged 6 and 4 years. The learned Motor Accidents Claims Tribunal has awarded a sum of Rs. 78,000/- as compensation and has made the insurer also liable for the entire amount.

2. M.A. (F) 39/77 is by the insurer who contends principally that under the law and the contract, it could not have been asked to pay the entire amount, at best its liability extended upto a sum of Rs. 50,000/-. M.A. (F) 6/78 is by the claimant and her contention relates to the quantum of compensation.

3. In so far as the quantum appeal is concerned, Mr. Barua has raised there points: (1) a deduction of 40 per cent from the total amount of Rs. 1,30,000/-, which was estimated to be the probable income of the deceased, was not justified; (2) Nothing has been paid for the loss of consortium; (3) No interest has been awarded.

4. In so far as deduction of 40 per cent is concerned, there is some force in the

submission because the deceased was maintaining from his income only his wife and two minor children. As such, if we take the dependants as two adults, the reasonable deduction on account of the maintenance of the deceased himself should have been around 33 per cent. But then, while arriving at the figure of Rs. 1,30,000/- the learned Tribunal has not given any margin for uncertainty of life. So, if the amount awarded is enhanced on account of larger deduction, something has to be sliced-off for uncertainty of life. Ultimately, there would not be much difference and we would be coming around the figure of Rs. 78,000/-.

5. In so far as compensation for consortium is concerned, Mr. Barua has referred to *Srisailam Devastanam v. Bhavani Pramillamma* 1983 A.C.J. 510 (A.P.), in which a sum of Rs. 6,500/- was awarded to the husband for the loss of company of his wife. We may also refer to a decision of this Court in the State of Assam and Others Vs. Nalini Kanta Doloi, . In that decision while taking note that such compensation has not been awarded in any Supreme Court case, nor is available under English law, some award was made on this count as well following a Full Bench decision of this Court in *Mrs. Hira Devi Vs. Smt. Bhaba Kanti Das and Others etc. etc.*, . Despite this, we have not felt inclined to disturb the quantum of award as the Appellant has not claimed anything specifically in the claim petition on this count. What was specified was "loss of prospect of life, general, special and consequential damages". According to us, a sum of Rs. 78,000/- even otherwise represents a just compensation. An appellate court should not disturb such award unless it is too high or too low.

6. So far as the claim of interest is concerned, that, however, has to be conceded in view of what has been stated in Section 110-CC of the Motor Vehicles Act, 1939 hereinafter referred to as "the Act", as the interest is in addition to the amount of compensation as stated therein. As this section had become effective on 2.3.70 and as the accident had taken place thereafter, we are satisfied about the entitlement of the claimant to interest. We fix the rate of interest at the rate of 6 per cent from the date of making the claim till payment or deposit of the amount in court.

7. So far as the insurer's appeal is concerned, it may first be stated that the Appellant in MA (F) 39/77 is the insurer of the tanker which had collided with an Ambassador car. As the learned Tribunal has held that the accident was due to negligence of the driver of the tanker, it is the owner and insurer of that vehicle along with the driver who have been held jointly and severally liable. The tanker being a goods vehicle, there is a statutory limit of the liability as per Section 95(2)(a) of the Act and that is Rs. 50,000/- in all. The question is whether by the policy in question the insurer undertook to pay any higher amount. There is no dispute that an insurer can do so by entering into a contract with the insured. The question is whether in the present case there was such a contract.

8. The learned Tribunal on interpreting certain provisions in the policy (Exh. Gha) has opined that the insurer had not limited its liability to what has been fixed in the statute. In coming to this conclusion, reference has been made to Clause (1)

(i) of Section II of the policy. We may read that clause:

1. Subject to the Limits of Liability the company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of,

(i) death or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle.

An identical clause had found place in the case of Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., . By referring to the opening words "subject to the limits of liability" it was stated that these evidently referred to the limit prescribed u/s 95(2) of the Act. This decision then noted another clause of the policy which read:

Nothing in this policy or any endorsement thereon shall effect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96.

Such a clause in identical also finds place in Exh. Gha. The Supreme Court observed with reference to this clause that it made abundantly clear that the extent of the right of the person indemnified is as prescribed u/s 96 of the Act and under that provision the amount to be recovered is covered by restrictions of Section 95.

9. In this view of the matter, an interpretation of this clause by the learned Tribunal to hold that the policy had gone beyond the statutory limit, cannot be accepted. Let it, however, be said that this decision has none-the-less been arrived at because of what has been stated in the policy under the heading "Limits of Liability. It has been stated in this context that the limits of liability u/s II-1(i) in respect of any one accident is "such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939 and the learned Tribunal has felt that it referred to the determination of compensation u/s 110-110F independently of Section 96. But if this statement in the policy is read along with what has been stated earlier, there can be no doubt that the "limits of liability" of which mention has been made refers to the limit prescribed by Section 95(2) of the Motor Vehicles Act, as already alluded.

10. In this view of the matter, we are satisfied that the learned Tribunal erred in law in making the insurer liable for the entire amount of Rs 78,000/-.

According to us, as per the law and the terms of the policy, the insurer could have been asked to pay a sum of Rs 50,000/- and no more.

11. Accordingly, M.A. (F) 39/77 is allowed to the extent that the Appellant in this case would pay a sum of Rs 50,000/- to the claimant, the remaining sum would, however, be paid by the persons who were opposite parties 1 and 2 before the learned Tribunal, the owner and driver of the tanker. In so far as MA (F) 6/78 is concerned, that is dismissed subject to the observations relating to payment of

interest.

Das, J.

12. I agree.